
(2014) 08 GUJ CK 0085

In the Gujarat High Court

Case No : Special Civil Application No. 10350 of 2013

Divisional Controller

APPELLANT

Vs

Pathan Idrishmiya Bhikumiya

RESPONDENT

Date of Decision : 27-08-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2014) 143 FLR 866

Hon'ble Judges : Paresh Upadhyay, J

Bench : Single Bench

Advocate : Hardik C. Rawal, Advocate for the Appellant; Vivek V. Bhamare and Paritosh Calla, Advocate for the Respondent

Judgement

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Paresh Upadhyay, J.—Heard Mr. Hardik Rawal, learned advocate for the petitioner--Employer and Mr. Vivek Bhamare, learned advocate for the contesting respondent No. 1--Workman. Challenge in this petition is made to the award passed by the Labour Court, Palanpur, dated 28.2.2013 in Reference (LCP) No. 28 of 2010, whereby the respondent-workman is ordered to be reinstated in service with continuity of service, without back wages. Learned advocate for the petitioner Employer has submitted that, there was inordinate and unexplained delay on the part of the respondent-workman. It is further submitted that, no infirmity was found by the Labour Court in the departmental inquiry, either on merits, or in the procedure. It is submitted that, under these circumstances, the punishment imposed by the petitioner on the respondent-workman, ought not to have been interfered by the Labour Court. Learned advocate for the petitioner has taken this Court through the factual aspects, including earlier round of litigation, which are on record, reference to which is made hereinafter. It is submitted that, the impugned award be quashed and set aside.

2. On the other hand, Mr. Bhamare, learned advocate for the contesting respondent-workman has taken this Court through the material on record, and

has submitted that, on the basis of evidence on record, the Labour Court could not have come to the conclusion that, the charges against the respondent was proved. Further, the respondent was already before different Forums between these years and therefore, the delay aspect could not operate against the respondent. It is submitted that the Labour Court was well within its power to exercise discretion under section 11-A of the Industrial Disputes Act, and therefore, this Court may not interfere. It is submitted that, the petition be dismissed.

3. Having heard learned advocates for the respective parties and having gone through the material on record, this Court finds as under.

The petitioner Corporation had imposed punishment of dismissal on the respondent for the proved misconduct. The said order was dated 27.10.1995. The Departmental Appeal against it was also dismissed in the year 1996.

Thereafter, for the first time, in the year 2007, the respondent approached this Court by filing Special Civil Application No. 14699 of 2007 which came to be disposed of on asking the employer to decide the representation which was pending at the relevant time. The dismissal order was however not interfered by this Court.

The above referred representation was rejected, and again petition was filed before this Court being Special Civil Application No. 20179 of 2007. The said petition also came to be dismissed on 21.8.2007, inter-alia on the ground that, it was a stale claim, and further that the respondent had alternative remedy, which he had not exhausted.

The said order of learned Single Judge was challenged in Letters Patent, Appeal No. 1922 of 2007 which also came to be dismissed vide order dated 3.10.2007. It is indicated that, against the said order of the Division Bench, the respondent had approached Hon^{ble} the Supreme Court of India by way of SLP (Civil) No. CC 1344 of 2008 which was also dismissed on 4.2.2008. Two years thereafter, the respondent moved the Labour Court by the present reference i.e., the Reference (LCP) No. 28 of 2010.

In above factual background, this Court finds that, on the ground of delay, the workman had disentitled himself to claim any relief. The Division Bench of this Court had, in para 5 of its order dated 3.10.2007 (Letters Patent Appeal No. 1922 of 2007) observed as under.

"5. In our view, the learned Judge was right in observing that the action under challenge was stale by nearly eleven years. Even if what is stated by learned Advocate is accepted at face value, the First Appeal and the Second Appeal both came to be dismissed in the year 1996. Thereafter, the petitioner-appellant has not taken any action till he approached this Court with Special Civil Application No. 14699 of 2007, which came to be dismissed by order dated 27th June, 2007 observing that the petitioner's representation dated 5th September, 2006 was

pending before the respondent authorities and, therefore, the learned Judge directed the respondent authorities to decide the representation within three months from date of receipt of the copy of the order. Differently put, the petitioner has approached this Court after eleven years even if the date of dismissal of Second Departmental Appeal is considered and the learned Judge, therefore, refused to exercise his discretion."

Learned advocate for the contesting respondent has relied on the decision of this Court in the case of *State of Gujarat Vs. Karsanbhai Jesang*, , to contend that the delay ought not to have operated against him. In this regard, it is recorded that, there cannot be any dispute with regard to what is held in the said decision, however in this case, when this Court had, way back in the year 2007 already held that, the delay was fatal, and the same was confirmed by the Division Bench, and which was not interfered with by the Hon"ble the Supreme Court of India, the respondent cannot claim immunity in this regard. Therefore, this judgment will not take the case of the respondent any further. Thus, only on the ground on delay the impugned award of the Labour Court needs to be quashed and set aside.

4. Additionally, even on merits, no relief could have been granted to the workman. In this regard, the following aspects need mention.

The respondent was dismissed from service for gross misconduct. The charge against him was that, the respondent-driver had unauthorisedly driven the bus, which met with an accident, resulting into loss of life of one girl, and on the top of this, he simply dropped the bus at the depot, without even informing the Authorities about the accident. This charge is held to be proved against him. The Labour Court has also found that there was no illegality in the departmental inquiry or any perversity in the findings recorded by the Inquiry Officer.

After having held as above, the Labour Court exercised its discretion under section 11-A of the Industrial Disputes Act, 1947 and has set aside the dismissal and has awarded reinstatement without back wages. The question is, as to whether in the facts of this case, the Labour Court was justified in exercising its powers under section 11-A of the Industrial Disputes Act. Considering the totality, this Court finds that, the Labour Court was in error in exercising its powers in these facts, and therefore the same needs to be quashed and set aside.

5. Considering the totality, this Court finds that, on the ground of delay, as well as on merits, the Labour Court committed error in granting relief to the respondent and the same needs to be quashed and set aside. This petition, therefore needs to be allowed. For the reasons recorded above, this petition is allowed. The impugned award passed by the Labour Court, Palanpur dated 28.2.2013 in Reference (LCP) No. 28 of 2010 is quashed and set aside. Rule is made absolute. No order as to costs.