
(2016) 03 GUJ CK 0104

In the Gujarat High Court

Case No : Special Civil Application No. 12368 of 2013

Mallinath Maharaj Trust

APPELLANT

Vs

Kalubha Chandubha Solanki and Others

RESPONDENT

Date of Decision : 16-03-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A, Section 2(j)

Citation : (2016) 03 GUJ CK 0104

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

Bench : Single Bench

Advocate : R.V. Desai, Advocate, for the Appellant; Prakash V. Chavda, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Thaker, J.—1. Heard Mr. Desai, learned advocate for the petitioner.

2. Learned advocate for the respondent No. 1 is not present.

3. The petitioner-trust has taken out present petition against the award dated 09.05.2013, passed by the learned Labour Court at Ahmedabad in Reference (L.C.A.) No. 825 of 2006, whereby the learned Labour Court has set aside the termination order passed by the petitioner-trust against the respondent and directed the petitioner-trust to reinstate the respondent in service on his original post without backwages.

4. The petitioner of present petition has claimed that it is a religious and charitable trust and it is registered under the provisions of Bombay Public Trust Act.

5. So far as factual background is concerned, it has emerged from the record and from the submissions by Mr. Desai, learned advocate for the petitioner that the petitioner-trust terminated service of present respondent after conducting departmental inquiry in connection with certain charge/allegations levelled

against the respondent.

5.1 The service of the respondent herein came to be terminated vide order dated 01.02.2006.

5.2 The respondent felt aggrieved by the said order dated 01.02.2006 and raised industrial dispute. The dispute was referred for adjudication to the learned Labour Court vide order of reference dated 12.06.2006. The said reference came to be registered as Reference (L.C.A.) No. 825/96.

5.3 During the proceedings of the reference, the respondent herein filed his statement of claim alleging inter alia that he was employed by the petitioner-trust since last 20 years and that at the relevant time when his service came to be terminated on 01.02.2006, he was paid salary at the rate of Rs. 3,200/- per month.

5.4 The respondent also alleged that before terminating his service, the petitioner had not followed any procedure prescribed by law. He alleged that any inquiry was not conducted and he was not granted opportunity of hearing and defence. He also alleged that at the time of terminating his service, and retrenchment compensation was also not paid.

5.5 The respondent also alleged that show cause notice dated 09.08.2005 and 10.01.2006 were issued by the petitioner-trust alleging commission of misconduct, however, he had not committed any misconduct, as alleged in the said notices. On such allegation, the respondent claimed that he should be reinstated with consequential benefits.

6. The petitioner herein had opposed the reference. The petitioner claimed that it is a religious and charitable trust, and therefore, it cannot be said to be an Industry as defined under Section 2(j) of the Industrial Disputes Act, 1947, and therefore, provision under Industrial Dispute Act is not applicable and reference is not maintainable.

6.1 Beside the said objection, the petitioner herein, in its written-statement, claimed that in light of complaint/report and certain misconduct allegedly committed by the respondent a show cause notice was issued, and thereafter, departmental inquiry was conducted.

6.2 The petitioner trust also claimed that on completion of the departmental inquiry, the Inquiry Officer submitted a report dated 31.12.2005 holding that the charge/allegations levelled against the respondent is proved. Therefore, the competent/disciplinary authority issued second cause notice and called for respondents explanation as to why penalty should not be imposed.

6.3 The petitioner-trust also claimed that after considering the reply, the material on record of the inquiry proceedings and the report of the inquiry officer, the disciplinary authority decided to terminate the service of the respondent and consequently, order dated 01.02.2006, came to be passed, whereby the service

of the respondent came to be terminated.

6.4 The petitioner claimed that the service of the respondent is terminated for proved misconduct and after conducting departmental inquiry and granting opportunity of hearing and defence to the respondent and that therefore, the relief prayed for by the applicant does not deserve to be granted and reference may be dismissed.

6.5 During proceedings before the learned Labour Court, the petitioner-trust placed on record report of the inquiry proceedings, however, the petitioner-trust did not examine any witness and except placing material of domestic inquiry on record of the reference, the petitioner-trust did not place any other documentary evidence and also did not lead any oral evidence before the learned Labour Court.

7. At the time of hearing of present petition, Mr. Desai, learned advocate for the petitioner submitted that the petitioner-trust is administrator of a temple, and that therefore, it would not come within the purview of the definition term Industry as defined under Section 2(j) of the Act. Mr. Desai, learned advocate for the petitioner submitted that the petitioner had relied on several decisions to support the contention that the petitioner would not come within the purview of the term Industry and that therefore, the act would not be applicable however, the learned Labour Court did not consider and did not deal with the decision relied on by the petitioner. He submitted that the service of the respondent was terminated for mis-conduct after conducting domestic inquiry wherein Inquiry Officer held that the charge and allegations levelled against the present respondent- delinquent is proved.

8. I have considered the submissions by learned advocate for the petitioner and I have also considered the material available on record.

9. In view of the petitioners contention that the learned Labour Court did not consider and did not deal with the decisions on which the petitioner relied on at the time of hearing before the learned Labour Court, it is necessary to mention at the outset that having regard to the observations by the learned Labour Court in the award that the petitioner did not lead any evidence, this Court specifically and repeatedly asked Mr. Desai, learned advocate as to whether the petitioner-trust led any evidence before the learned Labour Court with regard to the nature and type of the activities undertaken by the trust and/or whether the petitioner led any evidence with regard to the nature of its activities to establish that none of the activities undertaken by it would come within the purview of the test laid down by Hon''ble Apex Court in case of Bangalore Water-supply & Sewerage Board v. A. Rajappa & Ors, (, 1978 (2) SCC 213).

9.1 Ultimately, after repeated query by the Court, Mr. Desai, learned advocate for the petitioner conceded and accepted the fact that except placing on record before the learned Labour Court the material of domestic inquiry, the petitioner did not lead any evidence, oral or documentary, and more particularly, it did not lead any evidence with regard to the nature and type of activities of the trust.

10. Another relevant aspect which deserves to be mentioned before proceeding further is that the thinking of and submissions by the petitioner are covered by cloud of misconceived belief (derived from misreading of certain decisions, wherein the Court held, after carefully examining detailed and substantial evidence applicable in that case that the temple did not come within the term, and cannot be considered, Industry that since the trust manages a temple it is not a industry. However, the petitioner is ignoring the fact that the defendant before the learned Labour Court was the trust (and not the temple) and the petitioner before this Court is also the trust (and not the temple) and the employer of the respondent was the trust and not the temple and that the petitioner trust is a different and separate entity distinct from the temple and that the case of the claimant was and before this Court also is that he was employed by the trust and he was working for, and rendering service to, the trust. The trust i.e. the petitioner cannot compare itself with and cannot equate itself with and not present itself as, temple and cannot consider itself one with the temple.

11. In this view of the matter, more particularly in view of the assertion by the respondent, it was very much necessary for the petitioner-trust to lead proper, cogent, relevant and satisfactory evidence, oral and/or documentary, with regard to the nature of its activities which would clarify as to whether in view of its activities the petitioner trust comes within the purview of industry or not.

11.1 However, undisputedly the petitioner trust did not lead any evidence with regard to its activities.

11.2 It is an undisputed position that by decisions on which the petitioner trust placed reliance are based on the facts of the particular case and the decisions are rendered in light of evidence available in each case and the Court recorded the finding of fact as to whether the undertaking concerned in that particular case came within the purview of the term industry or not. Therefore, the petitioner is not justified in claiming that its case is covered by the said decisions.

12. So far as the petitioners contention that the Learned Labour Court did not consider and did not deal with the judgments relied on by the petitioner is concerned, it is relevant (i) to recall that the petitioner did not lead any evidence of whatsoever nature before the learned Labour Court (except placing on record of the reference the material of domestic inquiry conducted against the respondent) (ii) it did not lead any evidence, more particularly and evidence - with regard to the nature and type of activities of the trust, and that (iii) the said submission is factually incorrect inasmuch as a glance at the award shows that after considering the judgments cited by the petitioner the Learned Labour Court has recorded that since any evidence with regard to activities of the trust the said decisions are not relevant and cannot be applied and benefit of said judgments cannot be granted.

13. In this context, it is pertinent that The learned Labour Court considered the

contention raised by the petitioner trust viz. that the petitioner-trust is not an industry and after considering the contentions by the learned advocate for the petitioner, the learned Labour Court recorded in the order that the petitioner-trust relied on various decisions, however, since the said decisions are based on facts of each case, wherein it was established on the basis of specific evidence (with regard to the activities of the trust and the Temple) that any industrial activity was not being undertaken, and therefore, concerned establishment were not treated as industry, whereas in the case on hand the petitioner-trust did not lead any evidence with regard to nature of its activities and petitioner-trust failed to establish that it was engaged only and purely in religious as well as non-industrial activities and was not engaged in any industrial activity. Any evidence of whatsoever nature with regard to the activities of the petitioner trust was not placed before the Court.

14. In Paragraph 10 of the award, the learned Labour Court has specifically recorded that the petitioner-trust has failed to lead any evidence, and that therefore, the decisions on which the petitioner trust placed reliance cannot help the petitioner or cannot render any assistance because the said cases are decided in light of the evidence with regard to the activities of respective trust and the temple whereas the petitioner trust did not lead any evidence with regard to the activities of the trust/temple.

15. In present case, it is also necessary to note that it is not the case even of the petitioner trust that the respondent was exclusively working in and for the temple.

16. Even according to the petitioner, the respondent herein was appointed and employed by the trust and was working for the trust and that the respondent was performing clerical duties.

17. In view of the fact that the claim was raised by employee/clerk against the trust as his employer and the claim was not raised by any employee or person working in, or working for the temple, but by an employee/clerk employed for the activities of the trust and since any evidence with regard to the activities of the trust was not placed before the learned Labour Court, the decision of learned labour Court of not accepting the contention that the petitioner trust is not an industry within the meaning of the term under Section 2(j) of the Act, cannot be faulted.

18. So far as the award is concerned and so far as the allegation about misconduct is concerned, the learned Labour Court has examined entire evidence and has also analyzed the evidence available on record by considering the material which formed part of the proceedings of departmental inquiry.

19. Upon analysis and appreciation of the evidence, the learned Labour Court came to the conclusion that though the respondent can be said to be guilty of overwriting in the receipt and thereby altering/changing the contents/entry in the receipt, however, it cannot be said that the respondent was guilty of the charge

of misappropriation of amount which was levelled against the respondent and said charge cannot be treated or held as proved.

20. Having regard to the said finding, the learned Labour Court reached to the conclusion that penalty imposed by the petitioner trust was harsh in view of the fact that the charge of misappropriation is not proved.

21. In that view of the matter, the learned Labour Court considered it appropriate to set aside the order/decision of penalty and to direct the petitioner trust to reinstate the workman. The learned Labour Court found that the allegation of overwriting in the receipt was proved, and that therefore, the learned Labour Court considered it proper to deny back-wages for entire interregnum i.e. from the date of termination (February, 2006) until the date of award from (May, 2013) and direct the petitioner to reinstate the respondent without any back-wages. Consequently the labour Court passed the award with above quoted directions.

22. From the award passed by the learned Labour Court, it has emerged that the learned Labour Court, after examining the findings of the inquiry officer (which were challenged by the present respondent on the ground that the findings are perverse and not supported by the evidence) reached to the conclusion that substantial or major allegation related to the alleged misappropriation is not established and having reached to such conclusion the learned Labour Court found that when the charge about misappropriation is not proved, the penalty of termination from the service would be harsh.

23. Therefore, the learned Labour Court considered it appropriate to exercise power and discretion under Section 11A of the Act and set aside the order terminating the service of the respondent and directed the petitioner to reinstate the respondent.

24. After considering over all circumstances and facts of the case and the conclusions reached by it, the learned Labour Court denied the demand for back-wages.

25. In this view of the matter and having regard to the foregoing discussions, this Court is not inclined to and not convinced to interfere with the said decision by the learned Labour Court.

26. Therefore, the Court does not find any reason or justification to interfere with the impugned award.

27. Any case to interfere with the impugned award and direction is not made out.

28. The petition fails and deserves to be rejected and it is accordingly rejected.