
(1984) 12 GUJ CK 0015
In the Gujarat High Court

C.V. Kotecha

APPELLANT

Vs

Halar Salt and Chemical Works

RESPONDENT

Date of Decision : 11-12-1984

Acts Referred:

Citation : (1985) 1 GLR 146

Hon'ble Judges : R.C. Mankad, J;R.A. Mehta, J

Bench : Division Bench

Judgement

R.A. Mehta, J.—The dismissed workman has filed the present petition against the judgment and award passed by the Labour Court, Rajkot. whereby his demand for reinstatement and back wages has been rejected.

2. The chargesheet ex. 76 dt. 14th May 1970 alleged that on 11-5-70 the petitioner-workman had talked rudely to the Manager of the respondent company Chunilal Adaija on phone at about 12.45 noon in connection with accidental injury to the brother of the petitioner and thereafter when the Manager Chunilal Adaija had gone to the hospital there also in the presence of the officers and other persons of the company the petitioner-workman had uttered abuses and misbehaved very rudely and had committed breach of discipline of the company and said conduct was considered to be grave misconduct under the Standing Orders. By the said notice he was asked to explain within 48 hours as to why he should not be dismissed from service. After holding the inquiry the management came to the conclusion that the workman was guilty of the charged misconduct and dismissed him from service.

In the reference to the Labour Court under the Industrial Disputes Act, the workman failed and therefore he has filed the present petition.

3. At the outset the learned Counsel for the petitioner-workman referred to the judgment in the case of Ved Prakash Gupta Vs. Delton Cable India (P) Ltd., and particularly the observations at page 918 in para 6 and submitted that under any circumstances the order of punishment of dismissal was absolutely illegal and

was required to be quashed and set aside and if the Court upheld his contention, he would not press other contentions.

4. The facts of the present case show that the workman was the active trade union worker and Vice President of Jamnagar Mazdoor Sangh. The alleged rude behaviour and uttering abuses was caused by the injury received by his brother in an accident in the factory. While his brother was removed to the hospital, none from the management had attended to the injured workman in the hospital and, therefore, the present petitioner had telephoned in the office and it is alleged that during this telephonic talk he had behaved rudely with the Manager Chunilal. Thereafter when Chunilal went to the hospital there also, it is alleged, that this workman had uttered abuses to Chunilal and conducted himself rudely in the presence of the officers and other persons of the company. This was considered by the management to be subversive of discipline and serious misconduct requiring extreme penalty of dismissal.

5. The Labour Court did not believe the say of the workman and held that "when the charge against the worker is established, award and quantum of punishment rests in the discretion with the management, and the Labour Court can interfere with the punishment only in the circumstances which have been, well established." In paras 45 and 46 the learned Labour Judge observed that the workman had used insulting language on phone and had again insulted the manager in the presence of subordinates and the language used was filthy one and from this it appeared to the Labour Court that the misconduct was serious one and, therefore, there was no reason to interfere with the findings and punishment inflicted.

6. It is impossible to uphold the reasoning of the Labour Court. The Supreme Court in the above case has clearly declared the law on the subject. In a case of very similar misconduct of abuses and use of filthy language against the persons in the management, the Supreme Court has held that the extreme penalty of dismissal would be grossly disproportionate and would clearly show mala fide and victimization of the workman. In the present case also the workman is not only active union workman but also Vice President of the Jamnagar Mazdoor Sangh. The observations of the Supreme Court are clear and simple and they are as follows:

There is nothing on record to show that any previous adverse remark against the applicant had been taken into consideration by the management for awarding the extreme penalty of dismissal from service to the appellant even if he had in fact abused in filthy language Durg Singh and S.K. Bagga. We are therefore of the opinion that the punishment awarded, to the appellant is shockingly disproportionate regard being had to the charge framed against him. We are also of the opinion that no responsible employer would-ever impose in like circumstances the punishment of dismissal to the employee and that victimisation or unfair labour practice could well be inferred from the conduct of the management in awarding the extreme punishment of dismissal for a flimsy

charge of abuse of some worker or officer of the management by the appellant within the premises of the factory. We, therefore, hold that the termination of the appellant's service is invalid and unsustainable in law, and that he is entitled to reinstatement with full back wages and other benefits including continuity of service.

7. The learned Counsel for the respondent management has submitted that the misconduct and misbehaviour of a workman against the management and use of filthy language more particularly by a person in the position of Vice-president of the Trade Union is required to be punished very severely. He has submitted that unless such persons are properly punished, the discipline in an industrial undertaking cannot be maintained. The Supreme Court has not said and we also do not say that such conduct should go unpunished.

8. However, to say that extreme penalty of economic death in form of dismissal is the only penalty would be clearly wrong and unjustified. No responsible employer acting reasonably can say that for a misconduct of uttering abuses to the Manager, should result into extreme penalty of dismissal as if such misconduct is the highest form of severe misconduct. Persons belonging to comparatively poorer and backward strata of society may not have the same sense of sophistication in expressing their outburst but that does not deserve the punishment of losing the service. The termination of service cannot, under any circumstances, be justified in the present case. The punishment is certainly and grossly disproportionate to the charge against the petitioner workman and, therefore, the order of dismissal and termination of services of the petitioner workman must be quashed and set aside.

9. The petitioner has been out of service since more than a decade. Although it is not shown that during this period he was gainfully employed and he had earned, we think that the ends of justice and the purpose of punishment would be served by refusing to him half the back wages and awarding him only half the back wages from the date of dismissal till the date of reinstatement which must be made on or before 1st February, 1985.

10. In the result, the petition succeeds and the rule is made absolute by quashing and setting aside the impugned judgment and award of the Labour Court and by declaring that the dismissal of the petitioner from service of the respondent is illegal and void and that he continues to be in service and

11. The respondent is directed to reinstate the petitioner in service to his original post before 1st February, 1985, and to pay 50% of the back wages from the date of dismissal till the date of reinstatement and such back wages shall also be paid before 1st February, 1985. Rule made absolute with costs.