IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/LETTERS PATENT APPEAL NO. 414 of 2024
In
R/SPECIAL CIVIL APPLICATION NO. 7556 of 2023
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2024
In R/LETTERS PATENT APPEAL NO. 414 of 2024
With
R/LETTERS PATENT APPEAL NO. 415 of 2024
In
R/SPECIAL CIVIL APPLICATION NO. 2686 of 2023
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2024
In R/LETTERS PATENT APPEAL NO. 415 of 2024
In
R/SPECIAL CIVIL APPLICATION NO. 2686 of 2023

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RAJKOT MUNICIPAL CORPORATION
Versus
RAJESHBHAI RAMJIBHAI PURABIYA

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Appearance:
MR NISHANT LALAKIYA(5511) for the Appellant(s) No. 1
MS MAMTA R VYAS(994) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE BIREN VAISHNAV**
and
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

Date : 29/04/2024

ORAL ORDER
(PER : HONOURABLE MR. JUSTICE BIREN VAISHNAV)

1. Letters Patent Appeal No. 414 of 2024 is filed by the Rajkot Municipal Corporation challenging the order dated 20.3.2024 passed in Special Civil Application No.7556 of 2023 by which the Corporation's challenge to the award of Labour Court, Rajkot dated

26.11.2019 in Reference (LCR) No.73 of 2013 failed. As a consequence of dismissal of Special Civil Application No. 7556 of 2023, the learned Single Judge by the order of the same date allowed the petition of respondent-workman which was filed seeking execution of the award.

2. It is aggrieved by both these orders that the Corporation has preferred an appeal before us. Essentially we have heard Letters Patent Appeal No. 414 of 2024 as the lead matter.

3. Briefly stated the facts are that the respondent-workman Rajeshbhai Ramjibhai Purabia was working as “Sweeper” with Rajkot Municipal Corporation. By an order dated 18.6.2011 passed under Section 56(2) of the Gujarat Provincial Municipal Corporation Act, 1949 (for short **“the Act”**), the respondent-workman was dismissed from service. The penalty therefore, imposed under Section 56(2)(h) of the Act became a subject matter of challenge before the Labour Court. Before the Labour Court, the Corporation sought to defend the dismissal on the ground that the workman had repeatedly remained absent on multiple occasions and therefore, there was no choice but, to resort to the extreme penalty of dismissal

for which a show cause notice was issued. A written submission was filed before the Labour Court. The Labour Court holding that the order of dismissal was in violation of principles of natural justice directed reinstatement with 20% backwages. The Learned Single Judge affirmed the award.

4. Mr. G.M.Joshi, learned Senior Counsel appearing with Mr. Nishant Lalakiya, learned advocate for the appellant would make the following submissions :-

4.1 Mr. Joshi, learned Senior Counsel would submit that the award of learned Labour Court and order of learned Single Judge is erroneous in asmuch as in light of clear concession made on behalf of the respondent admitting his misconduct it was not necessary for the employer to hold an inquiry.

4.2 Mr. Joshi, learned Senior Counsel would take us through the written statement annexed to the petition and would submit that even otherwise, if the Labour Court was of the opinion that the order of dismissal was without holding an inquiry and in violation of principles of natural justice, in light of the decision of the Apex Court in the case of **The Cooper Engineering Ltd. Vs. Shri**

P.P.Mundhe reported in **(1975) 2 SCC 661,** the Labour Court ought to have given the employer a chance to adduce evidence to prove the charge. He would submit that a defective inquiry or no inquiry would stand on the same footing. He would rely on the decision of the Apex Court in the case of **Engineering Laghu Udyog Employees' Union Vs. Judge, Labour Court and Industrial Tribunal and another** reported in **(2003) 12 SCC 1.**

4.3 Mr. Joshi, learned Senior Counsel has submitted that the Labour Court has committed an error without deciding the issue as to whether there was validity or legality in the domestic inquiry. He would submit that once a specific statement was made in the written statement reserving a liberty that the employer be permitted to lead the evidence, failing to do so, the Labour Court committed a jurisdictional error. In support of his submission, he would rely upon the following decisions :-

1. M.L.Singla Vs. Punjab National Bank and another reported in (2018) 18 SCC 21.
2. Gujarat Ambuja Cement Private Limited Vs. N.D.Rathod C/o. Nasantbhai Pamnani reported in 2004(0) AIJEL-HC-203882 .

4.4 On the question of the necessity to hold an inquiry in light of the workman admitting the guilt, Mr.Joshi, learned Senior Counsel has taken us through the response to the show cause notice dated 16th March, 2011 issued by the Corporation. He would submit that on 17th March, 2011, the workman in his response had categorically admitted his absence and therefore, even otherwise assuming for the sake of arguments that no inquiry was held, it was not necessary to hold an inquiry in view of the admission of workman's guilt. In support of his submission, he would rely upon the following decisions:-

1. Himachal Pradesh Road Trasnport Corporation and Another Vs. Hukam Chand reported in (2009) SCC 222.

2. Chairman & Managing Director, V.S.P and others Vs. Goparaju Sri Prabhakara Hari Babu reported in (2008) SCC 569.

5. Ms.Mamta Vyas, learned advocate appearing for the respondent-workman would submit that for an absence which was genuine and justified, the dismissal from service disqualifying the workman for future employment was indeed a very harsh penalty. It has been at every stage pointed out by the respondent-workman and in response to the notices issued at various stages that the absence

was justified due to reasons beyond the control of the workman and therefore, once having punished the respondent-workman by fine and stoppage of increment, a penalty of dismissal for past misconduct was a case where the respondent-workman faced double jeopardy.

5.1 Ms.Mamta Vyas, learned advocate would also submit that award in question was passed in the year 2019. No effort was made by the Corporation to move a petition challenging the award and it has been observed by the learned Single Judge that the workman had to file an application seeking execution of the award in June, 2021 and a request was made again in January, 2023. The petition was filed by the Corporation in 2019/2020 which was dismissed on account of non removal of the office objections and was restored only after a year in 2023. This obviously shows the carelessness of the Corporation to implement the award for which, the respondent-workman need not suffer. In absence of full opportunity of hearing, the Labour Court was right in its wisdom to quash the order of dismissal and the order of reinstatement. In turn, the learned Single Judge was also right in confirming the award.

6 Having heard the learned Counsels appearing for the respective parties, true it is that the respondent-workman was a Class -IV employee working with the respondent with the appellant-Rajkot Municipal Corporation. The concept of proportionality of penalty has to be weighed with the nature of misconduct and the hierarchy of the employee in the set up. However, at the same time, one cannot shut itself to the nature of misconduct which appears to be repeated, even if, it is in the nature of absence justified. Perusal of the written statement filed by the appellant-corporation wherein, the instances of past absence have been set out in para 5 indicates that the respondent-workman was repeatedly absent, which accordingly to the perception of the respondent-workman was justified for reasons beyond his control. The record shows that the absence was from 8.6.2003 to 16.7.2003, from 30.5.2006 to 15.10.2006, from 9.5.2007 to 1.3.2008 and from 1.2.2009 till the date of termination i.e. 18.6.2011. What is also evident from a separate paper book tendered by learned Sr.Counsel at the time of hearing is that at every stage when the absence occurred, a show cause notice was given to the respondent promptly and undertaking

on stamp paper was filed by the respondent that he will take care in future to see that the absence will not occure in future. The record indicates that either on account of a family dispute or on account of financial constraints, the respondent-workman continued to remain absent. He was therefore, even imposed a penalty of fine/ stoppage of increment which did not desist the respondent from repeating the misconduct of remaining absent. The Corporation therefore was left with no other alternative but to issue show cause notice on 16th March, 2011 asking the respondent to show cause as to why a penalty of dismissal be not imposed in light of provision of Section 56(2) of the Act. His response was filed on 17th March, 2011 admitting the guilt. The Corporation in turn imposed the penalty which was the subject matter of challenge before the Labour Court.

6.1 Perusal of the written statement thus indicates that a specific plea was taken by the employer that in the event the Labour Court comes to the conclusion that the action of imposing penalty in violation of principles of natural justice and opportunity to the parties to lead the evidence be given. Perusal of the award of the Labour Court and the order of the learned Single Judge would

indicates that the issue was never decided.

7. Albeit, learned Counsel for the respondent would submit that these were never raised before the learned Single Judge, and therefore, it was not open for us to delve on these issues in light of the decision of the Hon'ble Apex Court in case of **Baddula Lakshmaiah and others Vs. Sri Anjaneya Swami Temple and others** reported in **(1996) 3 SCC 52**, when an intra court appeal particularly when a question of law has been raised before us, it was not desist us from opining on the issue whether the Labour Court as well as the learned Single Judge committed jurisdictional error in not permitting the employer to lead the evidence when a specific plea was so made in the written statement filed before it. In the case of **The Cooper Engineering Ltd (Supra)** wherein, the Hon'ble Apex Court in paragraph 22 held thus :-

> *"22. We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the labour court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the labour court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any*

proceeding to raise the issue.. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the labour court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication."

7.1 A specific plea when raised before the Labour Court that if the Court came to the conclusion that the inquiry was in violation of the principle of natural justice, the same should have been decided as a preliminary issue. The fact of this case indicates that it was not so done. In the case of **M.L.Singla (Supra),** the Hon'ble Apex Court while examining the award of the Labour Court, opined that if the Labour Court had come to conclusion that the inquiry was illegal or in violation of principles of natural justice it was under legal obligation to give an opportunity and then decide the question. The Hon'ble Apex Court has held as under:-

"14) When we examine the award in the light of detailed facts set out above, we find that the Labour Court committed more than one jurisdictional error in answering the Reference.

15) The first error was that it failed to decide the validity and legality of the domestic enquiry. Since the dismissal order was based on the domestic enquiry, it was obligatory

upon the Labour Court to first decide the question as a preliminary issue as to whether the domestic enquiry was legal and proper.

16) Depending upon the answer to this question, the Labour Court should have proceeded further to decide the next question.

17) If the answer to the question on the preliminary issue was that the domestic enquiry is legal and proper, the next question to be considered by the Labour Court was whether the punishment of dismissal from the service is commensurate with the gravity of the charges or is disproportionate requiring interference in its quantum by the Labour Court.

18) If the answer to this question was that it is disproportionate, the Labour Court was entitled to interfere in the quantum of punishment by assigning reasons and substitute the punishment in place of the one imposed by respondent No.1Bank. This the Labour Court could do by taking recourse to the powers under Section 11A of the ID Act.

19) While deciding this question, it was not necessary for the Labour Court to examine as to whether the charges are made out or not. In other words, the enquiry for deciding the question should have been confined to the factors such aswhat is the nature of the charge(s), its gravity, whether it is major or minor as per rules, the findings of the Enquiry Officer on the charges, the employee's overall service record and the punishment imposed etc.

20) If the Labour Court had come to a conclusion that the domestic enquiry is illegal because it was conducted in violation of the principles of natural justice thereby causing prejudice to the rights of the employee, respondent No.1Bank was under legal obligation to prove the misconduct (charges) alleged against the appellant (employee) before the Labour

Court provided he had sought such opportunity to prove the charges on merits.

21) The Labour Court was then under legal obligation to give such opportunity and then decide the question as to whether respondent No.1Bank was able to prove the charges against the appellant on merits or not.

22) If the charges against the appellant were held proved, the next question to be examined was in relation to the proportionality of the punishment given to the appellant."

7.2 We need not refer to the decision of the learned Single Judge which has followed the precedents of the Hon'ble Apex Court in case of **The Cooper Engineer Ltd.** and **M.L.Singla (Supra).** That an defective inquiry and no inquiry stand on same footing has been set out by the Hon'ble Apex Court in the case of **Engineering Laghu Udyog (Supra)** for which paragraph 11 reads as under:-

"11. Yet again in Workmen of Messrs Firestone Tyre & Rubber Company of India (P) Ltd. v. Management & Ors., [1973] 3 SCR 587, this Court while interpreting the provision of Section 11A of the Act held that in terms thereof, the management need not necessarily rely on the materials on record as while introducing Section 11A of the Act, the Legislature must have been aware of the decisions of this Court which are operating in the field for long time. This Court enunciated several principles bearing on the subject and, therefore, it held that it was difficult to accept that the expression materials on record; used in the proviso to Section 11A was set at naught. The Court formulated the

propositions of law emerging from the decisions rendered by this Court, the relevant portions whereof are as under:

"From those decisions, the following principles broadly emerge:

(1)-(3) * * *
(4) Even if no enquiry has been held by an employer of if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, has to give an opportunity to the employer and employee to adduce evidence for the first time justifying his action; and it is open to the employee to adduce evidence contra.
(5) * * *
(6) The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.
(7) It has never been recognized that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.
(8) ....."
Even in Firestone 's case (supra), no distinction, thus, has been made between a defective inquiry and no inquiry.

7.3 We are not going into the question as to whether in the face of an admission made by the respondent-workman, was it open for the employer to dispense with the inquiry, as we are convinced on the first issue of the labour Court and the learned Single Judge having committed an error of jurisdiction in asmuch as not giving the employer an opportunity to lead the evidence before the Labour Court in light of the decisions set out hereinabove.

8. For the above reasons, the order of learned Single Judge passed in Special Civil Application No. 7556 of 2023 dated 20th March, 2024 and the award of the Labour Court dated 26th November, 2019 in reference (LCR) No.73 of 2013 are quashed and set aside.

9. We are remanding the matter back to the Labour Court in light of the liberty sought by the appellant to lead the evidence before it. The employer shall in accordance with the statement made in the written statement be permitted to lead evidence before the Labour Court to prove the misconduct that is alleged to have been committed by the respondent-workman. On remand, the Labour Court, Rajkot shall decide the reference within a period of six months from today. It is clarified that the parties to the disputes before the Labour Court shall cooperate with the hearing before the Labour Court. Letters Patent Appeal No. 414 of 2024 is accordingly allowed.

10. In light of the order passed in the Letters Patent Appeal No. 414 of 2024, consequential Letters Patent Appeal No. 415 of 2024 is also allowed. The order of learned Single Judge in the petition filed by the respondent-workman i.e. in Special Civil Application No. 2686 of 2023 is quashed and set aside too. Orders accordingly.

ORDER IN CIVIL APPLICATION NOS. 1 OF 2024

In light of the orders passed in the main matters, present Civil Applications do not survive and stand disposed of accordingly.

(BIREN VAISHNAV, J)

(PRANAV TRIVEDI,J)

BEENA SHAH