

(2016) 02 GUJ CK 0184

In the Gujarat High Court

Case No : Special Civil Application No. 10759 of 2012

Rajkot Municipal Corporation

APPELLANT

Vs

L.G. Lakkad

RESPONDENT

Date of Decision : 23-02-2016

Acts Referred:

Citation : (2016) 02 GUJ CK 0184

Hon'ble Judges : K.M. Thaker, J.

Bench : Single Bench

Advocate : Hriday Buch, Advocate, for the Appellant; Bhavin S. Raiyani, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Thaker, J.—1. Heard Mr. Lalalkiya, learned advocate for Mr. Buch, learned advocate for the petitioner, and Mr. Raiyani, learned advocate for the respondent.

2. In present petition, the petitioner Corporation has challenged the award dated 13.3.2012 passed by the learned Industrial Tribunal, Rajkot, in Reference (IT) No. 36 of 1993, whereby learned Court has set aside the order passed by the disciplinary authority on the ground that the charge and allegations against the respondent workman are not proved. The learned Labour Court has, by the impugned award, directed the petitioner to reimburse loss suffered by the respondent workman on account of the penalty order dated 12.5.1988.

3. So far as facts involved in present case and leading to present petition are concerned, it comes out from the record that the respondent workman was working with the petitioner corporation as Planning Assistant in Town Planning Department. In connection with the reported misconduct, the respondent workman was suspended vide order dated 6.11.1986, and thereafter, he was visited with charge-sheet dated 13.04.1987, whereby the charge and allegations levelled against him were conveyed to the respondent workman and he was called upon to file his reply. The respondent workman denied the allegations in

his reply dated 22.05.1987. Thereafter, the corporation appointed an Inquiry Officer, who conducted the inquiry. The respondent workman and the petitioner corporation placed their respective evidence before the Inquiry Officer. After the stage of evidence was concluded, the Inquiry Officer heard the submissions and after considering the material on record, he reached to the conclusion that the charge levelled against the respondent workman are proved. The Inquiry Officer submitted report dated 30.12.1987. Thereafter, the respondent workman was called upon to show cause as to why he should not be dismissed from service. The respondent workman submitted his reply dated 12.2.1988. The disciplinary authority considered the material on record and report of the Inquiry Officer and the reply filed by the respondent workman. After considering the material and relevant factors, the disciplinary authority considered it appropriate to impose penalty of withholding 5 increments with permanent effect. Accordingly, penalty order dated 12.5.1988 came to be passed. By separate order dated 20.5.1988, the disciplinary authority also directed that the period of suspension shall be treated as period not spent on duty.

3.1 Feeling aggrieved by the said penalty order, the respondent raised industrial dispute which came to be referred for adjudication to the learned Labour Court vide order of Reference dated 04.08.1993. The reference was registered as Reference (IT) No. 36 of 1993.

Before the learned Labour Court, the respondent workman filed his statement of claim which was opposed by the petitioner corporation who filed its written statement and denied the allegations by the respondent workman in his statement of claim.

3.2 The respondent workman filed an application/pursis (Exh. 14) and challenged the legality and propriety of the inquiry and the findings recorded by the Inquiry Officer.

The learned Labour Court, therefore, considered it appropriate to decide workman's objection against the inquiry as preliminary issue.

While the learned Labour Court was recording evidence with regard to the preliminary contention/objection raised by the workman, he filed another application/pursis (Exh. 28) and declared that he admits the legality and propriety of the inquiry, however, he challenges the findings recorded in the report of the Inquiry Officer.

The parties led evidence before the learned Labour Court and after considering the material on record and submissions by the contesting parties, the learned Labour Court reached to the conclusion that the findings recorded by the Inquiry Officer are not sustainable. The learned Labour Court reached to the conclusion that the allegations are not proved and the conclusions by the Inquiry Officer are perverse. Having reached to such conclusion, learned Labour Court declared that the order of the penalty based on such findings by the Inquiry Officer cannot be sustained and that therefore, the learned Labour Court set aside the penalty

order dated 12.5.1988.

Feeling aggrieved by the said decision, the petitioner corporation has taken out present petition.

4. The learned advocate for the petitioner corporation, submitted that the learned Labour Court ought not have interfered with the quantum of penalty. He submitted that the quantum of penalty is within the realm and in discretion of the employer and when the employer passed an order imposing penalty, the learned Labour Court ought not have interfered with such order of penalty. He further submitted that when the Inquiry Officer records findings on the basis of material available on record of the domestic inquiry and the workman admits the legality and propriety of the inquiry, then, it is not permissible to the learned Labour Court to reappreciate the evidence and reach to contrary finding then the findings recorded by the Inquiry Officer. He submitted that in present case, the learned Labour Court has reappreciated the evidence and reached to the findings contrary to the findings recorded by the Inquiry Officer and that therefore, the decision by the learned Labour Court is incorrect, unjustified, arbitrary and without jurisdiction.

5. Per contra, learned advocate for the respondent workman submitted that the Inquiry Officer failed to appreciate the fact that the authority to sanction the building construction plans was with the Town Planner and it was not the function and duty of the respondent workman and that therefore, the respondent could not have been held guilty in the matter of sanctioning the building construction plans. He submitted that though there was evidence on record to establish that the respondent was neither concerned with nor involved in the decision of sanctioning building construction plans, the respondent was held guilty and responsible in the matter of sanction granted to the building construction plan. He further submitted any action against the In-charge Town Planner or Dy. Town Planner or any other persons involved in the process of sanctioning the building construction plans have not been taken and the respondent workman alone is targeted. He submitted that the workman had reserved his challenge against the findings of the Inquiry Officer and has categorically mentioned that he does not admit the findings of the Inquiry Officer as legal and correct and that therefore, the legality and propriety of the findings of the Inquiry Officer were challenged before the learned Labour Court. He also submitted that since findings of the Inquiry Officer were under challenge before the learned Labour Court, it was necessary for the learned Labour Court to examine as to whether the findings and conclusions recorded by the Inquiry Officer are based on evidence or not and that therefore, there is no illegality or error in the impugned award.

6. I have considered the material on record and I have also considered the submissions by learned advocates for the petitioner corporation and the respondent workman.

7. At the outset, it is necessary and appropriate to mention that the respondent

workman had vide Exh. 28 admitted the legality and propriety of the inquiry and the challenge against the conduct of the inquiry which was raised vide Exh. 14 was subsequently dropped by the respondent workman. However, his objection against the findings recorded by the Inquiry Officer continued. Therefore, it was necessary for the learned Labour Court to examine as to whether the findings and conclusions recorded by the Inquiry Officer in his report dated 30.12.1987 were based on available evidence or the findings are perverse.

8. On examination of the impugned award, it is noticed that so as to decide as to whether the findings recorded by the Inquiry Officer are just or perverse, learned Labour Court has taken into account the evidence which was available on record of the domestic inquiry and on examination of the findings and conclusions recorded by the Inquiry Officer in his report dated 30.12.1987 in light of the evidence available on record of the domestic inquiry, the learned Labour Court reached to the conclusion that the findings are contrary to, and not supported by, the evidence on record and the conclusions recorded by the Inquiry Officer are perverse. The learned Labour Court also reached to the conclusion that in light of the evidence which was available on record, the Inquiry Officer could not have reached to the conclusion that the allegations against the respondent workman are proved. The learned Labour Court also reached to the conclusion in light of the evidence available on record of the domestic inquiry that the respondent workman cannot be said to be guilty.

9. At this stage, it is appropriate to take into account the allegations and charge levelled against the respondent workman.

From the record, it has emerged that the respondent workman was visited with the charge that the respondent workman mentioned incomplete details while forwarding the application seeking sanction of the building construction plan in respect of plot No. 2 at survey No. 375 and that while the construction was in progress, he failed to visit the site and make the spot checking of the construction work. Thus, the charge of negligence in performance of duty was levelled against the respondent.

10. After examining the material on record, the learned Labour Court has reached to the conclusion that the inspection report was to be prepared and submitted by overseer and not by the respondent workman. The learned Labour Court also found that the sanction was granted by the Town Planner and not by the respondent workman and before granting the sanction, the Town Planner ought to have examined the plan and other relevant details.

11. When the allegations against the respondent workman as levelled vide charge sheet dated 13.4.1987 are examined, it comes out that on the premise that sale deed was executed on incorrect and false affidavit instruction was issued by the Dy. Collector to the Town Planning Department of the petitioner corporation that building construction plans in respect of plot No. 2 at survey No. 375 may not be granted and despite such instruction, the building construction

plans were sanctioned. Having regard to the said allegation, the learned Labour Court noticed from the evidence on record that there was evidence on record to establish that the reports were to be submitted by the overseer and the authority to refuse or grant sanction in respect of any building construction plans was with the Town Planner and that there was no material on record to establish that the respondent workman had placed incomplete details before the competent authority. The learned Labour Court also found on examination of the evidence on record that there was no evidence available on record in light of which the Inquiry Officer could have reached to the conclusion that the respondent workman was guilty of the charge levelled against him and that the allegations are proved. The learned Labour Court reached to the conclusion that the findings and conclusions recorded by the Inquiry Officer in his report dated 30.12.1987 are not based on any evidence and they do not have any support of evidence on record and the findings are perverse.

12. Having reached such conclusion, the learned Labour Court also held that the disciplinary authority's order was based on such findings by the Inquiry Officer and that therefore, it cannot be sustained.

The learned Labour Court also noticed that even the disciplinary authority had observed in the order that the respondent workman alone cannot be said to be wholly responsible for the non-compliance of the instruction by the office of the Collector namely, to not grant sanction to the building construction plans in respect of plot No. 2 of survey No. 375.

On overall consideration, the learned Labour Court found that neither the conclusion of the Inquiry Officer is sustainable nor the order of the disciplinary authority based on such erroneous findings of the Inquiry Officer can be sustained. Therefore, the learned Labour Court set aside the penalty order passed by the disciplinary authority.

13. It is in this background that the learned advocate for the petitioner corporation raised the contention that the learned Labour Court could not have reappreciated the evidence.

The said contention is not sustainable in light of the fact that the respondent workman had kept his challenge and objection against the findings of the Inquiry Officer open and he had consistently urged that the findings of the Inquiry Officer are perverse and are not based on any evidence.

Under the circumstances, the learned Labour Court was constrained to examine as to whether the findings by the Inquiry Officer are supported by any evidence or they are contrary to the evidence on record or are without support of any evidence.

For the purpose of examining the said issue, the learned Labour Court considered the material on record and found that the conclusions recorded by the Inquiry Officer are perverse and without support of any evidence. In this view of the

matter, the contention by the learned advocate for the petitioner fails and cannot be sustained.

14. If the allegations and charge against the delinquent workman are proved and the domestic inquiry conducted against the delinquent workman is held to be legal, then, the jurisdiction of the learned Labour Court to interfere with the quantum of penalty in case of proved misconduct would be very limited. However, in cases where it is established before the learned Labour Court that the allegations and charge are not proved, then, the order of penalty may not be sustained, inasmuch as when the allegations are not proved, any penalty order cannot be passed.

Under the circumstances, while the charge/allegations are not proved, then, the learned Labour Court can set aside the order of penalty which is based on unsustainable findings and report of the Inquiry Officer.

15. In present case also, the learned Labour Court found that the penalty order is based on report of the Inquiry Officer which is erroneous and unsustainable and that therefore, the learned Labour Court set aside the order of penalty.

In present case, it is pertinent that the petitioner corporation could have led evidence before the Court and proved the charge but the petitioner failed to place cogent and sufficient evidence before the Court to prove the charge.

16. In this view of the matter, the award does not warrant any interference. It cannot be said that the learned Labour Court has committed any error of law and jurisdiction. It also cannot be said that the learned Labour Court has travelled beyond the jurisdiction and decided the issue which was not permissible. The petitioner has failed to establish that the impugned award suffers from any infirmity.

Therefore, the petition fails and deserves to be rejected and is, accordingly, rejected.

Rule is discharged.

Interim relief, if any, stands vacated.