

**HIGH COURT OF GUJARAT****ATUL PRODUCTS LTD***Versus***SUMANBHAI MAGANBHAI PATEL****Date of Decision:** 05 March 2013**Citation:** 2013 LawSuit(Guj) 256**Hon'ble Judges:** [K S Jhaveri](#)**Case Type:** Special Civil Application**Case No:** 6198 of 2002**Subject:** Constitution, Labour and Industrial**Acts Referred:**[Constitution Of India Art 227, Art 226](#)[Industrial Disputes Act, 1947 Sec 32\(2\)\(b\), Sec 10](#)**Final Decision:** Petition allowed**Advocates:** [B M Mangukiya](#), [Keyur Gandhi](#), [Nanavati Associates](#)**Cases Referred in (+): 5****K. S. Jhaveri, J.**

**[1]** By way of present petition under Articles 226 and 227 of the Constitution of India, the petitioner has inter alia prayed to quash and set aside the judgment and award dated April 30, 2002 passed by the Labour Court, Valsad in Reference (LCV) No.1778 of 1990, whereby the Labour Court directed the petitioner to reinstate the respondent-workman on his original post with effect from May 20, 1986 along with full back wages.

**[2]** The facts of the case in brief are that in pursuance of a murder case registered against the respondent and other eight workmen, who were co-accused, the petitioner-Company had lost confidence against the respondent and the said other workmen of the petitioner-Company. The petitioner-Company recorded the statement of the eye-witness to the said incident of murder and after recording its findings, ultimately discharged the respondent along with other workmen involved in the said incident vide discharge order dated May 20, 1986 along with notice pay. The petitioner-Company

also paid retrenchment compensation to the respondent and others, although they were not entitled to. At the end of the trial of the said criminal case, out of total nine accused, five accused were found guilty and four accused including the respondent were acquitted for want of evidence vide order dated May 11, 1988. Thereafter, the petitioner filed a criminal appeal before this Court, which ultimately came to be dismissed. Meanwhile, the respondent had raised an industrial dispute on the ground that the petitioner-Company discharged him from his services in complete breach of the provisions of the Industrial Disputes Act. The dispute was numbered as Reference (LCV) No.1778 of 1990 and it was decided by way of the impugned judgment and award. Being aggrieved by the same, the present petition has been preferred.

**[3]** Having considered the contentions raised by the learned advocates for the respective parties, averments made in the petition and the documentary evidence produced on record, it transpires that it is the main contention canvassed by the learned counsel for the petitioner that though the petitioner-Company had in the very written statement filed on behalf of the petitioner-Company in paragraph 17 had categorically contended that per chance, the Court comes to the conclusion that the order passed is punitive, the petitioner-Company be given the opportunity to lead evidence and prove the circumstances discharging the respondent-workman, the Labour Court failed to appreciate the said aspect and did not permit the petitioner to lead any evidence at any stage of the proceedings before the Labour Court.

**[4]** It would be profitable to quote relevant part of the said paragraph 17 of the written statement filed by the petitioner before the Labour Court as under :

17. ... .. However, the company begs to submit that per chance the Hon'ble Court comes to the conclusion that the order passed is punitive the company be given the opportunity to lead evidence and prove the circumstances discharging the workman concerned.

4. In support of his said argument, Mr.Gandhi, learned counsel appearing on behalf of Nanavati Associates for the petitioner, relied upon a decision of the Apex Court in the case of [Karnataka State Road Transport Corpn. v. Lakshmidamma \(SMT\) and another](#), 2001 5 SCC 433, whereby the Apex Court held that the Industrial Court can require or direct the parties to lead additional evidence at any stage before closure of the proceedings if on facts and circumstances deemed just and necessary in the interest of justice. It is also held by the Apex Court that the employer has right to lead additional evidence in the proceedings under section 10 or 32(2)(b) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') when he files his statement of claim or makes an application for permission to

take certain action or for approval of the action taken by him. Thus, it is not a right but a procedure laid down by the Apex Court.

**[5]** Further, Mr.Gandhi has also relied upon a decision of this Court in the case of [Beek & Co. India Ltd., Ankleshwar v. S.J. Mehta](#), 1999 1 GLH 712, whereby the Apex Court held that in the event a reference is made to the Labour Court challenging the order of termination, the management gets a right to justify the order. It is further held that the Labour Court not only can examine the fairness of the enquiry but also can give an employer an opportunity to lead evidence even where no enquiry is held.

**[6]** It is pertinent to note here that in the present case also, no enquiry was conducted by the petitioner-Company and the respondent was discharged simpliciter. Further, the petitioner had also raised a contention before the Labour Court in its written statement as quoted hereinabove. In that view of the matter and in light of the aforesaid decisions of the Apex Court, it clearly transpires that the Labour Court has committed an error in not requiring or directing the petitioner to lead additional evidence when no such enquiry was conducted by the petitioner. Mr.Mangukia, learned counsel for the respondent, though has supported the impugned judgment and award, has failed to point out any decision contrary to the aforesaid decisions of the Apex Court. In that view of the matter, following the decisions of the Apex Court, I am of the opinion that the Labour Court has committed grave error in passing the impugned judgment and award. Hence, the matter is required to be remanded by setting aside the impugned judgment and award.

**[7]** Insofar as granting of back wages is concerned, the Labour Court shall take into consideration the decisions of the Apex Court rendered in the case of [Ram Ashrey Singh v. Ram Bux Singh](#), 2003 2 LLJ 176 as well as a decision in the case of [General Manager Haryana Roadways v. Rudhan Singh](#), 2005 5 SCC 591 and also a decision of the Apex Court in the case of [Novartis India Limited v. State of West Bengal and others](#), 2009 3 SCC 124.

**[8]** For the foregoing reasons and in light of the above cited decisions, present petition is hereby partly allowed. The impugned judgment and award passed by Labour Court is quashed and set aside. The matter is remanded to the concerned Labour Court for deciding the same afresh in light of the above cited decisions after allowing the petitioner-Company to lead additional evidence. It is, however, clarified that this Court has not expressed any opinion on the merits of the matter. Rule is made absolute to the aforesaid extent with no order as to costs.

**[9]** It is clarified that during the course of hearing, the petitioner had also offered a lump sum compensation of Rs.8,00,000/- (Rupees Eight Lakh only) to the respondent

in lieu of the judgment and award passed by the Labour Court, which was refused by the learned counsel for the respondent at the instructions of the respondent. In that view of the matter, it will be open to the respondent to accept the offer of the petitioner if he so desires, and if such offer is accepted by the respondent, then the Labour Court shall dispose of the Reference in light of such full and final settlement, since it would be difficult to get the evidence produced on record after a period of more than two decades.

