

(1999) 09 GUJ CK 0042
In the Gujarat High Court
Case No : S.C.A. No. 3559 of 1999

Gujarat Leather Industries Ltd.

APPELLANT

Vs

Mahendrakumar Pawar and Others

RESPONDENT

Date of Decision : 07-09-1999

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2000) 1 GLR 487 : (2001) 3 LLJ 403

Hon'ble Judges : D.C. Srivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.C. Srivastava, J.—The petitioner through this writ petition has challenged the legality of the award dated January 30, 1999 rendered by

the Labour Court, Bharuch, directing the petitioner to reinstate three respondents to their original post with 60 percent back wages and continuity

of service together with Rs. 300/- as cost and has prayed that the said award be quashed being illegal.

2. The brief facts giving rise to this petition are as under:

3. The petitioner is a registered Company. The respondents were employed by the petitioner in May, 1980 as machine operators. They were

members of the Trade Union. Allegations of serious misconduct were made against the respondents. Show-cause notice was given to them on

November 3, 1982 under the applicable Standing Orders. The incident occurred on October 21, 1982 between 8.05 a.m. and 8.40 a.m.

Explanation of the respondents was not satisfactory hence charge-sheets were served on them. Domestic enquiry was conducted. Pending enquiry

the respondents were suspended. The Enquiry Officer after completing enquiry by observing principles of natural justice, submitted a report dated

February 7, 1983. On February 26, 1983 the Director of the petitioner-Company by a reasoned order awarded major punishment and dismissed

all the three respondents. The respondents were heard before the impugned order was passed. The respondents approached appropriate

Government and reference of the industrial dispute was made to the Labour Court.

4. The allegations of the respondents before the Labour Court were that they were serving sincerely and honestly since the date of their

appointment. However, certain demands were made regarding inadequate salary of the workers keeping in view the profits earned by the

Company. The petitioner-Company was also not providing other necessary amenities to the workers. Since the Company did not accede to the

demands, a Union was formed and the respondents were its members. It was alleged by them that the order of dismissal was mala fide with a view

to crush the activities of the Union of which the respondents were active members. They also alleged that adequate opportunity of hearing was not

afforded to them in the domestic enquiry by the Enquiry Officer. The order of dismissal was, therefore, challenged before the Labour Court.

5. The stand of the petitioner was that the respondents committed serious misconduct. Disciplinary enquiry was conducted in accordance with

rules and principles of natural justice were duly observed in the course of enquiry. Charges were found established. The charges were of serious

nature which included serious misconduct and insubordination etc. Accordingly, the respondents were dismissed from service. The order of

dismissal was said to be valid, legal and in accordance with rules.

6. The Labour Court however found that the order of dismissal was not invalid. It however found, looking to the charges established against the

respondents, that the punishment of dismissal from service was disproportionate to the charges established against the respondents. Accordingly,

the order of dismissal was set aside by the Labour Court. The Labour Court further granted back wages at the rate of 60% with continuity of

service. This award is under challenge in this writ petition.

7. Learned Counsel for the parties were heard and the material on record was

examined. The cases cited were also taken into consideration. After giving my thoughtful consideration to the entire material on record and the law on the subject, it can be said that the impugned award is a presumptive award and it suffers from the error apparent on the face of the record as well as on the face of the award. This Court in exercise of writ jurisdiction will not sit as Court of appeal over the award passed by the Labour Court. On the other hand, instead of substituting its own views over the view taken by the Labour Court, this Court will examine whether there is any manifest error of law on the face of the record as well as on the face of the award. If such error is found to exist in the award as well as on the record there should be no hesitation in interfering in the matter of quashing the award. The errors which are apparent on the face of the award can be highlighted as under. If the award is found to be presumptive it can certainly be set aside. If the award is rendered on some presumptions it cannot be sustained. On the other hand, the award should have been based on the evidence produced by the parties before the Labour Court. At page 9 of the English translation of the award the following lines will show that it was presumptive award where on the basis of mere presumption view was taken against the petitioners. The relevant portions are quoted below:

It is presumed that the simple mistake of the applicants is given a shape of a serious type of misconduct by the Company. And it is not in the interest of justice to snatch away bread of the workers by dismissing them permanently because of such misconduct.

Thus, the first presumption raised by the Labour Court is that it was a case of simple mistake which was given the shape of serious type of misconduct by the petitioner. In so doing the Labour Court has totally ignored the findings of the Enquiry Officer as well as the charges framed against the respondents by the Enquiry Officer. It was not a case of single misconduct. The Labour Court at page 7 of the English translation of the award has observed that the incidents of all the allegations are of 5 to 7 minutes. This is factually incorrect. The Labour Court has not cared to look into the charges framed against the respondents by the Enquiry Officer. Annexure-A to the writ petition collectively indicates that the incidents commenced at 8.05 a.m. and continued till or after 8.40 a.m. It was therefore,

not a case where the incident was completed within 5 to 7 minutes.

As many as 5 to 6 allegations of different incidents, though in continuity, were made in the charge-sheets served on the respondents. Two

respondents were served with charge-sheet containing five charges. (1) The gross misconduct alleged in the charge-sheet was riotous and

disorderly behaviour during working hours in the establishment or act subversive of discipline, (2) Negligent and irresponsible attitude towards

work, (3) Wilful insubordination and disobedience whether alone or in combination with others to lawful and reasonable orders of superiors (4)

Using abusive language and threatening the employees and officer of the Company during working hours in the factory premise, (5) and also

attempting to assault on the life of the employees of the Company during working hours in the factory premises. These allegations cannot be said to

be simple acts of misconduct. To this extent, the award ignores the material on record and as such there is apparent error on the face of the record

as well as as on the award.

8. The report of the Enquiry Officer which is a detailed one was also not properly considered by the Labour Court; rather it can be said that there

was no consideration of the enquiry report submitted by the Enquiry Officer.

9. Annexure-D contains reasons for imposing punishment by the Director of the petitioner-Company who was the punishing authority. It is a

detailed order passed by the punishing authority. The punishing authority considered the report of the Enquiry Officer and also afforded an

opportunity of hearing to the representatives of both the parties. The evidence on record was also considered by the punishing authority and it

found that the incident on account of which the respondents were charge-sheeted did take place. It was, however, of the view that the

respondents individually and jointly neglected their work, left their place of work, told the watchmen not to allow the late comers to enter the

premises of the factory, threatened the watchmen and officers with dire consequences using unprintable abusive language and attempted to beat

officers of the Company. It further found that Mr. Awasthi besides using abusive language also went to the extent of threatening to kill and suck the

blood of those who would do staff duty and to make the watchmen dance naked throughout the factory premises, beat them, lift and throw them

out of the factory gate. The respondents Mr. M.K. Pawar and Mr. V.S. Chauhan without any authority instructed the watchmen not to allow any late coming officers inside the gate and further threatened them and if they did so, they would be beaten to such an extent that their skin would be peeled off. They also went to the extent of visiting Mr. Sharma in his department and took active part in pressurising Mr. Sharma to get out of his office. The respondent Mr. Pawar showered abuses on Mr. Sharma and on protest by Mr. Sharma he was threatened of dire consequences and further threat was given to beat him. These allegations were found established by the punishing authority. This was also not considered by the Labour Court. It was not a case of single incident; rather an atmosphere of riot was created inside the factory premises. It was a serious type of misconduct and the incident lasted for more than 35 minutes. It therefore, cannot be said that the order of dismissal was vindictive in nature or it was passed with a view to crush the activities of the respondents who were active members of the Union of employees.

10. If these findings of the punishing authority and the finding of the Enquiry Officer were not considered by the Labour Court, it can be said again that the award is based on presumptions and it has ignored the material evidence on record. Consequently, it becomes a perverse award, which cannot be sustained.

11. The learned Counsel for the respondents contended that all the charges were not proved against the respondents and that there is a contradiction in the finding recorded by the Enquiry Officer and that recorded by the punishing authority. To my point, it is not necessary that in a domestic enquiry all the charges should have been proved. If the charge of serious misconduct was proved, it was sufficient to award punishment of dismissal from service. It is also difficult to appreciate the contentions that punishing authority was bound to endorse the findings of the Enquiry Officer. If, from the material on record, he finds some more misconducts proved against the respondents, he could have taken notice thereof and it cannot be said that there is such contradiction between the findings of the Enquiry Officer and that of the punishing authority that it has rendered the order of dismissal illegal. In substance, on the point of serious type of misconduct, the Enquiry Officer as well as punishing authority have taken

identical view. Hence the order of dismissal could not have been quashed by the Labour Court.

12. At some stage in the Departmental enquiry the validity of enquiry proceedings was challenged by the respondents. The Labour Court at page 6

of the English translation of the award, observed that by order dated January 21, 1995 below Ex. 32 the departmental enquiry was held legal and

as per the principles of natural justice. The Labour Court further observed that considering the whole record of the case and findings given in the

departmental enquiry conducted for the allegations made against the applicants (respondents), it is clear that it is proper, valid and legal. If this was

the finding of the Labour Court that the enquiry proceedings were validly conducted and were legal and proper, then the Labour Court should

have given cogent reasons for taking a different view on the findings of guilt than that recorded by the Enquiry Officer as well as by the punishing

authority. The award shows that no reason has been given by the Labour Court while it took a different view in the matter and ignored the findings

of the Enquiry Officer and the punishing authority. The award on the other hand indicates that the allegations of misconduct were established during

enquiry and were accepted by the Labour Court. If this was so, then the Labour Court should have given cogent reasons for awarding lesser

punishment, namely, directing reinstatement of the respondents with 60 percent back wages.

13. u/s 11-A of the Industrial Disputes Act, 1947, if the Labour Court 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. Jurisdiction u/s 11-A of the Act is not to be arbitrarily exercised by the Labour Court. On the other hand, this discretion

conferred u/s 11-A of the Act has to be exercised judicially and not, arbitrarily. If this is so then a duty is cast on the Labour Court to give some

reasons why the order of dismissal passed by the appointing authority cannot be maintained and that lesser punishment is required to be given on

the facts and circumstances of the case. If no cogent reasons are given while exercising jurisdiction u/s 11-A of the Act the award can be said to

be arbitrary and modification can be said to be without any reason. As such modification of order of dismissal will also be rendered illegal and the award can be said to be erroneous in the eyes of law. The only reason given by the Labour Court at page 9 of the English translation of the award is that "it is not in the interest of justice to snatch away bread of the workers by dismissing them permanently because of such misconduct". Interest of justice is not the consideration of modifying the punishment. Moreover, if the principles of interest of justice are to be kept in mind, then justice should be administered to both the parties namely, the employee and the employer. The Labour Court has duty to balance the interest of justice between the employee and the employer. It should have taken into consideration whether the misconduct of the workmen was of such nature that the entire discipline in the factory was likely to be disturbed and whether any congenial atmosphere was disturbed in the premises because of such incident so that the work in the factory may not be seriously hampered and the trading activity may come to a standstill. If the activity or misconduct was of minor nature then of course the major punishment of dismissal cannot be sustained.

14. Learned Counsel for the respondents however contended that if the abuses were made only once, major punishment of dismissal cannot be justified. He further contended that mere use of abusive language against the employer is not a serious misconduct for which the respondents could be dismissed. Reliance was placed on the Apex Court's decision in the case of Ved Prakash Gupta Vs. Delton Cable India (P) Ltd., . This judgment was relied on by the Labour Court in its award. This case is however distinguishable on facts. The Apex Court on facts and circumstances of the case found in this case that the charges of use of abusive language against the appellant was not a serious one. The Apex Court observed that it is not known how the charges of using abusive language, even if proved, would result in any, much less total, loss of confidence of the management in the appellant. It is on these established facts that the Apex Court held that the punishment awarded to the appellant is shockingly disproportionate, regard being had to the charge framed against him. As against this, from the charge-sheet and findings of the Enquiry Officer as well as the punishing authority, it is clear that it was not a case where the allegation was that the respondents merely hurled

abuses. On the other hand, so many serious misconducts were alleged specifically against the respondents and were found established. Threat was given to the officer Mr. Sharma to beat him, threat was given to watchmen not to allow late comers to enter premises of the factory, threats were given to other employees of the factory and the like which cannot be equated with mere use of abusive language. As such the verdict of the Apex Court in Ved Prakash Gupta v. Delton Cable India (P) Ltd. (supra) cannot be applied to the facts of the case before me. On the other hand, the verdict of the Apex Court in New Shorrock Mills Vs. Maheshbhai T. Rao, applies with full force to the facts of the case before me. In that case also the Labour Court came to the conclusion that the finding of the departmental enquiry was legal and proper and the order of discharge was not by way of victimisation. It was further found that the workman had seriously misbehaved and was guilty of misconduct. In face of this findings the punishment of dismissal was set aside by the Labour Court and reinstatement was ordered with 40 percent back wages. Apex Court held that the Labour Court on these established facts ought not to have interfered with the punishment which was awarded in the manner it did. The allegations against the workman in this case were not as serious as are established in the writ petition before me. In that case the allegations were that the respondent entered the office of the Deputy Manager, and started abusing him and threatened that the mill officers will not be safe outside the mill and that he did not care if he had to go to jail for murder of four to five officers. These allegations of misconduct were on lesser footing than the misconduct established in the order of the punishing authority. Besides, using abusive language the respondents individually as well as jointly neglected their work and left their place of work and this was certainly an act of dereliction of duty. They without any authority directed the watchmen not to allow late comers to enter factory premises. They also threatened the watchmen and officers of the Company though actually that could not materialise. One of the respondents Mr. Awasthi went to the extent of not only abusing but threatening to kill and suck the blood of these members of the staff who would do staff duty. He also threatened the watchmen to dance naked throughout the factory and beat them and lift and throw them out of the factory gate. This was the serious misconduct extending serious type of threats to the life of the watchmen and also

prohibiting the watchmen from discharging their duties effectively. The other two respondents namely Mr. M.K. Pawar and Mr. V.S. Chauhan

instructed the watchmen not to allow any late coming officers inside the gate of the factory. They further threatened that the officers coming late will

be seriously beaten and their skin would be peeled off. An attempt was also made by them to beat Shri Sharma in his office and he was threatened

to go out of the office. Such serious type of allegation should not have been lightly taken by the Labour Court. If ignoring this serious type of

misconduct, jurisdiction was exercised u/s 11-A of the Act to modify the order of dismissal, it could be said that it was a case of illegal and in any

case excessive exercise of jurisdiction u/s 11-A of the Act by the Labour Court which has also rendered the award illegal.

15. On the point of award of 60 percent back wages to the respondents the award is again illegal and erroneous. While granting such award the

Labour Court did not consider the material admission made by the respondents. It is true that the onus of proving that the respondents were

gainfully employed after their dismissal is upon the employer and this onus cannot be shifted on the shoulders of the workmen. However, if the

workmen or the respondents themselves admitted that they were gainfully employed after their dismissal, no further evidence was required to be

adduced by the petitioner. The admission of the respondents will be the best evidence against them inasmuch as these admissions were not

explained by them to be erroneous or could have been made under some mistaken notion. In the oral evidence of the respondents contained in

Exh. 33, 34 and 14 the respondent No. 1 admitted that his salary at the time of dismissal was Rs. 800/- and that he was earning Rs. 20/- to Rs.

25/- by selling vegetables after dismissal. The income from gainful employment after dismissal of the respondent No. 1 would come to Rs. 600/- to

Rs. 750/-. If this was so then there was hardly any justification for awarding 60 percent back wages. Respondent No. 2 likewise admitted that his

salary was Rs. 1000/- at the time of dismissal and he was earning between Rs. 35/- and Rs. 40/- per day from the work of packing agarbati. Thus,

the income from gainful employment of respondent No. 2 after dismissal from service worked out to Rs. 1050/- to Rs. 1200/- per month which

was in excess of the salary which was drawn by the respondent on the date of dismissal. Likewise respondent No. 3 stated that his last drawn

salary was Rs. 550/- and that he was earning Rs. 20/- to Rs. 25/- per day from tailoring work and in cross examination, he stated, that he was

earning Rs. 500/- to Rs. 600/- per month. In view of this evidence, there was hardly any justification for the Labour Court to award 60 percent

back wages. The Labour Court at page 8 of the English translation of the award has taken note of the statement made by one of the respondents

Mr. Chauhan that the salary of his co-workers at present is about Rs. 2200/- to Rs. 2500/- per month. Noticing this figure, it is really astonishing

that the Labour Court awarded 60 percent back wages hence this portion of the award is rendered illegal, invalid as well as arbitrary.

Looking to the charges established against the respondents by no stretch of imagination, it can be said or held that the punishment awarded to them

is shockingly disproportionate, regard being had to the charges framed and established against them. Consequently, the entire award is rendered

illegal and invalid.

16. The petition, therefore, is to be allowed and is accordingly allowed. The impugned award dated January 30, 1999 is hereby quashed. No

order as to costs.