

(2012) 08 GUJ CK 0081
In the Gujarat High Court
Case No : S.C.A. No. 11671 of 2012

Divisional Controller

APPELLANT

Vs

Vajir Mahmad Nurmahmad Sepai

RESPONDENT

Date of Decision : 30-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 10, 11A

Citation : (2013) 1 LLJ 703

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Hardik C. Rawal, for the Appellant;

Final Decision : Dismissed

Judgement

Abhilasha Kumari, J.—This petition under Articles 226 and 227 of the Constitution of India has been filed with a prayer to quash and set aside the judgment dated 8.2.2012 passed by the Industrial Tribunal, Ahmedabad ("the Tribunal" for short), whereby the penalty imposed upon the respondent has been reduced. Briefly stated, the facts of the case are that the respondent-workman was working as a Driver in the petitioner-Corporation.

It is the case of the petitioner that the respondent remained absent unauthorisedly from 1.9.1996 to 30.9.1996. A Departmental Inquiry was conducted and the charges were proved against the respondent. Penalty of stoppage of two increments with future effect was imposed by the Competent Authority, by order dated 31.7.1997. The respondent preferred a first departmental appeal against the same. The Appellate Authority reduced the penalty to stoppage of one increment with future effect. As per the ease of the petitioner, the respondent raised an industrial dispute after eleven years. In the reference, the respondent did not challenge the legality and validity of the Departmental Inquiry, but the penalty imposed upon him. After necessary adjudication, the Tribunal found that the respondent had remained

unauthorizedly absent for 22 days. However, it reduced the penalty to stoppage of one increment without future effect by exercising power u/s 11-A of the Industrial Disputes Act, 1947 ("the Act" for short). Aggrieved by the impugned judgment of the Tribunal, the petitioner is before this Court.

2. Mr. Hardik C. Rawal, learned advocate for the petitioner, has submitted that the Tribunal has failed to consider the documentary evidence and submissions advanced on behalf of the petitioner in proper perspective and has modified the punishment imposed upon the respondent without considering the delay of eleven years. The legality and validity of the departmental proceedings were not challenged by the respondent, despite which the punishment has been reduced. It is submitted that looking to the misconduct of the respondent in remaining unauthorizedly absent for 22 days, the punishment of stoppage of one increment with future effect as imposed by the first Appellate Authority was just and proper and did not warrant interference by the Tribunal.

3. I have heard learned counsel for the petitioner and perused the impugned judgment of the Tribunal. I find that the Tribunal has meticulously examined the evidence on record, produced both by the petitioner and the respondent workman. After doing so, the Tribunal has found that the respondent was a "Badli" worker at the relevant period of time, which means that he would be asked to perform duty when the regular workman was on leave. The Tribunal has further found that, for the period of 15 days' absence before 8.9.1996, the respondent has produced a medical certificate. However, for the period in question, that is 8.9.1996 to 30.9.1996, no leave report or medical certificate was found to be produced on record; therefore, the Tribunal has come to the conclusion that the respondent was unauthorizedly absent for 22 days. The Tribunal has held that the absence of 22 days cannot be said to be a very long one. Considering the aspect that for the previous absence the respondent had produced a medical certificate, coupled with the fact that the respondent was a "Badli" worker at the relevant period of time, the Tribunal found that not only was the initial penalty of stoppage of two increments with future effect excessive and harsh, but the penalty, as modified by the first Appellate Authority of stoppage of one increment with future effect was also disproportionate to the misconduct committed by the respondent. On this ground, the Tribunal has reduced the penalty to stoppage of one increment without future effect, in exercise of powers u/s 11-A of the Act. While doing so, the Tribunal had placed reliance upon a Full Bench decision of this Court, in the case of *Guj. State Road Transport Corporation Vs. D.V. Chauhan*, .

4. In the abovementioned judgment, the Full Bench, after discussing a catena of judgments, has held as below:

10. There is no disagreement amongst the parties that Section 11-A deals with punishments of discharge or dismissal. Disagreement is whether the Labour Court/Tribunal have jurisdiction to interfere in cases of other punishments? Managements say "no" while workmen say "yes". Prior to incorporation of

Section 11-A, Labour Court/Tribunal was guided by judicial pronouncements and interfered with punishments irrespective of their nature but the situation took turn by Apex Court decision in *Indian Iron & Steel Company Limited v. Their Workmen* (supra), limiting the jurisdiction to (i) when there is want of good faith, (ii) when there is victimization or unfair labour practice, (iii) when the management has been guilty of basic error or violation of principle of natural justice and (iv) when on the materials, the finding is completely baseless or perverse. While prescribing these conditions, the Apex Court also said that management may have power to direct its own internal administration and discipline but the power is not unlimited. When an industrial dispute arises, Industrial Tribunals/Labour Courts have been given powers to see whether termination of service of a workman is justified and to give appropriate relief, adding further that in cases of dismissal or discharge, the Industrial Tribunal/Labour Court does not act as a Court of Appeal and substitute its own judgment for that of the management. As to what is the extent of interference in cases of other punishments, the Apex Court does not opine in *Indian Iron & Steel Company Limited v. Their Workmen* (supra). Therefore, jurisdiction in such cases is left untouched, which means, Labour Court/Tribunal can interfere to the extent permitted by judicial pronouncements and facts of individual case. While examining the legality and propriety of the order, subject matter of industrial dispute, irrespective of nature of punishment, without being exhaustive, same can be (1) want of good faith, (2) victimization or unfair labour practice, (3) basic error or violation of principles of natural justice, (4) finding completely baseless or perverse, (5) colourable exercise of power or want of bona fide, (6) punishment shockingly disproportionate in the facts of the case, and (7) conduct of workman/workmen, present or past.

11. Adverting to the question, which of the two judgments referred to by the Division Bench (Coram: R.S. Garg and Ravi R. Tripathi, JJ.) decides the law correctly, our answer is, Section 11-A may exclusively deal with cases of discharge or dismissal, but criteria, after common reference u/s 10 to decide an industrial dispute is same, namely, the Second Schedule and the Third Schedule. In other words, in all cases of punishments, Labour Court/Tribunal can examine the legality and propriety of punishment, irrespective of nature thereof. Scope of examination of an industrial dispute and extent of interference is same irrespective of the fact that Section 11-A deals specifically with cases of discharge or dismissal, because, as said, in all cases, it is the legality and propriety of the order passed by the employer which is to be examined.

In cases of discharge or dismissal, the Labour Court/Tribunal exercises power u/s 10 read with Section 11-A read with the Second Schedule and the Third Schedule, while in other cases, it exercises jurisdiction u/s 10, read with the Second Schedule and the Third Schedule. Mere mention of Section 11-A while exercising power in cases of punishments other than discharge or dismissal would not make the order illegal since jurisdiction to interfere is traceable to Section 10, read with the Second Schedule and the Third Schedule.

The principles of law enunciated in the above quoted judgment squarely apply to the facts of the present case. As held by the Full Bench, in a reference u/s 10 of the Act, the Labour Court/Industrial Tribunal can examine the legality and propriety of the punishment, irrespective of the nature thereof. Having found that the punishment imposed upon the respondent in the present case is disproportionate to the misconduct committed by him, in my view, the Tribunal has rightly interfered and reduced the punishment.

5. The reasons advanced by the Tribunal for such interference cannot be faulted. The misconduct proved against the respondent is the unauthorised absence of 22 days w.e.f. 8.9.1996 to 30.9.1996, which cannot be said to be an inordinately long absence. At the relevant period of time, the respondent was a "Badli" worker and would be given duty when the regular Driver was on leave. Besides this, the financial implications of the penalty imposed upon the respondent would adversely affect his retiral benefits as well. Considering all the above aspects, the Tribunal was, in my view, justified in reducing the penalty to stoppage of one increment with-out future effect. The impugned judgment is the outcome of detailed scrutiny of the evidence on record and all relevant aspects of the case.

6. As there is no legal infirmity in the impugned judgment of the Tribunal, the challenge of the petitioner must fail. For the aforesaid reasons, as there is no merit in the petition, it stands rejected.

Petition rejected.