

(2013) 04 GUJ CK 0062

In the Gujarat High Court

Case No : Special Civil Application No. 8729 of 2000

M/s. Hindusthan Chemicals Company

APPELLANT

Vs

Mansingh Mangalram Verma

RESPONDENT

Date of Decision : 01-04-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 11A, 17B

Citation : (2013) 138 FLR 879 : (2013) 5 LLN 280

Hon'ble Judges : Paresh Upadhyay, J

Bench : Single Bench

Advocate : Keyur Gandhi, for Nanavati Associates, for the Appellant; M.S. Mansuri, for the Respondent

Final Decision : Allowed

Judgement

Paresh Upadhyay, J.—Heard Mr. Keyur Gandhi learned advocate for the petitioner-employer and Mr. M.S. Mansuri learned advocate for the respondent. Challenge in this petition is made to the award passed by the Labour Court, Surat dated 19.5.2000 in Reference (LCS) No. 630/1984, whereby, the respondent is ordered to be reinstated in service with 75% back-wages.

2. Learned advocate for the petitioner has contended that the award of the Labour Court, on both the counts, i.e. reinstatement as well as awarding 75% back-wages, is bad in the eyes of law and on the basis of the material on record, not only no back-wages were required to be granted but even no reinstatement could have been ordered in favour of the respondent.

3. Learned advocate for the petitioner has stated that the respondent had joined the service of the petitioner-company on 1.10.1982 and his conduct was subversive of discipline and his acts constituted serious misconduct. It is stated that for this, he was issued three charge-sheets, first on 22.2.1984 and then on 3.5.1984 when two charge sheets were issued. The departmental enquiry was conducted against him and the Inquiry Officer, after examining the witnesses as

well as other material on record, came to the conclusion that the charges levelled against the respondent were proved. Based on this proved misconduct, the petitioner-company had, vide order dated 01.06.1984, imposed the punishment of dismissal of the respondent from service which was challenged before the Labour Court.

4.1. The details of the departmental inquiries for which the respondent was dismissed are as under.

4.2. The first charge-sheet dated 22.2.1984 reads as under:

It has I been reported that on 20th February, 1984 you along with other workers instigated the workers of the "B" shift to go on strike and disrupted the working of the plant. Your activity of inciting workers to take part in the illegal strike is still continued and you are further intimidating and threatening workers to participate in the strike. Your activities and behaviour inside and outside the factory is most subversive of discipline and the above acts constitutes serious misconduct on your part under orders (II) and (XII) of the Certified Standing Order of the factory applicable to you.

You are required to explain in writing within 7 days from the date of this charge sheet as to why suitable disciplinary action should not be taken against you under Order (II) and (XII) of the Certified Standing Orders.

4.3. The contents of the first of the two charge-sheets dated 3.5.1984 is as under:

It has been brought to your notice that on 2nd May, 1994 around 0950 hrs. when you reported at the factory get for your attendance and official letter in closed enveloped bearing office No. F.CCC:T:MS:3030:207 dated 30th April 1984 was given to you by our security staff with a copy of the letter on which security staff requested you to receive the same. You had refused to accept this letter and informed our security that you would not accept any more letters from the company.

Please note that refusal to accept official communication is a serious misconduct under order 212 (b) (XXIII) of the Certified Standing Order of the company, which warrants dismissal or discharge from the services.

Please explain in writing within 7 days from the date of this charge sheet as to why suitable disciplinary action should not be taken against you for the above mentioned misconduct on you part under order No. 21 (b) (XXIII) of the Certified Standing Order of the company.

Please note, that should you fail to submit your explanation without the stipulated time, it will be presumed that you have no explanation to the above charges.

4.4. The contents of the first of the two charge-sheets dated 3.5.1984 is as under:

In terms of our charge sheet F.CCC:T:MS:3030 dated 22.02.84, you were required to report at our factory gate every day at 8.30 A.M. and shall receive instructions or communications addressed to you. It has come to our notice that in violation of our instructions, you are not reporting at our factory gate regularly. Further, you have refused to certain official letters which were given to you by our Security Staff.

The above acts constitutes serious misconduct on your part under Order 21(b) (I) & 21 (b)(XXIII) for not following lawful and reasonable orders by willful neglect or disobedience and refusal to accept official letter.

Please explain in writing within 7 days from the date of this charge sheet as to why suitable disciplinary action should not be taken against you under order No. 21(b)(I) and 21(b)(XXIII) of the Certified Standing Orders of the Company.

Please note, that should you fail to submit your explanation within the stipulated time, it will be presumed that you have no explanation to the above charges.

5.1. From the record, it transpires that the Labour Court had framed five issues for adjudication. Two of these five issues are relevant for the purpose of this petition. They are Issues No: 3 and 4.

5.2. Issue No: 3 was, as to whether the departmental enquiry against the respondent was conducted in due compliances of principles of natural justice or not and Issue No. 4 was as to whether the punishment of dismissal was proper or not.

5.3. So far issue No. 3 is concerned the Labour Court has recorded a finding to the effect that the departmental enquiry in question was conducted in due compliance of the principles of natural justice and there was no illegality in it. So far as Issue No. 4 as to whether the dismissal order was justified or not, the Labour Court has answered it in negative and has held that the dismissal was not proper, and therefore, reinstatement with back wages is ordered.

6.1. Learned advocate for the petitioner-company contended that so far the Issue No. 3 is concerned there is categorical finding by the Labour Court that the enquiry in question was conducted legally, wherein the respondent was given sufficient opportunity to put his case and that the same was in due compliance of principles of natural justice. It is stated that the said finding of the Labour Court is not under challenge even by the respondent. It is stated that therefore that question may not be required to be gone into in detail by this Court.

6.2. Learned advocate for the petitioner has contended that after holding that the inquiry in question was conducted legally, the Labour Court further recorded that Certified Standing Orders were not produced and therefore, Model Standing Orders will have applicability. Labour Court has further proceeded to record that in Section 24(B) of the Model Standing Orders, participating in illegal strike is shown to be the misconduct and participating in a strike which is not declared to be illegal, is not defined as misconduct. It is further recorded by the Labour

Court that since the Certified Standing Orders have not come on record, therefore applying Model Standing Orders, the charges levelled against the respondent of participating in a strike can not be accepted to have been held to be proved. The further reasoning of the of Labour Court is that other misconduct is consequential to the said strike and therefore even that needs to be ignored. Therefore, in effect, the Labour Court has excluded all the serious misconducts from consideration while exercising powers u/s 11-A of the Industrial Disputes Act. Learned advocate for the petitioner has contended that it is at this juncture that the Labour Court fell in error. At this stage Learned advocate for the petitioner has drawn the attention of the Court to the acts of misconducts attributed to the respondent which are reproduced here above. It is submitted that participation in strike is one aspect, but the charge against the respondent was not only restricted to the participation in strike and thus the finding of the Labour Court is perverse since it has refused to take into consideration relevant factors. It is contended that the award of the Labour Court which is based on this finding is illegal and the same be interfered with by this Court.

6.3. So far as back-wages is concerned, learned advocate for the petitioner-company has contended that the onus to prove that the workman was not gainfully employed is on the workman and that onus could not have been shifted on the employer, the petitioner. Without prejudice to that contention, learned advocate for the petitioner has further contended that ample material was produced by the petitioner-company before the Labour Court to point out that the respondent was doing work and that he had also employed persons with him. Specific reference is made to the deposition of one Mr. Gaurav Sudhirkumar Varma Ex. 53, Anup Ramanlal Desai Ex. 56, Telephone Directory page 202 and Ex. 61. Based on this material, it is contended that no back-wages could have been ordered in this case.

6.4. It is also indicated that the dismissal order is of the year 1984. The settlement was arrived at by the parties before the Labour Court at the relevant time which was challenged before this Court and the respondent backed out from it and the matter was sent back to the Labour Court again. The matter remained pending for years together and petitioner-company gave an application for early hearing of the matter and it is the respondent who took time. In all these years, the matter did not proceed for the circumstances not attributable to the petitioner-company and on that count also, the petitioner-company ought not to have been saddled with the liability of back-wages for all these years.

6.5. Learned advocate for the petitioner has relied on the following decisions in support of his contentions:

1. LPA No. 623 of 2011 dated 20.4.2011 Madhavsingh Nagjibhai Solanki vs. Gujarat Electricity Corporation Ltd.)
2. J.K. Synthetics Ltd. Vs. K.P. Agrawal and Another,
3. M.D., Balasaheb Desai Sahakari S.K. Ltd. Vs. Kashinath Ganapati Kambale,

4. Kendriya Vidyalaya Sangathan and Another Vs. S.C. Sharma,

5. State Bank of Bikaner and Jaipur Vs. Nemi Chand Nalwaya,

6.6. On the basis of the above submissions and reliance on the authorities referred to above, it is contended by the learned advocate for the petitioner-company that the impugned award of the Labour Court on both the counts, i.e. reinstatement as well as back-wages be set aside. It is indicated that during the pendency of this petition, the impugned award was stayed and the petitioner-company is paying wages to the respondent in due compliance of Section 17-B of the Industrial Disputes Act and therefore, the award may be quashed and set aside.

7.1. On the other hand, learned advocate for the respondent Mr. M.S. Mansuri has contended that the Labour Court has wide powers u/s 11-A of the Industrial Disputes Act and it is the settled position of law that the discretion exercised by the Labour Court be not interfered with by this Court in exercise of powers under Article 227 of the Constitution of India.

7.2. Specific stress is made by the learned advocate for the respondent that the challenge in this petition is the award of the Labour Court and since the Labour Court is not joined as party-respondent in this petition, in view of the decision of the Full Bench of this Court in the case of (The) Bhagyodaya Co-operative Bank Limited Vs. Natvarlal K Patel and Another, , this petition is essentially under Article 227 of the Constitution of India and the scope of judicial review of this Court under Article 227 of the Constitution of India, is very limited.

7.3. Learned advocate for the respondent has addressed this Court at length on merits of the matter. He has taken this Court through the reasonings and findings recorded by the Inquiry Officer and contended that there was no legally acceptable material to come to the conclusion that the charges levelled against the respondent were legally proved. It is further contended that at the best, it could be said to have been proved that the respondent had participated in a strike which was not an illegal strike. Learned advocate for the respondent has also contended that so far as punishment of dismissal is concerned, there was discrimination meted out by the petitioner-company, since according to him, other workmen who had also participated in the strike were not imposed the same punishment.

7.4. So far as back-wages is concerned, learned advocate for the respondent has contended that the onus is not on the workman, but it is always on the employer. It is further contended that even for the sake of argument, if it is accepted that the onus is on the shoulder of the workman, then also, on the moment the workman enters the witness box and deposes to the effect that he is unemployed, the same is due discharge of his obligation to prove that he is unemployed. If the employer disputes this deposition, it is for him to lead evidence and prove it legally that the workman was gainfully employed. It is pointed out that the respondent had duly discharged his obligation by deposing

to the effect that he was not gainfully employed and further that the petitioner-company had not discharged its obligation to disprove what was stated by the respondent workman. It is contended that having found that the dismissal of the respondent was untenable in the eyes of law, what back-wages should be awarded was within the discretion of the Labour Court which has already indirectly imposed punishment by reducing 25% of back-wages and under these circumstances, no interference be made by this Court even qua back-wages. It is contended that the award of the Labour Court for reinstatement and back-wages both, is just and proper and the same be not interfered with by this Court.

7.5. Learned advocate for the respondent has relied on the following decisions.

1. Cyanides and Chemicals Company Vs. Mansingh Mangalram Varma,
2. Hindustan Tin Works Pvt. Ltd. Vs. The Employees of Hindustan Tin Works Pvt. Ltd. and Others,
3. Novartis India Ltd. Vs. State of West Bengal and Others,
4. Anoop Sharma Vs. Executive Engineer, Public Health Division No. 1 Panipat (Haryana),
5. Harjinder Singh Vs. Punjab State Warehousing Corporation,

7.6. By referring to the above judgments, learned advocate for the respondent has submitted that this Court in exercise of powers under Article 227 of the Constitution of India may not interfere in the impugned award of the Labour Court on any count, either so far as it orders reinstatement or even on back-wages.

8. Having heard the learned advocates appearing for the respective parties and having gone through the record, two points fall for consideration of this Court. Firstly, as to whether the interference by the Labour Court in exercise of its powers under Sec. 11-A of the Industrial Disputes Act, in the dismissal order passed by the petitioner-company, for the proved misconduct, after legally held departmental enquiry, in the facts of this case, was legal or not, and secondly, if the said exercise of powers is found to be just and proper, whether granting 75% back-wages in the facts of this case, was justified or not.

9. Before adjudicating the above points, the preliminary issue raised by the learned advocate for the respondent that this petition is under Article 227 of the Constitution of India and not under Article 226 of the Constitution of India, needs to be answered first. It is not in dispute that the challenge in this petition is to the award of the Labour Court and as rightly pointed out by the learned advocate for the respondent, the Labour Court is not joined as party respondent. Under these circumstances in view of the decision of Full Bench of this Court in the case of Bhagyodaya Co-operative Bank Limited (supra), the contention of the learned advocate for the respondent that this petition is essentially under Article 227 of the Constitution of India, is accepted.

10.1 Reverting back to the merits of the matter, it is recorded that if the first of the above referred two points is held in favour of the petitioner-company, the second question may not be required to be gone into. To elaborate this point, it is recorded that if this Court finds that the exercise of powers by the Labour Court to set aside the dismissal order and consequently ordering reinstatement was not legal in the facts of this case, the question as to whether awarding 75% back-wages was just or not, may not be required to be gone into.

10.2 The reasons recorded by the Labour Court to set aside the dismissal order proceeds in the following chain. The misconduct alleged and charge sheets issued to the respondent by the petitioner-company was under the Certified Standing Orders. According to Labour Court, Certified Standing Orders were not produced and therefore Model Standing Orders will have to be applied. It is recorded by the Labour Court that what was alleged against the respondent was not the misconduct under the Model Standing Orders. Therefore, the foundation of the conclusion arrived at by the Labour Court is that in the present case Model Standing Orders will have applicability and not the Certified Standing Orders.

10.3 On above basis the Labour Court proceeded further to record that since the strike in question was not an illegal strike, the allegation of the petitioner-company against the respondent to the extent that he had participated in a strike which was illegal cannot be held to be proved. There is categorical finding of the Labour Court that except that part, in other charges it has not interfered with.

10.4 In this regard, firstly it needs to be ascertained as to whether the foundation of relying on the Model Standing Orders, instead of Certified Standing Orders was proper or not. In this regard, it needs to be recorded that the respondent-workman, in his cross-examination, had categorically conceded to the fact that he is conscious of Certified Standing Orders and the only dispute was that it was not supplied in the language he knew. Thus the finding of the Labour Court that the petitioner-company had not produced Certified Standing Orders is found to be inconsistent with the record, and therefore that finding is set aside. Since the consequential reasoning of the Labour Court is based on this, the consequential finding shall also not survive.

10.5 This court further finds that even if the above referred erroneous finding is taken into consideration, then also the conclusion is something different. The Labour Court recorded that the charge against the respondent to the extent of having participated in the strike, which was not an illegal strike, is not proved, but other part of the charges are not held to be not proved and under these circumstances, it cannot be said that the charges against the respondent which are reproduced above were not legally proved. Be it noted that so far as Issue No. 3 formulated by the Labour Court is concerned, as to whether the departmental enquiry was conducted properly or not, there is positive finding that it was in due compliance of principles of natural justice. And the finding that the respondent having participated in the strike which was not illegal strike, that too by applying Model Standing Orders, the other charge even as per the finding

recorded by the Labour Court stood as it is. On the face of this finding of the Labour Court, the ultimate conclusion of the Labour Court that entire charge-sheet was relatable to the said strike and therefore all the misconduct are to be ignored, is found to be erroneous and perverse. In my view, the Labour Court, on the face of this finding could not have come to the conclusion that the charge against the respondent was worth exercising its power u/s 11-A of the Industrial Disputes Act. At this juncture, reference may be made to the order passed by the Division Bench of this Court in the case of Madhavsing Nagjibhai Solanki Vs. Gujarat Electricity Corporation Ltd. in Letters Patent Appeal No. 623 of 2011, which is referred above. The judgments relied by the learned advocate for the respondents will not have any applicability in this fact situation.

11. After having taken into consideration the judgments of the Hon''ble Supreme Court, which are referred by the learned advocate for the petitioner-company, and the view of the Division Bench of this Court, as referred above, in my judgment, the impugned award of the Labour Court does not stand the test of exercising the powers under sec. 11-A of the Industrial Disputes Act in the facts of this case.

12. Considering the totality of the facts and material on record, I find that the Labour Court was not justified in exercising its powers u/s 11-A of the Industrial Disputes Act, in the facts of this case, and the same needs to be quashed and set aside. In view of this finding, the second question about legality of awarding 75% of back wages need not be gone into.

13. It is recorded that during pendency of this petition, the petitioner-company was under legal obligation and under the direction of this Court to make payment to the respondent, of his last wages drawn, in due compliance of provisions of section 17-B of the Industrial Disputes Act. With the disposal of this petition by this judgment, now the petitioner-company shall not be under that legal obligation and the direction of this Court in that regard would now not survive. For the reasons recorded above, this petition is allowed. The impugned Award of the Labour Court, Surat passed in Reference (LCS) No. 630/1984 dated 19.5.2000, is quashed and set aside. Rule is made absolute. No order as to costs.