

**(2003) 04 GUJ CK 0012**  
**In the Gujarat High Court**

**Case No :** Special Civil Application No. 7759 of 2000

Navin Fluorine Industries

APPELLANT

Vs

Babubhai Kashiram Rana

RESPONDENT

**Date of Decision :** 24-04-2003

**Acts Referred:**

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

**Citation :** (2003) 04 GUJ CK 0012

**Hon'ble Judges :** H.K. Rathod, J

**Bench :** Single Bench

**Advocate :** K.S. Nanavati and K.D. Gandhi, for the Appellant; Sangeeta N. Pahwa, for the Respondent

## **Judgement**

1. Heard learned Senior advocate Mr. K.S. Nanavati with Mr. K.D. Gandhi on behalf of the petitioner and learned advocate Mrs. Sangeeta N Pahwa on behalf of the respondent workman. In the present petition, the petitioner has challenged the award passed by the Labour Court, Surat in Reference (LCS) No. 811/1999 dtd. 02.06.2000 wherein dismissal order dtd. 18.03.1999 has been set aside by the Labour Court and directed the petitioner to reinstate the respondent workman on his original post with full back wages with continuity of service within 30 days from the date of publication of the award.

2. In the present petition, RULE and ad-interim relief has been granted by this Court on 12.07.2000. On behalf of the respondent, affidavit-in-reply has been filed.

3. Learned Senior advocate Mr. K.S. Nanavati with learned advocate Mr. K.D. Gandhi appearing on behalf of the petitioner submitted that respondent workman was dismissed from service by the petitioner on 18.03.1999. That dismissal order has been produced by the petitioner at Annexure "A" page 23. Against the dismissal order, respondent workman raised the Industrial Dispute which ultimately referred for adjudication to the Labour Court, Surat as Reference

(LCS) No. 811/1999. Before the Labour Court, respondent workman has filed statement of claim and written statement was submitted by the petitioner. Thereafter, the respondent has filed application on preliminary points for consideration vide Exh. 6 on 13.01.2000. Against that, reply has been submitted by the petitioner. Thereafter, on 18.02.2000 vide Exh.11, the respondent workman has filed affidavit accepting the averments made in application Exh.6 as true. The petitioner has filed detailed reply against application Exh.6 on 24.02.2000. Thereafter, Exh.11 application which was filed by the respondent workman, the Court has asked the question to the petitioner whether petitioner wants to cross examine the respondent workman or not. At that occasion, a detailed objection has been given by the petitioner on 09.03.2000 and on the same day, after giving that application, another application was given by the petitioner that the matter is pending at the stage of preliminary point and that is required to be decided. As both the parties agreed to that application, therefore, at this juncture, petitioner has not cross examined the respondent workman against application Exh.11. Thereafter, Labour Court has passed the award.

4. Learned Senior advocate Mr. K.S. Nanavati with learned advocate Mr. K.D. Gandhi submitted that looking to this factual aspect which are on record, the Labour Court while examining the preliminary issue application, decided the entire Reference without giving any opportunity to the petitioner. He pointed out that from the award itself, the issue which has been framed by the Labour Court, if it is considered that if without any evidence, whether Reference can be finally decided or not and at the stage of preliminary point application, entire reference can be disposed of or not. These are the two issues framed by the Labour Court and answer was given by the Labour Court that Labour Court can dispose of the entire reference at the stage of deciding the preliminary issue application. Therefore, learned advocate Mr. K.D. Gandhi has submitted that the dismissal order which has been passed by the petitioner without holding the departmental inquiry that facts has been mentioned in the order itself by the petitioner. Therefore, in case of no inquiry, if dismissal is based upon the misconduct, then employer have the right to prove the charge against the workman by leading proper evidence before the Labour Court. So, if the Labour Court has decided the entire Reference at the stage of deciding the preliminary point application, then petitioner is not having any opportunity to prove the charge against the respondent workman. He also pointed out that real fact of the said award is that entire law which has been settled on this point that in respect to the procedure before the Labour Court has been considered to be meaningless because he submitted that the Labour Court has considered only Section 10(2) and Section 11 that he can adopt any procedure as deem fit, meaning thereby that he may also pass the final order in the reference after receiving the statement of claim and he may not wait for the employer to file written statement. I have perused the entire award passed by the Labour Court. One fact is very clear that vide Exh.6, the respondent workman has given application to the effect that dismissal order passed by the employer is based upon the misconduct, without holding the

departmental inquiry. There is no dispute between the parties that dismissal order was passed without holding departmental inquiry though it was based upon the misconduct. Therefore, while examining application vide Exh.6, the Labour Court should have to pass some order that what relief the respondent workman is entitled in such situation, as per the settled law laid down by the various Courts. Without examining this aspect, straightway when there is no inquiry, dismissal order is bound to be set aside and without giving any opportunity to the employer, straightway set aside the dismissal and granted full relief in favour of the respondent workman.

5. According to my opinion, such approach on the part of the Labour Court denying the total opportunity to the employer in respect to prove the charge against the respondent workman by leading proper evidence before the Labour Court as well as other opportunity in respect to the back wages part is not correct. Therefore, this award has been passed by the Labour Court without giving any opportunity to the employer and employer is entitled a reasonable opportunity before passing final award against the petitioner. That opportunity is not given which is found apparent on the face of the record and that is the basic error committed by the Labour Court which requires interference by this Court while exercising the powers under Article 226/227 of the Constitution of India.

6. In the result, the present petition is allowed. The award passed by the Labour Court, Surat in Reference (LCS) No. 811/1999 is hereby quashed and set aside while remanding back the matter to the Labour Court, surat being Reference (LCS) No. 811/1999 with a direction to the Labour Court, Surat to decide application Exh.6 which has been submitted by the respondent workman after considering the reply which has been submitted by the petitioner as well as after giving reasonable opportunity to both the respective parties and to pass appropriate order in accordance with law only on the preliminary issue application and thereafter, Labour Court will proceed further in accordance with law and finally adjudicate the Reference in accordance with law. In respect to the payment u/s 17(B) of the I.D. Act, 1947, learned advocate Mr. K.D. Gandhi has made statement before this Court that petitioner has already paid last drawn monthly wages inclusive maintenance allowance to the respondent workman upto 31.03.2003 and petitioner will pay the last drawn monthly wages inclusive maintenance allowance to the respondent workman for the month of April, 2003 within a period of 3 weeks from today. In the result, rule is made absolute accordingly.

7. Both the learned advocates for the respective parties have requested to this Court that some suitable directions may be issued to the Labour Court, Surat so that Labour Court may examine the entire matter within some reasonable time. Both the learned advocates for the respective parties agreed before this Court that they will cooperate the hearing before the Labour Court, Surat. In view of the request made by both the learned advocates, it is directed to the Labour Court, Surat to decide application Exh.6 in Reference (LCS) No. 811/1999 within

a period of three months from the date of receiving the copy of the said order after giving reasonable opportunity to both the respective parties. Thereafter, it is further directed to the Labour Court, Surat to adjudicate the Reference finally within a period of one year from the date of decision on preliminary point application.

8. In view of the final order passed in this petition i.e. Special Civil Application No. 7759/2000, there is no order in Civil application No. 5600/2002.