(2023) 04 GUJ CK 0102

Gujarat High Court

Case No: R/Letters Patent Appeal No. 900 Of 2021, In R/Special Civil Application No. 3760 Of 2012, Civil Application (For Stay) No. 1 Of 2021

Mannesmann Rexroth(India) Ltd,(Now Bosch Rexroth(India) Ltd	APPELLANT
Vs	
Dipakbhai Manilal Gohel	RESPONDENT

Date of Decision: April 28, 2023

Acts Referred:

- Industrial Disputes Act, 1947 - Section 10, 33, 33(2)(b)

Hon'ble Judges: N.V.Anjaria, J; Niral R. Mehta, J

Bench: Division Bench

Advocate: Keyur Gandhi, Kishan M Rathod, Mukesh H Rathod

Final Decision: Disposed Of

Judgement

N.V.Anjaria, J

1. Heard learned advocate Mr.Keyur Gandhi for Gandhi Law Associates for the appellant and learned advocate Mr.Mukesh Rathod for the

respondent- original petitioner.

2. The challenge in this Letters Patent Appeal is addressed to the judgment and order of learned single Judge dated 24.6.2021 In Miscellaneous Civil

Application (for recall) No.1 of 1990 in Special Civil Application No.3760 of 2021 read with order dated 3.9.2021 passed upon the Note for Speaking-

to-Minutes.

2.1 Learned single Judge entertained the review application against the judgment and order of learned single Judge dated 11.6.2019 which was an ex-

parte judgment. As per the judgment and order dated 24.6.2021, the said Miscellaneous Civil Application for review came to be allowed. Learned

single Judge dealt with the controversy on merits by recalling the ex-parte order earlier passed by learned single Judge. At the same time, impugned

Special Civil Application No.3760 of 2012 was allowed, holding in favor of the original petitioner.

3. The facts in the backdrop may be set out. By filing Special Civil Application No.3760 of 2012, the petitioner workman challenged the judgment and

award dated 18.2.2011 of the Labour Court, Ahmedabad in Reference (LCA) No.1789 of 2000. The said reference was for reinstatement of

respondent workman on his original post with backwages. The labour court did not grant the reinstatement but awarded the lump-sum compensation

of Rs.50,000/- in lieu of reinstatement. As the reinstatement was not granted, the workman felt aggrieved.

3.1 It was the case of the respondent workman that he has been working since six years under the first party employer and that his services came to

be terminated by oral order with effect from 18.5.2000. It was the case that suspension order dated 16.6.1999 was illegal and the allegations made in

the notice about misconduct were false and fabricated. The respondent workman faced the charges of misconduct of insubordination. The allegations

was that the workman got angry on his superior and thus tarnished the image of the company. At the end of the inquiry, findings were arrived at and

his services came to be terminated.

3.2 The Labour Court held that the evidence produced in course of the inquiry was in respect of the allegations which were not part of the notice

therefore such findings were baseless and perverse. The Labour Court thereafter dealt with the aspect of grant of backwages and concluded that the

workman has been earning Rs.24,000/- per month by engaging in partnership business. It was concluded that having regard to the nature of

misconduct, reinstatement could not be granted. The Labour Court however partially allowed the reference directing the first party employer to pay

the benefits to the workman from the date of entry till termination. The reinstatement was denied, but in lieu of reinstatement, the Labour Court

awarded lump-sum compensation of Rs.50,000/- to the workman and further directed the employer to pay the cost of Rs.1,000/-.

3.3 The said judgment and award came to be challenged by workman before learned single Judge. Before learned single Judge, the respondent

employer despite service of notice of Rule, did not appear. Learned single Judge noted that the petitioner was charged with the allegations of

disobedience and misbehaviour with his superior while on duty on 15.6.1999, as he got angry and did not carry out the instructions of his superior.

3.3.1 It was further noticed that in the oral evidence of the complainant, however other incidents dated 9.6.1999 and 10.6.1999 were referred to and

relied on. In respect of those incidents also the misconduct of use of abusive language was attributed to the petitioner. It was stated that the

accusations other than the accusations in relation to the incident on 15.6.1999, were added to be made part of the charge memorandum. Therefore, it

was observed that the labour court was right in recording the finding that the oral evidence was at variance with the charge levelled against the

petitioner. The Labour Court also rightly found inconsistency and ambiguity in the charged.

3.3.2 Learned single Judge then observed,

â€œAfter rendering the findings as above strangely, the Labour Court went perverse to the findings and held that the witness Mr. Joshi and Chaudhari

had corroborated the incident dated 15.06.1999. It also rendered a perverse findings that Shri Joshii the petitionerâ€™s superior was insulted by him

and reputation of the company was harmed in presence of the customers without even naming or examining such customers. The petitionerâ€™s

conduct was deprecated on the above counts and it was held that despite his entitlement to reinstatement, he ought not to be reinstated, for his

misconduct. Thus the Labour Court approbated and reprobated at the same time. It also rendered perverse finding without any supporting evidence

that the petitioner was earning Rs. 24000/ per month in a partnership firm. â€

3.3.3 According to learned single Judge, the Labour Court approbated and reprobated,

â€œâ€¦in view of the findings that the case against the petitioner was not proved during the departmental inquiry, the reinstatement of the petitioner

ought to have been the consequence with all consequential benefits, including backwages in absence of evidence of petitioner generating income in the

alternative employment during the pendency of the dispute. Impugned judgement and award to the extent of denying the reliefs(supra) to the petitioner

therefore deserves to be substituted by allowing the reference as a whole and directing the respondent to reinstate the petitioner from the date of his

termination on the post he held at the time of dismissal, with all consequential benefits including continuity of services and backwages. Accordingly

ordered.â€

3.4 Against the abovementioned order of learned single Judge directing reinstatement of the workman with all consequential benefits including

continuity of service and backwages, review application was filed by the employer. It was one of the grounds raised that learned single Judge had

proceeded ex-parte, therefore judgment and order was liable to be set aside.0

3.4.1 While dealing with the review application, learned single Judge, inter alia, observed in para 5, â€˜It has been given to understand that not only this

application for recall has been heard for a limited purpose of recall, the parties are permitted to even argue on merits while arguing this application for

recall and accordingly, both the sides have extensively made their submissions along the line of their respective standâ€™. Accordingly, the case was

heard on merits.

4. What was argued before the learned single Judge on merits by employer seeking review was inter alia that when the Labour Court found the

inquiry to be perverse, an opportunity was required to be given to the applicant employer to lead evidence for the proposition that the employer could

be given opportunity to justify its action of termination or dismissal of the employee by leading fresh evidence in the event when the inquiry was found

to be perverse or effective.

4.1 Before the learned single Judge, the decision of the Supreme Court in Bharat Forge Company Limited Vs. A.B. Zodge, [(1996) 4 SCC 374] as

well as another decision in Neeta Kapleesh Vs. Presiding Officer, Labour Court [1998 Supp(3) SCR 379] were pressed into service. The very

decisions were relied on before this court to canvass that the domestic inquiry if vitiated either for non-compliance of natural justice or on the ground

of perversity the disciplinary action taken on the basis of such inquiry does not stand on a better footing than disciplinary action without any inquiry. It

was further submitted that in all such cases, the tribunal can call upon the management or the employer to justify the action taken against the workman

and to show cause by fresh evidence that the service was proper.

4.1.1 Learned single Judge while dealing with the case on merits discussed in detail the facts in Bharat Forge Company Limited (supra) as well as in

Neeta Kapleesh (supra), and also the principles emanating therefrom in the context of the facts in the respective decisions learned single Judge relied

on the decision of the Apex Court in Karnataka State Road Transport Vs. Lakshmidevamma (Smt.) [(2001) 5 SCC 433 i]n which the question about

the right of the employer to lead evidence in the proceedings under Section 10 or under Section 33(2)(b) of the Industrial Disputes Act, 1947 against

the termination of service was considered.

4.1.2 Learned single Judge noted that such right would have to be exercised when at the initial stage when the statement of claim or the application

for permission to take action or for approval is submitted. In this regard, learned single Judge referred to the decision of the Supreme Court in

Karnataka State Road Transport (supra), in which the Supreme Court relied on its own decision in Shambu Nath Goyal Vs. Bank of Baroda [(1983) 4

SCC 491] and other decisions. The Supreme Court in Karnataka State Road Transport (supra), approved the law laid down in Shambu Nath Goyal

(supra).

4.1.3 It was observed in Karnataka State Road Transport (supra),

â€œWe think that the application of the management to seek the permission of the Labour Court or Industrial Tribunal for availing the right to adduce

further evidence to substantiate the charge or charges framed against the workman referred to in the above passage in the application which may be

filed by the management during the pendency of its application made before the Labour Court or Industrial Tribunal seeking its permission under

section 33 of the Industrial Disputes Act, 1947 to take a certain action or grant approval of the action taken by it. The management is made aware of

the workmans contention regarding the defeat in the domestic enquiry by the written statement of defence filed by him in the application filed by the

management under section 33 of the Act. Then, if the management chooses to exercise its right it must make up its mind at the earliest stage and file

the application for that purpose without any unreasonable delay.â€

(para 15)

4.1.4 The decision in Shambu Nath Goyal (supra) was reaffirmed. It was observed also thus,

â€œKeeping in mind the object of providing an opportunity to the management to adduce evidence before the Tribunal/Labour Court, we are of the

opinion that the directions issued by this Court in Shambu Nath Goyals case need not be varied, being just and fair. There can be no complaint from

the management side for this procedure because this opportunity of leading evidence is being sought by the management only as an alternative plea

and not as an admission of illegality in its domestic enquiry. At the same time, it is also of advantage to the workmen inasmuch as they will be put to

notice of the fact that the management is likely to adduce fresh evidence, hence, they can keep their rebuttal or other evidence ready. This procedure

also eliminates the likely delay in permitting the management to make belated application whereby the proceedings before the Labour Court/Tribunal

could get prolonged. In our opinion, the procedure laid down in Shambu Nath Goyals case is just and fair. (para 17)

4.2 Thus, after taking survey of several decisions on the aspect as to when the employer could seek opportunity of leading fresh evidence, learned

single Judge that the plea of the employer in that regard was not liable to be accepted.

4.2.1 Learned single Judge observed,

â€œIt would be apt to consider the approach of the Labour Court in a matter where the opponent no.1 was charged for disobedience and

misbehaviour with his superior while on duty on 15.06.1999. This Court noticed that the workman when was proceeded against in the domestic inquiry,

there were no specific accusations in relation to the incidents dated 09.06.1999 and 10.06.1999. In the charge / memorandum of charges, the oral

evidence was found at variance by the Labour Court. The Labour Court also justly gave a right conclusion that the charges de hors the notice were

sought to be proved against the petitioner by oral evidence. The findings during the inquiry were held by the Court as perverse and it further held that

the case of dismissal from service against the opponent no.1 was not made out. The Labour Court also held that the witness Mr. P.A.Joshi and Mr.

Chaudhari corroborated the incident dated 15.06.1999. It questioned seriously the conduct of the opponent no.1 on the ground of insulting his superior

and it chose not to direct the reinstatement because of the conduct.

4.2.2 It was also recorded by learned single Judge that the applicant employer was aggrieved because this court directed reinstatement, however the

Labour Court had granted lump-sum compensation at the stage of deciding reference. It was also noticed that there was no cross petition to instant

Special Civil Application filed by the workman.

4.2.3 Learned single Judge proceeded to observe,

â€œ12. There is no cross petition of SCA 3760 of 2012 which has been challenged by the opponent. Therefore, to urge this Court to allow the

opportunity after nearly a decade as the date of award of the Labour Court is of 18.02.2011, is not found justifiable. At the same time, this Court

cannot be oblivious of the fact that there cannot be automatic reinstatement and the complete backwages merely because the Court held the findings

of the inquiry perverse.â€

5. In Shambu Nath Goyal (supra), the Apex Court laid down that where a dispute is referred to the tribunal or labour court, under Section 10, the

management may seek opportunity to adduce further evidence, if any, in respect of the charges levelled against the workman regarding non-

compliance of natural justice principles, however, such opportunity has to be asked for in its reply statement itself and not at belated stage.

5.1 It was observed by the Apex Court in Shambu Nath Goyal (supra),

â€œWhen the question arises in a reference under Section 10 of the Act after the workman had been punished pursuant to a finding of guilt recorded

against him in the domestic enquiry there is no question of the management filing any application for permission to lead further evidence in support of

the charge or charges framed against the workman, for the defect in the domestic enquiry is pointed out by the workman in his written claim

statement filed in the Labour Court or Industrial Tribunal after the reference had been received and the management has the opportunity to look into

that statement before it files its written statement of defence in the enquiry before the Labour Court or Industrial Tribunal and could make the request

for the opportunity in the written statement itself. If it does not choose to do so at that stage it cannot be allowed to do it at any later stage of the

proceedings by filing any application for the purpose which may result in delay which may lead to wrecking the morale of the workman compel him to

surrender which he may not otherwise do.â€

(para 16)

5.1.1 It was then stated,

â€œThe application for the first time seeking further opportunity to lead evidence before the Tribunal for substantiating the charges framed in 1965.

The management is thus seen to have been taking steps periodically to see that the dispute is not disposed of at an early date one way or the other.

The blame for not framing an issue on the question whether or not the workman was gainfully employed in the intervening period cannot be laid on the

Tribunal alone. It was equally the duty of the management to have got that issue framed by the Tribunal and adduce the necessary evidence unless

the object was to make up that question at some later stage to the disadvantage of the workman as in fact it has been done. The management appears

to have come forward with the grievance for the first time only in the High Court. There is no material on record to show that the workman was

gainfully employed anywhere. The management has not furnished any particulars in this regard even before this Court after such a long lapse of time.

The workman could have been asked to furnish the necessary information at the earliest stage. The management has not resorted to that course. The

workman was not expected to prove the negative. In these circumstances, we do not think that it would be in the interest of justice to prolong any

further the agony of the workman whose power to endure the suffering of being out of employment for such a long time and to oppose the

management Bank, a nationalised undertaking with all the money power at its disposal in this prolonged litigation is very limited by allowing the Bank to

have the advantage belatedly sought in the application.â€

(para 17)

5.2 The principle laid down balances the rights of the employer and the workman. The employer is permitted to seek the opportunity of leading

evidence in respect of the inquiry to fill up the lacuna of inquiry before the labour court after delay and at belated stage, it would operate prejudicial

rights of the workman.

5.3 The reasoning supplied by learned single Judge is in consonance with and stand buttressed by the proposition of law laid down by the Supreme

Court in Shambu Nath Goyal (supra). This court is in agreement with the reasons supplied by learned single Judge in the said regard. In the totality of

facts and circumstances obtained in the present case it was not expedient nor was justified in law to avail for the management the opportunity to lead

the evidence afresh so as to protract the proceedings.

6. However, learned single Judge observed with regard to the entitlement of backwages, that it is a discretion relief yet allowed the petition granting

benefit of backwages also to the respondent workman. It was noted by learned single Judge,

â€œThe applicant has also produced the evidence before the Labour Court that the opponent no.1 has employed with the partnership firm called

'Gohel Traders' and he was looking after the marketing of Nisaar Brand of Bindi. His monthly income was approximately 24,000/- per month. â€

6.1 The above observations and the final conclusion about allowing the petition by also upholding grant of backwages stand inconsistent. When the

learned single Judge has found and accepted that the workman was earning Rs.24,000/- per month and was employed with the partnership firm, it has

to be held that the workman could not have been given backwages. In wake of evidence regarding income of the workman, he could not be said to be

entitled to receive the backwages. In addition to the said aspect, it cannot be reasonably believe for all this long period the workman would have

remained unemployed or without earning. The discretionary relief of backwages is required to be denied to the respondent workman in the facts of the

case and in view of evidence about earning by the workman. The relief of reinstatement was properly granted.

6.2 It is unfortunate that workman is still kept out of service. Therefore, it is directed that the appellant-employer shall reinstate the workman within a

week. It was stated by learned advocate for the respondent - workman that workman shall report for duty within one week. Upon workman reporting,

he shall be reinstated.

7. The present appeal is partly allowed. The judgment and order of learned single Judge dated 26.4.2021 in Miscellaneous Civil Application No.1 of

2019 read with order dated 3.9.2021, confirming reinstatement with continuity of service and the benefits consequential thereto, is upheld, but the

respondent shall not be entitled to the backwages.

In view of disposal of the main appeal, the Civil Application will not survive. It is accordingly, disposed of.