

2007 (3) GCD 1943

GUJARAT HIGH COURT

Hon'ble Judges:D.H.Waghela, J.

Ismail Yusuf Bhanji Versus Navin Flourine Industries

SPECIAL CIVIL APPLICATION No. 2732 of 2003 ; *J.Date :- JUNE 20, 2007

- [CONSTITUTION OF INDIA](#) Article - [14](#), [21](#), [226](#), [227](#)

Service and labour - Constitution of India - Art. 14, 21, 226, 227 - reinstatement with full back wages - claim for rejected - validity - held, petitioner himself admitted that he had worked as Badli/Helper in all departments of company - he failed to prove allegation of mala fides or victimization in matter of regularisation or posting of petitioner - therefore, Labour Court justified in upholding the order of discharging petitioner from services on account of his proved misconduct of disobedience - petition dismissed.

Imp.Para: [[3](#)] [[4](#)]

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**JUDGMENT :-
D.H.WAGHELA, J.**

1 The petitioner workman has invoked Arts. 14, 21, 226 and 227 of the Constitution to challenge the award dated 5.06.2002 of Labour Court, Surat, in Reference (LCS) No.267/1991, whereby the reference claiming reinstatement with full back wages was rejected. That award, in substance, is challenged as perverse and illegal.

2 According to the relevant facts as stated in the impugned award and about which there was no dispute, the petitioner was serving as Helper under the respondent and, by order dated 1.09.1990, his services were regularized as a permanent and confirmed employee while designating him as a Canteen Attendant and posting him in Canteen Department. The petitioner objected to that order on the ground that since last four years he was working in the Instrument Department of the company and, therefore, he ought to have been posted in the Maintenance Department rather than being posted in the

Canteen. The charge sheet dated 18.09.1990 was issued to the petitioner alleging that the petitioner had refused to accept the order dated 1.09.1990 and disobeyed that order. He was also warned that unless he obeyed the order and reported for duty in the Canteen, he would not be entitled to any wages with effect from 19.09.1990. A departmental enquiry, on the basis of those charges, was conducted and it was found to have been proved that the petitioner had disobeyed reasonable order of the respondent. Therefore, the order discharging him from service on the basis of the charges proved against him was upheld, even as the Labour Court found that the petitioner was earning income from an alternative source after the termination of his service.

3 Learned counsel Mr. Ramnandan Singh, appearing for the petitioner, vehemently argued that the original order regularizing services of the petitioner and posting him in the Canteen Department was itself illegal and mala fide insofar as the petitioner was, since last four years, working in the Instrument Department and the petitioner was justified in insisting on his regularization in the Instrument or Maintenance Department since there were no scopes of progress or promotion in the Canteen Department. Thus, the learned counsel indirectly strove to justify the act of disobedience of order of the respondent without showing any provision by which right of the management to transfer an employee, whether temporary, casual or permanent, to any other department was curtailed. In the facts of the present case, as recorded in the impugned award, the petitioner had himself admitted during the course of departmental enquiry that he had worked as Badli/Helper in all departments of the company. It is also recorded as a finding of fact that the petitioner had failed to prove the allegation of mala fides or victimization in the matter of regularization or posting of the petitioner. Therefore, in short, the Labour Court was justified in upholding the order discharging the petitioner from service on account of his proved misconduct of disobedience.

4 It was submitted by learned counsel Mr. Kunal Nanavati, appearing for the respondent, that, despite the earlier record of other misconduct, the respondent had taken a lenient view and the service of the petitioner was terminated by an order of discharge simpliciter. Thereafter, the amount legally due to the petitioner upon termination of his service was remitted to him but such amount was reported to have not been accepted by the petitioner. Therefore, he fairly stated that, the amounts which may be due and payable to the petitioner shall be paid to him with interest at the rate of 10% p.a. upon his personally approaching the respondent within a period of one month, on condition of his passing appropriate receipt therefor.

5 Recording the above concession made by the respondent, the petition is dismissed for being devoid of any substance and Rule is discharged with no order as to costs.

