

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5436 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAYMON GLUES & CHEMICALS

Versus

BECHARBHAI MADHABHAI

Appearance:

MS MAMTA VYAS for Petitioner

None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 29/11/96

ORAL JUDGEMENT

1. Heard learned counsel for the petitioner. Having gone through the award of the Labour court at Ahmedabad made in Ref. (LCA) No.1010/76 dated 3rd August, 1983, I am satisfied that this petition deserves to be accepted and the matter has to be remanded back to the Labour court to decide the same afresh in accordance with law.

2. The respondent-workman has been dismissed from the services after holding a full-fledged domestic

inquiry by the petitioner management. The respondent workman raised an industrial dispute challenging thereunder the order of his dismissal from services made by the petitioner. Reference has been made of the industrial dispute by the State Government to the Labour court and under the impugned award the dismissal of the workman was declared to be illegal and arbitrary and the petitioner was directed to reinstate the respondent-workman on his original post with continuity of service and 50% of the backwages has also been awarded.

3. The respondent-workman has challenged his dismissal from services inter-alia, on the ground that the domestic inquiry held against him was not fair and proper. From the award which has been given by the Labour court, it is borne out that the Labour court has considered that the domestic inquiry held against the respondent-workman was not proper and in accordance with the principles of natural justice. In the statement of claim, the respondent-workman has raised a plea that the domestic inquiry was not fairly and properly conducted by the management, but this issue regarding the fairness of the domestic inquiry was not decided by the Labour court as a preliminary issue. The counsel for the petitioner made a statement before this court on a question put to her by the court that the Labour court has not decided the question of the fairness of the inquiry as a preliminary issue. She has further contended that this issue has been decided by the Labour court while deciding the reference finally, and as such, the petitioner has been deprived of its right to prove the misconduct before the Labour court by leading the evidence.

4. From the award I find that the petitioner has filed two applications before the matter could have been finally decided. By Ex.43, the petitioner prayed for the grant of permission to it to prove the misconduct against the petitioner in case where domestic inquiry is held to be improper. This application has been rejected, but I am satisfied that the ground of rejection given by the Labour court is not correct. The Labour court has altogether proceeded on wrong presumption and assumption and has not correctly understood the law as laid down by the Apex court in catena of cases. The question of fairness of domestic inquiry which has been held against the workman and on the basis of which he has been dismissed from services has to be decided as a preliminary issue where this issue has been raised by the workman in his statement of claim. It is not in dispute that this plea has been put in issue by the

workman-respondent, and as such, it was obligatory on the part of the Labour court to decide the question of fairness of the inquiry as a preliminary issue. The stage where the right to prove the misconduct before the Labour court would have arisen immediately on pronouncement of the order by the Labour court holding thereunder the domestic inquiry held against the workman to be improper and unfair. That was the stage where the petitioner has to exercise its right, but as stated earlier, this has not been done in the present case and as such, naturally when the arguments have been advanced on the fairness of the inquiry at the final stage of the hearing of the Reference, the petitioner has right moved an application to permit it to prove the charges against the workman. That application has been moved by the petitioner probably under the bonafide belief that the Tribunal would have been prima-facie satisfied on the question that the inquiry conducted against the workman was fair and reasonable.

5. Taking into consideration the totality of the facts of this case, I am satisfied that the Labour court has misdirected itself on the facts as well as on law as laid down by the Apex court.

6. In the result, this writ petition succeeds in part and the award of the Labour court at Ahmedabad made in Reference (LCA) No.1010 of 1976 dated 3rd August, 1983 is quashed and set aside and the matter is remanded back to it with the direction to first decide the question regarding the fairness of the domestic inquiry conducted against the workman on the basis of which the petitioner has dismissed the workman-respondent from the services. This issue may be decided after giving both the parties full opportunity of producing the evidence as they desire as well as after hearing them. In case the inquiry is held to be improper and unfair by the Labour court then at that stage if the petitioner wants to exercise its right to prove the misconduct against the workman before the Labour court then that opportunity should be given to the petitioner. Rule is made absolute in the aforesaid terms with no order as to costs.
