

(2013) 01 GUJ CK 0087

In the Gujarat High Court

Case No : Letters Patent Appeal No. 65 of 2002 in Special Civil Application No. 3798 of 2000

Executive Director Gujarat Refinery

APPELLANT

Vs

Ashwinkumar R. Patel

RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

Constitution of India, 1950 — Article 12

Industrial Disputes Act, 1947 — Section 11, 11A

Citation : (2013) 01 GUJ CK 0087

Hon'ble Judges : R.R. Tripathi, J; R.D. Kothari, J

Bench : Division Bench

Advocate : Manish R. Bhatt, With Mrs. Mauna M. Bhatt, for the Appellant;
Hardik C. Rawal, for the Respondent

Judgement

Ravi R. Tripathi, J.—The Executive Director, Gujarat Refinery, Indian Oil Corporation Ltd., Vadodara, is before this Court being aggrieved by the judgment and order dated 26.12.2001 passed by the learned Single Judge, whereby the learned Judge is pleased to dismiss Special Civil Application No. 3798/2000 filed by the present appellant challenging the judgment and award dated 13.1.2000 passed by the Industrial Tribunal (Central), Vadodara, in Reference (I.T.C.) Case No. 4/1992, whereby the learned Member of the Industrial Tribunal (Central) was pleased to pass the order as under:-

The reference is allowed and it is ordered that the action of the Management of Gujarat Refinery (I.O.C) Ltd. P.O. Jawaharnagars, Baroda, through the Chief Personnel and Administrative Manager and by its officer in terminating the services of Shri Ashwainkumar R. Patel, Operator-D from the service of the Corporation is not legal, proper and justified, hence the first party - Company is hereby directed to reinstate the second party workman on his original post, operator -D, with continuity in service and with all other consequential benefits.

The first party-Company is also directed to pay the 50% of the back wages from

the dismissal till reinstatement in terms of this award. The first party company shall bear its own costs and pay Rs. 1000/- as costs of this proceedings to the second party workman.

This award shall be implemented within 30 days of its publication.

Learned Senior Advocate Mr. Manish R. Bhatt for the appellant submitted that the respondent-workman had also filed a petition being Special Civil Application No. 12331/2000 challenging the award of 50% back wages only. The said petition was also dismissed by the common judgment, which is under challenge in this appeal. The appellant has challenged the judgment only to the extent it has dismissed Special Civil Application No. 3798/2000 filed by the present appellant.

2. Learned Senior Advocate for the appellant submitted that Special Civil Application No. 3798/2000 was filed, as the petitioner-appellant was aggrieved by the judgment and award of the Industrial Tribunal (Central). Learned Senior Advocate submitted that the respondent herein did not disclose before the Hon"ble Industrial Tribunal (Central) that he had challenged the action of the appellant by filing Special Civil Application No. 4375/1983 before this Court, which was disposed of by a judgment dated 25.1.1991 and this Court, after careful consideration of the rival submissions made on behalf of both the parties, i.e. appellant and respondent herein, had observed as under :-

All told therefore, what appears is that it is not a case of no evidence and that it is not possible for this Court to enter into the question of sufficiency or otherwise of punishment and so far as the contentions raised by the respondents are concerned, for want of factual data, it is not possible for this Court to hold that the Corporation is a "State" within the purview of Article 12 of the Constitution of India. Rest of the contentions are already answered above. In the event, the petition fails. Rule issued earlier is discharged. Parties are left to bear their own costs.

3. Leaned Senior Advocate invited the attention of the Court to the judgment of this Court passed in the said writ petition and submitted that besides a larger controversy of the Corporation (appellant) being a "State" under Article 12 of the Constitution, the question such as the case being of "no evidence" was also considered, and last but not the least, the Court was also requested to consider the question of "disproportionate punishment". Those questions as mentioned hereinabove stood answered by the Court in so many words.

Learned Senior Advocate submitted that he is not raising any issue about "not disclosing the factum of having filed petition (SCA No. 4375/1983) before this Court", but that is definitely a relevant consideration when it comes to appreciate the conduct of the respondent-workman.

4. Learned Senior Advocate submitted that the appellant did produce the judgment and order of this Court passed in Special Civil Application No. 4375/1983 for consideration of the learned Member of the Industrial Tribunal

(Central), but for the reasons best known to the learned Member of the Tribunal, he has given diagonally opposite finding that it is a case of "no evidence". Learned Senior Advocate invited attention of the Court to the relevant part of the judgment and award wherein the terms of Reference are quoted in the opening paragraph, which reads as under:-

Whether the action of the Management of Gujarat Refinery (I.O.C) Ltd., P.O. Jawaharnagar, Baroda, through Chief Personal and Administrative Manager and by its officer in terminating the service of Shri Ashwinkumar R. Patel, operator-D from the service of the company is legal, proper and justified?

AND

Whether the penalty/punishment of dismissal is proportionate to the gravity of the offence ? if not, to what relief the workman is entitled to and what directions are necessary in the nature.

5. Learned Senior Advocate for the appellant submitted that in light of the judgment and order of this Court, wherein this Court has categorically recorded a finding that "it is not a case of no evidence", and this Court has recorded that the respondent-workman was not challenging the legality and validity of the departmental inquiry, the learned Member of Industrial Tribunal should have answered first part of Reference accordingly and then the Tribunal should have proceeded to consider the second part of the Reference about "quantum of punishment", as it is a matter of dismissal.

6. Learned Senior Advocate for the appellant submitted that the learned Member of the Industrial Tribunal knew very well that his hands are tied in light of the judgments of the Apex Court as well as of the High Court on the point of punishment of dismissal in matters of misappropriation or theft of the property of the employer. He tried to find out a way out and in stead of focusing his attention to the second part of the Reference, he focused on the first part that "this is not a case of no evidence". Learned Senior Advocate submitted that paragraph 9 is a paragraph wherein the learned Member of the Industrial Tribunal (Central) has appreciated the evidence which were before him as part of the record. Paragraph-9 of the judgment of the Industrial Tribunal (Central) is reproduced for ready perusal, which reads as under:-

Now, if we see the documentary evidence produced by the company vide Ex. 19 to 56 wherein the charge sheet is at Ex. 35 and the inquiry report is at Ex. 45. The documentary evidence shows that the workman was caught stealing mobile oil on 23.04.1981 at about 5.30 A.M. The statement of C.I.S.F. Personnel produced in the inquiry shows that they have seen the workman by pouring petrol in his scooter. In the inquiry only the stealing of mobile oil is proved and the stealing of mobile oil is only 20 gms, but if we see the statement of witnesses namely Shri Jhala, Shri Mahendrasingh, Shri Jadhav, and the Japtinama does not say that they have seen the workman by pouring mobile oil in his scooter. The report of inquiry officer is not based on the inquiry

proceedings and documentary evidence on record. In my opinion the misconduct of stealing mobile oil is not proved in the inquiry and the workman have not committed any misconduct enumerated in charge sheet Ex. 35 and the action of the Management of Gujarat Refinery in terminating the service of the Ashwin R. Patel is not legal, proper and justify.

Learned Senior Advocate for the appellant rightly submitted that the preceding paragraphs do not refer to the evidence mentioned in this paragraph being documentary evidence produced by the Company vide Exhs. 19 to 56, and without discussing any specific part or portion of any of the oral evidence, the learned Member of the Industrial Tribunal by a sweeping stroke recorded that, "but if we see the statement of witnesses namely Shri Jhala, Shri Mahendrasingh, Shri Jadav, and the Japtinama does not say that they have seen the workman by pouring mobile oil in his scooter".

(emphasis supplied).

7. Learned Senior Advocate for the appellant submitted that fortunately the proceedings of inquiry were presented before this Court at the time of consideration of the Special Civil Applications, and in that inquiry proceedings, evidence of Mr. B.F. Jhala is reproduced, which will be of direct relevance to bring it on record that the learned Member of the Industrial Tribunal (Central) has failed to appreciate the contents of the said evidence. The relevant part reads as under:-

Examination-in-Chief of Shri B.F. Jhala, Security Guard, C.I.S.F. marked as P.W.-1:

What is your name and how long are you working in Gujarat Refinery? With C.I.S.F.

My name is B.F. Jhala and I am here from 16th May 1980.

Please explain in detail the happening on 23.04.1981 during your duty hours?

On 23.04.1981 I was in 1st shift i.e. from 5.00 am to 13.00 hours. At 5.10 am myself and Mr. Jadhav reached near OMS road we were on one cycle. In between mango tree and cycle/scooter stand two people were standing. I do not know the names of both persons though I know them by faces. As the time of stealing petrol is in between changing the shift of CISF person and as such we got a doubt, as this our experience. As we had a doubt so we were watching and one person went to switch off the light falling cycle/scooter stand, and switched off the light. Since the light switched off our doubt was confirmed. There is pit-fall near the mango tree, I hide myself in the pit-fall. I advised Jadhav to go and he did. I saw one person lifting two bottle, I do not know from where bought, he poured something in the tank of scooter. Another person was holding one bottle, he was also pouring something in the scooter and I reached there. I caught the person who was having one bottle, and immediately he kept the bottle down. I had caught by hand and he tried to get rid off and I started blowing whistle. By that time I came to know his name, by asking then they told the names.

E.O. asked what were the names?

Their names are: Ashwin Kumar Raojibhai Patel to whom I had caught Ratilal Jathabhai Patel, who asked not to go.

Before arriving another C.I.S.F. people MR. Ratilal closed the petrol tank of his scooter.

Enquiry Officer asked have you not objected to his actions?

Mr. Jhala replied he did but he did not pay any attention After closing the petrol tank he was cleaning the oil and petrol which left over the petrol tank. I objected not to do but he did and by that time our another C.I.S.F. people arrived there.

Despite this clear evidence of eye witness, which could not be dismantled or dislodged in lengthy cross-examination, the learned Member of Industrial Tribunal (Central) has recorded that, "but if we see the statement of witnesses namely Shri Jhala, Shri Mahendrasingh, Shri Jadav, and the Japtinama does not say that they have seen the workman by pouring mobile oil in his scooter".

(emphasis supplied).

8. In light of the aforesaid facts, the matter was required to be considered by the learned Single Judge, as submitted by the learned Senior Advocate for the appellant.

9. Learned Senior Advocate for the appellant submitted that the learned Member of the Industrial Tribunal (Central) has similarly dealt with the other submissions made by the learned advocate appearing for the appellant - Refinery. This is very clear from paragraph 10 of the Award of the Industrial Tribunal (Central), which reads as under:-

Shri Naginbhai I. Patel, learned Advocate for the company has submitted the judgment of Hon"ble Gujarat High Court in Spl. Civil Application No. 406 of 1983 and argued that the Tribunal has no power to review the matter of punishment awarded to the workman, but the fact of this case different from the present case. In this case, the misconduct of the workman is not proved and this Tribunal have vide (sic. wide) power u/s 11-A of the Industrial Disputes Act, 1947 to set aside the order of punishment inflicted by the management. In this case the misconduct of Shri Ashwin R. Patel enumerated in charge sheet at Exh. 35 is not proved and in exercising the power u/s 11-A of the I.D. Act, 1947, the order of terminating the services of the workman is deserves to be set aside and the workman is entitled for the reinstatement.

(underlined is emphasised).

The aforesaid paragraph shows the method and manner of the learned Member of the Industrial Tribunal (Central) in dealing with the submissions and reaching to his own predetermined conclusion. Section 11-A was inserted by Amended Act No. 45 of 1971 and became effective from 15.12.1971. For ready reference,

section 11-A is reproduced hereunder:-

11A. Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen. - Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.

Provided that in any proceeding under this section the Labour Court. Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.

A plain reading of section 11 makes it clear that it is with a definite purpose. It is to be exercised only in the cases where the Court, on the admitted fact of charge having been proved, comes to the conclusion that the penalty imposed is disproportionate to the charge, section 11-A can be resorted to. This Court is of the opinion that the learned Member of the Industrial Tribunal (Central) having felt that he would not be able to exercise powers u/s 11-A of the Industrial Disputes Act, he brushed aside the finding recorded by this Court in earlier proceedings being Special Civil Application No. 4375/1983 by one sweeping sentence that, "but if we see the statement of witnesses namely Shri Jhala, Shri Mahendrasingh, Shri Jadav, and the Japtinama does not say that they have seen the workman by pouring mobile oil in his scooter."

(emphasis supplied).

10. In this view of the matter, this Court is of the opinion that the learned Single Judge ought to have allowed the petition filed by the present appellant in view of the fact that the evidence led by the appellant-petitioner in the inquiry proceedings could not be dislodged or dismantled even after lengthy cross-examination and, therefore, the charge stood proved and looking to the nature of the charge, the only penalty or punishment was that of dismissal and, therefore, no relief could have been granted to the respondent-workman.

11. Learned advocate Mr. Raval appearing for the respondent-workman strenuously tried to convince this Court that the judgment and award of the learned Industrial Tribunal (Central) confirmed by this Court by judgment and order dated 26.12.2001 may not be interfered and the relief granted may be continued in favour of the respondent-workman, but of no avail. Learned advocate for the respondent-workman tried to find out some supporting reasons in attempt to convince this Court that there are certain, if not illegalities, irregularities which will warrant non-interference at the hands of this Court. In

this attempt, learned advocate for the respondent-workman submitted that, (i) charge against the respondent-workman was of stealing petrol and mobile-oil (Annexure-1 on page 33), whereas what is proved at the inquiry proceedings is only stealing of mobile-oil; (ii) all the witnesses have stated in the inquiry proceedings before the Inquiry Officer that there was darkness; (iii) there was a tree in between the person, who was witnessing the movement of the two persons; (iv) it was 5.10 am and, therefore, there could not have been sufficient light so as to see that the witness could identify the respondent-workman; and (v) last but not the least, learned advocate Mr. Raval submitted that nothing is learnt about the other person who was with the respondent-workman.

12. None of these contentions found favour with this Court. Taking first submission of learned Mr. Raval for the respondent-workman, the questions put to the witness was as under:-

Q.10 : After switching off the flood light, do you agree that there was more darkness than earlier?

Ans. : "Yes"

12.1 Any person would have answered the same to such question. The matter, which is for consideration is, whether there was sufficient light with flood light or without flood light at 5.10 am so as to see that the witness was able to identify the respondent-workman. It is nowhere suggested by the respondent-workman that the witness (CISF Personnel) had any animosity with the respondent-workman and, therefore, he was falsely implicated. Prima facie, the plea that at 5.10 am, there will be insufficient light may find some substance, but the same is required to be rejected for the reason that it has come on record that the witness had an occasion to see the respondent-workman and his colleague in light of flood lights which were focused towards scooter/cycle parking stand and at 5.10 am in the month of April, at a place like Vadodara, it will not be a pitch-dark and, therefore, this argument cannot be accepted.

12.2 Learned advocate for the respondent-workman invited attention of this Court to the sketch of the place of occurrence drawn at the time of site inspection on 15.2.1982, which is produced at page 130 of the compilation. It is true that the witness was on the other side of the tree and the respondent-workman along with his colleague were on the other side of the tree, but it was a tree and not a bush. The word "tree" presupposes that there will be a trunk of the tree which may be normally of 5 to 6 ft. height. One can understand if it was a case of the respondent-workman that there was a "hedge" or a bushy plant in between, which obstructed vision of the witness, and on account of that he could not identify the respondent-workman. This submission is found without any substance and hence, rejected.

12.3 The submission that at 5.10 am in the month of April, there will be no sufficient light, is devoid of any merits because a judicial notice can be taken of the fact that in the month of April and that too on 23rd of April at 5.10 am also

there will be sufficient light to make it possible for the witness to identify the respondent-workman, more particularly when the respondent-workman was seen by the witness in flood light and, thereafter he did not go in a crowd, but was accompanied by his sole friend - other workman. Hence, this submission is also found to be devoid of any merit.

13. Learned Senior Advocate for the appellant submitted that the other person - workman is also dismissed from service. It appears that deliberately the respondent-workman has not tried to get this information placed on record, either of his own or by asking the appellant to do so, with a view to see that such a plea can be raised as a last resort.

14. None of the pleas found favour with this Court and hence rejected. In the result, this Letters Patent Appeal is allowed. The judgment and order dated 26.12.2001 passed by the learned Single Judge in Special Civil Application No. 12331/2000 as well as judgment and award dated 13.1.2000 passed by the learned Member of Industrial Tribunal (Central), Vadodara, in Reference (I.T.C.) No. 4 of 1992 are hereby quashed and set aside. No order as to costs.