
(2008) 09 GUJ CK 0082

In the Gujarat High Court

Case No : Special Civil Appeal No. 24668 of 2007

Mohanbhai Ramjibhai Kateshia

APPELLANT

Vs

Gujarat State Fertilizer Co. Ltd.

RESPONDENT

Date of Decision : 24-09-2008

Acts Referred:

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

Citation : (2009) 120 FLR 985

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

Bench : Single Bench

Advocate : Kishor M. Paul, for the Appellant; Uday Joshi for Trivedi and Gupta, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Brahmbhatt, J.—Rule. Mr. Joshi, learned (sic Counsel) waives service of Rule on behalf of respondent. By consent, Rule is fixed forthwith.

The petitioner-workman has approached this Court under Article 227 of the Constitution of India assailing the order dated 2.6.2007 passed by the Presiding Officer, Labour Court, Jamnagar in Reference (L.C.J.) No. 233 of 1993 rejecting the Reference of the workman, which was referred to it vide order dated 11.3.1993 for adjudicating upon the industrial dispute with regard to reinstatement of workman with full back wages and continuity of service.

2. Facts in brief deserve to be set out as under.

3. The petitioner-workman, who was working as Depot Attendant since 17.7.1979 had been terminated with effect from 30.12.1992 on account of his being proved guilty of misconduct alleged against him. He raised demand vide his communication dated 5.1.1993. The concerned authority referred the dispute to the Labour Court for adjudication. After affording due opportunity to all the parties and recording its finding on issues framed, the Labour Court came to the

conclusion that the Reference deserved to be rejected and accordingly the same was rejected vide order dated 2.6.2007, the same is impugned before this Court under Article 227 of the Constitution of India.

4. Shri K.M. Paul, learned advocate appearing for the petitioner contended that the Labour Court has mainly relied upon the so-called confessional statements given by the workman in writing on 16.6.1992 as well as 17.6.1992, though it was a stand of the workman throughout that those statements were taken from him under coercion. As those statements were not sufficient to punish and/or dispensing with the services, the Management was constrained to issue charge-sheet which came to be issued on 24.4.1992 and without affording an opportunity for defending the same, ex-parte inquiry had been conducted which was concluded against him and ultimately he came to be dismissed. Shri Paul submits that the Labour Court has patently erred in not appreciating the fact that though opportunity granted to lead evidence, both the sides have not led evidence with regard to correctness of the inquiry and that in itself should not have held against the workman. The findings of the Predecessor of the Labour Judge with regard to correctness of inquiry was in fact requested to be modified but even that request had not been accepted by the Court, which has rendered the findings untenable in eye of law. Shri Paul in the alternative without prejudice to the aforesaid, submitted that punishment of dismissal could be said to be too harsh punishment and Labour Court has not exercised its discretion for substituting the same with appropriate lesser punishment in exercise of provisions of section 11-A of the Industrial Disputes Act. He submitted that the workman is ready and willing to accept any other punishment.

5. Shri Joshi, learned Counsel appearing for M/s. Trivedi & Gupta for respondent submitted that the entire order of the learned Labour Court clearly indicate that the inquiry proceedings as well as conclusions have been rightly upheld and when the serious misconduct of misappropriation is alleged and proved, no other lenient punishment deserves to be imposed and therefore, the learned Labour Court has rightly not exercised its discretion u/s 11-A of the I.D. Act. He has also relied upon the decision of the Apex Court in case of U.P. State Road Transport Corporation v. Vinod Kumar 2008(116) FLR 382 (SC), and submitted that in view of this, the order impugned cannot be said to be suffering from any infirmity warranting any interference under Article 227 of the Constitution of India. In short, he submitted that the order impugned deserves to be upheld and petition deserves to be dismissed.

6. The facts which are undisputed deserve to be set out as under before adverting to the rival contentions of the Counsel for the parties.

(i) The workman was said to have been involved in serious misconduct of misappropriation detrimental to the interest of the employer.

(ii) The appropriate steps were taken.

(iii) There are statements of workman on 16.6.1992 and 17.6.1992 admitting the

entire incident on his part and seeking leniency and pardon for such act.

(iv) The Labour Court has concluded that there was no flaw in the inquiry and inquiry was found to be correct.

(v) The opportunity was granted to both the sides to make elaborate submissions on conducting of the inquiry and its correctness and findings recorded that it was proper.

(vi) The Labour Court has recorded finding that workman, though contended that statements dated 16.6.1992 and 17.6.1992 were obtained under coercion, could not prove the same effectively

(vii) The Labour Court has further recorded its finding to the effect that workman admitted in his cross-examination that such an elaborate writing could not have been obtained under coercion or under threat as alleged.

(viii) The Labour Court has not considered this to be a fit case for reduction of punishment u/s 11-A of the I.D. Act.

7. In view of the aforesaid clear findings and when the serious act of misconduct is levelled, which has dealt serious blow to a very credibility of the workman and his worthiness of his being in service, this Court is of the considered view that the order impugned cannot be said to be suffering from any infirmities or any error apparent on the face of record, which requires any interference of this Court under Article 227 of the Constitution of India. The discretion of substituting the punishment has also rightly not been exercised in favour of the workman keeping in view the serious misconduct as aforesaid.

The petition, therefore, deserves to be dismissed and is accordingly dismissed Rule discharged. There shall be no order as to costs.