

(2005) 01 GUJ CK 0003
In the Gujarat High Court

Case No : Special Civil Application No's. 1233 and 8580 of 1994

Mafatlal Engineering Indus. Ltd.

APPELLANT

Vs

Ishwarbhai K. Makwana
 Ishwarbhai Kanjibhai
Makwana Vs Mafatlal Engineering Industries Ltd.

RESPONDENT

Date of Decision : 28-01-2005

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 10(1)

Citation : (2005) 2 GLR 1230

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Advocate : Varun K. Patel, for K.M. Patel in Special Civil application No. 1233 of 1994, for the Appellant; Varun K. Patel, for K.M. Patel in Special Civil Application No. 8580 of 1994, for the Respondent

Judgement

B.J. Shethna, J.—Both these petitions are heard and disposed of by this common order as they are arising out of the impugned common Judgment and Award dated 7.8.1993, passed by the Labour Court, Vadodara, in Ref. (LCB) No. 935 of 1984, whereby the Labour Court set aside the order of termination of the workman and order to reinstate him in service with 25 % of back wages and continuity in service and all other benefits of service.

2. The employer Mafatlal Engineering Industries Ltd. has challenged the impugned Judgment and Award passed by the Labour Court ordering reinstatement of the workman with 25 % back wages, whereas the workman has filed Special Civil Application No. 8580 of 1994 claiming remaining back wages of 75 % which was not granted to him by the Labour Court while passing the order of reinstatement in service.

3. The workman Ishwarbhai Kanjibhai Makwana was serving in Painting Department of the factory of the Employer Mafatlal Engineering Industries Ltd. He was served with charge-sheet dated 29.10.1982 for the misconduct

committed by him in which one Shri J.R.Parikh was appointed as Inquiry Officer. On 13.2.1983 the workman misbehaved with the Inquiry Officer in that inquiry and also abused him. Thereupon, he was served with another charge-sheet dated 14.2.1983 for his said misconduct of abusing the Inquiry Officer. He was also served with another charge-sheet dated 20.4.1983 for the gross and serious misconduct of abusing and assaulting the Supervisor and indulging in riotous, disorderly and indecent behavior while on duty in Company's premises for the incident which took place on 19.4.1983. He was on duty on that day i.e. on 19.4.1983 in the first shift, at about 9.05 am he was smoking "Bidi" sitting on a small drum and simply wasting time. Thereupon, the Supervisor Shri A.V.Petkar told him to get-up and start his work, but he did not respond to it and made threatening posture against his Supervisor. Shri Petkar left at that time but when he again came back at 9.20 a.m. to the Painting shop he was asked by the workman to provide filter cloth. He was already given filter cloth on a previous day, therefore, Shri Petkar inquired from him about the same. On being asked, the workman got infuriated and started abusing his Supervisor in the most indecent and filthy language. When he was asked to stop abusing he became more aggressive and took wooden plank lying there and assaulted his Supervisor with the same. Fortunately the Supervisor caught hold that plank with his both hands and, therefore, he could be saved himself with more serious injuries on his person. For his misconduct he was served with another charge-sheet dated 20.4.1983 (Annexure:B).

4. In the domestic inquiry both the charges of abusing the Supervisor, with filthy language and assaulting, found to be proved against the workman. Considering his past record and his repeated misbehavior with his Superior Officer, in the past, his services were terminated by order dated 28.5.1984 after issuing proper show cause notice dated 10.5.1984.

5. Against the aforesaid order of dismissal from service the workman raised dispute before the Labour Court u/s 10(1) of the Industrial Disputes Act, 1947. The Labour Court, Vadodara by its impugned Judgment and Award dated 7.8.1993 held that the departmental enquiry held against the workman was legal and valid and in fact the legality and validity of the inquiry was not challenged before it by the workman. The matter was argued by the workman only on the point of punishment as, according to him, the punishment of dismissal was highly disproportionate to the misconduct which was found to be proved against him. Considering all the aspects of the case the Labour Court by its impugned Judgment and Award came to the conclusion that penalty of dismissal was highly disproportionate and, therefore, it ordered reinstatement of the workman in service, but with 25% back wages. As stated earlier, this part of the order of reinstatement of the workman in service with back wages has been challenged by the employer of the Company and as a counter blast the petitioner has subsequently filed the petition before this Court against the part of the Judgment and Award passed by the Labour Court in not granting remaining 75 % back wages while ordering reinstatement.

6. Initially, the workman had filed this petition through his Advocate Shri M.S. Shaikh and thereafter on the death of Shri Shaikh Notice was issued to the workman for engaging any other Advocate, but he has not engaged any Advocate to defend his case after Notice was duly served upon him for engaging another Advocate.

7. Under the circumstances both these petitions are disposed of after hearing the learned Counsel Shri Varun Patel, appearing for the Company in both the petitions.

8. Learned Counsel Shri Patel for the employer company submitted that the misconduct committed by the workman was of a serious nature for which his services were terminated. Therefore, the Labour Court ought not to have interfered with the order of punishment in view of the past record of the workman. He also submitted that the Labour Court made factual error in its Award by observing that what actual abuses given by the workman have not come on the record. He submitted that Shri Ajit Vinayak Petkar has clearly stated in his evidence before the Inquiry Officer the actual abuse given in most filthy language by the workman. He stated that when he asked the workman about the filter cloth which was already given to him on a previous day at that time the workman got angry and told him that "Why you are getting your mother fucked for this piece of cloth ? You are not going to pay from your pocket. You are becoming over-smart for the company. "

" Thereupon, he told the workman not to give such filthy abuses and make proper representation, but he continued to give him filthy abuses and filthy gesture and stated that "Go away, don't befool me. Do whatever you can. and by making indecent acts with his hand he said a fool like you, can not cause me any damage".

" By saying so all of a sudden he lifted one wooden plank lying there and tried to assault him with it, which was caught by him with his both hands. Therefore, he was saved with minor injuries. Evidence of this witness Shri Ajit Vinayak was recorded on 23.7.1983 which is produced on record at Annexure ; E to Special Civil Application No. 1233 of 1994, filed by the employer company.

9. Thus, there is a lot of substance in the submission made by Shri Patel that the Labour Court has committed an error in observing that what actual filthy abuses given by the petitioner has not come on the record of the case.

10. Shri Patel further submitted that the Labour Court has also referred to in Para : 12 of its Award that the past record of the workman is not good and for misconduct committed by him he was also placed under suspension. Inspite of it the Labour Court passed an order of reinstatement of workman by stating that, at least, one more opportunity should be given to the workman to improve himself and accordingly it passed an order of reinstatement of the workman with 25 % back wages. He submitted that the workman was a strong headed person. He had committed repeated similar misconduct in the past of abusing his co-

worker, superior officer and also assaulted them for which he was served with the charge-sheet. Thus, on the facts and in the circumstances of the case the Labour Court was absolutely wrong in passing the order of reinstatement of workman in service relying on the Judgment and order of the Hon''ble Supreme Court in the case of Scooters India Limited Vs. Labour Court and Others, Relying on the later Judgment of the Hon''ble Supreme Court in the case of New Shorrock Mills Vs. Maheshbhai T. Rao, Shri Patel submitted that when the Labour Court found that the Departmental Enquiry was proper and legal and that the order of dismissal was not by way of victimization and that the workman was guilty of serious charge then the Labour Court ought not to have exercised its discretion in favour of the workman and set aside the impugned order of dismissal passed against the workman by substituting the same with an order of reinstatement with 25 % back wages. In the case of NEW SHORROK MILL (supra) almost similar type of misconduct was committed by the workman of abusing the Deputy Manager and threatening the Mill Officer with dire consequences. Such an act of misconduct preceded by awarding punishment in past for other misconduct on a number of occasions inspite of it workman had not improved and, therefore, he was dismissed from service. But, the Labour Court interfered with the same, and the petition filed by the Mills against the Judgment and Award passed by the Labour Court was dismissed by the Gujarat High Court, against which SLP was filed and while granting SLP, the Appeal was allowed and the Judgment and order passed by the Labour court, confirmed by the High Court, were set aside by the Hon''ble Supreme Court on the ground that such person cannot be retained in service. This issue is squarely applicable in this case.

11. It may be stated that though served, nobody appeared for the workman. Therefore, I have carefully gone through, not only the impugned Judgment and Award passed by the Labour Court, but also the averments made by the workman in his petition as well as the averments made by the company in its petition and having carefully gone through the same, I am of the considered opinion that in the instant case the Labour Court has materially erred in exercising the discretion in favour of the workman by setting aside the order of dismissal passed against the workman and ordering reinstatement in service with 25% back wages. As in my considered opinion the workman, habituated in misbehaving with his co-workers and superior officer of using filthy language and at times assaulting the co-worker and superior Officer cannot be retained in service. An opportunity of improving can be given once to a person if it was his first conduct, but where a person who is habituated cannot be given such opportunity of improving again and again. Such person can never improve himself. If such a person is kept in service then it may have adverse effect on other workman and they may also indulge themselves in such activity which will never be in the interest of industrial peace.

12. In view of the above, there is no option for this Court but to exercise its supervisory jurisdiction under Article 227 of the Constitution by setting aside the impugned Judgment and Award passed by the Labour Court ordering

reinstatement of the workman with 25 % back wages. Accordingly, Special Civil Application No. 1233 of 1994, filed by the petitioner company is hereby allowed and the impugned Judgment and Award dated 7.8.1993, passed by the Labour Court, Vadodara, ordering reinstatement of workman in service with 25 % back wages, is quashed and set aside and the order passed against the workman by the petitioner company is restored. Rule made absolute.

13. Once the writ petition No. 1233 of 1994, filed by the Employer Company is allowed then the petition i.e. Special Civil Application No. 8580 of 1994, filed by the workman, claiming remaining 75 % back wages has to be dismissed. Accordingly, it is dismissed. Rule discharged.

14. Accordingly, Rule issued in Special Civil Application No. 1233 of 1994 is made absolute with no order as to costs, and the Rule issued in Special Civil Application No. 8580 of 1994 is discharged with no order as to costs.