
(2016) 02 GUJ CK 0137

In the Gujarat High Court

Case No : Special Civil Application No. 3600 of 2003

Gujarat State Rural Development Corporation Ltd.

APPELLANT

Vs

Gulabsinh K. Rathod and Others

RESPONDENT

Date of Decision : 17-02-2016

Acts Referred:

Citation : (2016) 02 GUJ CK 0137

Hon'ble Judges : K.M. Thaker, J.

Bench : Single Bench

Advocate : H.S. Munshaw, Advocate, for the Appellant; N.K. Majmudar, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Thaker, J.—1. Heard Mr. Chauhan, learned advocate and Mr. Munshaw, learned advocate for the petitioner corporation and Mr. Majmudar, learned advocate for the respondent workman.

2. In present petition, the petitioner corporation has challenged award dated 13.11.2002 passed by the learned Labour Court at Ahmedabad in Reference (LCA) No. 2113 of 11 whereby the learned Labour Court directed present petitioner to reinstate the respondent on his original post with continuity of service and 50% backwages. The petitioner corporation is aggrieved by the said award and directions. Hence present petition.

3. The facts involved in and leading to present petition can be summarised thus.

4. The service of the respondent workman came to be terminated vide order dated 29.5.1989 in pursuance of domestic enquiry which was conducted against the respondent workman with reference to the charge and allegations levelled against him vide charge-sheet dated 9.1.1989. Upon feeling aggrieved by the said order dated 29.5.1989, the respondent workman raised industrial dispute which came to be referred for adjudication to the learned Labour Court vide order of reference dated 23.10.1991. The said reference was registered as

Reference (LCA) No. 2113 of 1991. The respondent workman filed his statement of claim, claiming allegation that he joined the service with the petitioner corporation with effect from May 1978. He was appointed as Agricultural Assistant and at the relevant time, i.e. in 1989 the respondent was working as Project Supervisor. In connection with reported misconduct, the respondent was placed under suspension vide order dated 26.12.1988 and thereafter a charge-sheet dated 9.1.1989 was served. Under the said charge-sheet dated 9.1.1989, five allegations were levelled against him.

4.1 The charge/allegations included the charge that he had prepared bill by mentioning incorrect measurement of the work and thereby he attempted to misappropriate amount by getting payment made in respect of the work which was not completed.

4.2 The second allegation/charge was to the effect that the respondent made certain alterations in the record which contained details of the work completed and thereby he attempted to commit fraud and attempted to cheat the corporation. Other three allegations/charge related to negligence in performance of duty.

4.3 After the respondent submitted his reply in response to the charge-sheet which was not found satisfactory by the competent authority, therefore, the Enquiry Officer was appointed and domestic enquiry was conducted. Upon conclusion of the domestic enquiry, the Enquiry Officer held that the charge/allegations levelled against the respondent are proved. The Disciplinary Authority considered the record of the domestic enquiry and the findings as well as the report of the Enquiry Officer. Upon examining the said material and other relevant aspects, the Disciplinary Authority reached to the conclusion that in the interest of the corporation, the service of the respondent should be terminated. Therefore, the Disciplinary Authority passed the order dated 29.5.1989 and dismissed the respondent from service.

4.4 As mentioned earlier, feeling aggrieved by the said dismissal order, the respondent raised industrial dispute.

4.5 During the proceedings before the learned Labour Court, the respondent challenged the legality and propriety of the domestic enquiry.

4.6 Therefore, the issue with reference to the legality of the enquiry, i.e. whether the domestic enquiry was conducted legal and fair manner or not was decided as preliminary issue.

4.7 After considering the record of the domestic enquiry and the evidence placed before the learned Labour Court with regard to conduct of the proceedings, the learned Labour Court passed order dated 31.12.1998 (Exh. 27) and declared that the domestic enquiry was defective and it was not conducted in legal and fair manner. Thereafter, the learned Labour Court allowed opportunity to the petitioner corporation to establish the charge/allegations against the respondent

by leading necessary and appropriate evidence. In this view of the matter, the petitioner corporation examined one Mr. P.I. Patel as its witness to establish the charge/allegations against the respondent. His deposition was recorded at Exh. 31. The petitioner corporation also examined one Mr. B.M. Chauhan as its second witness.

4.8 After considering the evidence of the said witnesses and the respondent, the learned Labour Court reached to the conclusion that the charge/allegations levelled against the respondent are not proved. Having reached to such conclusion, the learned Labour Court directed the petitioner corporation, vide impugned award dated 13.11.2002, to reinstate the respondent workman and to pay 50% backwages.

5. The learned advocate for the petitioner corporation submitted that the respondent workman was involved in serious misconduct which included attempt to misappropriate and attempt to commit fraud with and to cheat the corporation. According to the learned advocate for the petitioner corporation, the respondent workman was also negligent in performance of duties which caused and resulted into loss to the corporation. Learned advocate for the petitioner corporation submitted that the learned Labour Court failed to take into account the letters dated 24.5.1989 and 26.5.18 submitted by the respondent workman admitted his fault and negligence and had requested that his conduct and negligence may be condoned considering his financial condition and responsibility of his family. The learned advocate for the petitioner, submitted that the learned Labour Court erred in holding that the charge/allegations against the respondent are not proved. Learned advocate for the petitioner further submitted that in view of the gravity of the misconduct, i.e. gravity of the allegations against the respondent, the learned Labour Court ought to have upheld the dismissal order passed by the petitioner corporation.

6. The learned advocate for the respondent workman supported the award by the learned Labour Court. He submitted that the inquiry was declared illegal. The order dated 31.12.1998 passed below Exh. 27 declaring the inquiry illegal and unfair has attained finality since it was never challenged by the petitioner corporation. He further submitted that the witnesses who were examined before the learned Labour Court have not supported the allegations and from their evidence, it cannot be concluded that the allegations/charge levelled against the respondent are proved. He submitted that the conclusion by the learned Labour Court that allegations are not proved, is just and correct and does not warrant any interference. With reference to the letters dated 24.5.1989 and 26.5.1989 submitted by the respondent workman, learned advocate for the respondent submitted that on plain reading of the said letters, it cannot be concluded that the respondent had admitted the allegations levelled against him. Learned advocate for the respondent also submitted that even if it is assumed that the charge Nos. 1.1 and 1.2 are proved then also, the said charges are only of attempt to misappropriate or attempt to commit fraud/cheat and that therefore,

it could not have been concluded that the respondent had misappropriated any amount and/or had committed fraud. He also submitted that even negligence in performance of the duty is not established.

7. I have considered the submissions by learned counsel for the petitioner and the respondent workman. I have also considered the deposition by the witnesses examined by the petitioner corporation before the learned Labour Court and I have also considered the charge sheet, impugned award and other material available on record of the petition.

8. The factual background is not in dispute, inasmuch as it is not in dispute that the charge sheet dated 9.1.1989 was duly served to the respondent. It is also not in dispute that domestic inquiry in pursuance of the said charge sheet was conducted. It is also not in dispute that the learned Labour Court held and declared that the domestic inquiry was not conducted in legal and fair manner and it was defective and that order, has attained finality since it was never challenged by the petitioner corporation and that after the learned Labour Court declared that the domestic inquiry conducted against the respondent is defective, the petitioner corporation was granted opportunity to lead evidence to establish allegations against the respondent, the petitioner corporation had examined two witnesses namely, Mr. M.I. Patel and Mr. B.M. Chauhan to establish the charge and allegations against the workman.

9. The learned Labour Court has considered the evidence of the said witnesses and upon appreciation and analyze of the said deposition by the said two witnesses, the learned Labour Court has reached the findings of fact that the deposition by the said two witnesses does not establish the allegations against the respondent workman.

10. The said findings of fact is recorded upon appreciation of the evidence on record of the reference before the learned Labour Court.

10.1 During the hearing of present petition, learned advocate for the petitioner could not demonstrate that the learned Labour Court has committed any error in holding, after analyzing, appreciating and evaluating the said deposition, that the said deposition do not establish the allegations against the respondent.

10.2 Learned advocate for the petitioner also failed to demonstrate and establish that any other substantial and cogent evidence, either documentary or oral, was available on record, however, the learned Labour Court failed to consider the said evidence.

10.3 He also failed to establish that the conclusion by the learned Labour Court that the evidence led by the petitioner corporation to prove the allegations against the respondent, do not lead the Court to that conclusion that the charge are proved.

11. When a specific finding of fact is recorded by the learned Labour Court and such finding of fact is based on evidence available on record and on appreciation

of such evidence, then, this Court would not sit in appeal over such finding of fact and conclusion by the learned Labour Court. This Court would not enter into the process of re-appreciation of the evidence and reach to different conclusion unless it is demonstrated that the findings recorded by the learned Labour Court are perverse.

11.1 In present case, the petitioner corporation has failed to establish that the findings recorded by the learned Labour Court are perverse.

12. Besides this, it is also relevant to note that when the allegations/charge Nos. 1.1 and 1.2 are taken into account, it comes out that the said allegations/charge are related to alleged "attempt" by the respondent to commit misappropriation and "attempt" to commit fraud with and to cheat the corporation. Assuming that the evidence led by the petitioner corporation established the said allegations, then also, the allegations which would stand proved would be of "attempt" to misappropriation and/or "attempt" to commit fraud and to cheat. The allegations/charge of actual misappropriation and/or actual cheating and fraud was not even levelled against the respondent workman.

13. Other allegations/charge, i.e. charge Nos. 2, 3 and 4 are allegations/charge related to alleged negligence in performance of duty.

14. From the evidence of the two witnesses examined before the learned Labour Court, it comes out that anything with regard to negligence in performance of duty is not mentioned by the said witnesses. Similar is the case with regard to allegation/charge No. 5. The said charge No. 5 recites that the respondent used to prepare/forged receipts on plain paper and would obtain signatures of concerned persons with intention to commit fraud or cheating. From the deposition of the witnesses examined by the petitioner, it comes out that any material to establish that the respondent used to keep ready with him forged receipts is not established and it is also not established that the respondent used to keep such forged receipts ready with him with intention to commit fraud or cheating. The said findings by the learned Labour Court are based on material on record and they are not perverse.

15. In this view of the matter, it is not possible to hold that the learned Labour Court has committed any error in holding that the charge levelled against the respondent are not proved. The said findings of fact cannot be faulted in light of the material which is available on record of present petition. Learned advocate for the petitioner has failed to demonstrate that the evidence placed on record before the learned Labour Court by the petitioner establishes the allegations against the respondent and the conclusion by the learned Labour Court are incorrect.

16. In view of the fact that the petitioner has not placed any evidence on record to demonstrate that the respondent was gainfully employed or engaged in the interregnum and coupled with the fact that the respondent himself admitted that he earned some income from agriculture activity, the decision and direction by

the learned Labour Court with regard to backwages cannot be faulted and do not warrant any interference.

17. As upshot of the foregoing discussion and for the above mentioned reasons, the petition fails and deserves to be rejected and is, accordingly, rejected. Rule is discharged.