

(2016) 12 GUJ CK 0014

In the Gujarat High Court

Case No : Special Civil Application No. 13958 of 2012

Mithirohar Gram Panchayat

APPELLANT

Vs

Dilip P Bhogayata

RESPONDENT

Date of Decision : 08-12-2016

Acts Referred:

Citation : (2017) 153 FLR 52 : (2017) 1 LLJ 381

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

Bench : Single Bench

Advocate : Mr Jitendra H Singh, Advocate, for the Petitioner No. 1; Mr. M.H. Rathod, Advocate, for the Respondent No. 1

Final Decision : Allowed

Judgement

Mr. K.M. Thaker, J. (Oral) - Heard Mr. Jitendra H. Singh, learned advocate for the petitioner. Mr. Rathod, learned advocate is present for respondent.

2. In the petition, the petitioner Mithirohar Gram Panchayat has placed under challenge the Award dated 15.02.2012 passed by learned Labour Court, Gandhidham in Reference (LCG) No.691 of 1996, whereby the learned Labour Court has directed the petitioner Panchayat to reinstate the respondent on his original post with continuity of service, however, without back wages.

3. So far as factual background is concerned, it has emerged from the record and from the submissions made by the learned advocate for the contesting parties and from the award that the respondent herein was engaged as "Gramya Vijlighar". He raised industrial dispute with allegation that his service is illegally terminated. Appropriate Government referred the dispute for adjudication to the learned Labour Court. The dispute/ reference was registered by learned Labour Court as Reference (LCG) No.691 of 1996.

3.1 In the statement of claim, the claimant alleged that he was appointed in October, 1987 as permanent employee and that his salary was Rs.650/. He also alleged that he worked regularly and continuously and that he performed his

duties sincerely and diligently. He also alleged that on concocted allegation a show-cause notice dated 27.07.1994 was issued and thereafter opponent panchayat terminated his service vide order dated 12.08.1994 without granting any opportunity of hearing and without following procedure prescribed by law. With such allegations, the claimant demanded that he should be reinstated in the service with consequential benefits.

3.2 The Opponent Panchayat opposed the reference and resisted the demand of the claimant. The opponent Panchayat filed its reply wherein the Panchayat contended that the claimant was appointed as Vijlighar and that he worked on fixed salary and that he was very irregular and negligent in performance of his duty. The panchayat also contented that in past he was warned / censured and he was instructed to perform his duty diligently, however, he did not show any improvement in performance of his duties and that, therefore, show-cause notice was issued and his explanation was sought for and thereafter the claimant's service came to be terminated. According to Panchayat, service of show-cause notice was sufficient and there was no requirement of conducting domestic inquiry since the claimant was working on fixed salary basis.

3.3 Learned Labour Court received evidence from both the sides and upon conclusion of evidence, learned Labour Court heard the submissions of learned advocates for the contesting parties and thereafter, the learned Labour Court examined material available on record and considered rival submissions and passed impugned award with above mentioned direction. Learned Labour Court reached to the conclusion that claimant's service was terminated on the ground of misconduct. No domestic inquiry was conducted, therefore, the claimant's termination of service was in violation of principle of natural justice. Having reached such conclusion, the learned Labour Court passed the impugned award with which the panchayat is aggrieved.

4. Mr. Singh, learned advocate for Panchayat submitted that learned Labour Court failed to appreciate that the claimant was engaged on fixed salary basis and that, therefore, there was no need to conduct domestic inquiry. He further submitted that Panchayat had issued show cause notice and thereby opportunity to file reply was given to the claimant which complied principles of natural justice. He further submitted that claimant was irregular and negligent in performance of his duties and despite repeated instruction and warning, the claimant never improved performance of his duties and continued to behave in negligent and irresponsible manner and that, therefore, the panchayat was left with no alternative then to terminate his service and consequently the claimant's service came to be terminated vide order dated 12.08.1994. Learned advocate for the petitioner relied on the decision in case of Secretary, State of Karnataka & Ors v. Umadevi & Ors., reported in AIR 2006 SC 1806, in case of State of Rajasthan and Others v. Rameshwar Lal Gahlot, reported in AIR 1996 SC 1001, in case of Chandulal v. The Management of M/s. Pan American World Airways. Inc., reported in AIR 1985 SC 1128, in case of L.Robert D'Souza v. The Executive

Engineer, Southern Railway and another, reported in AIR 1982 SC 854 and in case of Amreli Municipality v. Gujarat Pradesh Municipal Employees Union, reported in 2004 (2) GLH 692.

5. Mr. Rathod, learned advocate submitted that according to the information from the respondent, the petitioner has already reinstated respondent in April, 2013 and the respondent is working with the petitioner since April, 2013.

5.1 He further submitted that there is no error or illegality in the award passed by the learned Labour Court. He also submitted it was established that though the petitioner terminated claimant's service on allegation of negligence in performance of duty the claimant's service was terminated without conducting domestic inquiry and that, therefore, the award by learned Labour Court does not warrant any interference, more particularly, when the learned Labour Court has denied back wages and directed reinstatement without consequential benefit in terms of back wages.

6. I have considered the statements by learned advocate for petitioner and learned advocate for respondent and I have considered the material available on record and the impugned award.

7. The factum of claimant's service is not in dispute. The fact that the administrator of Panchayat terminated his service by termination order dated 12.08.1994 is also not in dispute. The fact that the claimant's service came to be terminated by way of penal/ punitive order and that his service came to be terminated on allegation of misconduct namely that he was negligent and irresponsible in performance of his duties and several complaints about performance of duty were received against him, is also not in dispute.

7.1 It is true that before passing punitive/ penal order dated 12.08.1994, the petitioner panchayat had issued show-cause notice.

7.2 The said showcause notice confirms the fact that the claimant's service came to be terminated on allegation about negligence in duty, complaints about performance of duty and irregularity in performance of duty i.e. on the ground of misconduct.

8. It is not in dispute that the departmental inquiry was not conducted against the claimant. On plain reading of the show-cause notice, it appears that in the show cause notice Panchayat/ Administrator alleged and mentioned that complaint against him were received from the resident of the village.

8.1 However, the details of the complaints were not informed to the claimant.

8.2 From plain reading of the show cause notice it appears that copies of the said complaint were not supplied to the claimant. I

8.3 It is not the case even of the petitioner that during the hearing of the petition a copy of the said complaint was supplied to the claimant along with the show cause notice.

8.4 After serving the said show cause notice, the petitioner Panchayat/ Administrator undisputedly did not conduct departmental inquiry.

8.5 Any witness, more particularly, the complainants were not examined in presence of original claimant and the claimant did not get opportunity to cross-examine the said complainant or to effectively deal with the complaint inasmuch as he was not even aware about the details of the complaint.

8.6 The Panchayat/ Administrator did not place any evidence or any specific incidence of negligence in performance of duty.

8.7 The claimant seems to have submitted his reply vide communication dated 01.08.94.

8.8 In said reply, he mentioned certain details and thereafter without considering those details and / or without proving the allegations and/ or without citing any incidence with regard to alleged misconduct i.e. to demonstrate negligence of duty by the claimant, the Panchayat/ administrator passed the order dated 12.08.1994.

9. Even on plain reading of the termination order dated 12.08.1994 it comes out that the order is exfacie, punitive and penal inasmuch as the order specifically mentions that due to deficiency and negligence in performance of the duty, his service is terminated.

10. Such punitive termination could not have been effected without granting real, effective and reasonable opportunity of hearing to the claimant.

10.1 Whereas in present case undisputedly such opportunity was not granted and the petitioner panchayat/ administrator terminated claimant's service after only issuing show cause notice and without even considering the explanation by the claimant.

11. On examination of the award passed by the learned Labour Court it comes out that the learned Labour Court has found that without conducting domestic inquiry claimant's service came to be terminated on allegation and on the ground of misconduct.

11.1 Learned Labour Court, therefore, reached to the conclusion that the termination order is passed in violation of principle of natural justice.

12. Consequently, learned Labour Court passed the award which is impugned in the present petition.

13. Having regard to the above mentioned undisputed facts, more particularly, the fact that the claimant's service is terminated on the ground of negligence and on the allegation of misconduct, however, without granting opportunity of hearing, the finding of fact and final conclusion recorded by the learned Labour Court cannot be faulted.

14. So far as the decisions on which learned advocate for the petitioner placed

reliance are concerned, it is pertinent that in the case of Secretary, State of Karnataka & Ors v. Umadevi (Supra), Hon''ble Apex Court did not consider the case of termination of employee on the ground of misconduct without granting opportunity of hearing and in violation of principle of natural justice. Likewise in the decision of Amreli Municipality v. Gujarat Pradesh Municipal Employees Union (Supra) also the Full Bench of this Court did not consider the case of termination of employee on the ground of misconduct without granting opportunity of hearing. In the decision in the case of Chandulal v. The Management of M/s. Pan American World Airways. Inc.(Supra), issue related to termination of service of employees on the ground of loss of confidence. So far as the decision in case of L.Robert D''Souza v. The Executive Engineer, Southern Railway and another (Supra) is concerned, Hon''ble Apex Court considered the case of retrenchment and not the case where penal and punitive order on the ground of allegation of misconduct was passed by employer without granting opportunity of hearing and in violation of principle of natural justice. In the decision in case of State of Rajasthan and Others v. Rameshwar Lal Gahlot (Supra), Hon''ble Apex Court considered the case of termination of employee appointed on fixed period in light of the contention as to whether such termination amount to retrenchment or not. In the said case, issue about termination of service as penal and punitive measure and on allegation of misconduct without granting opportunity of hearing i.e. in violation of principle of natural justice was not the subject matter. In this view of the matter, the decisions on which the learned advocate for the petitioner places reliance on did not assist the petitioner.

15. In the result, it has emerged that the final conclusion by the learned Labour Court is based on finding of fact that the claimant's service was terminated by misconduct in violation of principle of natural justice and that, therefore, the learned Labour Court directed the petitioner to reinstate the respondent.

16. In this view of the matter, direction to reinstate the respondent-original claimant does not warrant any interference. The direction to reinstate the claimant respondent is hereby confirmed.

16.1 However, having regard to the fact that the claimant was initially engaged on special category/ post i.e. as Vijlighar and having regard to the nature of duty of said special category/ post viz. Vijlighar and the factual background out of the post on which the persons used to be engaged by various panchayats as Vijlighar this Court is of the view that the direction granting continuity of service for a period from the date of termination until date of award is unjustified and, therefore, the award of continuity of service from the date of termination till the date of award is not maintainable and the said direction is set aside.

16.2 Actually, the respondent is, as stated by the learned advocate for the respondent-claimant, is already reinstated and that is another reason for not disturbing said direction. Further, for the same reason any other or further direction with reference to reinstatement is not required.

17. Consequently, the petition is partly allowed by modifying the award whereby the direction to reinstate the claimant is not disturbed but the order directing the petitioner to consider claimant's service continuous from the date of termination until the date of award is set aside. Other directions are not disturbed. With said clarification and the Order, the petition is disposed of. Rule is made absolute.