

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 973 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
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

G S R T C

Versus

SHANTILAL H PATEL

Appearance:

1. Special Civil Application No. 973 of 1994
MR HS MUNSHAW for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 29/11/2001

ORAL JUDGEMENT

In this petition under Article 227 of the Constitution, the Gujarat State Road Transport Corporation has challenged the judgment and award dated 17.5.1993 passed by the Labour Court, Bhavnagar in Reference (LCB) No. 105 of 1992 whereby the Labour Court

set aside the dismissal order dated 15.1.1992 and directed the petitioner-Corporation to reinstate the respondent to the post of conductor with continuity of service and with 50% backwages.

2. Heard Mr Munshaw, learned counsel for the petitioner-Corporation. Though served, none appears for the respondent.

3. The learned counsel for the petitioner-Corporation has submitted that when the respondent had not issued tickets to two passengers and when that finding was given by the departmental authority, the defence of the respondent that he was not well and, therefore, the tickets were not issued ought not to have been accepted by the Labour Court when the defence was not borne out by any medical evidence at the earliest available opportunity, but the medical certificate was subsequently produced. The respondent had also not issued tickets to the passengers from whom fare was collected.

4. There appears to be considerable substance in the grievance made by the learned counsel for the petitioner that even if the Labour Court was of the view that the penalty imposed upon the respondent was unduly harsh or disproportionate, no backwages could have been awarded in favour of the respondent-workman. When the misconduct alleged against the respondent was proved, the Labour Court erred in not imposing any penalty other than denial of 50% backwages. In fact, in the facts and circumstances of the case, the Labour Court ought not to have awarded any backwages to the respondent for the intervening period between January, 1992 and the date of reinstatement. The interests of justice would, therefore, be served if the respondent is denied entire backwages for the period in question i.e. from the date of dismissal till the date of reinstatement and the respondent is further visited with the penalty of stoppage of one increment without future effect.

5. The petition is accordingly partly allowed in terms of the modification of the award of the Labour Court in the aforesaid terms.

Rule is made absolute to the aforesaid extent only with no order as to costs.

(M.S. Shah, J.)

sundar/-