

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5495 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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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?

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MANAGER

Versus

G J RABARI

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Appearance:

MR D.V. Mehta for Mr. BP TANNA for Petitioner

MR KS ACHARYA for Respondent No. 1

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CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 31/08/96

ORAL JUDGEMENT

The petitioner, Ahmedabad Municipal Transport Service, challenges the award dated 15.2.1988 by which the respondent employee who was dismissed for the misconduct of gross negligence in driving the vehicle causing death of a person was reinstated. The Tribunal noted that the respondent employee was acquitted by the Criminal Court for the same incident. However, it also found that the driver ought to have been careful and if

he had been careful, the accident could have been avoided. The Tribunal found that the driver was to some extent negligent though the cyclist was also negligent. Therefore, the Tribunal set aside the punishment of dismissal and ordered reinstatement with 50% backwages. Under Section 11A of the Industrial Disputes Act the Tribunal can reduce the punishment from dismissal to a lesser punishment. When the Tribunal has found that the respondent employee was negligent only to some extent, it rightly set aside the punishment of dismissal. However, no lesser punishment is awarded. Withholding of wages in such matters may depend upon the other factors like the employee having been gainfully employed or not during that period. Therefore, strictly speaking this cannot be termed as a punishment. Having regard to the facts and circumstances of the case, instead of remanding the matter to the Labour Court for imposing appropriate lesser punishment, by consensus of both the sides expressed through their learned counsel, the impugned award of the Labour Court is modified only to the extent of imposing punishment of stoppage of one increment on the respondent employee for one year without any future effect. There is no ground made out for disturbing the rest of the award. Rule is made absolute accordingly with no order as to costs.

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