HIGH COURT OF GUJARAT

LUPIN LTD THROU GENERAL MANAGER
Versus
MELSINGH BHAGVANSINH PARMAR

Date of Decision: 11 April 2022

Citation: 2022 LawSuit(Guj) 3048

Hon'ble Judges: A S Supehia

Eq. Citations: 2023 1 GLR 499, 2022 3 GLH 213, 2022 LLR 609

Case Type: Special Civil Application

Case No: 20331 of 2018

Subject: Labour And Industrial

Acts Referred:
Industrial Disputes Act, 1947 Sec 11A

Final Decision: Petition allowed

Advocates: D J Bhatt, Nanavati Associates, Harshad J Shah

Cases Referred in (+): **10**

A.S. Supehia, J.

[1] In the present writ petition, the petitioner-Company has assailed the Award dated 05.09.2018 passed by the Presiding Officer, Labour Court, Bharuch below Exh.76 in Reference (LCB) No. 226 of 2005 (published on 10.10.2018); wherein and whereby, the Labour Court has set aside the punishment of dismissal imposed upon the respondent-workman and has directed reinstatement with 100% back wages.

FACTS

[2] The petitioner-Company is engaged in production of various pharmaceutical products, medicines and formulations and having its office at the address mentioned in the cause title of the memo of the present petition.

2.1 The respondent-workman was appointed as a Helper in the plant of petitioner-Company and thereafter he was confirmed as a helper in the Production Department on 01.04.1989. On 10.10.2004, the respondent No.1 was working in the afternoon shift from 3:00 pm to 11:00 pm and he sought permission to leave the office early around 9:00 pm. While leaving from the office premises on his motorcycle, the security guard checked the respondent-workman as per regular procedure. On checking, a packet of white powder was found under the seat cover of the motorcycle of the workman. Later, it was discovered that the said powder was 7-ACCA powder manufactured by the petitioner-Company. The quantity of powder found from the workman was 50 grms. and price of the same was approx Rs.400/-. The said powder was not regularly available in the market and is used in manufacturing of life-saving drugs by the petitioner-Company. The bag of white powder was sealed by the security officers present on the site. Subsequently, on 11.10.2004, the same was sent for testing in the laboratory. The report of laboratory confirmed that the white powder was 7-ACCA powder manufactured by the petitionerCompany.

2.2.On 26.10.2004, the respondent-workman was suspended from the service by an order dated 26.10.2004 pending inquiry. On 06.11.2004, the petitioner was issued a show-cause notice cum charge-sheet for unauthorized possession of the white powder and theft, which amounted to violation of various misconducts enumerated in clause No.24 of the Model Standing Order. The respondent-workman replied to the same vide his reply dated 13.11.2004 denying the charge of possession of the unauthorized white powder.

2.3.The petitioner-Company issued a letter dated 22.11.2004 to the respondent-workman informing him that it had decided to conduct an inquiry and accordingly, appointed the Inquiry Officer.

2.4.The inquiry officer, after considering all the evidences, came to a conclusion that the charges levelled against the respondent-workman are proved. The inquiry officer presented a detailed inquiry report dated 09.03.2005 to the petitioner-Company. Pursuant to the aforesaid findings of the inquiry officer, the petitioner issued a second show-cause notice dated 01.04.2005 to the respondent-workman, calling upon him as to why he should not be dismissed from service and sought written explanation from the respondent-workman in this regard. After considering the reply of the respondent-workman, he was dismissed from service vide order dated 23.04.2005, after being paid his terminal benefits.

2.5.The respondent-workman raised an industrial dispute, which culminated in Reference (LCB) No.226 of 2005. The Labour Court vide award dated 05.09.2018

allowed the Reference of the respondent-workman and directed the petitioner to reinstate the respondent-workman in service at his original post and also to make payment of 100% back wages with continuity of service purportedly exercising powers under Section 11A of the I.D. Act.

SUBMISSIONS

[3] Learned advocate Mr.D.J.Bhatt appearing for the petitioner has submitted that the Court has failed to appreciate that vide order dated 19.08.2017, it was held that the inquiry conducted by the petitioner-Company was legal and valid and it is settled principle of law that the Labour Court/Industrial Tribunal should not ordinarily interfere with the findings of the inquiry officer, when the inquiry is held to be valid and legal. He has submitted that the finding of the Labour Court that the punishment imposed on the respondent-workman is apparently excessive is erroneous since a serious charge of theft has been proved against the respondent-workman. It is submitted that in light of the proved charge of theft of powder, the petitioner-Company was bound to lose confidence in the respondent-workman and deserved to be dismissed from the service. It is submitted that the Labour Court has failed to appreciate the settled position of law that in the event of serious misconducts like theft, the quantum of amount is not important but what is important, is the loss of confidence by an employer in the employee. It is submitted that the Labour Court has erred in not appreciating the settled principle of law that in the event of serious misconduct by the employee, if it is proved, the power should not be exercised upon the employee and while exercising powers under Section 11A of the I.D. Act, the Labour Court cannot interfere with the findings of the fact arrived at during the course of inquiry unless the findings are perverse.

3.1 It is submitted by the learned advocate Mr.Bhatt that the Labour Court cannot re-appreciate the evidence once the inquiry was held to be a legal and proper and as it is apparent from the impugned award, the Labour Court has ventured into re-appreciation of the evidence, which was the part of inquiry proceedings and has ignored the fact that during the cross-examination, the respondent-workman has admitted to committing theft. He has submitted that in the impugned award, the Labour Court while re-appreciating the evidence has observed that the charge-sheet nowhere depicts from which part of the rainy seat cover, the alleged prohibited powder was found by the security guard and inquiry papers nowhere reveals that from where the respondent-workman availed the alleged white powder. Moreover, from the papers of the inquiry proceedings, it transpires that only lump sum measurement was mentioned in the record and there is no evidence that the alleged powder was measured on machine by the petitioner. It is submitted that the Labour Court has further erroneously observed that even there is no record,

which shows that how much quantity of powder was extracted by the manager of quality control laboratory and analysis of the alleged powder was not done in presence of the respondent-workman. It is submitted that the Labour Court has further fell in error in observing that in absence of an F.I.R., it could not be believed that the alleged prohibitory powder was the theft material and the same was worth of Rs.400/- as alleged in the charge-sheet. Thus, Mr.Bhatt has submitted that the Labour Court has applied the principles of evidence that are applicable to a criminal trial and not to a disciplinary proceedings. It is submitted that the Labour Court has completely failed to appreciate that the standard of proof that is required to be considered in a criminal trial and in the disciplinary proceedings are completely different. He has submitted that in a criminal trial, the charge in case has to be proved beyond reasonable doubt, while in the case of departmental proceedings, the standard of proof is based on preponderance of probability.

3.2 Learned advocate Mr.Bhatt has submitted that the Labour Court has failed to appreciate that any misconduct of theft on part of the concerned workman, which is likely to cause financial loss to the company is serious misconduct and punishment of dismissal is appropriate in facts of such case. He has submitted that even assuming but not conceding that the Labour Court could have examined the findings of the inquiry in the present set of facts and the Labour Court has erred in holding that the inquiry officer ought to have weighed evidence appropriately and the inquiry officer had not performed his duties upto the mark. It is submitted that the respondent-workman was granted opportunity to cross-examine the witnesses of the petitioner and was provided copy of the documents that were produced by the petitioner and was also given opportunity to present his witnesses, which he did not. It is submitted that the Labour Court, after considering the evidence laid down in the inquiry proceedings by the petitioner at length, has held that the inquiry held is valid and hence, the Labour Court could not have held that there is violation of principles of natural justice and the findings given by the inquiry officer is noting but colourable exercise of power.

3.3 Learned advocate Mr.Bhatt has further submitted that the Labour Court has awarded 100% back wages to the respondent-workman along with reinstatement. It is submitted that the Labour Court has awarded the said back wages mechanically without assigning any reasons in support of the same. Finally, it is submitted that in view of the aforesaid reasons, the present writ petition may be allowed.

[4] In support of his case, learned Advocate Mr.Bhatt has placed reliance on the judgements of the Apex Court in the cases of Divisional controller, N.E.K.R.T.C. Vs. H.

Amaresh,2006 AIR(SCW) 370 and A.P.SRTC Vs. Raghuda Siva Sankar Prasad, 2007 1 SCC 222.

4.1 In response to the above, learned advocate Mr.Harshad Shah appearing for the respondent-workman has submitted that the award passed by the Labour Court does not require any interference since the same is well reasoned and does not suffer from any illegality or perversity.

4.2 While supporting the findings of the Labour Court, he has submitted that on perusal of Section 11 of the I.D. Act, it is the employer, who has the burden to prove the misconduct of the workman however, the petitioner-Company has not produced any documentary evidence to show that it has suffered financial loss at the time of incident i.e. 10.10.2004 and the white powder was part of the product of the petitioner-Company and the powder weighed 50 grms. in its total calculation and is a prohibitory product.

4.3 Learned advocate Mr.Shah has further submitted that the Labour Court has precisely held that the extraction of the sample powder does not mention the quantity of the powder taken by the laboratory manager in quality control department of the petitioner-Company and the sample was in fact the same. It is submitted that the Labour Court has also considered that the two security guards, who were examined in the inquiry have submitted that they had neither seen any unusual activities on that day nor the respondent-workman was doing any unusual activity.

4.4 Learned advocate Mr.Shah has submitted that the the Labour Court has precisely appreciated that the charge-sheet nowhere depicts that from which part of the rainy seat cover, the alleged prohibited powder was found by the guard-Brijkishor Sharma. It is submitted that the petitioner has not lodged any F.I.R. for theft against the respondent-workman, hence the charge cannot be believed. It is submitted by him that the Labour Court has accurately concluded that the inquiry officer has not performed his duties upto the mark as per the principles of natural justice and hence, the writ petition may be rejected.

CONCLUSION

[5] The fact with regard to the holding of the departmental inquiry against the respondent workman is not in dispute. The respondent-Workman, after holding a regular departmental inquiry, was dismissed from service vide order dated 23.04.2005 for the proved charge of committing theft of 50 Grms. of 7-ACCA powder manufactured by the petitioner-Company. The said powder is a life saving drug, which is not freely available in the market. It is also not in dispute that vide order dated 19.08.2017 the

Labour Court has held the departmental inquiry as legal and valid. The Labour Court has set aside the punishment of dismissal and has directed the petitioner-Company to reinstate the respondent-workman with 100% back wages.

[6] This Court has perused the impugned award threadbare. The documents as produced on record are also perused. The petitioner-Company was working in the plant at drier and packing department. A perusal of the departmental proceedings reveal that the workman has admitted that he had left his shift at night at 9:00 p.m. on 10.10.2004, though his duty was not over. He has also admitted that 7-ACCA powder was found from the seat cover of his motorcycle. He was also shown the documents of laboratory test Exh.12 and 12-A (of the departmental proceedings).

[7] It is interesting to note that the Labour Court has reduced itself to an investigating authority, while conducting the reference proceedings. The findings, which are recorded in the impugned award, depict that the Labour Court has set aside the punishment order as if it was doing the investigation in a criminal offence. The following irrelevant factors have weighed upon the Labour Court for setting aside the punishment order:

a) The petitioner-Company has not produced any documentary evidence that it suffered financial loss;

b) Nowhere documentary evidence has been shown that 50 Grm. powder was part of the product of the petitioner-Company and it is a prohibitory article since no Government notification is produced to establish;

c) No statistical data is produced, which may show that the petitioner-Company has suffered loss of 50 Grms of 7-ACCA powder, and the powder was not measured in a weighing machine;

d) Though sealing and unsealing was carried out in presence of the respondent-workman, however, the analysis of the produce was not carried out in presence of the respondentworkman;

e) The extraction of the sample powder does not mention the quantity of the powder taken by Mr.Notin Farasrami, who is the laboratory manager in quality control department of the petitioner-Company;

f) The charge-sheet nowhere depicts that from which part of the rainy seat cover, the alleged prohibited powder was found by the guard-Brijkishor Sharma;

g) No FIR has been lodged against the respondent-workman;

h) The Inquiry Officer has not performed the duties upto his mark;

i) The punishment is excessive and harsh;

j) The respondent-workman is not an habitual offender;

[8] The aforementioned facts reveal that the Labour Court has stepped in the shoes of the inquiry officer and has also acted beyond its authority also.

[9] The Apex Court in the following judgments has enunciated the principles of law with regard to the interference with the punishment imposed on an employee. In the case of A.P. SRTC v. Raghuda Siva Sankar Prasad, 2007 1 SCC 222, it is held thus:

> **"19**. The learned Single Judge considered the past conduct of the delinquent employee as one of the grounds in taking a lenient view. In our view, past conduct of workman is not relevant in departmental proceedings. Likewise, the learned Single Judge has erred in holding that the workman did not involve in any misconduct of theft during his past services and on that ground, granted reinstatement with continuity of service.
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> **18**. The enquiry reports also clearly reveal that the departmental enquiry was conducted after giving fair and reasonable opportunity to the delinquent official, after following the procedure and as per the Regulations.
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> **17**.
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> **15**. We have carefully considered the rival submissions and perused the orders passed by the Labour Court and of the High Court and other annexures. In our opinion, the High Court has failed to appreciate that the delinquent employee categorically admitted that he had stolen the property of the Corporation. The Labour Court, on a careful perusal of the evidence, rightly ordered removal of the respondent from service. When the delinquent employee admitted his guilt before the enquiry officer that he had handed over the alternator from pan shop to the police authorities and further deposed that he had handed over the stolen property and requested the Labour Court to excuse him since it was his first offence, the Tribunal rightly set aside the request by taking into consideration the entire factual circumstances on record and after careful examination of the same and held that the delinquent employee does not deserve any sympathy and therefore he ordered removal from service.
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> **22**. It is also not open to the tribunal and courts to substitute their subjective opinion in place of the one arrived at the domestic tribunal. In the instant case, the opinion arrived at by the Corporation was rightly accepted by the Tribunal but not by the Court. We, therefore, hold that the order of reinstatement passed by the

Single Judge and the Division Bench of the High Court is contrary to the law on the basis of a catena of decisions of this Court. In such cases, there is no place for generosity or sympathy on the part of the judicial forums for interfering with the quantum of punishment of removal which cannot be justified. Similarly, the High Court can modify the punishment in exercise of its jurisdiction under Article 226 of the Constitution only when it finds that the punishment imposed is shockingly disproportionate to the charges proved.

23. Interfering therefore with the quantum of punishment of the respondent herein, is not called for. In our opinion, the respondent has no legal right to continue in the Corporation. As held by this Court, in a catena of judgments that the loss of confidence occupies the primary factor and not the amount of money and that sympathy and generosity cannot be a factor which is permissible in law in such matters. When the employee is found guilty of theft, there is nothing wrong in the Corporation losing confidence or faith in such an employee and awarding punishment of removal. In such cases, there is no place of generosity or place of sympathy on the part of the judicial forums and interfering with the quantum of the punishment."

[10] In the case of Bharat Heavy Electricals Ltd. v. M. Chandrasekhar Reddy, 2005 2 SCC 481, it is held thus:

"24. In CMC Hospital Employees' Union [Christian Medical College Hospital Employees Union v. Christian Medical College Vellore Assn., 1987 4 SCC 691: 1988 SCC (L&S) 53] this Court held: (SCC p. 708, para 14)

"Section 11-A .... cannot be considered as conferring an arbitrary power on the Industrial Tribunal or the Labour Court. The power under Section 11-A of the Act has to be exercised judicially and the Industrial Tribunal or the Labour Court is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that the punishment imposed by the management is highly disproportionate to the degree of guilt of the workman concerned. The Industrial Tribunal or the Labour Court has to give reasons for its decision."

23. With reference to Section 11-A of the Act, in the case of Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd., 1973 1 SCC 813 : 1973 SCC (L&S) 341 this Court held:

Once the misconduct is proved, the Tribunal had to sustain the order of punishment unless it was harsh, indicating victimisation. [SCC pp. 828-29, para 32(9)] "If a proper enquiry is conducted by an employer and a correct finding arrived at regarding the misconduct, the Tribunal, even though it has now power to differ

from the conclusions arrived at by the management, will have to give very cogent reasons for not accepting the view of the employer." (SCC p. 835, para 53)

22. In U.P. SRTC, 2000 9 SCC 521 : 2001 SCC (L&S) 109 this Court held: (SCC p. 524, para 8)

"The employee has been found to be guilty of misappropriation and in such an event if the appellant Corporation loses its confidence vis-à-vis the employee it will be neither proper nor fair on the part of the Court to substitute the finding and confidence of the employer with that of its own by allowing reinstatement. The misconduct stands proved and in such a situation by reason of the gravity of the offence the Labour Court cannot exercise its discretion and alter the punishment."

21. In Janatha Bazar (South Kanara), 2000 7 SCC 517 : 2000 SCC (L&S) 962 this Court held: (SCC pp. 520-21, paras 6 & 8)

"Once an act of misappropriation is proved, maybe for a small or large amount, there is no question of showing uncalled-for sympathy and reinstating the employees in service. Law on this point is well settled.

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In case of proved misappropriation, in our view, there is no question of considering past [service] record. It is the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases."

20. In Francis Klein & Co. (P) Ltd., 1972 4 SCC 569 this Court held: (SCC pp. 573-74, para 3)

"In our view when an employer loses confidence in his employee, particularly in respect of a person who is discharging an office of trust and confidence, there can be no justification for directing his reinstatement.

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Even this direction is not a valid direction because if once the company has lost confidence in its employee it is idle to ask them to employ such a person in another job. What job can there be in a company which a person can be entrusted with and which does not entail reposing of confidence in that person."

19. The learned counsel for the appellant has rightly relied upon the decisions of this Court in support of her argument. In Air India Corpn., 1972 1 SCC 814 this

Court held with reference to loss of confidence as follows: (SCC p. 825, para 16)

"Once bona fide loss of confidence is affirmed the impugned order must be considered to be immune from challenge."

18. In our opinion by no stretch of imagination either the extenuating circumstances recorded by the Labour Court or the exercise of its discretion could be termed either as reasonable or judicious. In our opinion even the learned Single Judge and the Division Bench erroneously held that the Labour Court had unlimited jurisdiction under Section 11-A of the Act. It is because of the above erroneous legal foundation as to the vastness of power vested with the Labour Court that the High Court accepted the interference by the Labour Court in the award of punishment. Thus, the Labour Court as well as the High Court fell in error in granting the relief to the respondent which is challenged in this petition."

[11] In a recent decision The Apex Court in the case of Standard Chartered Bank Versus R.C.Srivastava, 2021 AIR(SC) 4879, has reiterated thus:

"18 In the instant case, after we have gone through the record, we find that the Tribunal has converted itself into a Court of Appeal as an appellate authority and has exceeded its jurisdiction while appreciating the finding recorded in the course of domestic enquiry and tested on the broad principles of charge to be proved beyond reasonable doubt which is a test in the criminal justice system and has completely forgotten the fact that the domestic enquiry is to be tested on the principles of preponderance of probabilities and if a piece of evidence is on record which could support the charge which has been levelled against the delinquent unless it is per se unsustainable or perverse, ordinarily is not to be interfered by the Tribunal, more so when the domestic enquiry has been held to be fair and proper and, in our view, the Tribunal has completely overlooked and exceeded its jurisdiction while interfering with the finding recorded during the course of enquiry in furtherance of which, the respondent was dismissed from service and the High Court has also committed a manifest error while passing the judgment impugned."

[12] The Apex Court has thus, held that there can be no justification of directing reinstatement when an employer loses confidence in his employee, particularly in respect of a person who is discharging an office of trust and confidence and the Court cannot substitute the findings of the employer with that of its own by allowing reinstatement when the misconduct stands proved and in such a situation, by reason of the gravity of the offence, the Courts cannot exercise its discretion and alter the punishment and substitute their subjective opinion in place of the one arrived at the domestic tribunal. It is also held that the past conduct of the workman is also not

relevant in the departmental proceedings. The crux of the aforementioned observations of the Supreme Court is that the Labour Court/Tribunal, while exercising the powers under section 11-A of the I.D.Act, cannot interfere with the punishment order if the departmental inquiry is fair and proper. It is held that the finding recorded in the domestic enquiry is to be tested on the principles of preponderance of probabilities and if a piece of evidence is on record which could support the charge which has been levelled against the delinquent the punishment cannot be interfered with.

[13] In the present case, the respondent-workman was discharging his duties as a packer of the drug in the Packing Department, which is an office of trust and confidence in the petitioner-Company, which is manufacturing life saving drugs. The petitioner-Company had lost confidence in him when he was caught stealing the powder (drug) of the petitioner-Company. Departmental proceedings are declared legal and valid. In wake of such aspects it was not open for the Labour Court to interfere with the findings of the departmental inquiry and substitute such findings by its own and thereafter set aside the punishment order of dismissal, while exercising powers under Section 11-A of the I.D.Act that too in an absolute wayward manner. Looking to the proved serious misconduct, it cannot be said that the punishment of dismissal is shocking or disproportionate which shake the conscience of the Court.

[14] On the substratum of the foregoing analysis and observations, the writ petition succeeds. The impugned award dated 05.09.2018 passed by the Presiding Officer, Labour Court, Bharuch below Exh.76 in Reference (LCB) No. 226 of 2005 (published on 10.10.2018) is quashed and set aside. Rule made absolute.