

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3662 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

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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

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

NATWAR R DARBAR

Appearance:

MR HARDIK RAVAL AND MR KN RAVAL, for Petitioner
MR Mukesh H Rathod, for Respondent No. 1

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 30/03/2001

ORAL JUDGEMENT

The petitioner-Corporation has challenged the award of the Labour Court, Nadiad made on 24/02/1987 in Reference (L.C.N.) No.845 of 1983.

2. The respondent-Workman was employed as a Bus Conductor with the petitioner-Corporation since about 7 years in Dakore Depot of Nadiad Division.

3. On 31st May, 1982 the respondent-Workman was on

duty on the Raniya-Dakore route and during surprise checking it was found that though the respondent-Workman had recovered Rs.20/- from a group of 17 passengers, no tickets had been issued to the said passengers. After carrying out the necessary procedure as per law, the respondent was found guilty at the end of departmental inquiry and ultimately his services were terminated. The respondent-Workman raised an industrial dispute and in absence of any settlement between the parties the matter was referred to the Presiding Officer of the Labour Court by way of Reference (L.C.N.) No.845 of 1983.

4. The Labour Court after taking into consideration the facts, evidence on record and submissions of both the sides gave a categorical finding that the delinquent-Workman was guilty of the charge of misappropriation. However, as regards the sentence, the Labour Court came to the conclusion that the order of dismissal was harsh and modified the same to the extent of ordering reinstatement with continuity of service but without backwages. It is the aforesaid order which is challenged before us.

5. Mr.Raval, appearing on behalf of the petitioner has principally based his case on the following Apex Court decision as well as two decisions of this Court :

- (i) Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Ltd.) V/s. The Secretary, Sahakari Noukarara Sangha, reported in 2000(6) Supreme 339.
- (ii) Gujarat State Road Transport Corporation V/s. Kachraji Motiji Parmar, reported in 1993 Vol. 34 (1) GLR 302.
- (iii) Gujarat State Road Transport Corporation V/s Jamnadas Becharbhai, reported in 1982 (2) GLH 1057.

As against this, on behalf of the respondent Workman, Mr.Rathod has relied upon the Supreme Court decision in case of Asst. General Manager, SBI V/s. Thomas Jose and another, reported in 2000 SCC (L&S) 830.

6. We find from the facts on record that the impugned award has recorded the following findings of fact.

- (i) A passenger named Jenabhai Khodabhai was examined and he has categorically stated that though he

had given Rs.20/- for 16 and half tickets, he was not issued the tickets nor was the amount returned to him. The said passenger had not been cross-examined.

(ii) That the fare per ticket from Raniya to Dakore was Rs.1.25 ps.

(iii) The respondent-Workman has stated that he has issued tickets, but the same is not corroborated either from any entry in the way bill or by any other independent evidence.

(iv) There is no reason for the passengers' concerned to state anything against the Conductor by speaking a lie.

On the basis of these facts found after appreciation of evidence on record, the Labour Court has come to the conclusion that the delinquent-Workman had committed breach of trust and misappropriated the amount.

7. In the case of Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Ltd.) V/s. The Secretary, Sahakari Noukarara Sangha (supra), the Apex Court has stated that

"Once act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employees in service. Law on this point is well settled."

In the said case also the facts were that the Labour Court after finding the workman delinquent had ordered reinstatement with 25% backwages and for issuing such an order the Labour Court had considered that there was no evidence regarding past misconduct by the employee concerned. However, on the facts of the case before us the Labour Court has categorically recorded a finding based on the past record that the delinquent-Workman had also been found to have misappropriated monies on many occasions and had been awarded punishments of varying degrees.

8. As held by the Supreme Court, once misappropriation of monies which are held in trust stands proved, it is not necessary to show any sympathy towards

a delinquent and that too in the case where the respondent-Workman is found to be a habitual offender.

9. In view of the aforesaid facts, circumstances and the evidence on record, we find that the order of the Labour Court dated 24/02/1987 on the aspect of sentence cannot be upheld and this petition is required to be allowed. The impugned award at Annexure "A" made in Reference (L.C.N.) No.845 of 1983 is quashed and set aside to the extent of the sentence awarded and it is held that the respondent-Workman was correctly dismissed from service by the petitioner-Corporation.

The petition is allowed accordingly. Rule is made absolute.

(D.A. Mehta, J)

'Bhavesh'