

**(2016) 03 GUJ CK 0075**

**In the Gujarat High Court**

**Case No :** Special Civil Application No. 7332 of 2015.

Nugen Machineries Ltd.

APPELLANT

Vs

Minal A. Goswami and another

RESPONDENT

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**Date of Decision :** 10-03-2016

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 11A

**Citation :** (2016) 149 FLR 690 : (2016) LabLR 708 : (2016) 4 LLN 380

**Hon'ble Judges :** Paresh Upadhyay, J.

**Bench :** Single Bench

**Advocate :** Dipak R. Dave, Advocate, for the Appellant; Riddhesh Trivedi, Advocate, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

Paresh Upadhyaya, J. (CAV) - Challenge in this petition is made by the Employer to the award passed by the Labour Court, Ahmedabad in Reference (LCA) No.484 of 2003 dated 02.07.2014. By the impugned award, the Labour Court has held that, the order dated 22.10.2002 passed by the Employer, by which the respondent was dismissed from service was illegal, the same is therefore quashed and set aside and consequently the Labour Court has ordered that the respondent be reinstated in service, with continuity and 20% back wages.

2. Heard learned advocates. Both the learned advocates have taken this Court through the material on record.

3. Mr. Dave, learned advocate for the petitioner has submitted that, the respondent No.1 was dismissed from service for the proved misconduct, the charges against him were very serious including browbeating and abusing his superiors. It is further submitted that the legality of the departmental inquiry was questioned by the workman and in that regard, the Labour Court had passed an order on 22.10.2012 holding that the inquiry in question was legal and proper and there was no infirmity therein. It is submitted that, the said order was not

challenged by the workman and it attained finality. It is further submitted that, the Labour Court has, while recording the final award dated 02.07.2014, taken note of its earlier order dated 22.10.2012 also. It is submitted that though the Labour Court accepted that the charges against the workman were legally proved, according to Labour Court this was the case where the powers under Section 11A of the Industrial Disputes Act, 1947 were required to be exercised, since according to the Labour Court the dismissal was shockingly disproportionate to the guilt established. It is submitted that, though the powers vested in the Labour Court can not be and are not questioned by the employer, in the facts of this case, exercise of discretion by the Labour Court was unwarranted and therefore the same needs to be interfered with by this Court. It is submitted that, the impugned award be quashed and set aside. In support of his submissions, learned advocate for the petitioner has relied on the following decisions of Honourable the Supreme Court of India:

- (i) 2005 (3) SCC 134 ? Mahindra and Mahindra Limited v. N.B. Naravade
- (ii) 2005 (7) SCC 338 ? V. Ramana v. A.P.S.R.T.C.
- (iii) 2006 (13) SCC 613 ? Life Insurance Corporation of India v. R. Dhandapani
- (iv) 2006 (2) SCC 269 ? L K Verma v. H.M.T. Ltd.

Additionally, reliance is also placed on the decision of this Court in Special Civil Application No.5110 of 2002 in the case of Gujarat State Road Transport Corporation v. J.K.Barad.

4. Mr.Riddhesh Trivedi, learned advocate for the respondent has submitted that, merely because the inquiry is held to be legal and proper, which in this case was vide order dated 22.10.2012, that itself is no ground to hold that the Labour Court did not have any power to interfere in the punishment. It is submitted that, the scope and ambit of Section 11A of the Industrial Disputes Act, 1947 is wide enough to sustain the impugned award. It is submitted that the Labour Court has recorded cogent reasons as to how the dismissal order was unsustainable and therefore no interference be made by this Court. It is submitted that, this petition be dismissed.

5. Having heard learned advocates for the respective parties and having gone through the material on record, this Court finds as under.

5.1 The charges against the workman are on record. In the departmental inquiry, the charges are held to be proved, is an admitted position. The said inquiry is held to be legal and proper that is also an admitted position. Under the circumstances, the only question before this Court is, as to whether in the facts of this case, the Labour Court was justified in coming to the conclusion that the punishment of dismissal was shockingly disproportionate to the proved guilt and therefore the exercise of powers under Section 11A of the Industrial Disputes Act, 1947 was required. In this regard, the decision of Honourable the Supreme Court of India in the case of L.K. Verma v. H.M.T. Ltd. reported in 2006 (2) SCC

269 would be relevant. Para:22 thereof reads as under:

"15. So far as the contention as regard quantum of punishment is concerned, suffice it to say that verbal abuse has been held to be sufficient for inflicting a punishment of dismissal."

5.2 On conjoint consideration of the nature of the proved charges against the workman and the above noted proposition of law, the exercise of powers by the Labour Court, invoking section 11A of the Industrial Disputes Act, 1947, in the facts of this case, prima facie, appears to be unsustainable. This aspect, however, is examined by this Court in more detail. The following are the decisions on which reliance is placed by learned advocate for the petitioner.

5.3 In the case of Mahindra and Mahindra Limited v. N.B. Naravade reported in 2005 (3) SCC 134, Honourable the Supreme Court of India observed as under:

"20. It is no doubt true that after introduction of Section 11-A in the Industrial Disputes Act, certain amount of discretion is vested with the labour court / Industrial Tribunal in interfering with the quantum of punishment awarded by the Management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the court, or the existence of any mitigating circumstances which requires the reduction of the sentence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of any such factor existing, the Labour Court can not by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment. As noticed herein above atleast in two of the cases cited before us, i.e. Orissa Cement Ltd. (supra) and New Shorrock Mills (supra), this Court held : "punishment of dismissal for using of abusive language cannot be held to be disproportionate". In this case all the forums below have held that the language used by the workman was filthy. We too are of the opinion that the language used by the workman is such that it cannot be tolerated by any civilised society. Use of such abusive language against a superior officer, that too not once but twice, in the presence of his subordinates cannot be termed to be an indiscipline calling for lesser punishment in the absence of any extenuating factor referred to hereinabove."

5.4 In the case of V. Ramana v. A.P.S.R.T.C. reported in 2005 (7) SCC 338, Honourable the Supreme Court of India has observed as under.

"11. The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of

what has been stated in *Wednesbury*'s case (supra) the Court would not go into the correctness of the choice made by the administrator open to him and the Court should not substitute its decision for that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision".

5.5 In the case of *Life Insurance Corporation of India v. R. Dhandapani* reported in 2006 (13) SCC 613, Honourable the Supreme Court of India has observed as under.

"7. It is not necessary to go into detail regarding the power exercisable under Section 11- A of the Act. The power under said Section. 11-A has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of the management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words "disproportionate" or "grossly disproportionate" by itself will not be sufficient."

5.6 After considering various decisions on this point, Honourable the Supreme Court of India in the case of *Mavji C. Lakum v. Central Bank of India* reported in (2008) 12 SCC 726 observed as under.

"22. In our opinion under Section 11-A of the Industrial Disputes Act the Tribunal was quite justified in using its discretion. The scope of Section 11-A has been explained by this Court from time to time in *LIC of India v. R.Dhandapani* [(2006) 13 SCC 613], *Mahindra and Mahindra Ltd. v. N.B.Narawade* [(2005) 3 SCC 134] and *M.P. Electricity Board v. Jagdish Chandra Sharma* [(2005) 3 SCC 401]. Lastly, this Court has held in *Land T. Komatsu Ltd. v. N. Udayakumar* [(2008) 1 SCC 224] that assaulting or giving abuses to the superior would justify the dismissal. We have carefully examined the facts in all the above cases and find that the appellant's case nowhere comes near the one described in all the above four cases. After all the Tribunal has to judge on the basis of the proved misbehaviour. In this case we have already recorded that the Tribunal was firstly correct in holding that the misbehaviour was not wholly proved and whatever misconduct was proved, did not deserve the extreme punishment of discharge."

5.7 Having considered the facts of the case, the contents of the order of the Labour Court dated 22.10.2012, the proposition of law enunciated by Honourable the Supreme Court of India in the above referred decisions, and the reasons which weighed with the Labour Court at the time of recording the final award, this Court finds that, in the facts of this case, the Labour Court was not justified in interfering in the quantum of punishment solely on the basis of the powers vested in it under Section 11A of the Industrial Disputes Act, 1947. The workman is guilty of browbeating and abusing his superior on the job. The same is, in view

of the above referred decisions, such misconduct, for which dismissal was justified. For these reasons, the impugned award is unsustainable in law and the same needs to be quashed and set aside.

5.8 The reliance placed by learned advocate for the petitioner on the decision of this Court in Special Civil Application No.5110 of 2002 in the case of Gujarat State Road Transport Corporation v. J.K.Barad will also support the case of the petitioner, since it is applicable with full force in the facts of this case. In the said decision, this Court had observed as under.

"6. In my view, the order of the Labour Court is absolutely unsustainable. The Labour Court has not appreciated the facts and circumstances of the case in its proper perspective. Apart from the said fact, the judgment of the Division Bench, which was cited before the Labour Court was dealt with in a very casual manner. The Labour Court, while exercising the powers under section 11-A of the Act, has not even substituted the punishment imposed by the management by imposing any other suitable penalty, and instead has granted 25% back wages to the respondent workman against whom the misconduct is proved in the departmental proceedings. The Labour Court has not given justification or reasons in the award for substituting the penalty. In my view, since the misconduct is proved in the inquiry, there was no scope for granting any back wages to the respondent workman. The entire award suffers from total non-application of mind and the reasoning of the Labour Court is absolutely unsatisfactory. In my view, the judgment of the Division Bench of this Court, which was cited before the Labour Court, was not properly considered at all by the Labour Court and in a very casual manner the said judgment is dealt with by the Labour Court. I am sure that, appropriate care will be taken by the concerned court, while dealing with the judgments of the superior Courts and the said judgments will not be treated in such casual manner, which has been done in the instant case by the Labour Court. The Labour Court has also failed to consider that the concerned workman did not participate in the departmental proceedings, and, therefore, it cannot be said that, the management deliberately proceeded with the inquiry ex parte. The Labour Court has not even looked into the past record produced at page 19 of this petition, which was also produced before the Labour Court as argued by Mr.Munshaw. It is expected from the Labour Court to consider all the relevant documents and evidences and to appreciate the same in proper manner. Considering the aforesaid record, it is clear that the concerned workman was subjected to misconduct for so many times in the past. In my view, the award of the Labour Court suffers from total non-application of mind as the relevant facts and circumstances of the case and the evidence on record are not taken into consideration by the Labour Court while passing the impugned award".

5.9 Considering the totality, this Court finds that, the impugned award is unsustainable and the same needs to be quashed and set aside.

6. For the reasons recorded above, the following order is passed.

6.1 This petition is allowed.

6.2 The impugned award is quashed and set aside.

6.3 The order dated 22.10.2002 passed by the petitioner-employer, by which the respondent was dismissed from service is held to be legal.

6.4 Rule is made absolute. No order as to costs.