
(2008) 12 GUJ CK 0041
In the Gujarat High Court

Case No : Special Civil Application No's. 7540, 7541 to 7542 and 7583 of 2008

Jafar B. Chauhan

APPELLANT

Vs

Shon Ceramics Pvt. Ltd.

RESPONDENT

Date of Decision : 22-12-2008

Acts Referred:

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

Citation : (2008) 12 GUJ CK 0041

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : Rajesh P. Mankad, for the Appellant; Harshad K. Patel, for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Brahmbhatt, J.—Shri Mankad, learned Advocate for the petitioners in all these four petitions has submitted that all the four petitions could be heard together and disposed of, as they involved common question of law and facts are almost identical and therefore these four petitions are being disposed of by this common judgment and order.

2. The petitioners in all these four petitions have challenged the award dated 27/08/2007 passed in Reference No. 897 of 2003, Reference No. 898 of 2003, Reference No. 900 of 2003 and Reference No. 899 of 2003 by the learned Presiding Officer, Labour Court, Vadodara.

3. The facts in brief deserves to be set out as under in order to appreciate the controversy.

3.1 These four petitioners were leaders of the Union and were espousing cause of their fellow workman. The petitioner of Special Civil Application No. 7540 of 2008 has put in 12 years of service; petitioner of Special Civil Application No. 7541 of 2008 has put in 08 years of service; petitioner of Special Civil Application No.

7542 of 2008 has put in 26 years of service and petitioner of Special Civil Application No. 7583 of 2008 has put in 08 years of service, all the four petitioners received charge-sheet almost identical indicating therein that petitioners were deliberately observing go slow and not giving the production to the best of their ability. The charge-sheet contained specific allegation that this tendency to give less production was for creating impediment in smooth functioning of the company and for that company had to even lay off other workman. The inquiry was conducted and on charge being found to be proved they were discharged from services. The industrial dispute was raised which came to be referred to the competent Court and after adjudicating the concerned Court held against the workmen and rejected the reference by the order and award impugned in this petition.

4. Shri Mankad, learned Advocate for the petitioner has contended that despite the Pursis Exh.9 and its clarification Exh.33, the Labour Court was not absolved its duty to take into consideration the relevant factors when it is called upon to exercise its jurisdiction u/s 11(A) of the ID Act. Shri Mankad, has placed reliance on the following decision in support of his case and submitted that the factors enumerated in those authorities are required to be taken into consideration by the Court while exercising powers u/s 11(A) of the ID Act.

2004 LLR 498 in case of Rajkot Municipal Corporation v. Punjabhai Rajubhai Waghela.

2001 II LLJ 387 (GUJ) in case of G.S.R.T.C. v. Vajabhai D. Parmar.

Gujarat State Road Transport Corporation Vs. U.A. Malek,

2008 AIR SCW 1354 in case of State of M.P. and Ors. v. Hazarilal.

4.1 The factors according to Mr. Mankad were length of service, compelling circumstances for committing misconduct and the nature of misconduct itself. In the instance case as could be seen from the award, the Labour Court has not considered those circumstances and rejected the reference on the strength of the Pursis Exh.9 clarified by Exh.33 which render the award vulnerable and therefore the same deserves to be quashed and set aside.

5. Shri Patel, learned Advocate for the respondent contended that once the Pursis Exh.29 and clarification Exh.33 are taken into consideration then it leave no room to quash the order but to confirm the order of discharge which was subject matter of reference before the Court. The misconduct alleged and proved cannot be said to be misconduct committed out of sheer exasperation, negligence or any other dereliction of duty. As could be seen from the findings of the Inquiry Officer, the misconduct was well designed attempt to thwart the smooth functioning of the employer ?" company which compelled the company to even lay off its other workers and the very slowing down of production paces itself is sufficient to indicate seriousness of the misconduct which requires appropriate punishment and which cannot be less than severing of relationship

as the workers cannot be said to have been working in the interest of either production or their fellow workers. He, therefore, submits that the award impugned in this petition need no interference under Article 227 of the Constitution of India. In support of his argument, he has placed upon a reliance on following decisions.

U.B. Gadhe and Others Vs. G.M., Gujarat Ambuja Cement Pvt. Ltd.,

2007 LLR 109 in case of Tata Engineering & Locomotive Company Ltd., v. N.K. Singh.

2007 LLR 168 in case of Jitendra B. Mehta v. The Manager, Reliance Industries Ltd. and Ors.

2007 LLR 245 in case of Jarnail Singh v. Presiding Officer, Labour Court, Patiala and Anr.

2007 LLR 166 in case of High Polymer Laboratoires v. Jagdish Chand and Anr.

2007 LLR 217 in case of Sahil Khan v. Hashmat & Company.

GLR Vol.XLVI 3122 in case of Harshadkumar B Vasia v. Gujarat State Fertilizers & Chemicals Ltd. (Fibre Unit) and Anr.

6. Heard learned Advocates for the parties and has perused the award impugned in these petitions.

7. The fact remains to be noted that Pursis Exh.9 signed on behalf of the workman contains even admission of guilt on their part. Now, it is the pursis not only giving up challenge to the inquiry proceedings and the findings, but it also amounts to admission of misconduct or commission of misconduct on their part. While filing the clarificatory Pursis at Exh.33, the workmen have nowhere said to have resiled from their earlier Pursis including even admitting their misconduct on their part, but they confined their challenge to proportionality of the punishment imposed. The certified copy of these two Pursis Exh.29 and Exh.33 have been taken on record. Both the pursis go to show that admission of guilt and misconduct has not been disputed. Now, when such misconduct has been admitted which even as per the provisions of Industrial Disputes Act, 1947 amounts to unfair labour practice, the same could not have been countenanced by any Court of law and this in itself was sufficient for justifying the order of discharge, which was subject matter of reference before the Court. The contention with regard to non-consideration of length of service especially so far as these cases are concerned, two petitioners have put in 18 years of service and one has put in 20 years also would pale into insignificance compare to the seriousness of the misconduct which as stated herein above cannot be countenanced by any Court of law. There cannot be any compelling circumstances to give less production, as it is not only a counter productive to an industry but it is viewed to be counter productive to even the economic growth of entire sector. Therefore, in its wisdom legislature has incorporated, such conduct

to be unfair labour practice.

8. In view of this, the decisions cited at bar by Shri Mankad, learned Advocate for the petitioners will have no applicability to the peculiar facts and circumstances of the case especially coupled with the admission on the part of the workmen of the guilt of commission of the misconduct. The award impugned, therefore cannot be said to be so perverse as to call for any interference under Article 227 of the Constitution of India.

9. In the result, the petitions fail and are hereby rejected. Notice discharged. However, there shall be no order as to costs. Registry is directed to keep a copy of this order in each of the petition.