

(1991) 04 GUJ CK 0004

In the Gujarat High Court

Case No : Special Civil Application No. 2784 of 1991

Municipal Commissioner

APPELLANT

Vs

Sanatkumar D. Brahmbhatt

RESPONDENT

Date of Decision : 24-04-1991

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 11A, 2

Citation : (1992) 1 GLR 432 : (1993) 3 LLJ 882

Hon'ble Judges : S.M. Soni, J;S.B. Majmudar, J

Bench : Division Bench

Advocate : G.N. Desai, for the Appellant; Shailesh Brahmbhatt, for the Respondent

Judgement

Majumdar, J.—Rule. Mr. Brahmbhatt appears for the respondent and waives service of Rule. With the consent of the learned Advocates of parties, Rule is heard today.

2. The grievance made by the petitioner Corporation in this petition under Article 227 is that the Industrial Tribunal had patently erred in law and had also committed error of jurisdiction in interfering with the punishment imposed departmentally against the respondent by way of stoppage of three yearly increments with future effect and by substituting the punishment of stoppage of one increment without future effect. Such type of jurisdiction could not have been exercised u/s 11A of the Industrial disputes Act, 1947 ("the Act" for short) which on its express language would not apply to such a case.

3. In order to appreciate the grievance of the petitioner, a few relevant facts may be noted. The respondent was working at the relevant time as an octroi clerk. The allegation against him was that he had allowed a truck to pass without collecting octroi. On account of this incident, three charges were levelled against him. In the departmental inquiry, it was found that out of three charges, the first charge was mostly proved, the second charge was not wholly proved but he was found to be negligent and third charge was not proved. However, ultimately,

punishment by way of stoppage of three yearly increments with future effect was imposed by the disciplinary authority. The respondent raised an industrial dispute to the effect whether punishment of stoppage of three yearly increments should be vacated and whether deducted amount should be refunded to the workman or not. This dispute was adjudicated upon by the Industrial Tribunal which reached the conclusion that looking to the charges which were proved, punishment of stoppage of three yearly increments with future effect would be too harsh and consequently, punishment of stoppage of one yearly increment without future effect was substituted.

4. The learned Advocate for the petitioner was right when he contended that on the express language of Section 11-A of the Act, such controversy could not be covered by the said provision as such provision relates to only discharge or dismissal of a workman. However, on the facts of the present case, the very dispute which is referred to the Industrial Tribunal for adjudication centres round the legality and propriety of the imposition of punishment of stoppage of three yearly increments with future effect. Once that dispute is referred for adjudication, the Industrial Tribunal in exercise of its power u/s 11-A was bound to adjudicate upon that dispute and pronounce upon it. The term "industrial dispute" is defined by Section 2(k) to mean any dispute or difference between employers and employees or between employers and workmen. It cannot be gainsaid that there is difference or dispute between the employer and employee in connection with the punishment imposed on the workman. Therefore, de hors Section 11-A, the legality and impropriety of the punishment had to be examined by the Industrial Tribunal while adjudicating this very dispute which was referred for adjudication. Consequently, when the Industrial Tribunal considered the gravity of the punishment in the light of the charges having been held proved, it cannot be said that it was exercising jurisdiction not vested in it. In fact, it was its obligation to adjudicate this very dispute which was referred for adjudication.

(Rest of the Judgment is not material for the Reports.)