

HIGH COURT OF GUJARAT**UNITED PHOSPHOROUS LTD***Versus***DALPATBHAI FATESINGH PATEL****Date of Decision:** 26 August 2011**Citation:** 2011 LawSuit(Guj) 1511**Hon'ble Judges:** [Ravi R Tripathi](#)**Eq. Citations:** 2012 132 FLR 144**Case Type:** Special Civil Application**Case No:** 4132 of 2011**Subject:** Labour and Industrial**Final Decision:** Petition dismissed**Advocates:** [D S Vasavada](#), [Nanavati Associates](#)**Cases Referred in (+):** 6**Ravi R. Tripathi, J.**

[1] M/s. United Phosphorous Ltd. is before this Court being aggrieved by award and order dated 6.10.2010 passed by the learned Judge of Labour Court, Bharuch in Reference (LCB) No. 260 of 2004, a copy of which is produced at Annexure-A to the petition.

The learned Judge of Labour Court No. 1 Bharuch was pleased to allow the Reference and quash the punishment of dismissal. The learned Judge was pleased to order the establishment to reinstate the respondent-workman within one month from the date of publication of the award and was also pleased to order that 30% back wages shall be paid to the respondent-workman from the date of his termination till the date of reinstatement. The learned Judge was pleased to clarify that amount, if any, paid to the respondent-workman be deducted from this amount (30% back wages) payable to the respondent-workman. The learned Judge was also pleased to order payment of ` 1,000/- towards expenses to the respondent-workman.

Learned Advocate Mr. Joshi for Nanavati Associates for the petitioner emphatically argued the matter and contended that the learned Judge has committed an error in allowing the Reference. Learned Advocate submitted that the learned Judge was pleased to hold, 'the inquiry to be legal and valid', but by the award and order under challenge, he was pleased to hold, 'finding recorded by the Inquiry Officer to be perverse'.

Learned Advocate for the petitioner submitted that in the event, the Court was to hold the findings recorded by the Inquiry Officer to be perverse, the learned Judge ought to have granted permission to the petitioner to prove the charges levelled against the respondent-workman.

Learned Advocate for the petitioner invited attention of the Court to page No. 102, para-6. It is Exh. 10-reply to the Statement of Claim of the workman. In para-6, it is stated that, 'Against second party for serious misconduct during discharge of his duties, according to the applicable Model Standing Order, charge sheet was issued and a legal, proper and in accordance with principles of natural justice, a departmental inquiry was held and at the end of the same, he was terminated, the proceedings taken against the respondent-workman are reasonable, proper and legal. Still, if the Court comes to conclusion that the departmental inquiry against the second party respondent-workman is not legal and in accordance with the principles of natural justice then in such circumstances, a reasonable and appropriate opportunity be given to the first party to prove the charges levelled against the second party respondent-workman'.

Learned Advocate for the petitioner submitted that in view of this specific contention raised in the reply to the Statement of Claim, the learned Judge of the Labour Court was under an obligation to give an opportunity to the petitioner-establishment to prove the charges levelled against the workman. In this regard, learned Advocate for the petitioner invited attention of the Court to following decisions of the Hon'ble the Apex Court in the matter of [Bharat Forge Company Ltd. v. A.B. Zodge and another](#), 1996 73 FLR 1754 [Shambhu Nath Goyal v. Bank of Baroda and others](#), 1983 47 FLR 438 [Karnataka State Road Transport Corpn. v. Lakshmiddevamma \(Smt\) and another](#), 2001 90 FLR 35 and [Uday Mohanlal Acharya v. State of Maharashtra.](#), 2001 5 SCC 453

Learned Advocate for the petitioner submitted that if an opportunity is sought for, the learned Judge is under an obligation to give such opportunity to the employer to lead evidence before the Court itself to justify the action under challenge (termination of the workman). Learned Advocate for the petitioner submitted that the contents of para-6 of the reply should be construed to mean that, 'permission

was sought for not only of the departmental inquiry being held to be illegal and violative of principles of natural justice, but also if the findings recorded in such inquiry - being integral part of the inquiry were held to be perverse'. When the Court had come to the conclusion that the findings recorded in the inquiry are perverse, the learned Judge ought to have granted an opportunity to the petitioner-establishment to lead evidence to prove the charges before the Labour Court itself.

Learned Advocate for the petitioner-establishment submitted that one of the charges levelled against the respondent-workman was that, he did not accept notice dated 17.8.2002, is proved against the present respondent-workman by examination of the witness during the inquiry proceedings. He also assailed the order qua grant of 30% back wages without giving any reasons for the same.

So far as these two contentions are concerned, the same could not be made good by the learned Advocate for the petitioner-establishment. Hence, they are not accepted.

[2] Learned Advocate Mr. D.S. Vasavada for the respondent-workman strongly contested the matter and submitted that, 'the contents of para-6 cannot be read to mean that the petitioner-establishment had asked for an opportunity to lead evidence to prove the charges levelled against the respondent-workman even if the findings were held perverse. Learned Advocate for the respondent-workman invited attention of the Court to Exh.21, a copy of which is produced at Annexure-R1, page No. 144, wherein it is specifically contended that, 'No charge levelled against me in the charge sheet is proved in the departmental inquiry, still the Inquiry Officer has given findings absolutely contrary to the evidence, which are perverse. The Inquiry Officer has wrongly interpreted the evidence led before him and on the basis of these incorrect evidence, the establishment has terminated me on 20.7.2004'.

Learned Advocate for the respondent-workman submitted that after this affidavit was filed, the petitioner-establishment cross-examined the respondent-workman at length. A copy of that cross-examination is produced at Annexure-L and typed copy at page Nos. 127 and 128. Learned Advocate for the respondent-workman invited attention of the Court to entire cross-examination and could demonstrate that in the entire cross-examination, not a word is put to the respondent-workman about the contents of Exh.21-affidavit which were relevant to the aspect of perverse findings. In Exh.21-affidavit, it is specifically mentioned that, 'the witness of the petitioner-establishment Shri Idrish Pathan has admitted in his cross-examination that one Shri Mahendrasinh Mahida had approached him for obtaining his signature, whereas the case of the petitioner-establishment was that it was the respondent-workman who had approached the co-workers for collecting

signatures'. Similarly, it is also mentioned in the affidavit that, 'statement of Shri Rajesh Pandya-second witness of petitioner-establishment is also not helpful to the petitioner-establishment inasmuch as, said Shri Rajesh Pandya has admitted in his cross-examination that Shri Mahida had come to him to obtain his signature'. It is further stated in the affidavit that, 'Another witness of the petitioner-establishment - Shri Shankarbhai Patel has admitted in his cross-examination that he has not seen anybody in person to have come to him to obtain his signature; that no paper had come to him'.

The affidavit then proceeds to state that, 'The petitioner-establishment is not able to establish the charge in the departmental proceedings. As against that, the respondent-workman had produced his statement before the Inquiry Officer and placed true facts to the effect that as the respondent-workman was connected with the Vigilance Team and as he had represented against corruption, the officers of the establishment, to save their own skin, keeping grudge, had falsely implicated the respondent-workman...

Learned Advocate for the respondent-workman relied upon a decision of the Hon'ble the Apex Court in the matter of [Shankar Chakravarti v. Britannia Biscuit Co. Ltd. and another.](#), 1979 39 FLR 70 He also relied upon a decision of this Court in the matter of [Fag Bearings India Ltd. v. K.N. Saiyed.](#), 2003 1 GLH 235

[3] Learned Advocate for the petitioner-establishment is not able to satisfy this Court as to why in cross-examination, no question was put about this material aspect of the matter. He is also not able to give any satisfactory answer as to why though the question of "perverse finding" was brought in the focus, no application seeking permission to prove the charges levelled against the respondent-workman was filed after filing of Exh. 21 and detailed cross-examination conducted on 1.8.2008 of the respondent-workman.

[4] Learned Advocate for the petitioner-establishment submitted that there is no decision of the Hon'ble the Apex Court or for that reason any other Court laying down that, 'permission is required to be sought two fold, (1) if the departmental inquiry is adjudged to be illegal and violative of principles of natural justice and (2) even when inquiry is held to be legal and valid, but the findings are held to be perverse. He submitted that therefore, permission sought for in the reply to the Statement of Claim should have been held sufficient and the learned Judge ought to have granted the same and as he has not granted the same, the award and order is required to be quashed and set aside.

[5] Taking into consideration the rival submissions made by both the learned Advocates and the decisions relied upon by them, in light of the decision of the Hon'ble the Apex Court in the matter of Shankar Chakravarti , this Court is of the opinion that the learned Judge has not committed any error which warrants an interference at the hands of this Court. Hence, the petition fails and the same is dismissed. Notice is discharged. No costs.

