

(2004) 04 GUJ CK 0096

In the Gujarat High Court

Case No : Special Civil Application No. 4533 of 1995

Gandhinagar Dist. Milk Producers Union Ltd.

APPELLANT

Vs

Upendrakumar M. Brahmbhatt

RESPONDENT

Date of Decision : 09-04-2004

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2004) 04 GUJ CK 0096

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : Palak Thakkar, for K.M. Patel, for the Appellant; R.V. Desai, for the Respondent

Judgement

H.K. Rathod, J.—Heard learned advocate Mr. Palak Thakkar for learned advocate Mr.K.M. Patel on behalf of the petitioner and learned advocate Mr. R.V. Desai for respondent workman.

2. In the present petition, the petitioner has challenged the award passed by the labour court in Reference No.411 / 1991 dated 22nd September, 1994 whereby the labour court has set aside the termination order and granted reinstatement with continuity of service with 25 % back wages of the interim period. However, the labour court has imposed punishment of stoppage of one increment without cumulative effect.

3. Learned advocate Mr. Palak Thakkar has submitted that the respondent workman was initially appointed on the post of Attendant on 18th August, 1984 for a period of one year on probation. That during this one year probation period, the respondent workman remained repeatedly absent without prior permission and therefore, one year probation extended by the petitioner for a further period of six months. Even thereafter also during the extended period also, his conduct to remain absent without prior permission was not improved and therefore, ultimately, the petitioner was not having any other option except to terminate service of the respondent. Accordingly service of the respondent workman came

to be terminated by order dated 8th March, 1986 which is at page.16 of the petition. Learned advocate Mr. Thakkar has submitted that detail order has been passed on 7th March, 1986 that inspite of giving an opportunity that he may improve his conduct and he will not remain absent without prior permission but repeatedly the workman remained absent and therefore, his service was terminated with effect from 8th March, 1986 from petitioner dairy at Gandhinagar. The dispute was raised by the workman against this termination in Reference No.1524 / 1986 wherein the settlement arrived at between the parties on 12th January, 1988 and thereafter, he was reinstated in service without backwages of the interim period. He also submitted that from record, it is clear that in the year 1988, the respondent workman remained absent without prior permission for 121 days. In the year 1889, the workman remained absent for 136 days and in the year 1990 he remained absent for a period of 188 days. In all, in each year, there was unauthorised absent period, that too, without prior permission of the petitioner. Therefore, service has been terminated by the petitioner on 20th August, 1990 which was challenged by the workman before the labour court and award in question has been passed by the labour court. Therefore, he submitted that the employee whose conduct has not been improved and remained absent without prior permission in each year, which adversely affected the administration of the petitioner and as the result thereof, the work of the petitioner suffered. He also submitted that earlier on two occasions, opportunity was given to the respondent to improve his conduct but even though he had not improved his conduct and ultimately the petitioner had no other option but to terminate service of the workman. He also submitted that on 20th August, 1990, service was terminated after following due procedure of law after giving all reasonable opportunities to the workman and therefore, the labour court has committed an error while interfering with the punishment of dismissal passed by the petitioner and as consequence thereof, the award impugned in the present petition deserves to be interfered with and hence, the impugned award passed by the labour court may be set aside.

4. Learned advocate Mr. R.V. Desai appearing on behalf of the respondent workman has submitted that as per the contents of para-5 of the award in question, the legality of the departmental inquiry has not been challenged by the workman but he kept open the challenge against finding. He also raised objection that absent period subsequent to the completion of the departmental inquiry, has been taken into account without issuing fresh chargesheet to the respondent workman for the said period. Therefore, the order of dismissal has been rightly set aside by the labour court and as such, no interference of this Court is warranted.

5. I have considered submissions made by the learned advocates for the parties and considered the documents produced on record by the petitioner before this Court. The labour court has given reasoning in para-5 for setting aside the termination order. The ground which has been taken into account by the labour court for setting aside the punishment order that subsequent period of after

completion of departmental inquiry, has been taken into account by the petitioner. Therefore, the labour court has come to the conclusion that punishment of dismissal for absent period is harsh and ultimately, exercised the powers u/s 11-A of the I.D. Act, 1947 relying upon the decision of the Division Bench of this Court in case of R.M.PARMAR v. G.E.B.

6. I have perused the award passed by the labour court. I fail to understand the reasoning given by the labour court. The facts of the case on hands reveal that the respondent was the Attendant working in the dairy appointed on 18th August, 1984 on probation for a period of one year, remained absent without prior permission. Even that probation period, his probation period was extended by the management for a further period of six months. Even during the said six months extended period, he remained absent without prior permission. Therefore, ultimately his service was terminated by order dated 7th March, 1986 with effect from 8th March, 1986. The petitioner has considered overall conduct of the respondent workman. The said termination was challenged before the labour court in Reference No.1524 / 1986 where the matter was settled between the parties giving one chance to the respondent workman for improving his conduct. That said settlement dated 12th January, 1988 wherein it was decided to reinstate the workman without backwages. It is also important to note that the respondent workman had remained absent for the following period without prior permission even after reinstatement.

Year Absent period [days]

1988 120 days 1989 136 days 1990 188 days 7. At this stage, learned advocate Mr. R.V. Desai submits that the material produced before this Court by the petitioner, was not produced before the labour court and therefore, this Court cannot enter into and entertain such material. The question is whatever material produced by the petitioner before this Court and the material produced before the labour court, if both are not same, learned advocate Mr. Desai has objection if such material which is placed on record before this Court, is taken into consideration. I fail to understand submission advanced by the learned advocate Mr. Desai. As revealed from para-3, Exh.6 is written reply of the petitioner showing absent period of 109 days for the period from 1985-86 and 1988. Before the labour court, the petitioner has produced certain documents vide Exh.7/1 to 7/22 which are inquiry papers and thereafter vide Exh.11, 11/1 to 11/22 are the documents produced before the labour court and Exh.9 whereby the workman was examined on oath. Therefore, the petitioner has produced all the records before the labour court but the unfortunate situation is, the labour court has discussed and decided the entire reference in casual manner. It was in fact the duty of the labour court to consider each and every document produced by the respective parties but the labour court concerned, unfortunately, based only on single clue that considering the absent period subsequent to the reinstatement of the workman and after completion of the inquiry since considered by the management while passing the order of punishment. The labour court has

passed the award of reinstatement ignoring the entire record. Therefore, this Court is of the view that the labour court has erroneously exercised the powers conferred on it in a casual manner and without application of mind. Therefore, considering the award, averments and observations made by the labour court in para-3 & 4, according to my opinion, the petitioner had produced all the relevant materials but it was not considered by the labour court. To answer the contention raised by the learned advocate Mr. Desai in the midst of the dictation, it can be said that the statement Annexure-C produced before this Court by the petitioner are the details of absent period of the respondent workman for the period from 1984 to 1990. It is also relevant to note that the respondent workman has not filed any affidavit before this Court to controvert the details of Annexure-C despite of the fact that a copy of this statement was received by him. Therefore, it goes without saying that the workman has admitted said absent period and the same deserves to be considered by this Court and therefore, the labour court has committed gross error in not considering the entire record which was produced by the petitioner before the labour court.

8. As stated above, the respondent workman had remained absent for more than four hundreds days without prior permission subsequent to reinstatement and therefore, after completion of the departmental inquiry, again service of the respondent came to be terminated on 20th August, 1990 which was challenged and the labour court has passed the award which is impugned in the present petition. Therefore, the labour court has committed an error as there is nothing wrong in considering the subsequent period of absenteeism after completion of departmental inquiry for the purpose of imposing punishment on the workman. Such long continued absent inspite of extending him number of opportunities in past by the management, even though, there was no improvement in the conduct of the respondent workman and therefore, in such circumstances, it is gross case of remaining absent without prior permission and for that, the labour court ought not to have exercised the powers u/s 11-A of the I.D. Act, 1947. The labour court should think twice before exercising the powers u/s 11-A of the Act to the effect that whether gravity of the misconduct and punishment in fact shock the judicial conscience of the Court or not. Unless the labour court is satisfied, the court concerned should not exercise the powers u/s 11-A of the Act in a very casual manner while granting reinstatement in each and every case. To consider this issue, the observations of the Apex Court in case of B.C. Chaturvedi Vs. Union of India and others, are relevant, wherein HANSARIA, J. has expressed opinion that similar to Article 142, whether the High Court has power to do "complete justice" between the parties similar to the Apex Court or not. On that occasion, Justice Hansaria has given an example that if the labour court having powers u/s 11-A of the I.D. Act to modify punishment in case of satisfaction, then why the High Court should not modify the punishment when the High Court is satisfied that the punishment is disproportionate. Therefore, when such wide powers are conferred upon the labour court, in that case, the labour court should not exercise such powers in very casual manner without application of mind. But

the labour court, while dealing with and adjudicating the case involving such serious and gross misconduct should consider twice that whether the facts of the case demand any interference or not and then only, should exercise the powers u/s 11-A of the I.D. Act, 1947. In the facts of the present case, according to my opinion, the labour court has committed gross error in exercising the powers ignoring the facts that from the date of reinstatement i.e. 12th January, 1988, upto the date of termination on 20th August, 1990 the workman remained absent without prior permission for more than four hundreds days. This can be, in fact, said to be not only serious misconduct but a gross misconduct on the part of the respondent workman, warranting extreme penalty of dismissal, for that, no other punishment other than dismissal can be imposed against the respondent. In such case, some leniency and / or sympathy would turn to be mis-sympathy and therefore, according to my opinion, the labour court has committed gross error in exercising the powers u/s 11-A of the I.D. Act, 1947 and wrongly granted reinstatement with continuity of service with 25 % backwages. Therefore, the award in question passed by the labour court in Reference No.411 / 1991 dated 22nd September, 1994 warrants an interference of this Court and hence, the same is hereby quashed and set aside.

Rule is made absolute with no order as to costs.