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(2014) 12 GUJ CK 0134

In the Gujarat High Court

Case No : Special Civil Application No. 8452 of 2013

Zonal Manager — APPELLANT

Vs

Presiding Officer, Central Government Industrial Tribunal-Cum-Labour Court and Others — RESPONDENT

Date of Decision : 23-12-2014

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (2015) 145 FLR 307

Hon'ble Judges : S.R. Brahmbhatt, J.

Bench : Single Bench

Advocate : Nandish Chudgar for Nanavati Associates, for the Appellant; Pranav Trivedi, A.G.P., for the Respondent

Final Decision : Dismissed

Judgement

S.R. Brahmbhatt, J.?The petitioner, first party employer in Reference (CGIT) No. 45 of 2005 from the Central Government Industrial Tribunal (CGIT)-trum-Labour Court, Ahmedabad has approached this Court by way of this petition under Articles 226 and 227 of the Constitution of India with following prayers:

"(A) Your Lordships may be pleased to issue a writ of mandamus and/or certiorari or writ in the nature of mandamus and/or certiorari or any other appropriate writ, order or direction, be issued for quashing and setting aside the order dated 6.3.2013 passed by the CGIT-cum-Labour Court, Ahmedabad in Reference (CGITA) No. 45 of 2005 so far as directing the petitioner Bank to produce fresh materials and evidence before the Tribunal to justify its action taken against the respondent No. 2 employee is concerned;

(B) Pending admission, hearing and final disposal of this petition, Your Lordships may be pleased to stay the execution, implementation and operation of the Order dated 6.3.2013 passed by the CGIT-cum-Labour Court, Ahmedabad in Reference (CGITA) No. 45 of 2005;

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(C) An ex-parte ad-interim relief in terms of prayer (B) above may kindly be granted; and

(D) Grant such other and further relief(s) as may be deemed fit in the interest of justice and equity. "

This Court, while passing the order on 8.5.2013 has recorded the contention of Counsel for the petitioner, which order deserves to be set out hereinbelow so as to appreciate the purport and purview of the challenge contained in this petition:

"1. Heard Mr. K.S. Nanavati, learned senior advocate for the petitioner.

2. Challenge in this petition is made to the order passed by the CGIT-Cum-Labour Court, Ahmedabad (the ''Tribunal'' for short) in Reference (CGITA) No. 45 of 2005, dated 6.3.2013. By the said order, preliminary issue regarding validity or otherwise of the domestic inquiry held against the workman is decided against the petitioner.

3. In substance, the Tribunal has held that the principle of natural justice was not observed in conducting the domestic inquiry and further that reasonable opportunity was not given to the workman in the inquiry. By the impugned order, the Tribunal has held that the inquiry has therefore stood vitiated and the petitioner Bank is directed to justify its action against the delinquent (Respondent No. 2) by producing fresh material and evidence.

4. Learned Counsel for the petitioner has stated that so far holding the inquiry and leading of evidence afresh is concerned, the petitioner does not have objection, however the question is, from which stage it should start. According to him, three out of four witnesses presented by the Disciplinary Authority, were cross examined also, and qua them there is no dispute. Thai part need not be reopened.

5. Issue Notice to the respondents returnable on 18.6.2013. Direct Service permitted. "

Thus, as recorded by this Court in its order dated 8.5.2013, the petitioner essentially does not challenge the order impugned on account of direction for holding inquiry and leading of evidence afresh, however, it is confined to the stage wherefrom such exercise is required to be undertaken. Accordingly, it was contention on the part of petitioner that the inquiry was found to be vitiated from a point and therefore, fresh inquiry or leading of the evidence should commence therefrom only before the Court and as the order impugned is in fact directing fresh inquiry and leading of evidence afresh, the same was found to be untenable in law and hence, it was challenged in this petition.

2. Facts in brief leading to filing this petition as could be seen from the memo of petition deserve to be set out as under:

3. The respondent No. 2 was working as Clerk at Naroda Branch of the petitioner Bank. The respondent No. 2 employee was called upon to explain vide

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Memorandum dated 29.4.2002 in respect of misconduct mentioned thereunder. As the explanation given by the employee was found unsatisfactory, the employer bank decided to hold Disciplinary Inquiry. Accordingly, charge sheet dated 30.5.2002 came to be issued to respondent No. 2 and the Disciplinary Proceedings commenced. The Inquiry Officer recorded its finding on 31.7.2002 concluding that the charge sheet levelled against the respondent No. 2 employee stands proved. The Disciplinary Authority issued show cause notice for punishment on 19.8.2002. The said show cause notice was followed by an opportunity of being heard personally to the respondent No. 2, who chose not to appear before the Disciplinary Authority on the day. The Disciplinary Authority under its order dated 11.11.2002 compulsorily retired the respondent No. 2 from the service of the petitioner Bank with immediate effect and with superannuation benefits. The respondent No. 2 was informed that, the appeal against said order is available. The respondent No. 2 preferred appeal before the Appellate Authority of the Bank on 19.12.2002 and the Appellate Authority vide order dated 19.2.2003 rejected the appeal and confirmed the punishment of compulsorily retirement from the service of the petitioner Bank. The respondent No. 2 raised Industrial Dispute by way of Reference (CGITA) No. 45 of 2005 inter alia challenging the order of compulsorily retirement. In a statement of claim filed in this proceedings, the respondent No. 2 challenged the validity of domestic inquiry on the ground that this was conducted without following the principle of natural justice and without affording an opportunity to defend himself against the charge as he was not permitted to examine the defence witness nor did authority summon the witness of the petitioner''s bank. The bank filed its written statement Exh. 4. The bank also filed purshis being Exh. 10 inter alia praying that if the Tribunal comes to the conclusion that inquiry held against delinquent was not in accordance with principles of natural justice and the same is vitiated, then, an opportunity be given to the petitioner Bank to justify its action by leading evidence before the Tribunal. The Tribunal under order impugned dated 6.3.2013 held that the inquiry was not in accordance with principles of natural justice and the findings of Inquiry Officer recorded on 3.7.2002 were perverse and the petitioner Bank was directed to produce fresh materials and evidence to justify its action against respondent No. 2.

4. This order of Tribunal dated 6.3.2013 is assailed in this petition filed by employer invoking Article 226 and also Article 227 of the Constitution of India for the grounds mentioned in the memo of petition.

5. Learned advocate appearing for the petitioner contended that the scope of the petition has already been defined as recorded by this Court in its order dated 8.5.2013 and therefore, the petitioner may not be called upon to lead evidences afresh and direction of leading fresh evidences be confined only from the stage wherefrom the Tribunal found that there was a breach of principles of natural justice.

6. Learned advocate appearing for the petitioner relying upon the decision of this

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Court rendered in Special Civil Application No. 2495 of 1980 decided on 26.11.1980, submitted that the evidences so far led before the Inquiry Officer cannot be said to be wiped off. A specific emphasis was laid upon the observation of the Court in un-numbered paragraph of the judgment, which are required to be set out herebelow to appreciate the contention in its correct prospective:

"We have perused the charges which were preferred against respondent No. 1 by the Corporation. They are all charges of negligence and dereliction of duty. They do not raise any complicated questions of fact of law. Respondent No. 1 has no statutory or other right to be represented by a lawyer at the departmental inquiry. Since the charges preferred against him were not complicated necessitating the help of a lawyer, it is difficult for us to say that the departmental inquiry was vitiated on account of the fact that respondent No. 1 was not allowed to be defended by a lawyer at the departmental inquiry. Principles of natural justice did not require it to be done. We, therefore, set aside the finding recorded by the Labour Court on that appeal.

So far as the second finding recorded by the Labour Court is concerned, there is some substance in it. Respondent No. 1 does not appear to be acquainted with law, legal norms and legal procedures. In order, therefore, that he could effectively defend himself against the charges preferred against him. It was necessary for the inquiry officer to call upon respondent No. 1 to produce defence witnesses and examine them if he so desired. Inasmuch as the inquiry officer did not do it, the inquiry held against respondent No. 1 was vitiated. The finding recorded by the Labour Court in that behalf is justified. We uphold it.

Now before the Labour Court, the Corporation will have no justify the order of dismissal on merits. So far as the evidence led by the corporation before the inquiry officer is concerned, it cannot be wiped off from the record because we find nothing wrong with the recording of that evidence. We, therefore, direct that when the Labour Court makes an inquiry into this matter, the Labour Court shall retain that evidence on record and shall look into it as if it was led before it. However, it shall be open to respondent No. 1 to lead such evidence as he thinks fit in order to show that he was not guilty of any or all of the charges preferred against him. We would also like to make it clear that it shall be open to the Labour Court to call upon the Corporation to produce evidence before the Labour Court if the Labour Court thinks that such evidence is necessary in addition to the evidence which is on record. In view of the fact that we are confirming the findings recorded by the Labour Court on the second aspect, this petition cannot succeed. Therefore, subject to the observations which we have made, the petition fails and is dismissed. Rule is discharged with no order as to costs. Since this is an old dispute between the parties, we direct the Labour Court to decide this case as expeditiously as it can preferable within a period of two months."

Relying upon these observations of the Division Bench of this Court, learned advocate appearing for the petitioner emphatically submitted that labour Court''s order whereunder the petitioner is called upon to lead evidence afresh may not

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be sustainable and is required to be modified accordingly.

7. Learned advocate appearing for the petitioner thereafter contended that as per observation of the Supreme Court in case of Shri Anant R. Kulkarni Vs. Y.P. Education Society and Others, , submitted that there is no requirement of holding entire inquiry afresh and it should be only from the point where the breach of principles of natural justice is attributed.

8. Learned advocate appearing for the petitioner invited this Court''s attention to the proceedings before the Inquiry Officer and submitted that the proceedings as could be seen from the record as placed in this petition, would indicate that the entire proceedings were not required to be dubbed as vitiated on account of breach of principles of natural justice.

9. Learned advocate appearing for the petitioner thereafter contended that the proceedings could not have been ordered to be recommenced from the cross-examination of witness Bharat Bhushan only. The evidence led before that point and time, are noted, have been treated as vitiated only on account of attributing of breach of principles of natural justice.

10. Learned advocate appearing for the petitioner thereafter submitted that this Court may examine this issue and permit the petitioner to recommence or start the inquiry or lead evidence only from that point, so as not to nullify the earlier proceedings in its totality.

11. The respondent No. 2 in-person made submissions in support of order impugned. The respondent No. 2 invited this Court''s attention to the records of the findings by the Court below and submitted that those findings are capable of indicating that entire inquiry was held to be vitiated and therefore, the part reliance upon the earlier documentary or other documentary evidence led before the officer cannot be permitted to be form part of the proceedings and the petitioner, if chooses, may produce the same witness and documentary evidence again before the Court but the proceedings have been commenced de novo before the Court justifying the action by employer. The respondent No. 2 submitted that order under challenge is an interim order of the Industrial Tribunal and did not decide the reference finally and therefore, same may not be interfered.

12. The respondent No. 2 in support of his submission relied upon the following decisions:

"(I) Unreported decision in Special Civil Application No. 11230 of 2007 decided on 28.4.2008, (paras-6 to 10, 14, 25, 28, 31);

(II) in case of Dena Bank v. D.V. Kundadia 2011 (131) FLR 775, (para-2 and 3)

(III) in case of D.P. Maheshwari Vs. Delhi Administration and Others, ;

(IV) in case of The Cooper Engineering Limited Vs. Shri P.P. Mundhe, ;

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(V) in case of Neeta Kaplish Vs. Presiding Officer, Labour Court and Another, ;

(VI) in case of Dinesh Mills Ltd. v. Kedarnath R. Pande 1998 (2) GLR 1431, (paras 7 to 9)"

13. The Court has heard learned advocates for the parties and perused the evidences cited at bar. The petition though, is one said to have been filed under Articles 226 and 227 of the Constitution of India but looking to the averments made in this petition and considering the pleadings, it can well be said that petitioner has not indicated as to how this petition could be classified to be a petition under Article 226. By merely mentioning the Article 226 in the cause title and seeking a writ of mandamus or certiorari in themselves would not classified it as to be filed under Article 226, as in absence of any specific plea qua jurisdictional error and other aspect, which are required to be pressed into service for invoking Article 226 are conspicuously absent and therefore, though under cause title, Article 226 is specifically mentioned, and in the prayer clause reference is made for seeking writ, this Court is of the view that in absence of any such pleadings capable of invoking Article 226, this petition cannot be classified to be a petition under Article 226 of the Constitution and hence, this petition is required to be viewed as it is filed under Article 227 of the Constitution of India, as the petitioner has invoked Articles 226 and 227 both, as could be seen from the memo of petition.

14. The findings recorded by the Tribunal is required to be set out as under to appreciate the real purport:

"Para-13 : I have gone through entire enquiry documents produced by the 1st party and also oral evidence of workman Ashok Pandya to affidavit (Exh.4) and cross examination by the lawyer of 1st party on enquiry point. It is admitted position that the delinquent had kept either Shri Bankim Shah as the defence representative, but said Bankim Shah did not appear with CSE in early part of enquiry and he was dismissed so the CSE kept Shri Girish Dave as his DR, who actually participated in the enquiry with CSE to assist him. Now on perusal of each and every daily order sheet of the enquiry proceeding from 7.6.2002 to 16.7.2002 which are of 15 sittings, it appears that the E.O. granted in 11 settings to the presenting officer to conclude enquiry evidence of management side upto 9.7.2002 in which 4 management witnesses were examined whereas the E.O. has given only 3 sittings to the CSE to produce the witness and 2 defendants witnesses were examined and cross examined from 12.7.2002 to 16.7.2002 and on 13.7.2002 and on 16.7.2002 DW-I and DW-2 respectively were examined and cross examined. Even after requesting for more time to produce other witnesses by CSE and DR, prayer was refused by the EO on the ground that he has to conclude enquiry fastly. Then pertinent question also arises what was reason not to grant more opportunity to the DR/CSE. The answer itself comes from the proceedings order sheet dated 9.7.2002 on which date last MW 4 Bharat Bhushan was examined to prove several documents produced by him from Industrial Relation Department but cross examination of

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MWG Mr. Bharat Bhushan was refused by EO and DR/CSE to produce list of defence witness and when list of eight witnesses were produced which are No. 1 to 5 staffs of Naroda Branch where alleged incident as per charge happened and remaining 3 were pensioner customers. A page 3 of order sheet at bottom it has been incorporated by the EO that DA has ordered to continue enquiry day to day that go to show that D.A. was also taking stock of development in the inquiry in the inquiry proceedings and applying and extending pressure to EO to conclude inquiry fastly. In such view of the matter there is least chance of observing principles of natural justice in holding inquiry. It can be seen that out of 8 witnesses under the list given on behalf of DR/CSE only RA Khakhi (DW-1) and Kantilal M. Daxini (DW-2) could be examined as DW 2 on last date of inquiry on 16.7.2002. For examination of other who were mostly itself of Naroda Branch reasonable opportunity was not granted even praying that those are staff and could not get permission to attend enquiry. More so eleven, sitting were granted to the presenting officer to produce witnesses and relevant documents where as only four sitting was given to DR/CSE to conclude which itself speaks a volume that reasonable opportunity was not granted to DR/CSE whereas the presenting officer produced 1st MW1 on 7th sitting of enquiry on 2.7.2002. From the order sheets of the enquiry proceeding, it appears to me that principles of natural justice was not followed properly and also reasonable opportunity to DR/CSE was not granted in comparison to the opportunity granted to the presenting officer.

14. As per documents made above the point No. (i) and (ii) are answered in negative.

15. Point No. (iii)- Now coming to the report of EO dated 31.7.2002 (Exh. 14/7). From perusal of the enquiry report, it appears that the EO has not observed impartiality in weighing the evidence of management version as per MW-1, MW-2, MW-3 and of defence version as per DW-1 & DW-2 is right perspective and it appears to have presupposes guilt of the CSE on unnecessary giving much weightage to the past conduct and past punishment orders imposed upon the CSE in the year 1991 and 1992. It was none of the business of EO to consider the past record as if he was rating the disciplinary authority. The function of EO was to consider only relevant evidence and not irrelevant evidences as to past conduct and past punishment of the CSE for enquiry on to charge sheet report 30.5.2002. The EO has failed to examine both sides evidences meticulously and appears to have based findings also on hypothecation, so I find and hold the enquiry report and findings of the EO dated 3.7.2002 is pervasive.

16. Thus, as per findings to points No. (i), (ii) and (iii), the entire domestic enquiry has vitiated.

17. The first party is directed to justify its action so taken against the delinquent (Second party) by producing fresh materials and evidence before this tribunal. Next date is fixed for adducing evidence by the First party."

15. In view of the aforesaid, this Court is mindful of the fact that this being a

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petition under Article 227, the Court should not go into the findings of facts recorded by the Court. This Court under Article 227 of the Constitution of India, cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to case of grave dereliction of duties and flagrant abuse of fundamental principles of law or justice where grave injustice would be done.

16. In that view of the matter, this Court is unable to accept the submission made at bar on behalf of petitioner for holding the inquiry afresh. It is not the case of the petitioner that petitioner is likely to prejudice if the inquiry is not started afresh. Had there been the case of petitioner, the petitioner would surely demonstrate the same by leading evidence and therefore, the Court is not inclined to accept the submission of petitioner. The petition being bereft of merits, deserves rejection and is rejected accordingly. Interim relief, if any, stands vacated. There shall be no order as to costs.

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