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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA 305/2016& CM APPL. 37974/2016**

UNION OF INDIA

..... Appellant

Through: Ms. Archna Gaur and Ms.
Ridhima Gaur, Advs.

versus

RAMBIR SINGH

..... Respondent

Through: Mr. Gaurav Bhardwaj and Mr.
Rahul Bhati, Advs.

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

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04.01.2024

1. This is a second appeal under Section 100 of the Code of Civil Procedure (CPC), 1908.

2. The proceedings emanate from Suit 47/06/97 filed by the respondent Ranbir Singh before the learned Senior Civil Judge (learned SCJ). The suit was decreed by the learned SCJ with costs. RCA 05/2014 filed by the appellant/UOI before the learned Additional District Judge (the learned ADJ) was also dismissed by the impugned judgment dated 17 March 2016 with costs.

3. The Union of India is now before this Court in second appeal under Section 100 of the CPC.

4. The appeal suggests the following substantial questions of law as arising for consideration:

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“1. Whether the termination order can be faulted with even when it is an accepted position that the respondent was selected for enrolment as constable (driver) by the Recruitment Officer of 104 Battalion Central Reserve Police Force?

2. Whether the termination order passed by the appellant in consonance with the instruction/Rules and suffering from no patent, legal or other infirmity tantamount to violation of principles of natural justice?

3. Whether the Ld. ADJ was justified in dismissing the appeal with costs of Rs. 50,000/- in addition to the relief already granted to the respondent.”

5. I have heard Ms. Gaur, learned counsel for the appellant.

6. The facts of the case are brief.

7. The respondent Ranbir Singh was recruited as Constable (Driver) in the Central Reserve Police Force (CRPF). He underwent the requisite training, whereafter he was posted as Constable (Driver) in the MT Branch.

8. On 23 May 1994, the services of the respondent were terminated by the Commandant, purportedly under Rule 5(1) of the Central Civil Services (Temporary Service) Rules 1965 [the CCS (TS) Rules] read with Rule 16 of the CRPF Rules, 1955. Admittedly, the termination order contained no reasons for terminating the services of the respondent. In fact, this is one of Ms. Gaur’s primary submissions. She submits that the order was innocuous and as Rule 5 of the CCS (TS) Rules as well as Rule 16 of the CRPF Rules permitted termination of a temporary employee at any time without any reason, the respondent really has no cause of action to institute the suit in the first place.



9. Be that as it may, the respondent filed a statutory appeal against the order dated 23 May 1994 as well as a representation. Both were dismissed.

10. The respondent, in these circumstances, instituted S-47/06/1997 before the learned SCJ, seeking a decree of declaration, declaring the termination order dated 23 May 1994 as illegal, alongwith consequent relief of reinstatement with full back wages.

11. Having not adduced any reason for terminating the respondent's services, the CRPF, during the proceedings before the learned SCJ, contended that the respondent having failed in the final examination conducted by the Board of Officers for recruitment as Constable (Driver) was given a second opportunity to appear in the examination, in which he was found indulging in unfair means. This, it was alleged actually the reason for terminating his services.

12. The learned SCJ observed that, as no documents in support of the allegation that the respondent had indulged in unfair means had been produced by the appellant, and has no opportunity had been granted to the respondent before his services were terminated, the termination was *ex facie* bad in law. As such, the suit was decreed in terms of the prayers of the respondent who was directed to be reinstated in service.

13. Aggrieved thereby, the appellant preferred RCA 05/2014, which has come to be dismissed by the learned ADJ *vide* the



impugned judgment dated 17 March 2016.

14. During the proceedings before the learned ADJ, an application was filed by the appellant/UOI under Order XLI Rule 27¹ of the CPC to place certain additional documents on record which, according to Ms. Gaur, would have established the allegation that the respondent had indeed indulged in unfair means.

15. Apropos this application, the learned ADJ notes that the suit had been instituted by the respondent in 1997 and had remained pending for 12 years till it was disposed of on 5 October 2009. During these 12 years, no document supporting the allegations against the respondent had been filed by the appellant. Thereafter, RCA 05/2014 was filed in 2010 and it was only in 2015, five years after the appeal was filed that the Order XLI Rule 27 CPC application came to be filed by the appellant.

16. The only ground cited for permitting additional documents to be taken on record was that the matter was being pursued officially by

¹27. Production of additional evidence in Appellate Court.—

(1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if—

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced or witness to be examined.

(2) Whenever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission.



the Northern Sector, Pahrvi Cell of CRPF at R. K. Puram, New Delhi, and was thereafter, being pursued by the Pahrvi Cell of the RAF, New Delhi.

17. The learned ADJ has also relied in this context, on the evidence of PW1 O. P. Shekhawat who, despite opportunity, did not tender any document in evidence, to support the decision to disengage the services of the respondent. The fact that no such document on record was also admitted by Mr. Shekhawat, in cross-examination which took place in 2005. A suggestion put by learned counsel for the respondent to Mr. Shekhawat, that no such document was actually in existence, was also not denied. Despite this the UOI did not condescend to place any such document on record till 2015.

18. The learned ADJ has observed that no sufficient ground existed, to permit the additional documents to be brought on record at the first appellate stage, in view of the strict stipulations contained in Order XLI Rule 27 of the CPC.

19. As such, the impugned judgment does not allow the said documents to be taken on record.

20. Following this, the learned ADJ has observed that though Rule 5(1) of the CCS (TS) Rules² as well as Rule 16³ of the CRPF Rules

²5. Termination of temporary service.

- (1) (a) The services of a temporary Government servant shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant;
(b) the period of such notice shall be one month.

Provided that the services of any such Government servant may be terminated forthwith and on



permit a temporary employee to be discharged simpliciter without notice, if such discharge, though simpliciter in appearance, was in essence stigmatic, it would have to be preceded by an opportunity to the concerned employee before his services were disengaged.

21. In so holding, the learned ADJ has relied on the judgments of the Supreme Court in *Shamsher Singh v. State of Punjab*⁴, *State of Punjab v. Sukh Raj*⁵, and *Anoop Jaiswal v. Government of India*⁶.

such termination, the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or as the case may be, for the period by which such notice falls short of one month.

³16. Period of service .—

(a) All members of the Force shall be enrolled for a period of three years. During this period of engagement, they shall be liable to discharge at any time on one month's notice by the appointing authority. At the end of this period those not given substantive status shall be considered for quasi-permanency under the provision of the Central Civil Services (Temporary Service) Rules, 1965. Those not declared quasi permanent under the said rules shall be continued as temporary Government employees unless they claim discharge as per Schedule to the Act. Those who are temporary shall be liable to discharge on one month's notice and those who are quasi-permanent shall be liable to discharge on three months' notice in accordance with the said rules, as amended from time to time.

(b) Should the Central Government decide at any time to disband the Force or any part of it either before termination of the period for which a member of the Force is enrolled or at any time thereafter, he shall be liable to discharge, without compensation from the date of disbandment.

(c) No member of the Force shall withdraw from the duties of his office without the express permission of the Commandant or an accredited Gazetted Officer.

(d) The appointing authority may, during the period of initial appointment of a member of the Force appointed under [sections 4 and 5] of the Act, permit him, for good and sufficient reason, to resign from the Force with effect from such date as may be specified in the order accepting his resignation: Provided that on the acceptance of his resignation any such member of the Force shall be required to refund to the Government all the cost of training imparted to him in the Force or a sum equal to three months' pay and allowances, received by him prior to the date of his resignation whichever is less.
Explanation .—(1) For the purpose of this sub-clause "during the period of initial appointment" shall mean the period before a member of the Force is declared quasi-permanent.

(2) The appointing authority may refuse to permit a member of the Force to resign if any emergency has been declared in the country either due to internal disturbances or external aggression.

(e) The appointing authority may give substantive status to such members of the Force as are found suitable in all respect.

⁴AIR 1974 SC 2192

⁵AIR 1958 SC 1089

⁶(1984) 2 SCC 369



22. In these circumstances, the learned ADJ held that there was no occasion to interfere with the judgment of the learned SCJ which was, as already noted, upheld with the costs.

23. The UOI/CRPF is in second appeal before this Court.

24. The scope of interference by the High Court in second appeal, with concurrent findings of facts by the two courts below, is well-settled. One may refer, in this context, to the decisions in *Hero Vinoth v. Seshammal*⁷, of which the relevant passages may be reproduced thus:

“24. The principles relating to Section 100 CPC relevant for this case may be summarised thus:

(iii) The general rule is that High Court will not interfere with the concurrent findings of the courts below. But it is not an absolute rule. Some of the well-recognised exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to “decision based on no evidence”, it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding.”

25. The facts of the present case do not, in my opinion, make out a sufficiently exceptional instance for this Court to interfere in second appeal with the concurrent decisions of the learned SCJ and the learned ADJ. The avowed stand of the respondent before the learned SCJ as well as the learned ADJ was that the termination of the



respondent's services was because he had indulged in unfair means in the examination. No material to that effect was placed on record. PW-1 Mr. O.P. Shekhawat specifically acknowledged that there was no such evidence available on the record.

26. As the learned ADJ has correctly observed, for the 12 years during which the suit remained pending before the learned SCJ, no such evidence was produced.

27. The First Appeal came to be filed in 2010 and no such evidence was forthcoming even thereafter for five years till the Order XLI Rule 27 application came to be filed in 2015.

28. The peripheries of Order XLI Rule 27 CPC are well delineated by the provision itself. At the First Appellate stage, additional documents can be brought on record only in one of three circumstances which are exhaustive in that regard. As such, the learned ADJ has correctly observed, Order XLI Rule 27 is essentially in the form of a proscriptive covenant, which proscribes additional evidence being produced at the appellate stage. Clauses (a), (aa) and (b) which follow are exceptions to the general proscription contained in Order XLI Rule 27 (1). These clauses have, therefore, to be read strictly.

29. Howsoever they may be read, the learned ADJ is correct in her finding that the request for placing additional documents on record, as made by the appellant, did not satisfy any one of the three clauses (a),



(aa) or (b) in Order XLI Rule 27 (1). There was no refusal, by the learned Trial Court, to take the additional evidence on record; indeed, it was not even produced during the pendency of the suit; ergo clause (a) did not apply. There was clearly admitted want of due diligence on the part of the appellant, who could not seek to contend that the additional material was not within its knowledge; ergo, clause (b) did not apply. The additional documents were not produced consequent to any such direction passed by the learned ADJ; ergo, clause (c) did not apply.

30. As such, as none of the three clauses (a), (aa) and (b) of Order XLI Rule 27 applied, the learned ADJ was correct in refusing to allow the additional material to be brought on record.

31. One may, in this context, refer to the following enunciation of the law, contained in the judgment of the Supreme Court in *N. Kamalam v. Ayyar Swami*⁸:

“19. Incidentally, the provisions of Order 41 Rule 27 have not been engrafted in the Code so as to patch up the weak points in the case and to fill up the omission in the court of appeal — it does not authorise any lacunae or gaps in evidence to be filled up. The authority and jurisdiction as conferred on to the appellate court to let in fresh evidence is restricted to the purpose of pronouncement of judgment in a particular way. This Court in *Municipal Corpn. of Greater Bombay v. Lala Pancham*⁹ has been candid enough to record that the requirement of the High Court must be limited to those cases where it found it necessary to obtain such evidence for enabling it to pronounce judgment. In para 9 of the judgment, this Court observed: (AIR p. 1012)

“This provision does not entitle the High Court to let in fresh evidence at the appellate stage where even without such

⁸(2001) 7 SCC 503

⁹AIR 1965 SC 1008 : 67 Bom LR 782



evidence it can pronounce judgment in a case. It does not entitle the appellate court to let in fresh evidence only for the purpose of pronouncing judgment in a particular way. In other words, it is only for removing a lacuna in the evidence that the appellate court is empowered to admit additional evidence. The High Court does not say that there is any such lacuna in this case. On the other hand what it says is that certain documentary evidence on record supports 'in a large measure' the plaintiffs' contention about fraud and mala fides. We shall deal with these documents presently but before that we must point out that the power under clause (b) of sub-rule (1) of Rule 27 cannot be exercised for adding to the evidence already on record except upon one of the grounds specified in the provision."

Further in *Pramod Kumari Bhatia v. Om Prakash Bhatia*¹⁰ this Court also in more or less an identical situation laid down that since an application to the High Court has been made very many years after the filing of the suit and also quite some years after the appeal had been filed before the High Court, question of interfering with the discretion exercised by the High Court in refusing to receive an additional evidence at that stage would not arise. The time-lag in the matter under consideration is also enormous and the additional evidence sought to be produced was as a matter of fact after a period of 10 years after the filing of the appeal. Presently, the suit was instituted in the year 1981 and the decree therein was passed in 1983. The first appeal was filed before the High Court in April 1983 but the application for permission to adduce additional evidence came to be made only in August 1993. Needless to record that the courts shall have to be cautious and must always act with great circumspection in dealing with the claims for letting in additional evidence particularly, in the form of oral evidence at the appellate stage and that too, after a long lapse of time. In our view, a plain reading of Order 41 Rule 27 would depict that the rejection of the claim for production of additional evidence after a period of 10 years from the date of filing of the appeal, as noticed above, cannot be termed to be erroneous or an illegal exercise of discretion. The three limbs of Rule 27 do not stand attracted. The learned trial Judge while dealing with the matter has, as a matter of fact, very strongly commented upon the lapse and failure on the part of the plaintiffs even to summon the attestors to the will and in our view contextually, the justice of the situation does not warrant any interference. The attempt, the High Court ascribed it to be a stage-managed affair in order to somehow defeat the claim of the respondents — and having had the privilege of perusal of record we lend our concurrence thereto and the finding of the High Court cannot be found fault with for rejecting the prayer of the appellants



for additional evidence made in the belated application. In that view of the matter, the first issue is answered in the negative and thus against the plaintiffs, being the appellants herein.

32. No substantial question of law, therefore, arises out of the rejection by the learned ADJ, of the appellant's application under Order XLI Rule 27 CPC.

33. On merits, as the learned SCJ and the learned ADJ have correctly concurrently found, the order of termination, though innocuously worded was, admittedly, in essence stigmatic. No opportunity had been granted to the respondent to answer the allegation of unfair means before his services were terminated. Apart from the judgments on which the learned ADJ has relied, one may cite the following decision in *Bajinath Mandal v. UOI*¹¹ which also hold that it is not permissible to terminate the services even of a temporary employee if the termination is in essence stigmatic, even though it may be innocuously worded:

“16. There can be no dispute that when an employee has been granted a temporary status and the order of his termination is stigmatic and punitive, and not of discharge simplicitor, then a departmental inquiry has to precede the termination. For when the order of termination is stigmatic, termination of an employee without holding a departmental enquiry would be in violation of principles of natural justice. It has severe consequences for the employee, since he gets branded and blemished with the stigmatic declaration made against him, thus marring his future prospects of employment.

17. In the present case, the termination was due to alleged misbehaviour of the Petitioner, and hence, is stigmatic and punitive. Such termination, without holding a departmental enquiry, is clearly impermissible. The Respondents should have conducted a departmental enquiry before termination of the



services, thereby providing the Petitioner with an opportunity to meet the accusations of his misbehaviour. The procedure as contained in the Rules of 1968 was required to be followed. Instead, the Respondents resorted to a short cut method by issuance of a stigmatic termination order dated 30.04.2002 and terminating his services. Since there was no departmental enquiry conducted before the termination, in accordance to the procedure prescribed in Rules of 1968, the termination order is against the principles of natural justice and hereby set aside.”

34. In view of the above discussion, it is clear that there is no error in the decisions either of the learned SCJ or of the learned ADJ as would justify interference, especially within the limited confines of the jurisdiction vested in this Court by Section 100 of the CPC.

35. No substantial question of law, therefore, arises.

36. The appeal is, accordingly, dismissed.

C.HARI SHANKAR, J

JANUARY 04, 2024/ssc

Click here to check corrigendum, if any