SUPREME COURT OF INDIA

U. B. Gadhe

Vs.

G. M., Gujarat Ambuja Cement Pvt. Ltd.

C.A.No.892 of 2007

(Dr. A. Pasayat and Lokeshwar Singh Panta, JJ.)

28.09.2007

JUDGEMENT

Dr. ARIJIT PASAYAT, J.:-

1. Appellants call in question the judgment rendered by a learned Single Judge of the Gujarat High Court allowing the Special Civil Applications filed by the respondent (hereinafter referred to as the 'employer').

2. The respondent had filed the applications questioning correctness of the award dated 31.12.2004 passed by the Labour Court. Another set of petitions were filed by the employer questioning correctness of the said award by which the Labour Court had partially allowed the reference of the concerned workmen. By the said award the workmen were directed to be re-instated in service with continuity but without back wages. Challenge of the workmen was to the award insofar as it provided for no back wages and only re-instatement.

3. Background facts in a nutshell are as follows:

Respondent is involved in providing public utility services. In the year 1989-1990, there were certain disputes between the management and the employees. There was an extended strike in which a large number of employees employed by the respondent-company participated. This disrupted the working of the plant where the concerned workmen were employed. The respondent-company, therefore, initiated disciplinary action against the striking employees. Against the workmen concerned, charge sheet came to be issued. Since the workmen did not participate they were proceeded ex-parte. Eventually, eight workmen were dismissed from the service by the respondent-company by order dated 01.03.1990. The concerned workmen, therefore, raised industrial disputes challenging their dismissal orders.

Earlier once the references were disposed of by the Labour Court by an award dated 23.04.1999. The workmen concerned were directed to be reinstated in service with full back-wages from the date of dismissal till reinstatement. The employer challenged the award of the Labour Court by filing Special Civil Application No.6055/1999. The learned Single Judge disposed of the application on 14.5.2004 by giving certain directions, and the proceedings were remanded back to the Labour Court. These directions read as follows:

"11. For the reason stated above, it is necessary to quash and set aside the impugned judgment and awards while giving the following directions:-

I. The proceedings of aforesaid Reference Cases are remanded back to the Labour Court for re-trial.

II. When the proceedings of the aforesaid cases are remanded back to the Labour Court, the petitioner will be at liberty to lead additional evidence to substantiate its action taken against the respondents.

III. The respondents will be at liberty to lead evidence contra.

IV. The material already adduced before the Labour Court including the oral evidence led on behalf of the respondents will remain as it is.

V. The Labour Court to complete the hearing and final declaration of the judgment and awards on or

before 30th September, 2004.

VI. That parties to the aforesaid Reference cases will fully cooperate the Labour Court with the hearing of the cases and no adjournment will be sought without compelling reasons. The common judgment and award passed in Reference L.C.A. Nos. 139/1998, 146/1998, 162/1998, 145/1998 and 150/1998 dated 23rd April, 1999 are hereby ordered to be quashed and set aside. The petitions are allowed. Rule made absolute with no order as to costs".

4. After remand, the Labour Court took up the proceedings afresh, recorded the evidence and passed the awards on 31.12.2004.

5. Before recording the observations and conclusions of the Labour Court in the impugned award, it would be useful to notice the allegations made against the concerned workmen by the employer.

6. Charges against all the workmen were identical. Twelve different charges were levelled against them. By way of illustration the High Court took the case of appellant No.1. The charges read as follows:

"(1) Use of impertinent languages, insult to superiors, indecent behaviour, insubordination and any act which is subversive of discipline.

(2) Unlawful cessation of work or going on illegal strike in contravention of the provisions of law and the standing orders and participation in a sit down strike.

(3) Inciting and/or instigating other employees to take part in an illegal strike, sit down strike and action in furtherance of such strike launched in contravention of the provision of law.

(4) Disorderly behaviour and conduct endangering the life or safety of any person within the factory premises.

(5) Act of sabotage of causing damage to the work in progress or to any property of the management wilfully.

(6) Wilful interference with the work of another workman or of a person authorised by the management to work on its premises.

(7) Holding or participating in the meetings, demonstrations and shouting of slogans inside the factory premises or mines or residential colony.

(8) Unauthorised absence from duty for more than eight consecutive days.

(9) Committing a nuisance in the premises of the factory, breach of these standing orders.

(10) Canvassing for trade union membership and collection of union funds within the premises except as permissible under law.

(11) Making a false, vicious or malicious statement in public against management/factory or officer.

(12) Instigation, incitement, abetment or furtherance of any of the above acts.

7. Out of the said charges, charge Nos. 2, 4, 7, 8, 9 and 11 were held to have been proved while charge No.1 was held to be partially proved. Other charges were not proved.

8. The question relating to legality of the departmental proceedings was examined first. The Labour Court held that the enquiry conducted was legal and proper, but the Labour Court found that some of the charges were not proved. It was held that so far as the strike is concerned it was established that the workmen were not justified in going on strike. It was noted that undisputedly the concerned workmen had participated in a strike. Accordingly, the Labour Court had held that denial of back wages for a period of 14 to 15 years for which the concerned workmen remained out of employment would be sufficient punishment for the misconduct proved against them. The High Court held that once the charges have been proved, the Labour Court ought not to have interfered with the quantum of punishment. Accordingly, the employer's Special Civil Applications were allowed and those filed by the workmen were dismissed. It was concluded inter alia as follows:

"7.3 The above observations were made with regard to the scope of jurisdiction of the High Court under Article 226 of the Constitution of India, same would however, apply also to the powers of the Labour Court or Industrial Tribunal while examining the conclusions arrived at by the employer during the course of departmental inquiry.

7.5 I do not find that Labour Court considered the evidence on record to come to the above conclusions. The power of the Labour Court to interfere with the findings arrived at by the employer are extremely narrow. If there is some evidence on record to permit the employee to draw such conclusions, it is not for the Labour Court to decide the sufficiency of such evidence and unless the conclusions are based on no evidence and, therefore, perverse, Labour Court could not have interfered with the same.

7.7. The Labour Court also proceeded to consider the question of quantum of punishment on the basis that the charge of going on illegal strike was proved against the workmen. The Labour Court ultimately found that for the proved misconduct, punishment of withholding of the back wages for a period of 14 to 15 years would be sufficient punishment. The Labour Court found that order of dismissal cannot be sustained."

9. It was concluded that since the Labour Court had held that the workmen had proceeded on illegal strike and they were leading participants in such a strike, the Labour Court ought not to have interfered with the quantum of punishment, specially when it was established that the employer is a public utility service and the strike prolonged for a period of five months.

10. The stand of learned counsel for the workmen was that before the Conciliation Officer the employer had agreed to re-instate the workmen and to take a sympathetic view.

11. The main plank of the appellants' arguments was that the parameters of Section 11-A of the Act had not been considered by the High Court.

12. After the amendment of Section 11-A, the Labour Court or the Tribunal, as the case may be, had ample power to decide the question relating to quantum of punishment. Decisions relied upon by the High Court either related to a stage where amendment to Section 11-A was not there or under Article 226 of the Constitution of India, 1950 (in short the 'Constitution'). The situation is different in cases in which Section 11-A of the Act can apply.

13. Learned counsel for the respondent submitted that the primary stand of the respondent before

the High Court was alleged agreement to consider the cases sympathetically. That aspect was considered by the High Court in proper perspective, considering the fact that after the arrangement was agreed to, the employer appointed a Committee to examine the matter that no sympathy was required to be shown. The High Court's approach is clearly correct in view of the serious nature of the allegations against the appellants.

14. When the Labour Court found that the workmen had proceeded on illegal strike and that they were leading participants in such a strike, the Labour Court ought not to have interfered with the quantum of punishment especially when it was established that the employer is a Public Utility service and that the strike prolonged for a period of four to five months. Even in the absence of any further proof of involvement of the workmen for other misconduct of unruly behaviour, abusing superiors officers, preventing officers from entering the premises, preventing co-workers from resuming duties and threatening the family members of the workmen and collecting union subscription illegally, it is doubtful whether the Labour Court could have reduced the punishment and substituted the order of dismissal of lesser punishment. As noted earlier, this Court in Mill Manager, Model Mills Nagpur Ltd. v. Dharam Das, Etc. (AIR 1958 SC 311) had upheld the action of the employer in dismissing the employees who were found to have gone on illegal strike.

15. We are unable to accept the contention of the learned counsel for the workmen that before the Conciliation Officer, the employer had agreed to reinstate the workmen concerned as also the contention that having agreed to take a sympathetic review of the situation, the employer failed to do so and that therefore, the order is rendered illegal.

16. In the agreement, the following terms were provided:

"(1) The case of eight disputed workmen will be reviewed sympathetically within a period of one month.

(2) The workmen will give undertaking as decided.

(3) The management has proposed the principle of "No work no pay" as against which the demand has been raised by the union which will be decided jointly by Shri Sureshbhai and Managing Director.

(4) If the company finds that the workman has committed any misconduct or has done something wrong after taking him in service it will be open for the management to take steps in accordance

with law."

17. The High Court, as noted above, has not considered the case in the background of Section 11-A of the Act. Under Section 11-A, wide discretion has been vested in the Tribunal in the matter of awarding relief according to the circumstances of the case, whereas in the writ jurisdiction it is extremely limited.

18. It is not necessary to go into in detail regarding the power exercisable under Section 11-A of the Act. The power under said Section 11-A has to be exercised judiciously and the Industrial Tribunal or the Labour Court, as the case may be, is expected to interfere with the decision of a management under Section 11-A of the Act only when it is satisfied that punishment imposed by the management is wholly and shockingly disproportionate to the degree of guilt of the workman concerned. To support its conclusion, the Industrial Tribunal or the Labour Court, as the case may be, has to give reasons in support of its decision. The power has to be exercised judiciously and mere use of the words 'disproportionate' or 'grossly disproportionate' by itself will not be sufficient.

19. In recent times, there is an increasing evidence of this, perhaps well-meant but wholly unsustainable, tendency towards a denudation of the legitimacy of judicial reasoning and process. The reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. It is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions. They must emanate logically from the legal findings and the judicial results must be seen to be principled and supportable on those findings. Expansive judicial mood of mistaken and misplaced compassion at the expense of the legitimacy of the process will eventually lead to mutually irreconcilable situations and denude the judicial process of its dignity, authority, predictability and respectability. [See: Kerala Solvent Extractions Ltd. v. A. Unnikrishnan and Anr. [1994 (1) SCALE 631)]. 1994 AIR SCW 2534

20. Though under Section 11-A, the Tribunal has the power to reduce the quantum of punishment, it has to be done within the parameters of law. Possession of power is itself not sufficient; it has to be exercised in accordance with law.

21. These aspects were highlighted in Life Insurance Corporation of India v. R. Dhandapani (AIR 2006 SC 615). 2005 AIR SCW 6271

22. Power and discretion conferred under the Section needless to say have to be exercised judicially and judiciously. The Court exercising such power and finding the misconduct to have been proved has to first advert to the question of necessity or desirability to interfere with the punishment

imposed and if the employer does not justify the same on the circumstances, thereafter to consider the relief that can be granted. There must be compelling reason to vary the punishment and it should not be done in a casual manner.

23. We would have asked the High Court to consider that aspect. But considering the long passage of time, it would not be proper to do so since the employer seems to be a public utility service and the workmen's continued utility to the employer is gravely doubtful in view of their conduct. After such a long period, it would not be in the interest of parties to direct the High Court to consider parameters of Section 11-A of the Act. Therefore, we have considered the matter, taking into account the background facts. The proved misconduct is definitely serious. The respondent has, as a matter of good gesture, offered to pay each of the appellant rupees one lakh, in view of the fact that they have received payment upto December, 2004.

24. Taking into account all relevant aspects, the offer of respondent appears to be fair and reasonable. Let the payment be made within eight weeks from today.

25. The appeal is disposed of accordingly with no order as to costs.

Order accordingly.