

(2001) 12 GUJ CK 0012
In the Gujarat High Court

Case No : Special Civil Application No's. 3798 and 12331 of 2000

Asjwinkumar R. Patel

APPELLANT

Vs

Executive Director

RESPONDENT

Date of Decision : 26-12-2001

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Industrial Disputes Act, 1947 — Section 11A

Citation : (2002) 93 FLR 426

Hon'ble Judges : D.H. Waghela, J

Bench : Single Bench

Advocate : J.S. Brahmbhatt, in Special Civil application No. 12331 of 2000 and Manish R. Bhatt, in Special Civil application No. 3798 of 2000, for the Appellant; Manish R. Bhatt in Special Civil Application No. 12331 of 2000 for Respondent No. 1 and J.S. Brahmbhatt in Special Civil Application No. 3798 of 2000, for the Respondent

Final Decision : Dismissed

Judgement

D.H. Waghela, J.—By these cross-petitions, the employer and the employee have challenged the same award of the Industrial Tribunal, Vadodara in Reference I.T. (Central) No.4 of 1992. By consent and at the request of the learned counsel for the parties, both the petitions were heard together finally and are disposed by this common judgment.

2. For the sake of convenience, the parties herein are described as "the employer" and "the workman". By the impugned award dated 13.1.2000, the order terminating the service of the workman has been set aside with the direction to reinstate him on his original post with continuity of service and all the consequential benefits as also with the direction to pay 50% of the backwages and costs of Rs.1,000/-. The relevant facts, in brief, are that the workman was allegedly caught pouring petrol and oil in his scooter on 23.4.1981 while on duty. On the charge of stealing petrol and oil of the company, a criminal case as well as a departmental enquiry was instituted against the workman. The

workman was acquitted in the criminal case upon getting benefit of doubt and the departmental proceedings were concluded with the finding that the workman was "actually caught stealing only mobil oil in scooter No.GRE 6500 on 23.4.1981 at about 5.15 a.m. and thus he is guilty of misconduct under Clause 22 (iv) of the company's standing orders." On the basis of that finding, the workman was dismissed and the order of his dismissal was upheld in the departmental appeal. The workman had, therefore, preferred Special Civil Application No.4375 of 1983 in this Court and that petition was rejected on 25.1.1991. The workman then approached the Industrial Tribunal by raising an industrial dispute wherein, after hearing and appreciating the evidence on record, the aforesaid impugned award and order are made.

3. It was vehemently argued by Mr.M.R.Bhatt on behalf of the employer that by dismissing Special Civil Application no.4375 of 1983 by a detailed order, this Court had practically negated all the contentions of the workman and upheld the punishment of dismissal leaving no scope for the Industrial Tribunal to arrive at a different conclusion and make an order of reinstatement. The learned counsel took the Court through the text of the judgment from which the following observations were emphasised:-

" In my opinion, therefore, the case of the accused falls within the aforesaid exceptions and hence the enquiry proceeded with by the competent authority and finally concluded with the said appellate finding is quite proper."

".....In other words, this Court is not sitting in appeal over the finding of the enquiry officer and for that matter of the appellate authority. It has to be broadly seen whether the domestic enquiry is held in accordance with the rules, if there be any, governing the same and whether the principles of natural justice and that of fair play have been observed or not? The enquiry as such has not been challenged on that count anywhere."

Referring to the judgment of the Supreme Court reported at The State of U.P. Vs. Ram Chandra Trivedi, , it was further observed in the aforesaid earlier judgment that:

" Much less can it, therefore, evaluate the evidence to know whether it is amenable to another interpretation or any other conclusion based on that very evidence. What is required to be seen is whether the facts before the enquiry officer are such as would be possible to come to the conclusion that the enquiry officer has come to. If that be so, the finding of the enquiry officer subject to the enquiry whether principles of natural justice are followed or not, is final."

And the concluding remark that: "All told, therefore, what appears is that it is not a case of no evidence....." were printed out.

4. On the basis of the observations as above, it was submitted that the procedure adopted by the employer as also the conclusions arrived at in the enquiry and the ultimate orders of dismissal were upheld by this Court in a legal

proceeding and it was not open for the Industrial Tribunal to arrive at a different decision. It was, in that context, also submitted that the very reference of the dispute of the demand as made by the employee was incompetent and illegal. It must be noted that the aforesaid petition of the workman was resisted on behalf of the Corporation by the learned counsel Mr.R.P.Bhatt mainly on the grounds that the Corporation was not a "State" or an authority as understood under Article 12 of the Constitution; that alternative efficacious remedy by way of a reference under the Industrial Disputes Act was available to the workman and that this Court in exercise of the powers conferred under Article 226 of the Constitution cannot sit in appeal over the finding of a domestic enquiry as also that this Court cannot enter into the question of quantum of punishment at all. In the context of such objections raised by the employer, it was decided that it was not possible to enter into the question of sufficiency or otherwise of the punishment as also to decide whether the employer Corporation was a "State" in absence of necessary data. However, as for the plea of alternative efficacious remedy, the objection of the employer was upheld with the observation that:

" The alternative remedy for an industrial worker under the Industrial Disputes Act is certainly there and so far as setting aside of the dismissal order and consequential relief of reinstatement with backwages are concerned, they can be had under the proceedings initiated under the said Act. To that extent, the submission made by the learned counsel Mr.Bhatt has to be accepted."

5. After reference to the observations as above in the judgment of this Court in the aforesaid Special Civil Application No.4375 of 1983, it is clear that the recourse to alternative remedy was not barred and that petition of the workman was decided in the context of the powers and jurisdiction of this Court under Article 226 of the Constitution. The second relevant aspect of the matter is that the employer has, admittedly, not challenged the order of reference of the dispute to the Industrial Tribunal but, instead, fully participated in the proceedings before the Industrial Tribunal. Therefore, the first contention of the employer fails.

6. Coming to the second submission of Mr.Bhatt that there was sufficient evidence before the Enquiry Officer to arrive at the finding that the workman was stealing oil as alleged, and the conclusion drawn by the Tribunal in the impugned award was perverse, it shall have to be examined whether it is so. After examining the documentary evidence produced by the employer including the chargesheet and the statements of witnesses, it is concluded by the Tribunal in the impugned award that the report of the Enquiry Officer was not based on the enquiry proceedings and the documentary evidence on record. In the opinion of the Tribunal, the misconduct of stealing `mobil oil" was not proved in the enquiry and the workman had not committed the misconduct as alleged in the chargesheet at Exh.35. Discussing this aspect of the matter, it was pointed out by Mr.Bhatt that the charge indeed was of stealing petrol and oil and pouring it in scooter No.GRE 6500 as against the finding of the Enquiry Officer himself that

the workman was actually caught stealing only oil "in scooter No.6500". Thus, the charge of stealing petrol is expressly not held to have been proved. As for the charge of stealing oil, the Enquiry Officer had the statement of only one eye-witness to rely upon. The full text of the statement of that eye-witness along with copies of the original papers of the proceedings of the enquiry were produced by the learned counsel for ready reference. And going through the all important statement of the sole eye-witness, i.e. Mr.Jhala, it was seen that, according to him, on 23.4.1981 at 5.10 a.m., he saw two people standing near the mangoe trees and the cycle/scooter stand; he did not know the names of them but knew them by faces and he doubted their behaviour on the basis that the time of changing the shifts was the time of stealing petrol. The persons standing with the delinquent went to switch off the lights which confirmed the doubts of the witness. Thereafter, he hid himself in the pit and saw one person pouring something from a bottle into the tank of the scooter. Another person near the scooter was holding another bottle and he also poured something into the scooter. Upon being caught by the witness, the person having the bottle put it down whereafter the name of the person was told by himself to be that of the workman. Thereafter, the lights in the area were switched on and the witness also saw lid of the bottle near the scooter. The bottle found nearby contained some quantity of oil and the scooter in which the contents of the bottles were seen to have been poured was found to be scooter No.GRE 6500. After taking the workman to the gate, a seizure memo was prepared. No questions were admittedly asked by the witness to the workman. After that, the workman along with his colleague Mr.R.J.Patel was taken to a police station. The conclusion of the Enquiry Officer on the basis of the above statement, in his enquiry report, is that the defence has not been able to demolish the testimony of the witness and after referring to the statements of other witnesses, the finding that the workman was actually caught stealing only oil in scooter No.GRE 6500 was returned. Despite strenuous efforts on the part of the learned counsel, it could not be shown as to how an element of stealing or theft was brought into on the basis of the statement as above of the eye-witness. The distance from which the instance of pouring of petrol/oil was supposed to have been seen by the eye-witness is also nowhere mentioned and after switching off the lights what would have been the visibility at 5.10 a.m. in the morning and how the workman was identified as the person standing near the scooter and pouring the liquid into the scooter is also not clearly coming out in the evidence.

6.1 The Court is conscious of the basic principles that the evidence on record cannot ordinarily be reappreciated in this kind of proceedings and strict rules of evidence do not apply in the departmental proceedings. However, in the facts of the present case, the impugned judgment of the Tribunal is challenged specifically on the ground that it is perverse. As against that, the finding of the Tribunal, after consideration of the evidence on record that the misconduct of stealing oil was not proved in the enquiry, appears to be correct and it cannot be challenged merely by submitting that the finding of the Enquiry Officer could not

have been disturbed by the Tribunal by re-appreciating the evidence. Therefore, in short, no reason is made out to disturb the finding of fact recorded by the Tribunal, according to which, the act of misconduct alleged against the workman was not proved. And when the act of misconduct as alleged is not proved, there cannot be any question of imposing any penalty on the workman.

7. The judgment of the Supreme Court in *Bank of India and Another Vs. Degala Suryanarayana*, was relied upon to submit that the Court exercising the jurisdiction of judicial review should not interfere with the findings of fact arrived at in a departmental enquiry proceedings except in a case of mala fides or perversity. The Court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority and the conclusion must be sustained as long as there is some evidence to support it. It is, however, also held that in case of no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at a finding, it has to be interfered even in exercise of powers of judicial review. Similarly relying upon *Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Noykarara Sangha Etc.*, a case dealing with punishment u/s 11-A of the Industrial Disputes Act, it was submitted that once an act of misappropriation is proved, may be for a small or large amount, there cannot be a question of showing any uncalled-for sympathy to order reinstatement and the Labour Court cannot substitute the penalty imposed by the employer in such cases. As discussed hereinabove, the ratio in these two cases have no application in the facts of the present case.

8. As seen earlier, in the facts of this case, the employer has sought interference by this Court in the matter of the factual findings arrived at by the Tribunal where the scope of judicial review is clearly restricted and the findings of the Tribunal are found not to be perverse. On the other hand, the employee has, in his petition, sought substitution of the impugned order insofar as full backwages are denied. The Tribunal has, on the latter aspect, taken note of the contention that the workman had not produced any evidence about his attempt to get any employment and not believing the say of the workman that he remained unemployed while surviving on the support of his brother-in-law throughout the period of about eight years, awarded 50% of the backwages. No reason was made out on behalf of the workman to interfere with that part of the order and, in fact, his petition was not seriously pressed.

9. In these facts and circumstances, both the petitions are rejected. Notice and Rule, as the case may be, discharged with no order as to costs.