

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5203 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
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? : NO

G S R T C

Versus

TULJASHANKER J VYAS

Appearance:

MR HARDIK C RAWAL for Petitioner

MR MUKESH H RATHOD for the Respondent.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 28/04/2000

ORAL JUDGEMENT

This petition has been filed by the
petitioner against the award dated 23rd July,1987 in
Reference S.C.No. 1142 of 1983 passed by the Labour
Court, Rajkot whereby the petitioner Corporation has been
directed to reinstate the respondent-workman on his

original post with full back wages and continuity of service and also pay costs of Rs.200/- to the respondent-workman.

2. The respondent workman was serving as a conductor in the Porbandar depot of the petitioner. He was charged-sheeted and a show cause notice dated 23rd June, 1982 for dismissal from service was given to the respondent on the ground that on checking by the checking staff when the respondent was on the route from Jam Jodhpur to Porbandar on 26.8.81, the ticket fare was collected from three separate passengers going from Jam Jodhpur to Tran Patia, but tickets were not given till the checking place and he refused to give his statement to the checking officer. The respondent stated that he has given tickets to the passengers in advance but tickets were kept due to collecting fare charges from other passengers who were to be given at the place of alighting. The checking party believed by misunderstanding that the conductor has recovered money without issuing tickets. The Checking officer has not taken the statement of the passengers who were alighting from the bus and they were not asked for tickets. The cash which was with him was also not checked and the respondent was making the booking.

2. An industrial dispute was raised by the respondent-workman. The Labour Commissioner, Porbandar by his order No. KS/SM/MC/Por 83/17 referred the said dispute for judicial adjudication. Later on the matter was transferred to the Labour Court, Rajkot.

3. Heard the learned counsel for the petitioner Corporation. The learned counsel for the petitioner submitted that the respondent as a conductor plied bus between Jam Jodhpur to Porbandar on 26.8.81. On 26.8.81, by a checking staff, it was found that he was collecting fare from three travelling passengers who were to alight near Tran Patia and did not issue tickets to them. The unpunched tickets were found from his possession. A regular departmental inquiry was held against the respondent on the charge of misappropriation of public funds. The competent Authority came to the conclusion that the respondent workman was guilty of the charges levelled against him. On checking, there was no deficit in cash, but the way bill was also found to have been closed. The respondent was dismissed from service by an order dated 23rd June, 1982. The respondent raised the dispute to be referred to the Labour Court, Rajkot being LCR No. 1142 of 1983. The Labour Court, Rajkot vide its award dated 23rd July, 1986 has directed the petitioner

Corporation to reinstate the respondent workman with full back wages. Hence, the petitioner Corporation has filed this petition.

3. The learned advocate for the petitioner contended that the Labour Court has committed an error in holding that the cash was not checked. It has been specifically mentioned that the conductor had paid the requisite cash. In case the workman was right in saying that he had not collected the fare from the travelling passengers, the cash received from the passengers would have been found later on to the extent of the value of unpunched tickets. As such, the explanation of the respondent was not to be believed. It was further contended that the bus was checked at a distance of 80 kms., but the way bill was closed. It was erroneous to hold that the tickets were issued in advance to the passengers and cash was collected at the time when the passengers were to alight at their destination and the respondent was also found guilty of dereliction of duty in not issuing tickets to the passengers. Hence, the order of reinstatement with full back wages is wholly unjustified in the facts and circumstances of the case. It is also contended by the learned counsel for the petitioner that the respondent was found to have been guilty of similar charges on 21st May, 1980, 23rd May, 1980, 17.6.80, 26.8.81 and 1.1.82, but no action was taken as regards the incident dated 1st January, 1982.

4. The main contention of the learned counsel for the petitioner is that from the facts and circumstances, the petitioner ought to have been held guilty of misappropriation of public money and the Labour Court has erred in disbelieving the departmental case on flimsy grounds and has erred in reinstating the petitioner with full back wages.

5. I have considered the contentions of the learned advocate for the petitioner and perused the relevant record. The Labour Court has considered that the respondent might have given tickets and the passengers might have given money to the respondent at the place of alighting. In his statement, the respondent has stated that the checking officer had not asked for the statements from the passengers. The statements of all those passengers were not recorded and the cash of the applicant was not checked. As such, the Labour Court came to the conclusion that in absence of the statements of the passengers on the spot, it would be difficult to hold that the passengers were travelling without tickets and money had already been taken by the

respondent conductor without issuing tickets. In the facts and circumstances of the case, the Labour Court has come to the conclusion that the conductor was booking on road and after taking money from the three passengers, he had issued tickets but kept them with him either to return balance of money to the passengers concerned or he was to hand over those tickets later on prior to the destination of those three passengers. It was difficult to say that the respondent conductor had recovered the fare from those three passengers and allowed them to travel without issuing any ticket more particularly three tickets were found with the respondent conductor. Moreover, the respondent was not given fair opportunity of defending himself and the department was found to have miserably failed to prove its case against the respondent conductor.

6. I have carefully considered the facts and circumstances of the case. The contentions of the learned advocate for the petitioner are based on appreciation and evaluation of evidence on record. It is not possible for this Court to re-appreciate the evidence in a writ jurisdiction under Article 227 of the Constitution of India. The court below after having found sufficient reasons, has ordered to reinstate the petitioner with full back wages and this order does not appear to be unjustified in the facts and circumstances.

7. So far as the back wages are concerned, the respondent has stated that he had tried to obtain service at some other places, but no service could be available to him. Hence he was living on the income of his father. Thus, the Labour Court has committed no wrong in awarding back wages to the respondent. The learned counsel for the petitioner states that the respondent has already been reinstated in service in compliance with the impugned award and the petition before this Court is only in respect of back wages. In the facts stated by the respondent, the Labour Court does not appear to have committed any error in awarding back wages. As such, I do not find any reasonable ground to interfere with the impugned award of the Labour Court. Accordingly, this petition is dismissed. Rule is discharged with no order as to costs.

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