

(2010) 10 GUJ CK 0089

In the Gujarat High Court

Case No : Special Civil Application No. 8915 of 2002

Navin Flourine Industries

APPELLANT

Vs

B.K. Rana

RESPONDENT

Date of Decision : 08-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Industrial Disputes Act, 1947 — Section 33(C)(2)

Citation : (2010) 10 GUJ CK 0089

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : Kepur Gandhi, for Nanavati Associates, for the Appellant; Sangeeta N. Pahwa, for the Respondent

Final Decision : Allowed

Judgement

M.R. Shah, J.—By way of this petition under Articles 226 and 227 of the Constitution of India, the Petitioner has prayed for an appropriate writ, order and/or direction, quashing and setting aside the impugned judgment and award dated 03/06/2002 passed by Labour Court, Surat in Recovery Application No. 1131 of 2000, by which, the Labour Court has allowed the said Recovery Application filed u/s 33C(2) of the Industrial Disputes Act directing the Petitioner to pay 50% of the salary for the period from 27/08/1997 till 90 days are completed and 25% of the salary upto 18/03/1999.

2. It appears that a departmental inquiry was initiated against the Respondent on 27/08/1997 and in view of the Settlement, termination order was set aside and he was continued under suspension and inquiry was continued. It appears that during the pendency of the aforesaid inquiry, another departmental inquiry came to be initiated against the Respondent, in which, the Respondent - workman came to be terminated vide order dated 18/03/1999. As the Respondent was treated and continued under suspension, he was paid subsistence allowance at the rate of 50% of the salary from 27/08/1997 till 90

days are completed and thereafter at the rate of 25% of the salary till 18/03/1999. Being aggrieved by and dissatisfied with the same, the Respondent-workman approached the Labour Court, Surat by preferring the aforesaid Recovery Application u/s 33(C)(2) of the Industrial Disputes Act claiming full salary from 27/08/1997 till his services came to terminated i.e. 18/03/1999. The aforesaid Recovery Application was resisted by the Petitioner on the ground that earlier departmental inquiry was never dropped by the Petitioner and order of termination was converted into the order of suspension and he continued under suspension and, therefore, there is no question of making payment of full salary to the Respondent even for the period from 27/08/1997 to 18/03/1999. The Labour Court, Surat by impugned judgment and award dated 03/06/2002 allowed the said Recovery Application by holding that nothing is on record what happened to earlier departmental inquiry dated 27/08/1997 and it is presumed that the earlier inquiry has been dropped by passing subsequent order dated 18/03/1999. Being aggrieved by and dissatisfied with the impugned judgment and award passed by the Labour Court, Surat, the Petitioner has preferred the present petition under Articles 226 and 227 of the Constitution of India.

3. Mr. Keyur Gandhi, learned advocate appearing on behalf of the Petitioner has submitted that Labour Court has materially erred in holding that the earlier departmental inquiry dated 27/08/1997 has been dropped by the Petitioner. He has further submitted that earlier departmental inquiry dated 27/08/1997 was never dropped by the Petitioner and on the basis of said departmental inquiry dated 27/08/1997, order of termination was converted into order of suspension, which continued till another departmental inquiry was initiated and the Respondent came to be dismissed from service vide order dated 18/03/1999. Therefore, it is submitted that when the earlier departmental inquiry was continued and it was never dropped and in view of another subsequent departmental inquiry, the Respondent was not entitled to get full salary as prayed for and, therefore, Labour Court has materially erred in directing the Petitioner to pay full salary to the Respondent. By making above submissions, it is requested to allow the present petition.

4. Mrs. Sangeeta Pahwa, learned advocate appearing on behalf of the Respondent has submitted in any case the Respondent was entitled to subsistence allowance at the rate of 75% treating the Respondent as under suspension, considering the fact that earlier departmental inquiry dated 27/08/1997 is pending. By making above submission, it is requested to dismiss the present petition.

5. At this stage, Mr. Keyur Gandhi, learned advocate appearing on behalf of the Petitioner has submitted that pursuant to the interim order passed by this Court, the Petitioner was directed to pay amount of difference between 25% and 75%, which is already paid to the Respondent-workman.

6. Having heard learned advocates appearing on behalf of the respective parties and considering the impugned judgment and award passed by the Labour Court,

it appears that the Labour Court has materially erred in holding that the departmental inquiry dated 27/08/1997 has been dropped. Nothing is on record to prove that how the departmental inquiry was dropped. It appears that on the basis of earlier departmental inquiry dated 27/08/1997 order of termination was converted into order of suspension and before departmental inquiry dated 27/08/1997 concluded, another departmental inquiry was initiated for which the Respondent-workman came to be dismissed vide order dated 18/03/1999.

In view of the subsequent departmental inquiry, the earlier departmental inquiry was not proceeded further, it cannot be considered as dropping of the earlier departmental inquiry. Under the circumstances, the Respondent-workman is considered to be suspended for the period from 27/08/1997 to 18/03/1999 and, therefore, he is entitled to subsistence allowance at the rate of 75%, which the Petitioner has already paid to the Respondent-workman, pursuant to the interim order passed by this Court.

7. In view of the above, the present petition is allowed. The impugned judgment and award dated 03/06/2002 passed by Labour Court, Surat in Recovery Application No. 1131 of 2000 is hereby quashed and set aside and substituted by interim order passed by this Court by holding that the Respondent was entitled to 75% of the salary as subsistence allowance on completion of 90 days and for the period between 27/08/1997 to 18/03/1999. Rule is made absolute in terms of interim order passed by this Court. No costs.