

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6804 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES  
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

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UMARBHAI J SAMA

Versus

G S R T C  
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Appearance:

MR MUKESH H RATHOD for Petitioner  
MR HARDIK C RAWAL for Respondent No. 1  
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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 30/06/2000

ORAL JUDGEMENT

This is a petition under the provisions of Industrial Disputes Act, 1947 read with Article 227 of the Constitution of India challenging the order passed by the learned Presiding Officer, Labour Court at Rajkot on 2.12.1986 in Reference Case No.879/84. The petitioner

above named was a workman in the employment of the respondent. He remained absent from duty without any intimation from 11.3.1982 to 24.3.1982. Therefore, an enquiry was conducted and after the conclusion of the enquiry, he was dismissed from the service. Therefore, the aforesaid matter was filed and the learned Presiding Officer, Labour Court passed award dated 2.12.1986 setting aside the aforesaid order of dismissal and directed reinstatement of the petitioner without backwages. The petitioner has challenged the aforesaid order inasmuch as backwages have not been paid to him. It has been mainly contended that the backwages is a matter of rule and when the reinstatement is ordered, backwages should have been awarded. Therefore, this petition has been filed for getting the backwages.

2. Rule was issued and the respondent Corporation has put in appearance. I have heard the learned Advocates for the parties.

3. On behalf of the petitioner, efforts have been made to show that the trial court has erred in not granting backwages. At the same time the inquiry proceedings are not at dispute before me. No lapse in the procedure is pointed out. The rules of the departmental enquiry and the principles of natural justice have been undisputedly followed since there is no arguments on such points.

4. The case before me is thus in a very narrow compass. I am required to deal with the issue of back wages only.

5. Learned Advocate for the petitioner has relied upon a decision of 1987 GLR (1) 139 in the case of Vijaykumar M Jasani v Gujarat State Road Transport Corporation, wherein it has been observed that normally backwages should have been awarded by the Court.

Another decision relied upon by the learned Advocate for Another decision relied upon by the learned Advocate for the petitioner is in the case of Sayed Zaheer Hussain v. Union of India & Ors., (1999 SCC (L & S) 666. There the person concerned was dismissed and the Supreme Court found that the dismissal was too harsh to be a penalty requiring substitution by another appropriate penalty. The Government leaving it to the Hon'ble Supreme Court to award appropriate penalty, the Supreme Court directed that the employee concerned should be reinstated with continuity in service and with all other benefits but limiting the back wages to 50% only.

6. Learned Advocate for the respondent placed reliance on a decision in the case of M L Chauhan v. GSRTC, reported in 1999 (1) GLH 527. There the appellant had approached the Labour Court and the Labour Court passed order of reinstatement with 50% backwages. The appellant challenged the said order by preferring Special Civil Application No.3650/98. The Gujarat State Road Transport Corporation challenged the order by preferring Special Civil Application No.4711/98. The learned Single Judge dismissed the petition being Special Civil Application No.3650/98 preferred by the appellant. However, the learned Single Judge allowed the Civil Application No.4711/98 preferred by the GSRTC and quashed and set aside the award passed by the Labour Court. This would clearly mean that in appropriate cases, the courts may not allow backwages at all. We have, therefore, to consider each case in its own facts and circumstances.

7. The facts of the case before us are little different. Even the Labour Court has observed that there were many lapses on the part of the petitioner in the past. This can be gathered from para 9 of the judgment of the Labour Court wherein it has been mentioned that the petitioner has committed several misconducts of the same nature of remaining absent from duty without leave in the past and that he was in the habit of coming late. Thus, according to the findings of the Labour Court, the petitioner was in habit of remaining absent from duty unauthorizedly. In public employment, discipline has to be maintained and the Court should not be a party to encouragement of indiscipline amongst the employees. It would, therefore, be quite appropriate to follow the principles laid down by this Court (Coram: B C Patel & AL Dave, JJ.) in the case of M L Chauhan v. Divisional Controller, GSRTC (1999 (1) GLH 527) (supra).

8. It is clear that the petitioner remained absent without previous intimation for about 13 days and he was holding responsible post of Driver and the bus cannot proceed without the Driver and the bus was being run by the GSRTC which is a public Corporation and a public body. If a bus does not start at a particular time, there would be lot of hue and cry by the passengers at large and the management would be in acute difficulty to meet with the situation. Therefore, with a view to set example, some harsh punishment has to be inflicted on the petitioner.

9. In the present case, the Labour Court has shown leniency by reinstating the petitioner. However, the

backwages have not been awarded. At the same time, the Labour Court made it clear that in case of default the workman will be entitled to full backwages from the date of default till reinstatement.

10. In the aforesaid view of the matter, I am of the view that the Labour Court has not committed any illegality in passing the order of not giving backwages which order does not appear to be illegal considering the past defaults on the part of the petitioner and considering that he was absent without prior intimation for a long period and thus the S.T. Corporation was put to great difficulty. The facts clearly indicate that this is not a fit case in which this Court should exercise extra ordinary powers and jurisdiction under Article 227 of the Constitution of India.

11. Consequently, there is no merit in this petition and the same deserves to be dismissed. The petition is, therefore, ordered to be dismissed. Rule discharged. No order as to costs.

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msp.