

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4210 of 2002

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? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : YES
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

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GSRTC THRO.LEGAL OFFICER K.D.DESAI

Versus

GOKALBHAI M PATEL

Appearance:

1. Special Civil Application No. 4210 of 2002
MR MITUL K SHELAT for Petitioner No. 1
MR JS BRAHMBHATT for Respondent No. 1
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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 30/04/2002

ORAL JUDGEMENT

Heard Mr.Mittul Shelat, learned advocate appearing on behalf of the petitioner Corporation and Mr.J.S.Brambhhatt, learned advocate for respondent workman. This Court has issued notice returnable on 30th April, 2002 by order dated 18th April, 2002.

Rule. Mr.J.S.Brambhatt, learned advocate for respondent workman waives formal service of Rule on behalf of the respondent. With the consent of the learned advocates for the parties, this matter is heard finally today.

In the present petition, the petitioner Corporation has challenged the award passed by the labour court, Vadodara in Reference No.283 / 1998 dated 17th April, 2001, wherein the Labour Court has granted reinstatement with continuity of service with 75% backwages of the interim period and also awarded punishment of stoppage of one increment without cumulative effect.

Learned advocate Mr.Shelat appearing on behalf of the petitioner Corporation has submitted that the respondent workman was working as Driver at Bodeli Depot, Vadodara division. It is further submitted that the workman remained absent without prior permission of the authority concerned for a period from 7th August, 1994 to 19th August, 1994 and further period from 27th August, 1994 to 19th September, 1994. On the basis of the said misconduct, charged dated 15th September, 1994 was served on the respondent workman and thereafter departmental inquiry was initiated against the respondent workman, wherein also the workman remained absent and therefore, exparte inquiry was held against the respondent workman. Mr.Shelat, learned advocate has also submitted that no reply to the chargesheet was submitted by the workman and he also remained absent in the departmental inquiry. Ultimately, show cause notice dated 10th March, 1995 was served on the respondent workman, against which, reply was submitted by the respondent workman and thereafter, the respondent workman came to be dismissed from service on 17th April, 1995. Therefore, Mr.Shelat, learned advocate submits that the labour court has committed gross error in granting the relief of reinstatement to the respondent workman along with 75 % backwages for interim period especially when legality and validity of the departmental inquiry was not challenged by the respondent workman. Mr.Shelat, learned advocate also submits that the labour court has committed gross error in coming to the conclusion that at the relevant time, the respondent workman has submitted report to the concerned authority and the labour court further erred in holding that the misconduct of remaining absent without prior permission was found to have proved, inspite of this fact, the relief of grant of backwages to the extent of 75 % awarded by the labour court is unwarranted and contrary to the law. Therefore, Mr.Shelat, learned

advocate submits that the labour court has committed gross error in exercising the powers under Section 11-A of the I.D.Act, which requires to be interfered with by this Court in the interest of justice.

Learned advocate Mr.J.S.Brambhatt appearing on behalf of the respondent workman has submitted that the respondent workman has submitted report which is at Exh.9/4 on date 30th August, 1994 to the concerned authority . The respondent workman remained absent because of sickness of wife and thereafter on account of sickness of his mother and then also, the workman himself fallen sick and therefore, for this reason, the workman remained absent for the period in question. The cause for remaining absent was genuine and this fact was brought to the notice of the concerned authority by the respondent workman vide Exh.9/4 and 9/20. However, the competent authority has ignored the explanation given by the respondent workman at Exh.9/4 and 9/20 and passed the dismissal order. Learned advocate Mr.Brambhatt for respondent workman has also submitted that past record of the respondent workman was good and clean and therefore the labour court has rightly exercised the powers under Section 11-A of the I.D.Act, 1947 and granted proper relief to the respondent workman and therefore no error has been committed by the labour court and therefore, no interference of this Court is called for while exercising the powers under Article 226 and 227 of the Constitution of India.

I have considered submissions of the learned advocates for the parties. The respondent workman was working as Driver and he had remained absent on his duties for a period from 7th August, 1994 to 19th August, 1994 and further period from 27th August 94 to 19th September, 1994 and therefore, on the basis of this allegations, he came to be dismissed from service on 17th April, 1995. Before the Labour Court, the respondent workman has filed statement of claim vide Exh.3 and written statement was filed by the petitioner Corporation at Exh.8. Thereafter, the Corporation has produced documentary evidence vide Exh.9 and Exh.10 the respondent workman had filed Purshis stating that he is not challenging legality and validity of the departmental inquiry though challenge against the finding was kept as it is. Thereafter, the respondent workman was examined vide Exh.11, wherein he deposed that he remained unemployed during the interim period and he did not get any employment during the interim period. No oral evidence was led by the petitioner Corporation and thereafter, the labour court has examined the merits of

the matter. The labour court has considered that the respondent workman remained absent for period specified in the chargesheet and according to Exh.9/4, leave report was submitted on date 30th August, 1994 to the concerned authority and thereafter, chargesheet was served on the respondent workman. Therefore, the labour court has considered that before receiving the chargesheet, the respondent workman had already submitted leave report to the competent authority on date 30th August, 1994 and therefore, for that period, chargesheet cannot be served on the respondent workman. The labour court has also considered that the workman was working with the petitioner Corporation since 1976 and he remained absence because of sickness of wife, his mother and daughter. The respondent workman has deposed at Exh.11 that his wife is of unsound mind and on account of her sickness he had to go outside and to remain on leave for medical treatment of his wife. Therefore, he requested to impose minor punishment but not dismissal from service. The petitioner Corporation has pointed out that the order of dismissal is legal and valid and the respondent workman was gainfully employed and therefore, no relief can be granted in favour of the respondent workman. Thereafter, the labour court has considered inquiry papers and two reports submitted by the respondent workman dated 30th August, 1994 vide Exh.9/4 and second explanation vide Exh.9/20, wherein also the respondent has pointed out that he is also sick and therefore, he was not able to resume his duties and there was no any bad intention on his part and therefore, request was made to condone said lapse committed by the respondent workman. The labour Court has considered default card of the respondent workman vide Exh.9/26, wherein only one misconduct was recorded and that is in respect of the present misconduct. Therefore, past record has been considered by the labour court to be neat and clean and thereafter, the labour court has considered the document Exh.9/4 and 9/20, wherein explanation given by the respondent workman is genuine and on account of said reason, if the respondent workman remained absent, it cannot be said to be serious misconduct and therefore, the labour court has come to the conclusion that punishment of dismissal for such genuine cause, is considered to be harsh and unjustified. The labour court has also considered that the respondent workman has rendered his services from 1976 and no past misconduct is recorded against workman in past and the workman if remained absent because of genuine cause, it can be considered to be compelling circumstances for remaining absent. It is also observed that the respondent workman must have earned leave, casual leave and sick leave in his credit, which ought to

have considered by the petitioner Corporation and ultimately, the labour court has granted reinstatement with continuity of service with 75 % backwages of the interim period.

This Court has perused the entire award passed by the labour court. Looking to the observations made by the labour court while coming to the conclusion that punishment of dismissal is harsh and unjustified considering the genuine reason to remain absent without prior permission and granted reinstatement with continuity of service, for that, according to my opinion, the labour court has not committed any error while passing such directions against the petitioner Corporation. However, so far relief of grant of 75 % backwages of the interim period is concerned, the labour court has committed error inasmuch as the labour court has not considered oral evidence of the respondent workman. The labour court has imposed minor punishment on the respondent workman to suffer stoppage of one increment without cumulative effect. However, it is observed that once the misconduct is proved, no doubt which based upon genuine reason, in that case also, grant of 75 % backwages for the interim period from the year 1994 to 2001 seems to be on higher side. Afterall, the petitioner is public body and when the respondent workman had remained absent without obtaining prior permission of the concerned authority, the petitioner should not suffer any unnecessary financial burden. It is also noticed that the direction issued by the labour court granting 75 % backwages from the date of dismissal - 17th April, 1995, however, the labour court has ignored one important aspect that the respondent workman who was dismissed on 17th April, 1995 raised the dispute which referred for adjudication on 6th March, 1998, meaning thereby, after period of three years. Therefore, it is natural that the workman has not raised the dispute well in time but after three years and hence, obviously, he is not entitled to any amount of backwages for this delay period on the part of the respondent workman. Thus, according to my opinion, the respondent workman is not entitled to any amount of backwages for delay period in raising dispute from 17th April, 1995 to 6th March, 1998.

Therefore, now the question for consideration of this court is whether the workman is entitled to how much amount of backwages for the period from 6th March, 1998 to 17th April, 2001. Considering the fact that the respondent workman was driver, according to his deposition, he remained unemployed but some presumption can be drawn against the respondent workman that he might

have done some miscellaneous work of driving and further considering the fact that the petitioner Corporation is the public body and misconduct is found to have proved against the respondent, therefore, considering the aforesaid facts and circumstances in its totality, according to my opinion, if 75 % backwages awarded by the labour court is reduced to 40 % percent of the interim period will meet the ends of justice. Accordingly, award passed by the labour court, Vadodara in Reference No.283 / 1998 dated 17th April, 2001 is required to be modified accordingly.

In the result, present petition stands partly allowed. The direction issued by the labour court in granting reinstatement with continuity of service is not disturbed by this Court and the same stands unaltered. However, the direction in regard to backwages is reduced to 40 % of the interim period from 6th March, 1998 upto 17th April, 2001. It is also made clear that the petitioner corporation shall have to pay this 40 % backwages to the respondent workman but not amount of backwages is required to be paid by the petitioner Corporation to the respondent workman from the date of dismissal upto date of award i.e. for a period from 17th April, 1995 to 6th March, 1998.

Learned advocate Mr.Brambhattach submits that some suitable directions may be issued on the petitioner Corporation prescribing some time limit for implementation of the award in question as the respondent workman has not been reinstated in service till date. Therefore, considering the request made on behalf of the respondent workman, it is directed to the petitioner Corporation to implement the award in question as modified by this Court within period of one month from the date of receiving a copy of this order and to pay the backwages as directed by this Court within two months from the date of receiving the copy of this order. It is also directed to the petitioner Corporation to pay full wages to the respondent workman with effect from 17th April, 2001 till the actual date of reinstatement within period of three months from receiving the copy of this order.

Accordingly, present petition is partly allowed and the impugned award stands modified. Rule is made absolute accordingly. No order as to costs.

D.S. Permitted to respondent workman.

DATE : 30-4-2002 [H.K.RATHOD, J.]

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