



**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 12366 of 2014**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MRS. JUSTICE MAUNA M. BHATT**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	<b>No</b>
2	To be referred to the Reporter or not ?	<b>No</b>
3	Whether their Lordships wish to see the fair copy of the judgment ?	<b>No</b>
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	<b>No</b>

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**EXECUTIVE ENGINEER - UTTAR GUJARAT VIJ COMPANY LTD**

Versus

**PATEL RASIKBHAI RANGABHAI & ANR.**

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Appearance:

MR SP HASURKAR(345) for the Petitioner(s) No. 1

MR MANISH S SHAH(5859) for the Respondent(s) No. 1

RULE SERVED for the Respondent(s) No. 2

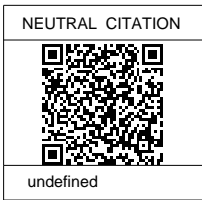
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**CORAM:HONOURABLE MRS. JUSTICE MAUNA M. BHATT**

**Date : 01/04/2024**

**ORAL JUDGMENT**

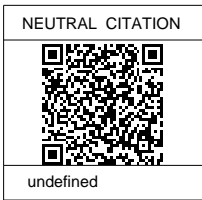
**1. Employer – Company has filed this petition challenging**



the award dated 01.05.2014 of Labour Court-Himmatnagar, in Reference (LCH) No.11 of 2012 wherein the petitioner was directed to reinstate the workman with continuity and without backwages.

2. Facts in brief as referred in the petition are as under:

2.1. Respondent No.1 – workman had joined the services with petitioner – Company as Apprentice lineman w.e.f. 04.01.1990. After appointment, he was transferred to various places. On 15.07.2008, he was served with the show-cause notice. Pursuant to the charge-sheet, the departmental inquiry was initiated and upon conclusion of the inquiry and upon charges being proved, the order dated 02.09.2008 terminating the service of the respondent – workman was passed. Against the order of termination dated 02.09.2008, the respondent – workman preferred departmental First Appeal which came to be rejected on 06.11.2009. Against the order of rejection of appeal dated 06.11.2009, the workman preferred Second Appeal, wherein the order dated 02.09.2008 was confirmed by order dated 22.11.2010. Against order dated 02.09.2008 and 22.11.2010, a mercy petition was preferred before the higher authority of the petitioner – company wherein the authority directed to conduct de-novo departmental inquiry. Pursuant to the order of Managing Director of petitioner-Company,

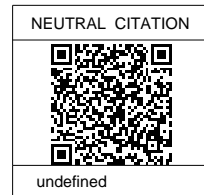


appointment of inquiry officer was done, wherein in de-novo inquiry, the inquiry officer held the workman guilty for charges No.1, 3 and 8. Thereafter, the order of termination dated 11.11.2011 was passed, aggrieved by the order of termination dated 11.11.2011, the respondent raised dispute before Labour Court, Himmatnagar registered as Reference (LCH) Case No.11 of 2012. The Labour Court, Himmatnagar upon adjudication directed the petitioner to reinstate the workman with continuity of service and without backwages, aggrieved by which, employer has filed petition is filed.

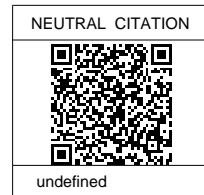
3. Heard Mr.S.P.Hasurkar, learned advocate for the petitioner and Mr. Manish Shah, learned advocate for the respondent – workman.

4. Mr. Hasurkar, learned advocate for the petitioner – Company submitted that the award of the Labour Court dated 01.05.2014 in Reference (LCH) No.11 of 2012 is erroneous on the following grounds:

4.1. That the provisions of Section 11A of the Industrial Disputes Act (“the Act” for short) is to be invoked only in cases where the principles of natural justice are not followed. In this case, the inquiry proceedings were conducted after following the principles of natural justice and, therefore, the



award of the Labour Court is erroneous. The Labour Court has erred by observing that the quantum of punishment is disproportionate. Section 11 A of the Act is to be invoked in the circumstances referred therein. In this case, all the conditions stipulated in Section 11 A are not fulfilled and, therefore, the interference by the Labour Court is erroneous. The finding of the Labour Court that only one charge is proved, is incorrect. On the contrary, all the charges levelled against the workman are proved and, therefore, the award is factually incorrect. Even the past record of the respondent workman is also to be seen and where the Labour Court has recorded that no past record was produced which is factually incorrect. The petitioner – Company had produced past record which the Labour Court has erred in not considering even the past complaints were also not considered and, therefore, there is a factual error in the findings recorded by the Labour Court which deserves interference of this Court. Learned advocate mainly relying upon the inquiry proceedings and the findings recorded has submitted that as there were discrepancies with regard to maintaining the record of the Corporation in relation to the amount received from the customers, the charges being serious in nature, the award of the Labour Court reducing the penalty, is erroneous. He thus, submitted that the award of the Labour Court being erroneous deserves interference of this Court and the order deserves to be quashed and set aside.



5. On the other hand, Mr. Manish Shah, learned advocate for the respondent – workman submitted that award of the Labour Court granting reinstatement with continuity is appropriate and no interference is called for. In relation to backwages, learned advocate submitted that for non-grant of backwages, a petition is filed being Special Civil Application No. 9724 of 2016. On the aspect of reinstatement with continuity, learned advocate submitted that the Labour Court interfered with the order of termination mainly on the ground that the punishment is disproportionate by invoking powers under Section 11A of the Act. Inviting attention of this Court to the inquiry report, learned advocate submitted that in the report it was held that the consumer of the Electricity Company had not complained. On the contrary, they have stated that they have received the money back and thus, there is no loss caused to the petitioner – Company. So far as the charges levelled Nos. 1, 3 and 8 are concerned, they are held to be proved. The charges levelled with the amount received from the customer and not deposited with the Corporation being not proved, it is not a case of loss caused to the Company. Further, the allegation of damage caused to the property of the Company is also not proved. Most importantly, the register maintained by the Company was examined and in the said register almost 90% entries were not made and, therefore, the inquiry officer recorded that it is a



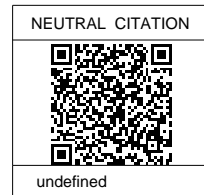
case of irregularity in maintaining the register and, therefore, the Labour Court held that after rendering 28 years of service, only on the ground of irregularity of maintaining the register, the punishment of dismissal is too harsh. Learned advocate thus, submitted that since only the charge with regard to irregularity in maintaining the register being proved and the charge being not so serious, no interference is called in the award granting reinstatement with continuity. He, thus submitted that Special Civil Application No.12366 of 2014 may be dismissed.

5.1. In support of his submissions, learned advocate relied upon following decisions:

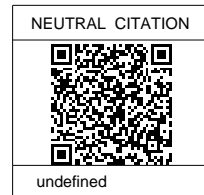
(a) *Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors.* reported in **2013 AIR SCW 5330.**

(b) *M.Gowrishankar vs. Deputy General Manager (SME), State bank of India and Ors.* reported in **2022 SCC Online Mad.1332.**

6. Considered the submissions and the decisions relied upon. Revisitation of facts reveal that the Labour Court has recorded that it interfered with the quantum of punishment by invoking of powers under Section 11A of the Act. The Labour Court is



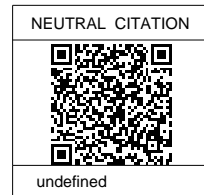
of the opinion that considering the charges proved against the respondent – workman, the punishment awarded of dismissal from service is too harsh. It is also noticed that the charges proved are only of leaving the place without prior permission of the superior, causing damage to the property of the Company and on account of negligent action loss had caused to the Company. Out of the three charges which are held to be proved by the inquiry officer as recorded by the Labour Court, it is noticed that no complain was lodge by the customers that they suffered loss on account of negligent action on the part of respondent – workman. In the inquiry officer’s report, there is no specific mention with regard to the quantum of loss or damage suffered by the Company. The only charge which held to be proved that on account of negligent action there was delay in depositing the amount received from the customer. However, it is on record that subsequently the said amount paid back to the customer, thus, there is no action which has caused loss to the Company. The contention of learned advocate for the petitioner that the award can only be interfered when all the requirement as stipulated in Section 11A are fulfilled does not merit acceptance because in this case, the Labour Court is of the opinion that it is a case of disproportionate punishment awarded to the workman for the misconduct held to be proved. Once the Labour Court is of the opinion that the



punishment awarded is disproportionate it has rightly invoked its jurisdiction under Section 11A which has been appropriately done in the present case particularly, when there is no loss caused to the Company. The only charge which proved is leaving the place without prior permission of the superior and disobeying of notifications and circulars of the Company.

7. In the opinion of this Court when the charges of serious nature are not proved, the punishment awarded by the petitioner Company is rightly held to be disproportionate and the Labour Court has therefore, correctly invoked Section 11 A of the Act. Further, it cannot be ignored that against the order of inquiry officer the respondent workman preferred appeal which was rejected on 06.11.2009. Against order of appellate authority, second appeal was preferred which also came to be rejected by order dated 22.11.2010. Against the order of 02.09.2008 and 22.11.2010, a mercy petition was preferred which came to be allowed and the authority of the Company directed de-novo inquiry. Once the de-novo inquiry was directed, the reliance placed by the learned advocate for the petitioner on the past inquiry officer's report is of no consequence. Upon de-novo inquiry, the charges No.1, 3 and 8 were held to be proved by order dated 10.07.2011. Charge No.1 refers to leaving the place without prior permission, Charge No.3 refers to not obeying the superiors order and

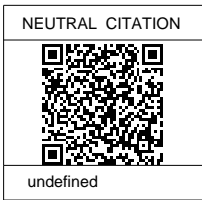




Charge No.8 refers to loss caused to the Company. All three charges are in the opinion of this Court are not of a serious nature, when no reference was made, particularly, in relation to the amount of loss caused to the Company. Therefore, in the opinion of this Court, the award of the Labour Court being appropriate, no interference is called for with regard to reinstatement with continuity.

8. The decision relied upon by learned advocate for the workman, would not be applicable in the facts of this case, because in the said decision the legality and validity of the inquiry proceedings was the subject matter of challenge. In the present case, the workman has not challenged the inquiry proceedings and he has accepted the inquiry initiated by Company. Further, in the decision of the Hon'ble Supreme in the case of *Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and Ors. (supra)*, it was held that the denial of full backwages is justified when the inquiry is found valid.

9. In the present case, the inquiry was held to be valid and there is no denial to the fact that the charges levelled as charge Nos.1, 3 and 8 are held to be proved. The Labour Court only interfered with regard to the quantum of punishment being disproportionate to the misconduct and,



therefore, in the opinion of this Court, no interference is required with regard to the payment of wages. Therefore, the petition filed by petitioner – Company is rejected and award of the Labour Court dated 01.05.2014 directing reinstatement with continuity is confirmed.

10. In relation to back wages not awarded to the respondent-workman, Learned Advocate for the respondent submitted that he is not pressing the same at this stage. Therefore, the issue of non-grant of back wages to the workman is not considered. The award of the Labour Court is confirmed.

11. Rule discharged.

**(MAUNA M. BHATT,J)**

NAIR SMITA V.