IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6183 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

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? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

ADAM MOHMAD GANCHI

Appearance:

MR Hardik C. Raval for Petitioner

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 29/10/1999

ORAL JUDGEMENT

Mr. Raval, the learned advocate is appearing for the petitioner Corporation. Notice of rule has been served upon the respondent but nobody has appeared for the respondent.

The facts of the present petition, in short, are that the the respondent was employed as a conductor by

the petitioner corporation. In the course of his duty as a conductor on 18th March, 1984, in bus plying between Double Daccker Station to Mandvi, it was found that he had collected fare passengers but had not issued tickets when the checking party made a surprise checking. Thereafter, regular inquiry was held and thereafter, the respondent was dismissed from service by an order dated 17th August, 1984. Said order of dismissal was challenged by the petitioner before the labour court, Vadodara, by filing reference No. 197 of 1986. The labour court, under its judgment and award dated 20.12.1989, directed reinstatement of the respondent without back wages and further directed that his one annual increment should be stopped. Said award is challenged by the petitioner corporation before this court by filing this petition under Article 227 of the Constitution of India.

While admitting the present petition by issuing rule thereon, this court has not granted the interim relief against the reinstatement of the respondent workman.

Before the labour court, the respondent workman has not challenged the legality and validity of the departmental inquiry by filing purshis and has also submitted an application to the labour court for exercising the powers under section 11A of the Industrial Disputes Act, 1947 ("the ID Act" for short). Before the labour court, the workman has also explained that the respondent was unemployed for more than five years and he does not have any means to maintain his family and is not pressing for back wages and also prayed for some mercy by imposing some penalty. On the basis of the said purshis Exh. 18, no evidence was led before the labour court by the either party.

The labour court has considered the length of service of the workman and past record of the workman and also considered the fact that by purshis Exh. 18, the respondent workman has foregone the claim of back wages and has also agreed to accept the punishment of stoppage of one annual increment with cumulative effect. The labour court has also considered the judgment of the apex court in the matter of Scooter India versus Lucknow Labour Court, reported in 1989 Lab. & IC Vol. 22, page 1043. After considering all these aspects as also the judgment of the Honourable the Supreme Court in case of Scooter India (supra), the labour court has ordered reinstatement of the respondent with continuity of service but without back wages and further imposed

punishment of stoppage of one annual increment but without future effect.

Mr. Raval, the learned advocate appearing for the petitioner has submitted that there was serious misconduct committed by the respondent workman while working as conductor and he has not issued tickets to the passengers from whom he had already recovered the fare and way bill was also not filled up properly and 00.45 ps. was found to be in excess and no statement was given by the respondent before the checking party and, therefore, the punishment which has been imposed by the labour court for stoppage of one annual increment without cumulative effect would, in fact, amount to mere fine of Rs. 100/- or so and nothing more than that.

I have considered the submissions of Mr. Raval, the learned advocate for the petitioner corporation. The charge against the respondent workman was that he had collected fare from the passengers but had not issued tickets to the passengers who were travelling in the bus and at the time of checking, there were 33 passengers travelling in the bus and the bus was double daccker. So, at the time of checking, said passengers were on the upper storey of the bus and the conductor was booking the tickets on the lower storey of the bus and, therefore, the mistake has occurred. The labour court has considered that there was no dishonest intention on the part of the respondent workman as the passengers who were travelling in the bus were on the upper storey of the bus and there was some bona fide mistake on the part of the respondent workman in not issuing tickets to those passengers. The labour court has also considered the past record of the respondent workman. In past, for such similar incident, five annual increments were stopped with permanent effect and thereafter, no misconduct was committed by the respondent. The respondent has completed more than five years service as such. After taking into consideration all these aspects of the matter, the labour court has passed the impugned judgment and award as aforesaid.

I have carefully considered the submissions made by Mr. Raval. I am of the opinion that after considering the charges levelled against the respondentn, his past record and the explanation which was tendered by the respondent workman as also his family back ground as stated in purshis Exh. 18, some more punishment is required to be imposed upon the respondent workman. Here, it should be noted that while admitting this

petition, no interim relief was granted against reinstatement of the respondent. Therefore, the respondent must have been reinstated in service and after passage of such long time, now,it is not in the fitness of the things to disturb the findings of the labour court and the present position of the respondent workman in so far as the reinstatement of the respondent is concerned. However, in so far as the punishment is concerned, I am of the opinion that instead of stoppage of one increment without future effect in addition to above punishment, it would be just and proper and would met ends of justice if two annual increments of the respondent workman are ordered to be stopped with permanent effect, with effect from 1st January, 1999. Therefore, on the facts and circumstances of the case, following order is passed :

The impugned judgment and award of the labour court is modified in so far as the penalty imposed upon the respondent is concerned. Instead of stoppage of one annual increment of the respondent without cumulative effect in addition to above punishment, the petitioner corporation is directed to stop two annual increments of the respondent workman with cumulative effect, with effect from 1st January, 1999. The effect of these directions would be that on and from 1st January, 1999, his two increments shall be stopped by the petitioner corporation with future effect and the same would not result into reduction of his present pay packet and as a consequence of such stoppage of increments as stated above, there shall be no recovery from the respondent workman but his two annual increments shall be stopped with future effect from 1st January, 1999. Rest of the award passed by the labour court, Baroda in Reference No. 197 of 1986 dated 20.12.1989 is confirmed. Rule is made absolute to the aforesaid extent with no order as to costs.

29.10.1999. (H.K.Rathod,J.)

Vyas