

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1652 of 1998

and

SPECIAL CIVIL APPLICATION No 3823 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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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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GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

RAMANBHAI M PATANWADIA

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Appearance:

MRS VASAVDATTA BHATT for Petitioner

MR. H. K. RATHOD for Respondent

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CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 30/06/98

ORAL JUDGEMENT

#. Leave to amend is granted. Rule. Mr.H.K.Rathod waives notice of rule in SCA No.1652/98 and Smt.Vassavadatta Bhatt waives notice of rule in SCA No.3823/98.

#. These two petitions are filed against the award passed by the labour court, Baroda in Reference No.825/94 on 5th May,97. The SCA No.1652 of 1998 is filed by the employer to challenge the award passed by the labour

court whereas SCA No.3823 of 1998 is filed by the employee workman to implement the award passed by the labour court, hence both these petitions are heard together and they are being disposed of by this common judgment.

#. The workman Ramanbhai M. Patanwadia was working as driver in Baroda Division of Gujarat State Road Transport Corporation. He had remained absent from duty from 25-10-1993 to 6-11-93 and again from 22-11-93 to 30-11-93. On account of his absence from the duty without any application for leave or grant of leave, the department had decided to proceed against him. Therefore a chargesheet was served on him and thereafter the departmental inquiry was held for his misconduct of remaining absent from duty. On finding him guilty of charge levelled against him, the competent authority had ordered his dismissal from service on 12th January, 1994. As he was dismissed from service, he raised a industrial dispute and consequently Reference (LCV) No.825/94 was referred to the labour court of Baroda. During hearing of the said reference, the legality of the departmental inquiry was not disputed. The labour court had found that the workman had produced the medical certificate, therefore, it could not be said that the workman was absent from duty without reasonable cause. Therefore, in these circumstances, the punishment awarded to the workman was grossly inadequate and harsh and therefore allowed the said reference directing reinstatement of the workman with 75 % backwages. Though the said award was passed on 5-5-97 and was published on 10th July, 1997, there is no implementation of the said award hence the workman has filed SCA No.3828/98 for implementation of the said award.

#. Whereas the employer - Gujarat State Road Transport Corporation has filed SCA No.1652/98. It is contended on behalf of the employer that there was no justification for the labour court to interfere with the punishment awarded by the employer. It is further contended that in view of the previous history of the workman, punishment awarded to him of denying 25 % wages is not adequate. It is contended by Smt. Bhatt that the workman was in habit of remaining absent. He had previously remained absent from duty on 11 occasions and though warning and minor punishments were awarded to him he had not shown any improvement, on the contrary the humanitarian approach shown to him, is misused by him and therefore in the circumstances, the punishment awarded by the employer ought not to have been interfered with by the labour court but in any case, the punishment awarded

by the labour court is not adequate in view of the proved misconduct coupled with the previous misconduct of the workman.

#. It is true that the previous service record of the workman does show that the workman had remained absent on 11 occasions prior to the misconduct in question, and that leniency was shown to him in those cases, he had repeated the said misconduct which is a subject matter of the present departmental proceeding against him. But the labour court has found that in view of the production of medical certificate by the delinquent, it could not be said that he was absent without any reason, and the gravity of misconduct committed by him stands reduced. Now the only misconduct that remains is of his failure to give intimation to his employer about his illness and about his inability to attend his duty. Therefore when the labour court had found that it could not be said that the workman was absent without any reasonable cause, the labour court was justified in interfering with the punishment awarded by the employer therefore the labour court was justified in holding that the punishment of dismissal from service was not called for in the present proceeding.

#. But the labour court has denied only 25 % wages to the workman. No doubt, this denial of 25 % wages to the workman will also amount to punishment but the labour court has not taken into consideration the previous conduct of the workman and the humanitarian treatment given to him by the employer in those 11 occasions prior to the incident in question. The conduct of the workman does show that instead of showing improvement in behavior, he continued to commit misconduct as if taking it for granted that no severe punishment would be granted / awarded to him and therefore in the circumstances, in view of the material on record, the punishment awarded by the labour court could not be said to be adequate and proper. I, therefore hold that in view of the material on record, the interference by this court by exercising the powers conferred under Article 226 & 227 of the Constitution of India is called for, in the question of punishment, is called for. Therefore, taking into consideration the previous misconduct of the workman, I hold that he deserves to be reinstated in service with 25 % backwages instead of 75 % backwages and he would be entitled to regular wages and continuity of service from the date of the publication of award.

#. Therefore, I hold that SCA No.1652 of 1998 will have to be partially allowed. The order passed by the

labour court directing the reinstatement of the workman with 75 % backwages is set aside and instead of its order, the workman driver is to be reinstated in the service with continuity of service with 25 % backwages from the date of the dismissal till the date of publication of award and full wages from the date of the publication of award till the date of reinstatement. The respondent Corporation in SCA 3823/98 and petitioner in SCA 1652/98 should pass necessary order and give him reinstatement within 3 weeks from today and as regards arrears of pay, they should be paid to the workman within 8 weeks from today. Both these petitions thus stand disposed of with no order as to cost.

Dt : 30-6-1998 (S.D.Pandit, J.)

(KPP)