

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10304 OF 2014

High Court of Gujarat .. Appellant
-vs- ..
Hitendra Vrajlal Ashara & Anr .. Respondents

J U D G M E N T**C. NAGAPPAN, J.**

1. This appeal is preferred against the judgment and final Order dated 30.8.2013 passed by the High Court Gujarat at Ahmedabad in Special Civil Application No.15449 of 2008. The respondent was working as a Judicial Officer under the administrative control of the High Court namely the appellant herein. Labour Court of Bhavnagar had passed ex-parte award dated 17.7.1993 in Reference (LCB) No.490 of 1990 in favour of workman, wherein his termination was set aside with a direction to grant consequential benefits. The employer filed Misc. Application No.92 of 1993 on 21.11.1993 to set aside the ex-parte award in the said case and the Labour Court dismissed the application on 28.4.1997.

2. Employer filed another Misc. Application No.37 of 1997 praying to set aside the ex-parte award in the said case.

Meanwhile workman filed Recovery Application No.279 of 1997 and the Labour Court directed recovery in pursuance to order passed in Reference LCB No.490 of 1990. Challenging the original award and the order passed in recovery application the employer preferred Special Civil Application Nos. 446 and 520 of 1998 and the High Court dismissed the same. Respondent as In-charge Judge of the Labour Court of Bhavnagar allowed the employer's Misc. Application No.37 of 1997 on 8.5.1998. The workman filed complaint dated 13.5.1998 before the President, Industrial Tribunal. The workman challenged the said order by filing Civil Application No. 4460 of 1998 on 15.9.1999 and the High Court dismissed the same. Two Members of the Industrial Court on 28.12.1999 conducted preliminary inquiry on the complaint of the workman against the respondent and concluded against him. Aggrieved by the Order in Special Civil Application No.4460 of 1998 both the workman and employer preferred independent Letters Patent Appeal Nos.1362 of 1999 and 1412 of 1999. They came to be disposed of by common order dated 27.3.2000 in terms of settlement arrived at between the parties. The Inquiry Officer on 4.4.2002 passed the final order. The High Court on 3.8.2002 recorded tentative

decision accepting the Inquiry Report. The respondent was dismissed from service on 19.11.2007. Challenging the same the respondent-officer preferred the Special Civil Application No.15449 of 2008 before the High Court, it has allowed the application and set aside the Inquiry Report and order of dismissal passed against the Appellant. Aggrieved by the same on the administrative side, the High Court has preferred the present appeal.

3. The employer filed first Misc. Application No.92 of 1993 to set aside the ex-parte award in Reference No. LCB 490 of 1990 and that was dismissed on 28.4.1997. The employer filed another Misc. Application No.37 of 1997 praying to set aside the same ex-parte award and that was allowed by the delinquent officer on 8.5.1998. On the complaint of workman inquiry was conducted and the Enquiry Officer found that the order passed by the delinquent officer amounts to review of the order passed by his predecessor in dismissing the miscellaneous application of the employer. Moreover, the employer in his second application did not refer to the filing and dismissal of his earlier application seeking for the same relief and further did not allege that his second application was beyond time and there was no

discussion and finding in the order passed by the delinquent officer as to the ground on which the delay was condoned. In the conclusion, the Enquiry Officer held that the delinquent officer had allowed Misc. Application No.37 of 1997 in the execution proceedings going out of the way to help the employer and to favour him brushing aside the legal contentions and objections raised by the workman to the said Miscellaneous application.

4. The Division Bench observed that though the employer had not disclosed about his earlier application, the workman in his reply filed to the second application had disclosed the same and also produced copies of the earlier proceedings as evidence and the omission to mention about the earlier application would not amount to suppression, since facts were known to both the parties. The Division Bench further held that the finding of the Enquiry Officer that the delinquent officer had reviewed the earlier order is erroneous since the order passed by the delinquent officer was not in exercise of review jurisdiction and he never treated it so and rejected the conclusion of the Enquiry Officer that the delinquent officer did not properly appreciate the objection raised by the workman.

5. Insofar as the finding of the Enquiry Officer with regard to entertaining of time-barred second miscellaneous application of the employer in the execution proceedings and condonation of delay, the Division Bench held that the power to extend the period for setting aside ex-parte award is conferred on the labour court under Rule 26-A(ii) and though the delinquent officer has not stated so in his order, the appeal preferred against the said order was summarily dismissed by the High Court and in the further appeal the parties have arrived at settlement and it renders the issue of limitation and condonation of delay more or less academic. The Division Bench was of the opinion that prima facie the delinquent officer did try to be judicious and it is sufficient to absolve him from charge of undue favour/help to the employer and on that premise set aside the report of the Enquiry Officer and order of dismissal.

6. It is a well accepted principle of law that the High Court while exercising powers under Articles 226 and 227 of the Constitution does not act as an appellate court and its jurisdiction is circumscribed and confined to correct an error of law or procedural error, if any, resulting in manifest miscarriage

of justice or violation of the principles of natural justice. As already seen in the present case, the Division Bench has reappreciated the evidence acting as a court of appeal and we find it difficult to support the judgment of the Division Bench. We have, on facts, found that no procedural irregularity has been committed by the Enquiry Officer in the disciplinary proceedings as the same was conducted in accordance with Gujarat Civil Services (Conduct) Rules, 1971, and principles of natural justice. We noticed that the enquiring authority had elaborately considered the charges leveled against the delinquent officer and rightly held to be proved. In our view, the Enquiry Officer has rightly rendered the finding against the delinquent and same was accepted by the High Court and on its recommendation the order of dismissal was passed by the appointing authority and it is legally justified.

7. Consequently, the appeal is allowed and the impugned judgment is set aside with no orders as to costs.

.....J.
(V.Gopala Gowda)

.....J.
(C. Nagappan)

New Delhi;

November 24, 2014.

SUPREME COURT OF INDIA



JUDGMENT