

(2005) 04 GUJ CK 0050

In the Gujarat High Court

Case No : Special Civil Application No. 1677 of 1997

CTM Textiles Mills

APPELLANT

Vs

Yashinbhai V. Rajput

RESPONDENT

Date of Decision : 19-04-2005

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 17, 23, 24, 5, 78
Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 11A
Penal Code, 1860 (IPC) — Section 114, 504, 506(1)

Citation : (2005) 04 GUJ CK 0050

Hon'ble Judges : Sharad D. Dave, J

Bench : Single Bench

Advocate : P.C. Master, for the Appellant; N.K. Majmudar, for the Respondent

Judgement

Sharad D. Dave, J.—The petitioner - company, by way of this petition, challenges the common judgment and order of the Industrial Court,

Ahmedabad passed in Appeal (IC) No. 23 of 1995 and Appeal (IC) No. 20 of 1995 dated 30.12.1996, whereby the petitioner - company was

ordered to reinstate the respondent with full back wages with all other consequential benefits.

2. The brief facts giving rise to this petition are such that the petitioner company is running a processing factory and doing the work of dyeing,

printing and finishing of grey cloth given to the petitioner mills by different customers. At the time relevant time, the establishment was being run on

small scale basis and at that time according to the necessity of the establishment, the employees were being appointed. The respondent employee

was appointed by an order dated 18.03.1982 as a clerk-typist and was required to do the clerical work, typing work and taking down dictation in

long hand of small letters, receiving telephones, filing work etc. His salary was Rs. 650/- per month and was given an additional remuneration and

thus in all he was being paid Rs. 700/- per month. It is the case of the petitioner - company that the respondent never used to do his work honestly

and faithfully and always demanded rise in salary. He filed a criminal case against the Managing Director and Manager for the offences u/s 504,

506(1) and 114 of Indian Penal Code and in the Labour Court for getting more salary and arrears for work load. However, all his cases were

dismissed. Thereafter, he never used to do his work, never used to come to office in time and misbehaved and never attend to his duties in time.

This caused loss to the petitioner - company. He was told by the petitioner in the form of notice that inquiry will be held against him for the

aforesaid charges. As no reply was given by the respondent against the said notice, regular inquiry was held against him. As the charges levelled

against him in the inquiry were proved, he was dismissed from service by order dated 08.04.1984.

3. The said order of dismissal was challenged before the Labour Court under Sections 78 and 79 of the Bombay Industrial Relations Act, by filing

T. Application No. 376 of 1984. After hearing both the parties and taking into consideration the oral and documentary evidence produced, the

Labour Court held that the inquiry held by the company was not legal and proper. Against the said order, the petitioner - company filed Revision

Application No. 35 of 1990 and after hearing the parties, the Industrial Court, by its judgment and order dated 16.09.1991, allowed the revision

application of the petitioner by holding that the inquiry conducted by the company is legal and proper and remanded the matter to the Labour

Court for proceeding according to law. It is the case of the petitioner that during the pendency of proceedings in January, 1988, the respondent -

employee had cancer on his hand and ultimately his hand was required to be amputated and from then he was not able to perform his duties. After

hearing both the parties, the Labour Court came to the conclusion that the order of dismissal was improper. It was also held that if he is required to

be reinstated, he is required to be reinstated in service till January, 1988 and thereafter it is open for the management to retrench his services

because of his disablement and also directed the petitioner - company to pay 50% back wages till the date of reinstatement. Against the said order

of the Labour Court, the petitioner - company preferred appeal being Appeal (IC) No. 23 of 1995 before the Industrial Court, Ahmedabad and

the respondent herein also challenged the same judgment by way of Appeal (IC) No. 20 of 1995 before the Industrial Court, Ahmedabad claiming

reinstatement with full back wages. Both the appeals were heard together and decided by common judgment, wherein the appeal of the petitioner -

company was dismissed and the appeal of the respondent was fully allowed and the petitioner - company was directed to reinstate the respondent

- employee with 100% back wages with all other consequential benefits. It is against this judgment and order, the present petition is filed.

4. Learned advocate for the petitioner - company has primarily submitted that the Industrial Court, in its judgment observed that in the present hard

days of unemployment, it will be very difficult for the respondent to maintain his wife and two children and God has also taken away his hand and

Government is also not in a position to give work and at this stage the Management should have taken some active steps and therefore the

judgment of the Industrial Court is based completely on mercy and humanitarian grounds rather than deciding the matter legally on merits. He

submitted that both the Labour Court and Industrial Court found that the inquiry was legal and if they found that the punishment was too harsh,

then the punishment could have been reduced instead of ordering reinstatement with full back wages.

5. Learned advocate for the petitioner has relied on the following submissions :

1. Textile Corporation of Marathwada v. Prabhakar Balajirao Deshpande and Anr. reported in 1997 II LLJ 446.

2. Mohan Ganpat Nikam Vs. National Textile Corporation (South Maharashtra) Ltd. and Others,

3. Madhukar Murari Pavaskar v. Hindustan Spinning and Weaving Mills Ltd. reported in 1997 LABIC 2673.

4. Municipal Corporation of Greater Bombay Vs. Sopan Yashwant Mohite and Others,

5. Sadhana Textile Industries Pvt. Ltd. Vs. Gulabchand Gayadin and Others etc.,

6. New Shorrock Mills Vs. Maheshbhai T. Rao,

7. Maruti Udyog Ltd. Vs. Ram Lal and Others,

8. Divisional Controller, GSRTC v. Ratansinh Thakore reported in 1997(2) GLH

230.

9. Rajkot Municipal Corporation v. Navinchandra I Vyas reported in 1997(2) GLH 331.

10. Gujarat Leather Industries Ltd. v. Mahendrakumar Pavar and Ors. reported in 2000(2) GLH 648.

12. Bharat Heavy Electricals Ltd. Vs. M. Chandrasekhar Reddy and Others,

13. Bharat Forge Co. Ltd. Vs. Uttam Manohar Nakate,

6. In the submissions of Mr. Master, learned advocate for the petitioner, in respect of Section 11A of the Industrial Disputes Act, the different

courts including the Apex Court have held that the Courts has to exercise power u/s 11A judiciously and not arbitrarily and only in case of a

punishment is shocking to the conscience of the court, in that case only the court can interfere with the punishment. In the present proceedings,

nowhere the Labour Court or the Industrial Court have held that the punishment was shockingly disproportionate and the Industrial Court has

materially erred in ignoring the important aspect that in January, 1988, one hand of the respondent was amputated because of cancer for which the

employer is not responsible and due to amputation of his hand, he was not in a position to do his normal works and therefore he should not have

been reinstated. It is further submitted that the respondent employee has preferred Civil Application No. 8461 of 1998 in this Special Civil

Application in which this Court (Coram : H.L. Gokhale, J) passed order dated 08.10.1998 by which the respondent employee was reinstated in

service from 10.10.1998 and therefore now the question of reinstatement does not arise, which is fairly admitted by the learned advocate for the

respondent.

7. Lastly, it is submitted that the citations cited on behalf of the respondent employee are the citations under the provisions of the Industrial

Disputes Act and that too u/s 11A of the Act. Now, the present case is covered under the BIR Act and there are judgments to the effect that

Section 11A of the ID Act does not apply to the provisions of the BIR Act. Thus, he prayed for allowing this petition by setting aside the judgment

and award passed by the Industrial Court.

8. Against the aforesaid submissions, learned advocate for the respondent submitted that this petition itself is not maintainable as this Court cannot

sit as an appellate authority while exercising the power under Article 227 of the Constitution of India. The order passed by the Industrial Tribunal is

a well reasoned order and therefore no interference is required by this Court. It is further submitted that the petitioner - company has not

established inability of respondent - workman with regard to the performance of his duty and the respondent has not stated that he is not in a

position to perform his duties. Under the circumstances, in absence of any evidence of disability of the respondent - workman and evidence of

gainful employment, the Industrial Court, after considering Sections 78, 79 of the Bombay Industrial Relations Act read with the standing order

granted relief of reinstatement of full backwages to the respondent. Therefore, it is prayed that this petition be dismissed.

9. Mr. Majmudar, learned advocate for the respondent has relied on the following authorities :

1. Central Coal Fields Ltd. Vs. Bhubaneswar Singh and Others,
2. Colour-Chem Limited Vs. A.L. Alaspurkar and Others,
3. Jitendra Singh Rathor Vs. Shri Baidyanath Ayurved Bhawan Ltd. and Another,
4. Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others,
5. Brahma Chandra Gupta Vs. Union of India (UOI),
6. APSRTC, Cuddapah v. K. Bajjanna, (2002) 9 SCC 739
7. Parmanand Vs. Nagar Palika and Others,
8. Scooters India Limited Vs. Labour Court and Others,
9. Haryana Urban Development Authority v. Devi Dayal reported in AIR 2002 SC 1313.
10. Bhagat Ram Vs. State of Himachal Pradesh and Others,
11. Rama Kant Misra Vs. The State of Uttar Pradesh and Others,
12. Ved Prakash Gupta Vs. Delton Cable India (P) Ltd.,

10. Preliminary objection was raised by Mr. Majmudar, learned advocate for the respondent that Industrial Court in Appeal (IC) No. 23 of 1995

has dismissed the appeal of the petitioner - company and allowed the appeal of the respondent workman in Appeal (IC) No. 20 of 1995 and

therefore separate petition should be filed against both the orders and that by not filing separate petitions, it is difficult to note against which appeal

the petition is filed. I am of the opinion that the Industrial Court has disposed of the two appeals by common judgment and therefore it is not necessary to file separate petitions for both the appeals.

11. Mr. Master submitted that when the proceedings are filed before the Labour Court as well as Industrial Court u/s 17 of the BIR Act, the

petition can be filed under Sections 78 & 79 of the BIR Act. For this purpose, a reference deserves to be made to following facts : The order of

dismissal was challenged before the Labour Court under Sections 78 and 79 of the Bombay Industrial Relations Act, by filing T. Application No.

376 of 1984. After hearing both the parties and taking into consideration the oral and documentary evidence produced, the Labour Court held that

the inquiry held by the company was not legal and proper. Against the said order, the petitioner - company filed Revision Application No. 35 of

1990 and after hearing the parties, the Industrial Court, by its judgment and order dated 16.09.1991, allowed the revision application of the

petitioner by holding that the inquiry conducted by the company is legal and proper and remanded the matter to the Labour Court for proceeding

according to law. It is the case of the petitioner that during the pendency of proceedings in January, 1988, the respondent - employee had cancer

on his hand and ultimately his hand was required to be amputated and from then he was not able to perform his duties. After hearing both the

parties, the Labour Court came to the conclusion that the order of dismissal was improper. It was also held that if he is required to be reinstated,

he is required to be reinstated in service till January, 1988 and thereafter it is open for the management to retrench his services because of his

disablement and also directed the petitioner - company to pay 50% back wages till the date of reinstatement. Against the said order of the Labour

Court, the petitioner - company preferred appeal being Appeal (IC) No. 23 of 1995 before the Industrial Court, Ahmedabad and the respondent

herein also challenged the same judgment by way of Appeal (IC) No. 20 of 1995 before the Industrial Court, Ahmedabad claiming reinstatement

will full back wages. Both the appeals were heard together and decided by common judgment, wherein the appeal of the petitioner - company was

dismissed and the appeal of the respondent was fully allowed and the petitioner - company was directed to reinstate the respondent - employee

with 100% back wages with all other consequential benefits.

12. It is submitted that the Industrial Court, in its judgment observed that in the present hard days of unemployment, it will be very difficult for the

respondent to maintain his wife and two children and God has also taken away his hand and Government is also not in a position to give work and

at this stage the Management should have taken some active steps and therefore the judgment of the Industrial Court is based completely on mercy

and humanitarian grounds rather than deciding the matter legally on merits. Moreover, Mr. Master has taken me through the pending inquiry report

dated 08.02.84 and submitted that the respondent workman misbehaved while on duty. Mr. Master submitted that the Industrial Court has erred

in coming to the conclusion that the behaviour of the respondent workman of going to bathroom and lunch room for a long time cannot be said to

be misconduct and allowed the appeal of the respondent workman. In my opinion, these acts of remaining absent from his seat for a long time can

be said to be indiscipline and can be said that when all other people are working honestly and sincerely, the respondent used to waste his time by

doing the aforesaid acts instead of doing his work. The Industrial Court has come to the conclusion that though the employee has committed

misconduct, it is not that much grave which can effect his employment. Relying on the judgments reported in (1978) 3 SCC 370 and (1980) SCC

478 on page 21 of the judgment, the Industrial Court has observed that there is no act of indiscipline to such an extent that it should effect his

employment. I am bound by the judgments of the Hon'ble Apex Court, but the facts of those cases are different from the facts of this case and

therefore do not apply to this case.

13. While going through the judgment of the Industrial Court, I am of the opinion that it is perverse and cannot be sustained on a better footing. I

am of the opinion that the judgments cited by Mr. Majmudar, learned advocate for the respondent herein are the judgments related to Industrial

Disputes Act, 1947 and the judgments cited by Mr. Master, learned advocate for the petitioner herein are the judgments related to Bombay

Industrial Relations Act. The standing orders framed under Bombay Industrial Relations Act, 1946 can apply to the petitioner company. Section

23 of the Standing orders is regarding acts and omissions constituting

misconduct, wherein (a) states that wilful insubordination or disobedience of any lawful and reasonable order of a superior and (l) commission of any act, subversive of discipline or good behaviour on the premises of the undertaking shall amount to misconduct. Section 24 is regarding punishment for misconduct, wherein sub-section 5 states that (5) An employee against whom any action is proposed to be taken under sub-clause (b) or (c) of clause (1) of this Standing order may be suspended pending the holding and completion of an inquiry or for the period, if any, allowed to him for giving for explanation. The order of suspension may take effect immediately on its communication to the employee. If as a result of enquiry held or explanation tendered, it is decided not to take any action under clause (l), the employee shall be deemed to have been on duty and shall be entitled to full wages and all privileges for the full period of the suspension.

14. In the case of New Shorrock Mills (supra), the Hon"ble Supreme Court has held in para 8 as under :

It appears to us that the Labour Court completely misdirected itself in ordering the respondent's reinstatement with forty per cent back wages.

The Labour Court was exercising jurisdiction u/s 78 of the Bombay Industrial Relations Act, 1946. It had the jurisdiction, inter alia, to decide the

disputes regarding the propriety and legality of an order passed by an employer acting or purporting to act under the standing orders. The Labour

court, in the present case, having come to the conclusion that the finding of the departmental enquiry was legal and proper, respondent's order of

discharge was not by way of victimization and that the respondent workman had seriously misbehaved and was thus guilty of misconduct, ought

not to have interfered with the punishment which was awarded, in the manner it did. This is not a case where the court could come to the

conclusion that the punishment which was awarded was shockingly disproportionate to the employee's conduct and his past record. The Labour

Court completely overlooked the fact that even prior to the incident in question the respondent had misconducted himself on several occasions and

had been punished. According to the appellant there were atleast three other instances where the respondent had misconducted himself and that he

had failed to improve his conduct despite his assurances from time to time.

Another aspect which was overlooked by the Labour Court was that on the finding of the enquiry officer that the respondent had misbehaved with his superior officer and was guilty of misconduct, the appellant could have dismissed the respondent from service. The appellant chose not to do so. Instead it passed an order of discharging the respondent from service. Lesser punishment having been given by the management itself there was, in our opinion, no justifiable reason for the Labour Court to have set aside the punishment so awarded. We are unable to accept that the punishment imposed by the management was in any way disproportionate to warrant interference by the Labour Court. The direction of the Labour Court ordering reinstatement of the respondent with forty per cent back wages was clearly unwarranted.

15. In view of the facts and circumstances of the case, this petition is allowed and the order passed by the Industrial Court, Ahmedabad passed in Appeal (IC) No. 23 of 1995 and Appeal (IC) No. 20 of 1995 dated 30.12.1996, whereby the petitioner - company was ordered to reinstate the respondent with full back wages with all other consequential benefits is quashed and set aside. Rule is made absolute to the aforesaid extent.