

(1996) 07 GUJ CK 0035
In the Gujarat High Court
Case No : S.C.A. No. 763 of 1996

Gujarat State Road Transport Corporation	APPELLANT
Vs	
Jarnal Sinh D. Ramgadhia	RESPONDENT

Date of Decision : 02-07-1996

Acts Referred:

Industrial Disputes Act, 1947 — Section 10A, 17B, 2, 33, 33(2)

Citation : (1996) 3 GLR 698 : (1997) 1 LLJ 774

Hon'ble Judges : H.L. Gokhale, J

Bench : Single Bench

Advocate : A.K. Clerk, Hardik C. Raval, for the Appellant;

Judgement

1. The petitioner in Special Civil Application No. 763 of 1996 is the Works Manager of Gujarat State Road Transport Corporation. Respondent therein is a workman who has filed the counter-petition being Special Civil Application No. 1564 of 1996. Both the petitions are concerning the same order of a Conciliation Officer passed under the Industrial Disputes Act, 1947 (hereinafter referred to as the Act for brevity). Hence, both the matters have been heard together and are being disposed of together by this common judgment. The petitioner in Special Civil Application No. 1564 of 1996 is hereinafter referred to as the management whereas the respondent in Special Civil Application No. 763 of 1996 who is the petitioner in Special Civil Application No. 1564 of 1996 is hereinafter referred to as workmen.

2. The workman was working as an artisan (Category-B) in a Coach Shop of the management. It is alleged against the workman that on February 27, 1993 the workman had stolen 17 pieces of scrapped battery brackets. A departmental inquiry was held against him and on February 28, 1994 he was ordered to be dismissed from service. Since one other dispute was pending in conciliation between the management and its workmen (in general) before a conciliation officer in Ahmedabad, the management applied for approval of their action by making necessary for approval of the, application as required by Sec. 33(2)(b) of

the Act. While making that application they paid the workman wages for one month as required by the proviso to the said section. The Conciliation Officer found that the workman was paid Re. 0.52 less while paying his wages and therefore, he rejected the approval application by his order dated June 30, 1994. The management reinstated the workman by order dated August 25, 1994 and paid him all his wages. The management thereafter issued another order of dismissal on January 2, 1995, paid one month's full wages and filed another application for approval of their action on the same day. That application also came to be rejected by the Conciliation Officer by his order dated November 17, 1995 wherein in the last paragraph the Officer observed as follows :

"The opponent joined on duty from August 26, 1994. The applicant has not pointed out any case being filed against the opponent or having taken any disciplinary action against him from August 26, 1994 till the date of passing of the dismissal order on January 2, 1995. Hence, the approval application dated January 2, 1995 filed by the applicant is not found to be proper. It does not deserve to be beard and is rejected."

3. Being aggrieved by that order, the management has filed Special Civil Application No. 763 of 1996 on January 24, 1996 whereas the workman has filed Special Civil Application No. 1564 of 1996 on February 26, 1996 praying that the said order be enforced and it be directed that the workman be treated as if continuing in service with effect from January 2, 1995 and never dismissed and he be paid full wages on that basis. It so happened that the workman's petition was moved earlier for admission and a notice was issued on February 29, 1996 making it returnable on March 7, 1996. On March 7, 1996 the learned Advocate for management pointed out that Special Civil Application No. 763 of 1996 has been filed by them about the same subject-matter and hence Special Civil Application No. 1564 of 1996 was directed to be beard along with Special Civil Application No. 763 of 1996. When both the matters came up on March 27, 1996 it was directed that if possible the matters will be heard finally on the subsequent date, i.e. on April 4, 1996. Thereafter, both matters have been placed on Board together from time to time. In Special Civil Application No. 763 of 1996 the workman has filed his reply on March 8, 1996 and the management has filed its rejoinder on March 27, 1996.

4. I have beard Mr. Clerk, learned Advocate for the workman, and Mr. Raval, learned Advocate for the management. The main submission of Mr. Clerk has been that the second order passed by the Conciliation Officer dated January 2, 1995 is a correct order. He submitted that the earlier order of dismissal dated February 28, 1994 had been interfered with (may be for paying 52 paise less along with the approval application). That order had been accepted by the management. That being so, unless they had an independent cause of action, they could not issue the second order of dismissal on the same facts.

5. As against that Mr. Raval submitted that all that the management has done was to accept the error while issuing the first order of dismissal as pointed out by

the Conciliation Officer. The first order of the Conciliation Officer rejecting the application for approval was not an order on merits. But for the provision of Section 33(2)(b) of the Act the management had no reason to apply to the Conciliation Officer. A departmental inquiry had been held against the workman, he had been heard and found guilty. The Conciliation Officer was expected to decide the approval application on merits as to whether there was any denial of principles of natural justice, victimisation or whether the order was perverse etc. He having pointed out the deficiency in the payment, the management had accepted the same and while retaining its findings had issued another order of dismissal and applied to the officer because the conciliation proceedings in another dispute were still pending. If the Conciliation Officer's view is accepted, it will mean that for this deficiency in payment (once pointed out by him and though accepted and corrected) the officer is declining to decide the approval application. It will also mean rejection of the employer's application without any determination thereon although the workman has been found guilty of a misconduct after a departmental inquiry. Mr. Raval relied upon a Division Bench judgment of the High Court of Mysore in the case of Mysore Machinery Manufacturers Ltd. Vs. Assistant Commissioner of Labour and Conciliation Officer, wherein in a similar set of facts having issued one dismissal order earlier the management had withdrawn the same and issued another one subsequently. The Conciliation Officer refused to accord the approval. The Division Bench of Mysore High Court held, "There is also no merit in the contention that the petitioner having cancelled the orders of dismissal made on July 17, 1963, should have held a fresh enquiry against the workman. What he has revoked is only the orders of dismissal and not the finding reached at the enquiry. The revocation of the orders of dismissal became necessary in order to comply with the requirements laid down in Section 33 of the Act." Relying upon the judgments of the Supreme Court in the case of Strawboard Manufacturing Co. Vs. Gobind, and P.H. Kalyani Vs. Air France Calcutta, the Mysore High Court held, "In the light of these decisions what we have to see is whether in the circumstances established in these cases, it can be held that the orders of dismissal, the payment of wages and the making of the applications were parts of the same transaction."

6. Mr. Clerk then submitted that the Mysore Machinery Manufacturers Ltd. Vs. Assistant Commissioner of Labour and Conciliation Officer, was slightly different inasmuch as the management had itself withdrawn the order of dismissal and issued another one whereas in the present case the Conciliation Officer had set aside earlier order. The management had accepted that decision and then issued the second order. Mr. Clerk submitted that such a course was not permissible. Mr. Raval, therefore, relied upon the judgment of a division Bench of Patna High Court in the case of Tata Iron and Steel Company Ltd. Vs. Hirangi and Others, . In that case four miners working in the company were dismissed by the Assistant Chief Mining Engineer after a domestic inquiry and after having found that they were guilty of robbing coal from the mines. An application was made u/s 33(2) (b) for approval of the order of dismissal. The Tribunal to whom the application

was made, held that the domestic enquiry was conducted properly and that the findings of guilt were wholly justified but it refused to grant approval solely on the ground that the order of dismissal was passed by the Assistant Chief Mining Engineer, whereas under the standing orders it should have been passed by the Chief Mining Engineer. Later on the Chief Mining Engineer passed an order dismissing the workmen and a second application was filed for approval under Sec 33(2)(b) of the Act. The learned Tribunal declined to grant approval holding that the second petition for approval in respect of same act of misconduct would not lie. The Division Bench of the High Court held that the first application had failed purely on technical ground but that defect was cured on the second occasion. The High Court held that the question whether second order was mala fide or amounting to victimisation or unfair labour practice etc. had not been gone into. The High Court therefore, interfered with the second order.

7. In my view, in the facts of the present case, where the Conciliation Officer earlier held that there was a deficiency of 52 paise, the management was fully justified in accepting the error and correcting it and then issuing another order of dismissal and then applying for approval. The Conciliation Officer is wholly in error in emphasising that after the workman resumed his duty on August 26, 1994 there has not been any departmental proceedings against him. The management is fully within its rights to pass second order on the same set of facts and to contend that whether its inquiry was fair or proper be gone into and thereafter the approval may be either granted or rejected. The order passed by the Conciliation Officer, therefore, requires to be interfered with. Special Civil Application No. 763 of 1996 is, therefore, allowed and the order passed by the Conciliation Officer on November 17, 1995 is quashed and set aside. Consequently Special Civil Application No. 1564 of 1996 filed by the workman is rejected. Since the Conciliation Officer has not decided the approval application on merits he will have to decide the same after hearing both the parties in accordance with the law.

8. Although these petitions are being decided in favour of the management at the admission stage itself, Mr. Clerk contended that the workman be given the benefit of Section 17-B of the Industrial Disputes Act, 1947, during the pendency of these matters in this Court. He relied upon the judgment of the Supreme Court in the case of Bharat Singh Vs. Management of New Delhi Tuberculosis center, New Delhi and Others, and that of Karnataka High Court in the case of M/s Visveswaraya Iron and Steel Co. Ltd. Vs. M. Chandrappa and another, to highlight the object of Section 17B of the Act which is to protect the workman who has already succeeded in the Labour Court or Tribunal during the delay that may take place in disposing the matter in the higher Courts. In the instant case, it is, however, material to note that after the earlier order of dismissal dated February 28, 1994 was interfered with by the Conciliation Officer earlier on June 30, 1994 the workman was reinstated and was paid the full wages by the management. The management thereafter passed the second order of dismissal on January 2, 1995 and applied for approval, which application came to be rejected on

November 17, 1995 by the impugned order, as stated hereinabove. The management has filed Special Civil Application on January 24, 1996. On March 27, 1996 both the matters were directed to be heard finally on April 4, 1996. " Amongst others the matters were adjourned on April 25, 1996, May 2, 1996 and May 9, 1996 and then beyond the summer vacation as requested by the Advocate for the workman and are being disposed of today. Mr. Raval had made his submissions on May 2, 1996 itself. It will mean a claim for full wages from January 24, 1996 to July 2, 1996. In the affidavit-in-reply of the workman affirmed on March 8, 1996 referred to earlier he has claimed to be unemployed whereas in its rejoinder affirmed on March 27, 1996 the management has stated that he may be put to strict proof thereof.

9. That apart, Sec. 17-B of the Act provides for the full wages last drawn being paid to the workman during the pendency of the proceedings where in a case the Labour Court, Tribunal or National Tribunal has passed an award directing reinstatement of a workman and the employer has preferred proceedings against such award in the High Court or in the Supreme Court. Section 17B reads as follows :

"17B. Payment of full wages to workman pending proceedings in higher Courts : Where in any case, a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court :

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part as the case may be".

In the instant case, the order passed is by a Conciliation Officer. He is not an authority mentioned in Section 17-B. Besides, an award as referred to in Section 17-B will have to be read as an award as defined u/s 2(b) of the Act which again is defined as interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Tribunal and includes an arbitration award made u/s 10-A. Mr. Clerk submitted that a single Judge of this Court in the case of Kirtiben B. Amin v. Mafatial Apparels, reported in 1995(2) GLH 804 has held that the provisions of Section 17-B can be applied to the orders passed u/s 33(2)(b) of the Act. That was a case of approval application before an Industrial Tribunal. That judgment also refers to a Division Bench judgment of Calcutta High Court in the case of Samser Ali v. Keshoram Industries, reported in (1988 I LLJ 1) wherein the orders that were

passed were by the Industrial Tribunal. Mr. Clerk could not point out to me any judgment wherein an order passed by any authority other than the Labour Court, Tribunal or National Tribunal was given the same status to grant relief under Sec. 17-B of the Act. Mr. Clerk submitted that in any case, such a construction must be placed on this section because, whereas u/s 33(2)(b) orders could be passed by an authority other than the Labour Court, Tribunal or National Tribunal, only in case of awards of Labour Court, Tribunal or Industrial Tribunals, the benefits contained u/s 17-B will be available but not in the case of the orders passed by the other officers.

10. In this behalf, what is material to note is that Section 33 deals with proceedings before two types of authorities, viz., "any conciliation proceeding before a Conciliation Officer or a Board (i.e. a Board of Conciliation)" and "any" processing before an Arbitrator or a Labour Court or Tribunal or National Tribunal" in respect of industrial disputes. Under sub-section (1) of this section the conditions of service etc., are directed to be maintained unchanged under certain circumstances during the pendency of both these proceedings. However, under sub-sec. (2) of this Section the employer is given liberty to alter them or to discharge or dismiss an employee for a misconduct not connected with the dispute provided the conditions on the proviso are followed. Section 33 reads as follows :

"33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings : (1) During the pendency of any conciliation proceeding before a Conciliation Officer or a Board or any proceeding before an Arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall -

(a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or

(b) for any misconduct connected with the dispute, discharge or punishment whether by dismissal or otherwise, any workmen concerned in such dispute,

save with the express permission in writing of the authority before which the proceeding is pending.

(2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the Standing Orders applicable to a workman concerned in such dispute or, where there are no such Standing Orders, in accordance with the terms of the contract, whether express or implied, between him and the workman, -

(a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to the workman immediately before the commencement of such proceeding; or

(b) for any misconduct not connected with the dispute, discharge or punishment

whether by dismissal or otherwise, that workman :

Provided that no such workman shall be discharged, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

(3) Notwithstanding anything contained in sub-section in (2), no employer shall during the pendency of any such proceedings in respect of any industrial dispute take any action against any protected workman concerned in such dispute -

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceeding; or

(b) by discharging or punishing whether by dismissal or otherwise such protected workman, save with the express permission in writing of the authority before which the proceeding is pending.

Explanation : For the purposes of this sub section a "protected workman", in relation to an establishment, "means" a workman who, being a member of the executive or other office-bearer of a registered trade union connected with the establishment, is recognised as such in accordance with Rules made in this behalf.

(4) In every establishment, the number of workmen to be recognised as protected workmen for the purposes of sub-sec. (3) shall be one per cent of the total number of workmen employed therein subject to a minimum number of five protected workmen and a maximum number of 100 protected workmen and for the aforesaid purpose the appropriate Government may make Rules providing for the distribution of such protected workmen among various trade unions, if any, connected with the establishment and the manner in which the workmen may be chosen and recognised as protected workmen.

(5) Where an employer makes an application to a Conciliation Officer, Board, an arbitrator, a Labour Court, Tribunal or national Tribunal under the proviso to sub sec (2) for approval of the action taken by him, the authority concerned shall, without delay, hear such application and pass within a period of three months from the date of receipt of such application, such order in relation thereto as it deems fit :

Provided that where any such authority considers it necessary or expedient so to do, it may, for reasons to be recorded in writing, extend such period by such further period as it may think fit :

Provided further that no proceedings before any such authority shall lapse merely on the ground that any period specified in this subsection had expired without such proceedings being completed."

If the legislature has confined the beneficial provisions under Sec, 17-B to the awards of the Labour Court, Tribunal and National Tribunal, while interpreting the

said section, one cannot enlarge the same to cover orders passed by the authorities other than those mentioned in Sec 17-B of the Act. To say that the orders passed by the Labour Court, Tribunal and National Tribunal under Sec, 33(2)(b) will have the benefit of Sec 17-B of the Act is one thing and to say that the orders passed by other authorities under that section will also attract the benefit under Sec. 17-B is another. The Labour Court, Tribunal or National Tribunal are judicial authorities whereas the other authorities u/s 33 are authorities for conciliation. The Legislature has restricted the scope of the beneficial provision under Sec, 17-B to the awards of these judicial authorities. It is possible to extend the same benefit to the orders of these authorities u/s 33(2) (b) of the Act as has been done by single Judge of this Court in the case of Mafatlal Apparels (supra) or by the Calcutta High Court. However, the same logic cannot be extended further to the determination of the conciliation authorities u/s 33(2)(b) of the Act in the absence of specific provision in that behalf under Sec, 17-B of the Act. Hence, the prayer to extend to the workman herein the benefit under Sec 17-B of the Act cannot be entertained.

11. Mr. Raval requests that the Conciliation Officer be directed to hear and decide the approval application at the earliest in as much as it has remained undecided on merits since January 2, 1995. The request is reasonable enough. The Conciliation Officer, Ahmedabad, is directed to decide the approval application filed by the management on January 2, 1995 in accordance with law and expeditiously preferably by the end of October 1996 which will be in the interest of both parties. There will be no orders as to costs in these two matters.