

(2014) 11 GUJ CK 0027
In the Gujarat High Court

Case No : Letters Patent Appeal No. 1009 of 2014 in Special Civil Application No. 4587 of 2014, Civil Application No. 9960 of 2014 in Letters Patent Appeal No. 1009 of 2014 and Special Civil Application No. 6667 of 2014

Gujarat State Co.Op. Marketing Federation	APPELLANT
Vs	
Ramjibhai Hirabhai Rabari	RESPONDENT

Date of Decision : 25-11-2014

Acts Referred:

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

Citation : (2014) 11 GUJ CK 0027

Hon'ble Judges : Jayant M. Patel, J;C.L. Soni, J

Bench : Division Bench

Advocate : G.M. Joshi, Advocate for the Appellant; Harsh K. Thakar and H.J. Karathiya, Advocate for the Respondent

Judgement

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C.L. Soni, J.—The appeal filed under clause 15 of the Letters Patent is against the order dated 3.7.2014 passed in the petition, being Special Civil Application No. 4587 of 2014, preferred by the appellant - employer under Article 226 of the Constitution of India challenging the award of reinstatement passed by the labour court.

2. Before the learned Single Judge, the workman had also preferred the petition being Special Civil Application No. 6667 of 2014 under Article 226 and 227 of the Constitution of India challenging the very same award in so far as the labour court has denied the back wages to him.

3. The learned Single Judge however dealt with only the petition of the employer and dismissed it by observing that the dismissal of the petition of the employer is not to mean the confirmation of the award passed by the labour court to the extent of denying total back wages and the said aspect would be considered and

decided in the above referred petition of the workman.

4. The dispute raised by the workman before the labour court was as regards his dismissal from service. The case of the workman was that he was serving as peon with the employer from 14.10.1983 and he was dismissed with effect from 10.7.2001 without any reason. Whereas the case of the employer was that the workman remained absent unauthorizedly for the period from 17.8.2000 to 12.10.2000, for 57 days and also for the period from 18.10.2000 to 3.12.2000, and his services were terminated for such misconduct after holding departmental inquiry after following due procedure.

5. The labour court however set aside the order of dismissal and ordered reinstatement with continuity of service in exercise of its discretionary powers under section 11-A of the Industrial Disputes Act, 1947 ("the Act") however, without any back wages by partly allowing the reference.

6. Since both the petitions filed before the learned Single Judge were arising out of the same award, in order to maintain uniformity in the decision, we were of the view that it would be just and proper if the appeal and the another petition of the workman both were heard by one bench of this Court. Therefore, we directed the office to place the matters before the bench as may be directed by the Hon"ble Chief Justice on administrative side. Hon"ble the Actg. Chief Justice vide order dated 1.10.2014 directed to place both the matters before this bench.

7. We therefore heard both the matters together for final disposal. Learned advocate Mr. G.M. Joshi appearing for the employer submitted that in the facts of the case, the labour court was not justified in exercising powers under section 11-A of the Act. Mr. Joshi submitted that the powers under section 11-A of the Act are exercised by the labour court without there being any justifiable reasons. Mr. Joshi submitted that the charge of unauthorized absence for 57 days and then for about more than 2 months was proved in the departmental inquiry and, therefore, it was not a case where the labour court was required to exercise the powers under section 11-A of the Act. Mr. Joshi submitted that the learned Single Judge has without appreciating the correct back ground of the case as regards the period of unauthorized absence, confirmed order of the labour court. Mr. Joshi submitted that the learned Single Judge has taken into consideration the period of leave of only 57 days which was in contradiction to the undisputed fact of long absence recorded by the labour court. Mr. Joshi submitted that there was also no evidence of medical certificate produced nor even the workman participated in the departmental inquiry and, therefore, learned single judge committed grave error in recording that as against the leave of 57 days, medical certificate was produced. Mr. Joshi submitted that since the absence period was of more than 57 days and proved as misconduct, the learned Single Judge ought to have entertained the petition of the employer and interfered with the award passed by the labour court. Mr. Joshi submitted that in any case, the labour court was not justified in awarding reinstatement with continuity of service as the workman was responsible to remain absent unauthorizedly and till the labour

court decided the reference, about more than ten years had passed and, therefore, awarding of continuity of service would be a premium to the workman who remained absent unauthorizedly. Mr. Joshi submitted that so far as the aspect of back wages is concerned, the workman has rightly not been awarded the back wages as the labour court has in the facts of the case found him not entitled for the same and this court may not interfere with the award denying back wages to the workman.

8. As against the above arguments, learned advocate Mr. Karathiya appearing for the workman submitted that the labour court appreciated the material on record and exercised its discretion under section 11-A of the Act. Mr. Karathiya submitted that against discretionary order under section 11-A of the Act, a limited judicial review was available with the learned Single Judge. Mr. Karathiya submitted that the learned Single Judge having considered that the workman has put in more than 18 years of service and leave of 57 days was on medical ground, committed no error in holding that the case was not warranting termination of service of the workman. Mr. Karathiya submitted that the reference to only 57 days leave by the learned Single Judge was just for the purpose of considering justification for such leave on medical ground. That would not mean that the learned Single Judge has not considered other observations made by the labour court. Mr. Karathiya submitted that in fact, the labour court ought not to have refused awarding of back wages to the workman simply on the ground that the workman had stated that he was meeting with the household expenses by keeping a buffalo. Mr. Karathiya submitted that it was not established by the employer that the workman was gainfully employed pending the reference. Therefore, the workman was entitled to back wages when the labour court found that it was a case for exercise of discretion under section 11-A of the Act. Mr. Karathiya thus urged to dismiss the appeal and allow the petition of the workman.

9. Having heard the learned advocates for the parties, we find that the absence period of the workman was in two parts. One was from 17.8.2000 to 12.10.2000, for 57 days and the another was for the period from 18.10.2000 to 3.12.2000. The departmental inquiry was initiated against the workman for the charge of unauthorized absence from service and the punishment of dismissal was imposed on the basis of the conclusion reached in the departmental inquiry about unauthorized absence of the workman. However, the labour court took into consideration the fact of the workman serving from 1983 and also considered that during his service career, he was not found to have indulged into any misconduct and that the medical certificate produced by the workman could not be established to be false one. The labour court was therefore of the view that the punishment of dismissal from service was harsh and disproportionate to the guilt of unauthorized absence. However, while setting aside the order of dismissal, the labour court ordered only reinstatement with continuity in service but did not award any back wages.

10. It is required to be noted that the reference made before the labour court was of the year 2001. It remained pending with the labour court for about 12 years. The workman is not granted benefits of back wages for such a long period. We find that non-availability of any back wages will be sufficient punishment suffered by the workman for a charge of absence of 57 days and another about 60 days which was stated to be proved in the departmental inquiry.

11. Learned advocate Mr. Joshi however relied on the decision in the case of Delhi Transport Corporation Vs. Sardar Singh, . That was a case before the Hon"ble Supreme Court where the Tribunal refused to accord approval to the order made by the employer on the misconduct of absence of an employee. In the facts of the said case, the Hon"ble Supreme Court considered habitual negligence of the employee in duty and lack of interest in the work by remaining absent and found that the tribunal was not justified in refusing to accord approval to the order and remitted the matter to the Tribunal for giving further opportunity to the employer. This decision will have no application to the facts of the present case.

12. Learned advocate Mr. Joshi also relied on the decision in the case of State Bank of India and Others Vs. Narendra Kumar Pandey, so as to point out that where the workman intentionally refuses to participate in the inquiry, he cannot complain against the order of punishment passed on the conclusion in the inquiry. In the said case, the bank officer was charge sheeted for several charges. He did not avail of the opportunity and remained absent in the inquiry. Inquiry officer continued and concluded the inquiry, ex-parte. The charge sheeted officer made several grievances about non service of documents etc. so as to complain about non observance of the principles of natural justice during inquiry against him. Hon"ble the Supreme Court held that even if the inquiry officer were to act ex-parte against the charged officer, that would not absolve the inquiry officer from deciding that the charges levelled against the charged officer were proved or not. In other words, no punishment could be imposed without inquiry. Hon"ble the Supreme Court however found that the inquiry officer elaborately considered the charges levelled against the charged officer and also the material produced by the bank in the inquiry to establish the charges. In such view of the matter, Hon"ble the Supreme Court found that the charged officer was rightly dismissed from service which called for no interference by the High Court under Article 226 of the Constitution of India.

13. Though the above case decided by Hon"ble the Supreme Court will have no bearing on the facts of the present case, however, as held therein, non-participation by the employee-workman in the inquiry may dis-entitle such workman from challenging such order of dismissal. But, in a given situation, the labour court may examine whether the dismissal of the workman could be allowed to stand in a particular facts situation and whether the discretion under section 11-A of the Act needs to be exercised.

14. As discussed above, the labour court for justiciable reasons has deemed it fit

to exercise the discretion under section 11-A of the Act and the learned Single Judge has thought it fit not to interfere with such discretion exercised by the labour court. We find no error in the award made by the labour court and the non-interference by the learned Single Judge.

15. As regards the petition of the workman for back wages, we find that since the charge against the workman of remaining absent unauthorizedly was proved, however, having regard to his long 18 years of service career and considering that the absence period was not long, the labour court did not commit any error in awarding only reinstatement with continuity of service without back wages. Such award of the labour court denying back wages is not required to be interfered with, especially when the Labour Court has considered the statement of the workman that he was earning his livelihood.

16. For the reasons stated above, appeal of the employer as well as the petition of the workman being Special Civil Application No. 6667 of 2014 both are dismissed with no order as to costs.

17. In view of the orders passed in the appeal of the employer, Civil Application No. 9960 of 2014 shall not survive. Same shall, therefore, stand disposed of as not surviving.