

(2016) 02 GUJ CK 0228
In the Gujarat High Court

Case No : Special Civil Application No. 10567 of 2003 with Civil Application No. 11815 of 2005.

Billmetal Works and another.

APPELLANT

Vs

Bharat Singh R. Chandel

RESPONDENT

Date of Decision : 25-02-2016

Acts Referred:

Citation : (2016) 150 FLR 455 : (2016) LabLR 811 : (2016) 2 LLJ 668 : (2016) 4 LLN 405

Hon'ble Judges : M.R. Shah, J.

Bench : Single Bench

Advocate : Trivedi and Gupta, Advocates, for the Appellant; Rajesh P. Mankad, Advocate, for the Respondent

Final Decision : Allowed

Judgement

M.R. Shah, J.(Oral) - By way of this petition under Article 226 of the Constitution of India the petitioners have prayed for an appropriate writ, order or direction to quash and set aside the impugned judgment and award passed by the learned Presiding Officer, Labour Court, Vadodara in Reference (LCB) No. 84/1991 by which the learned Labour Court has partly allowed the said Reference and has quashed and set aside the order of termination dated 17/11/1986 and has ordered reinstatement of the workman with 75% back wages from 25/09/1990 and with continuity of service.

2. At the outset it is required to be noted that by the impugned judgment and award the learned Labour Court has interfered with the order of punishment dismissing the workman from service in exercise of powers under Section 11A of the Industrial Disputes Act denying 25% back wages from 25/09/1990.

3. The main contention on behalf of the petitioners is that when the learned Labour Court has interfered with the order of punishment in exercise of powers under Section 11A of the Industrial Disputes Act and consequently the learned

Labour Court has quashed and set aside the order of termination, the learned Labour Court ought to have imposed some punishment commensurate with gravity of the misconduct committed by the workman.

4. Shri Naik, learned advocate appearing on behalf of the petitioners has vehemently submitted that in the present case the misconduct against the workman has been proved. It is submitted that not only that after having committed the mistake in preparing the wrong dye and wrong measurement the workman even tried to hide the same. It is submitted that assuming that the order of termination/dismissal can be said to be disproportionate to the misconduct committed by the workman, when the learned Labour Court has interfered with the order of punishment in exercise of powers under Section 11A of the Industrial Disputes Act the learned Labour Court was required to impose some another punishment, which can be said to be just punishment looking to the misconduct committed by the workman.

5. The present petition is opposed by Shri Rajesh Mankad, learned advocate appearing on behalf of the respondent-workman. Shri Mankad, learned advocate appearing on behalf of the workman has vehemently submitted that in the facts and circumstances of the case it cannot be said that by the impugned judgment and award the learned Labour Court has not passed any order of punishment at all. It is submitted that to deny 25% back wages from 25/09/1990 to 08/11/2001 itself can be said to be imposing punishment.

5.1 Shri Mankad, learned advocate appearing on behalf of the workman has further submitted that still to put an end to the litigation and considering the fact that the workman had already attained the age of superannuation in the year 2007 and he has not received any amount towards retirement benefits and/or even back wages and/or benefit in service he has ultimately left it to the Court to impose reasonable punishment even denying some more back wages.

5.2 Shri Mankad, learned advocate appearing on behalf of the workman has stated that as such the impugned judgment and award came to be passed by the learned Labour Court on 08/11/2001 which came to be challenged by the petitioners in the year 2002. However, the present petition came to be heard for admission hearing for the first time in the year 2004 and pursuant to the interim order passed by the learned Single Judge of this Court dated 14/12/2004 the workman was reinstated in service on 28/12/2004. It is submitted that thereafter he continuously worked up to his attaining the age of superannuation i.e. 14/11/2007 and he has retired on attaining the age of superannuation on 14/11/2007. It is submitted that as such the workman shall be entitled to full back wages from the date of award till reinstatement and even full salary while he was reinstated in service. He has further submitted that even the workman was also entitled to the retirement benefits which may be available to him. Shri Mankad, learned advocate appearing on behalf of the workman has stated that despite the above the workman has been denied the aforesaid benefits, which the workman is otherwise entitled to. It is submitted that therefore while

deciding the present Special Civil Application, the aforesaid aspect is also required to be considered.

6. Heard the learned advocates appearing on behalf of the respective parties at length. At the outset it is required to be noted that by the impugned judgment and award the learned Labour Court has specifically observed and held that the order of dismissal/termination of the workman from 17/11/1986 is disproportionate to the misconduct proved against the workman, and therefore, in exercise of powers under Section 11A of the Industrial Disputes Act the learned Labour Court has passed the impugned judgment and award, however has denied 25% of the back wages from 25/09/1990 till 08/10/2001 and, therefore as such it cannot be said that no punishment at all has been imposed by the learned Labour Court while passing the impugned judgment and award. Denying 25% back wages from 25/09/1990 to 08/11/2001 itself can be said to be imposing the punishment. However, in the facts and circumstances of the case and as stated by Shri Mankad, learned advocate appearing on behalf of the workman that still the workman may be denied the back wages to some extent to put an end to the litigation, this Court is of the opinion that in the facts and circumstances of the case if the workman is denied 50% back wages it will meet the ends of justice and it can be said to be just punishment with the gravity of the misconduct committed by the workman. To the aforesaid extent, the impugned judgment and award passed by the learned tribunal is required to be modified. In view of the above and for the reasons stated herein above, the present petition succeeds in part. The impugned judgment and award passed by the learned Labour Court in Reference (LCB) No. 84/1991 is hereby modified to the extent denying 50% of the back wages to the workman from 25/09/1990 till the impugned judgment and award i.e. 08/11/2001. Rest of the judgment and award passed by the learned Labour Court is hereby confirmed. Consequently the workman shall be entitled to all other consequential benefits, including the continuity of service and full back wages from the date of the award till the workman was reinstated in service i.e. 28/12/2004 and full salary with all the consequential benefits from the date of reinstatement till he attained the age of superannuation i.e. 14/11/2008 and the workman shall also be entitled to the retirement benefits he is entitled to in accordance with law. The aforesaid shall be paid to the workman within a period of eight weeks from today, failing which it shall carry the interest at the rate of 9% per annum. Rule is made absolute to the aforesaid extent. No order as to costs.

7. In view of disposal of the main Special Civil Application, no order in the Civil Application and the same stands disposed of accordingly.