
(2010) 10 GUJ CK 0048
In the Gujarat High Court

Case No : Special Civil Application No's. 7974, 10569 and 10668 of 1998

Mustak A Saiyad and Others

APPELLANT

Vs

Gujarat Carbon Ltd. and Another

RESPONDENT

Date of Decision : 18-10-2010

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 11A, 2

Citation : (2010) 10 GUJ CK 0048

Hon'ble Judges : M.R. Shah, J

Bench : Single Bench

Advocate : N.K. Majmudar, for Petitioners 1 - 5 and 9, Mukesh H. Rathod, for Petitioners 6 - 8 and 10 - 11 workmen, Varun Patel, in SCA 7974/98 and Krunal Nanavati, in SCA 10569/98, for the Appellant; Varun Patel, for Respondents 1 and Krunal Nanavati, for the Respondent

Final Decision : Dismissed

Judgement

M.R. Shah, J.

1.0. As common question of law and facts arise in this group of petitions and as such arising out of the common judgment and Award, they are being disposed of by this common judgment and order.

1.1. Special Civil Application No. 10668 of 1998 has been preferred by the Petitioners - respective workmen to quash and set aside the impugned common judgment and Award passed by the Labour, Court Bharuch in Reference (LCB) Nos. 242/1990, 133/1991 and 312/1990 dtd.25/6/1998, by which, the Labour Court has dismissed the aforesaid references confirming the order of punishment passed by the disciplinary authority - management dismissing the workmen from services and in not passing order of reinstatement.

1.2. Special Civil Application No. 7974 of 1998 has been preferred by the erstwhile management - Gujarat Carbon & Industries Limited challenging the

aforesaid judgment and award passed by the Labour Court in the aforesaid References in so far as directing the management to pay 45% of the last drawn wages as compensation from the date of dismissal till 31/10/1996.

1.3. So far as Special Civil Application No. 10569 of 1998. is concerned, the same has been preferred by the subsequent purchaser - present management namely Phillips Carbon Black Ltd. challenging the aforesaid judgement and award passed by the Labour Court, Bharuch in the aforesaid references in so far as directing the Petitioner - subsequent management - namely Phillips Carbon Black Ltd. to pay to pay 45% of the last drawn wages as compensation from the date of dismissal till passing of the award.

3.0. Facts, necessary for deciding the issue involved in these petition, in nutshell, are as under:

3.1. At the outset, it is required to be noted and it is not in dispute that the concerned unit of the Management was manufacturing Carbon Black, which is a continuous processing plant and considering the fact that any abrupt stoppage in the work can create safety hazard resulting in major accident in the plant involving risk to the property and the persons in the factory, it was declared as "Public Utility Service", by the State Government by issuing Notification as contemplated u/s 2(n)(vi) of the Industrial Disputes Act, 1947. It appears and it is also not in dispute that since the plant was a continuous processing plant, a settlement was arrived between the management and the workers" union, which provided that the workmen will not refuse to work overtime when asked to do so and that they will have to work on the public holidays also.

3.2. It appears that despite the fact that public holidays were cancelled, and the same were duly intimated by the notices on the Notice Board and despite the aforesaid facts and circumstances, the respective workmen herein - Petitioners of Special Civil Application No. 10668 of 1998, not only refused to do overtime but even refused to work on the public holidays, which were cancelled and went on strike. It appears that not only they went on strike but they also instigated other persons to go on strike. It appears that for the aforesaid misconduct, departmental inquiries were initiated against the concerned workmen and it appears that none of the workman participated in the inquiry and departmental inquiries proceeded ex-parte and on conclusion of the departmental inquiries, charge and misconduct alleged against the workmen came to be proved and thereafter, after following due procedure, the disciplinary authority passed orders dismissing the concerned workmen from service.

3.3. It appears that thereafter the concerned workmen raised industrial disputes which were referred to the Labour Court, Bharuch and the same were numbered as Reference (LCB) Nos. 242/1990, 133/1991 and 312/1990 and the Labour Court, vide judgement and award dtd.25/6/1998 held the charge and misconduct against the workmen proved and also held that the punishment imposed by the disciplinary is not disproportionate, and holding so, the Labour Court, dismissed

the said references qua dismissing the workmen from service and partly allowed the references and passed order u/s 11(A) of the Industrial Disputes Act, directing the management to pay 45% of the last drawn wages as compensation from the date of dismissal till the judgement and award. Being aggrieved by and dissatisfied with the aforesaid judgement and award passed by the Labour Court in Reference (LCB) Nos. 242/1990, 133/1991 and 312/1990 dtd.25/6/1998, the respective workmen as well as erstwhile management and subsequent purchaser - present management, have preferred these Special Civil Applications under Article 227 of the Constitution of India.

4.0. Mr. Nirav K. Majmudar, learned advocate appearing on behalf of the workmen - Petitioners of Special Civil Application No. 10668 of 1998, has fairly submitted that, as legality and validity of the departmental inquiries were not challenged by the workmen and the charge and misconduct levelled against the concerned workmen came to be proved, the only question which is required to be considered is whether the punishment imposed by the management is disproportionate to the charge and misconduct or not.

4.1. Mr. Majmudar, learned advocate for the concerned workmen has submitted that nobody can be compelled to do overtime and when the concerned workmen refused to do overtime, such harsh punishment by the management upon the workmen was not warranted.

4.2. Mr. Majmudar, learned advocate for the concerned workmen has submitted that similarly workmen cannot be compelled to work on the public holidays and when the concerned workmen refused to do work on the public holidays such as on 15th August, such harsh punishment of dismissal was not warranted.

4.3. Mr. Majmudar, learned advocate for the concerned workmen has submitted that the workman has right to go on strike for their legitimate grievances and therefore, also such harsh punishment of dismissal is harsh and was not warranted.

4.4. Mr. Majmudar, learned advocate for the concerned workmen relying upon the decision in the case of Palghat BPL and PSP Thozhilali Union Vs. BPL India Ltd. and Another, it is requested to take a lenient view and substitute the punishment of dismissal by reinstatement with appropriate back wages to the extent which may deem fit by this Court.

4.5. Now, so far as Special Civil Application Nos. 7974 and 10569 of 1998, filed by the management against the judgement and award passed by the Labour Court, Bharuch directing the management to pay 45% of the last drawn wages as compensation from the date of dismissal till judgement and award, Mr. Majmudar, learned advocate for the concerned workmen has submitted without prejudice to his aforesaid contentions that when the Labour Court has denied reinstatement and exercised jurisdiction and power u/s 11(A) of the Industrial Disputes Act and when the Labour Court has passed order awarding back wages from the date of dismissal till judgement and award, the same is not required to

be interfered with by this Court in exercise of powers under Article 227 of the Constitution of India. Submitting accordingly, it is requested by Mr. Majmudar, learned advocate for the concerned workmen to dismiss Special Civil Application Nos. 7974 of 1998 and 10569 of 1998.

5.0. Mr. Varun Patel, learned advocate has appeared on behalf of the erstwhile management - Gujarat Carbon & Industries Limited - Petitioner of Special Civil Application No. 7974 of 1998 and Mr. Krunal Nanavati, learned advocate has appeared for Nanavati Associates, appearing on behalf of the the subsequent purchaser - present management - Phillips Carbon Black Limited - Petitioner of Special Civil Application No. 10569 of 1998. They have submitted that when on appreciation of evidence and considering the facts and circumstances of the case, more particularly when the unit was declared as "Public Utility Service" by the State Government by issuing Notification as contemplated u/s 2(n)(vi) of the Industrial Disputes Act, 1947 and when the plant was a continuous processing plant, when a settlement was arrived between the management and the workers' union, which provided that the workmen shall not refuse to work overtime when asked to do so and that they will have to work on the public holidays also, and as the concerned workmen refused to do overtime and even refused to do work on public holidays, the management was justified in dismissing the concerned workmen from services, and the said decision of the management is rightly confirmed by the Labour Court. The learned advocates for the managements has further submitted that the charge and misconduct proved against the concerned workmen was not only that they went on strike but they also instigated the other workmen to go on strike. It is submitted that under the circumstances, when the charge and misconduct levelled against the concerned workmen came to be proved which was found to be very serious in nature even by the Labour Court, No. irregularity has been committed by the Labour Court in dismissing the reference qua dismissal and confirming the action of the management in dismissing the concerned workmen from service.

5.1. Mr. Varun Patel, learned advocate appearing on behalf of the erstwhile management - Petitioner of Special Civil Application No. 7974 of 1998 and Mr. Krunal Nanavati, learned advocate appearing on behalf of the the subsequent purchaser - present management - Petitioner of Special Civil Application No. 10569 of 1998 has further submitted that when the order of dismissal came to be confirmed by the Labour Court, the Labour Court was not justified in passing order u/s 11(A) of the Industrial Disputes Act and directing the management to pay 45% wages from the date of dismissal till judgement and award.

5.2. Learned advocates appearing on behalf of the Petitioners of the Petitioners of Special Civil Application Nos. 7974 and 10569 of 1998 - management, have further submitted that some of the workmen were gainfully employed and the said fact has come on record in the inquiry in the Examination-in-Chief.

Submitting accordingly, learned advocates appearing on behalf of the erstwhile management and subsequent purchaser - present management have requested

to allow Special Civil Application Nos. 7974 and 10569 of 1998 and dismiss Special Civil Application No. 10668 of 1998.

6. Heard the learned advocates appearing on behalf of the respective parties.

7. At the outset, it is required to be noted that in the departmental inquiry the charge and misconduct, leveled against the concerned workmen have been proved. The concerned workmen have refused to do overtime; refused to work on public holidays though the same were cancelled and went on strike. It is to be noted that it has been found that the concerned workmen not only went on strike but also instigated others to go on strike. The seriousness of the aforesaid misconduct is required to be considered in light of the fact that the Petitioner management and the unit was declared as "Public Utility Service" by the State Government by issuing Notification as contemplated u/s 2(n)(vi) of the Industrial Disputes Act, considering the fact that the unit of the management was manufacturing Carbon Black, which is a continuous processing plant and that any abrupt stoppage in the work can create safety hazard resulting in major accident in the plant involving risk to the property and the persons in the factory. Therefore, the concerned workmen could not have refused to work overtime and/or on the public holidays. It is to be noted that there was already a settlement arrived at between the management and the workers' union which provided that workmen will not refuse to work overtime when asked to do so and that they will have to work on the public holidays also. On the proved misconducts, the management dismissed the concerned workmen from services. It is to be noted that, as such, the Labour Court exercised powers u/s 11(A) of the Industrial Disputes Act, and interfered with the order of punishment passed by the disciplinary authority, by holding that the punishment of dismissal imposed by the disciplinary authority is disproportionate to the charge and misconduct proved against the workmen. Therefore, the only question which is required to be considered is whether the Labour Court was justified in awarding 45% wages as compensation from the date of dismissal till passing of the award? It is to be noted that even Mr. Majmudar, learned advocate appearing on behalf of the concerned workmen have also fairly conceded that as the charge and misconduct leveled against the workmen have been proved in the departmental inquiry, the only question which is required to be considered is whether on the proved misconduct the punishment of dismissal imposed by the disciplinary authority / management is just and proper or not. It is required to be noted at this stage that as such, the Labour Court has not quashed and set aside the order of dismissal passed by the disciplinary authority / management and the specific finding is given by the Labour Court that the concerned workmen have committed grave and serious misconduct of going on strike illegally and instigating other workmen, however still the Labour Court has directed the management to pay 45% wages from the date of dismissal till the date of passing of the award by way of compensation. Once the charge and misconduct alleged against the concerned workmen came to be proved and the same was also held to be grave and serious, and when the Labour Court upheld the order

of dismissal, there was No. reason for the Labour Court to award 45% wages from the date of dismissal till passing of the award, by way of compensation, in exercise of powers u/s 11(A) of the Industrial Disputes Act, 1947. Under the circumstances, the impugned judgement and award passed by the Labour Court, Bharuch in Reference (LCB) 242/1990, 133/1991 and 312/1990 cannot be sustained and the same deserves to be quashed and set aside.

8. In view of the above and for the reasons stated above, Special Civil Application Nos. 7974 and 10569 of 1998, preferred by the management are allowed and the judgement and award passed by the Labour Court, Bharuch in Reference (LCB) Nos. 242/1990, 133/1991 and 312/1990 dtd.25/6/1998 in so far as awarding 45% wages from the date of dismissal till award, by way of compensation, are hereby quashed and set aside. Rule is made absolute to the aforesaid extent in both the petitions. No. costs.

9. In view of allowing the Nos. 7974 and 10569 of 1998 and quashing and setting aside the judgement and award passed by the Labour Court, Bharuch in Reference (LCB) Nos. 242/1990, 133/1991 and 312/1990 dtd.25/6/1998, Special Civil Application No. 10668 of 1998 preferred by the concerned workmen is hereby dismissed. Rule is discharged. No. costs.