



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Second Appeal No. 278/2003

1. Rajasthan State Road Transport Corporation, Jaipur through General Manager-cum-Managing Director, Jaipur
2. Divisional Manager, Rajasthan State Road Transport Corporation, Kota.
3. General Manager (Traffic) Rajasthan State Road Transport Corporation, Jaipur
4. President, Rajasthan State Road Transport Corporation, Jaipur

----Appellant/Defendants

Versus

Omprakash Sharma S/o Shri Mool Chand Sharma, Ex-Conductor, Rajasthan State Road Transport Corporation, Kota Aagar, at present resident of through Mangal Chand Soni, Baseda Gali, Patanpol, Kota, District Kota.

----Respondent/Plaintiff



For Appellant(s)	:	Mr. Alok Chaturvedi with Mr. Shailendra Sharma
For Respondent(s)	:	Mr. Babu Lal Gupta with Mr. Ankul Gupta

HON'BLE MR. JUSTICE SUDESH BANSAL

Order

07/03/2022

The appellants- defendants-RSRTC (hereafter 'the RSRTC') have preferred this second appeal assailing the judgment and decree dated 10.12.2002 passed by the Additional District Judge No.4, Jaipur City, Jaipur in civil first appeal No. (289/95) 48/2002 whereby and whereunder, the appellate court while reversing the judgment and decree dated 08.03.1995 passed by the Additional Civil Judge (Jr. Division), Jaipur City, Jaipur in civil suit No.1731/1995 has allowed the first appeal and the respondent's suit has partially been decreed.



Facts as culled out from the record are that respondent-plaintiff (hereafter 'the plaintiff') filed a suit for declaration against the order of his termination from service dated 1-10-1982, appellate order dated 1-2-1984 and review order dated 4-2-1986 on the ground that allegations levelled against plaintiff were false, charge sheet was issued without seeking any explanation, copies of documents were not provided, during course of enquiry evidence of witnesses was not recorded in presence of plaintiff nor opportunity of cross examining them was provided, as such enquiry was conducted against the provisions of Section 35 of Standing Orders and vitiates on account of violation of principles of natural justice. Similarly copy of enquiry report was not provided nor plaintiff was heard on quantum of punishment. Appellate Authority and Review Authority did not provide any opportunity of hearing to plaintiff.

Defendant RSRTC did not file written statement. Plaintiff examined himself as Pw.1. In rebuttal RSRTC produced one witness as Dw.1, however, he did not turn up for cross examination, therefore, his evidence was not taken on record. The trial court considered the plaintiff's case on merits and found the impugned termination order of termination and subsequent orders of Appellate Authority and Reviewing Authority are against principles of natural justice. However, the suit was dismissed on the ground of limitation only. The trial court calculated the limitation from the first order of termination dated 1-10-1982 instead of counting the limitation from the final order of Reviewing Authority dated 4-2-1986.



On filing first appeal, the appellate court placed reliance upon judgment in case of **Ram Ratan Sharma Vs. R.S.R.T.C., in S.B. CSA No.245/1996 decided on 1-3-1997.** As per proposition of law propounded therein, limitation for suit for declaration was counted from the last order dated 4-2-1986 passed by Reviewing Authority affirming termination order dated 1-10-1982, the first appellate court reversed findings of trial court on the issue of limitation. Since the trial court has already passed findings on merits in favour of plaintiff holding that termination order and subsequent orders passed by Appellate and Reviewing Authorities are against principles of natural justice and such findings were never challenged by defendant RSRTC, accordingly the first appellate court decreed the plaintiff's suit vide its judgment dated 10-12-2002 and impugned order of termination dated 1-10-1982 and subsequent orders dated 1-2-1984 and 4-2-1986 passed by Appellate and Reviewing Authorities were declared null and void being violative of principles of natural justice. Plaintiff was also held entitled for reinstatement with all consequential benefits from the date of his termination. Hence, this second appeal.

This court vide order dated 3-1-2006 framed following substantial question of law:-

- i. Whether finding of the learned Appellate court cannot be sustained in the eye of law reversing the findings of the learned trial court without meeting with the reasonings assigned by the learned trial court?



ii. Whether the period of limitation in a suit for declaration could be counted from the date the review petition was rejected against the order of termination/ appellate order when there was no provision under the Standing Orders for filing the review?

iii. Whether the learned Appellate Court could have set aside the order of termination/ appellate order when the suit was rejected by the learned trial court filed on the ground of limitation only?

iv. Whether the learned Appellate court should have remanded the matter for decision on merits as to legality and validity of termination order when the judgment and decree of the trial court dismissing the suit on the ground of limitation were reversed?

v. Whether it was incumbent upon the learned Appellate court to have given liberty to the Disciplinary Authority to continue with the departmental enquiry from the stage when it was found to be invalid by it on ground of violation of principles of natural justice/ statutory provisions.

vi. Whether the learned Appellate court could have directed for payment of full back wages where the termination order was set aside being violative of principles of natural justice/ statutory provisions.

Heard learned counsel for parties and perused impugned judgments passed by courts below.



The issue of limitation as to whether it should be counted from the date of termination order or from the last order of Reviewing Authority has been decided by coordinate bench of this court in **Ram Ratan Sharma Vs. R.S.R.T.C. in S.B. CSA No.245/1996 decided on 1-3-1997**, which has been followed in subsequent case of **Mali Ram Banjara Vs. Rajasthan State Road Transport Corporation, in S.B. CSA No.204/1999 decided on 19.03.2013**. In view of proposition of law laid down therein it is no more res integra that limitation can be and should be counted from the last order, including orders of Appellate and Reviewing Authorities. Therefore, the question of law relating to limitation is answered in negative in view of aforesaid two judgments.

As far as the question of law that first appellate court should have remanded the matter for decision on merits to trial court is concerned, the same does not arise at all in the present case. A perusal of the judgment of the trial court indicates that the trial court considered the plaintiff's case on merits and recorded findings that termination orders and subsequent orders passed by Appellate and Reviewing Authorities are violative of principles of natural justice. Such findings were never challenged by RSRTC. The trial court dismissed the suit only on the ground of limitation. When the first appellate court reversed findings on issue of limitation, as a nature of corollary placed reliance upon findings of the trial court on merits and plaintiff's suit was decreed. The question of remanding the suit for consideration on merits does



not arise in such a situation. Thus, this question of law is also answered in negative.

As far as question of law as to first appellate court should have given liberty to the Disciplinary Authority to conduct departmental enquiry from the stage when it was found to be invalid on the ground of violation of principles of natural justice is concerned, in facts and circumstances of the case where the termination order was passed way back on 1-10-1982 and RSRTC never made such prayer before the first appellate court, the appellate court has not committed any illegality or jurisdictional error in not remanding the matter to the Disciplinary Authority. It depends on facts and circumstances of each case. In the present case such substantial question of law does not arise. Accordingly, the same is answered in negative.

In the opinion of this court, the first appellate court has not committed any illegality or jurisdictional error in awarding back wages to plaintiff from the date of his termination order dated 1-10-1982 and decreeing plaintiff's suit as a whole. In case of **Umerkhan Vs. Bismillabi [(2011) 9 SCC 684]** Hon'ble Supreme Court has propounded that if a second appeal is admitted on substantial question of law, while hearing second appeal finally, can re-frame substantial question of law or can frame substantial question of law afresh or even can hold that no substantial question of law involved, but the High Court cannot exercise its jurisdiction of Section 100 CPC without formulating substantial question of law.



In the present case substantial question of law as framed have been considered and this court is of the opinion that no substantial question of law as framed does fall within the scope of 100 CPC. It is a case where no substantial question of law involved as there is no perversity or material irregularity/ infirmity in the judgment passed by the first appellate court. Accordingly, the second appeal is not liable to succeed. Consequently, the same is hereby dismissed.

Stay application and any other pending application(s), if any, also stand(s) disposed of.

Record of courts below be sent back forthwith.

(SUDESH BANSAL),J

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