

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1957 of 1988

with

SPECIAL CIVIL APPLICATION No 3717 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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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? : YES
 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 concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SHANTILAL MOTILAL SHAH THRO HIS HEIR & L.R.

Versus

DIVISIONAL CONTROLLER-GSRTC

Appearance:

1. Special Civil Application No. 1957 of 1988
MR MUKESH H RATHOD for Petitioner No. 1-1/1
MR MD PANDYA for Respondent No. 1

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 28/02/2003

ORAL JUDGEMENT

1. Both these petitions are arising out of the award passed by the Labour Court, Baroda in Reference no.1219/1977 whereby the petitioner - workman in Special Civil Application no.1957/1988 was ordered to be reinstated, but without backwages for interim period from 31/7/1975 to 19/2/1985. In Special Civil Application no.1957/1988 the petitioner - workman was aggrieved by the decision of the Labour Court in not granting full backwages for the aforesaid interim period and in Special Civil Application no.3717/1988 the petitioner Corporation i.e. The Gujarat State Road Transport Corporation is aggrieved by the award of the Labour Court directing the Corporation to reinstate the workman. Since both the petitions are arising out of the same award of the Labour Court they are being disposed of by this common judgment.

2. Mr.M.D. Pandya learned advocate appearing for the Corporation in both the matters, has filed a sick note. However, both the matters are of 1988 and they are frequently adjourned, and, therefore, the same are taken up for hearing and are being decided on merits. Mr.Prabhakar Upadhyay learned advocate is appearing on behalf of the workman in both the matters. He has submitted that pursuant to the award passed by the Labour Court, the workman is reinstated and however, no work was allotted to him and wages were paid to him. Thereafter, the workman expired on 16/6/1992 and his legal heirs were brought on record in both the petitions by an order dated 14/02/2003. Since the workman was reinstated pursuant to the award passed by the Labour Court, the grievance raised by the Corporation in its petition filed in this Court did not survive and hence, the petition has become infructuous. The petition is, therefore, dismissed as having become infructuous.

3. So far as the petition filed by the workman is concerned, it is the case of the workman that he was serving as a S.T. driver in the Corporation. The Corporation has received a complaint on 10/03/1975 against the workman from one Mr.C.N. Vasava who was also serving as S.T. driver in the Corporation. According to the complainant, the said workman was plying S.T. bus on 08/02/1975 from Pavagadh to Dabhoi. The break of the said bus failed near village Rasulabad. The workman came about 6:00 p.m. to the house of the complainant who was residing near the highway and as the workman was a staff member and as he was not having a tiffin, the wife of the complainant served dinner to him at his request. As the workman found that there was no one in the house except the wife of the complainant and their two children, he

again came back during the midnight at about 12:30 and had committed rape on the wife of the complainant. She made a hue and cry & resisted an attempt, but her voice for the help was silenced by pushing a piece of cloth in her mouth. The complainant has further stated that after hearing of the screams for help, an old man who was residing near his house rushed at the place and, thereafter, the workman went out and escaped immediately. It was further stated in the complaint that when he came back from his duty on the next day, he came to know about the incident, but due to social stigma and disgrace the complaint was not filed immediately and after sometime the complaint was filed.

3.1. It was further stated that on the basis of the said complaint, the matter was departmentally investigated and statement of various persons connected with the incident in question were recorded. On the basis of the preliminary inquiry, the workman was chargesheeted on 01/05/1975 under Clause 18 of the Discipline & Appeal Procedure prescribed under Regulation 80 of Gujarat State Transport Corporation Employees' Service Regulations and the default case no.233/1975 was registered against the workman.

3.2. It is further stated that the Inquiry Officer who conducted the inquiry issued show cause notice to the workman in respect of the charges levelled against him. Statement of the various persons were recorded. Thereafter the workman was also given an opportunity to cross-examine the witnesses mentioned in the chargesheet. The reporter was cross-examined by the workman and, thereafter, the Inquiry Officer after recording the evidence came to the conclusion that the charges levelled against the workman are proved.

3.3. It has also been stated that second showcause notice was issued to the workman on 19/06/1975 requiring the workman to showcause as to why he should not be dismissed from service. The workman filed his reply to the said showcause notice and contended that there was major contentions and omissions on all the material points and the evidence of witnesses suffered from infirmities. It was further contended that there was delay of about one month and the principle of natural justice was also violated and, therefore inquiry as well as ultimate finding arrived at was vitiated and no punishment should be warranted. The Competent authority after appreciating various documents and papers of inquiry arrived at the conclusion that the charge against the workman was proved and he was liable for punishment

and accordingly, the workman was dismissed from service vide order dated 31/07/1975.

4. Being aggrieved by the said order of dismissal the workman has raised Industrial Disputes demanding that he should be reinstated with full backwages. The Assistant Labour Commission made a reference of the said dispute with the Labour Court under Section 10 (1) (c) of the Act. The said Reference being Reference (LCL) no.1219/1979 was decided by the Labour Court on 25/01/1985. The Labour Court after taking into consideration the various documents reached to the conclusion that there was no sufficient and satisfactory evidence to come to the conclusion that the workman has committed misconduct in question. In light of the facts and circumstances of the case, the Labour Court set-aside the dismissal order dated 31/01/1975 and ordered reinstatement of the workman with continuity in service but without backwages. It is this award of the Labour Court which is under challenge in both these petitions as stated herein above.

5. Mr.Prabhakar Upadhyay learned counsel appearing for the workman stated that when the Labour Court itself found that the charges are not proved against the workman, the workman should be ordered to be reinstated alongwith full backwages right from the date of dismissal to the date of reinstatement. He has further submitted that the Labour Court has committed serious error of law in not awarding backwages to the workman despite the fact that the charges levelled against the workman were not proved. The said finding of the Labour Court is contrary to the settled legal position and also not in accordance with several judicial pronouncements of this Court as well as of the Hon'ble Supreme Court. He has invited my attention to the decisions of the Hon'ble Supreme Court in the case of Desh Raj Gupta v. Industrial Tribunal IV, Lucknow reported in A.I.R. 1990 S.C. 2174 wherein it is held that when the order of dismissal passed by the management is declared illegal, the date of dismissal cannot relate back to the date of the illegal order of the employer and the workman is entitled to the salary for the period from the date of the dismissal to the date of award. Mr.Upadhyay has further relied on the decision of the Hon'ble Supreme Court in the case of H.S. Chandra Shekara Chari v. Divisional Controller, K.S.R.T.C. reported in 1999 A.I.R. S.C.W. 1444 wherein while remanding the whole case back to the learned Single Judge to rehear it on merits, the Hon'ble Supreme Court has imposed condition that in compliance with the award by the Labour Court, the appellant in that matter, shall be

put back to duty and all the arrears of salary and allowances be paid to him within three months and during the pendency of this petition the monthly salary shall continue to be paid to the appellant as and when it fell due.

5.1. Mr.Upadhyaya has further relied upon the decision of the Division Bench of this Court in the case of Shree Narayan K. v. M/s. Anup Engineering Ltd., reported in XXXVI (1) G.L.R. page 97, wherein it is held that in view of the fact that this is a case of no inquiry and dismissal without any inquiry, the employer will be entitled to lead evidence and make an attempt to justify his action of dismissal by proving the misconduct and the magnitude thereof. Even assuming that the employer establishes it and the Labour Court holds in favour of the employer, the finding and dismissal would be operative only from the date the award becomes operative and even in such case of success, the employer is bound to pay the wages from the date of his order of dismissal till the date of the order of the award. Mr.Upadhyay has also relied on the decision of this Court in the case of Bharat Co-operative Bank Ltd., & Anr. v. K.L. Baria reported in XXXIX (1) G.L.R. page 850 wherein while deciding the issue regarding employee entitled to receive subsistence allowance from the employer during the pendency of the departmental inquiry, this Court held that since the employer chooses to prove misconduct before the Labour Court instead of resorting to suspension pending departmental inquiry, consequences for employee ought to be similar to those during suspension and further held that subsistence allowance in such cases would be payable even where there are no Standing Orders or they do not provide for subsistence allowance during suspension. Mr.Upadhyay has further relied on the decision of the Hon'ble Supreme Court in the case of M/s. Hindustan Tins Works Pvt., Ltd., v. The Employers of M/s. Hindustan Tins Works Pvt., Ltd., reported in A.I.R. 1979 S.C. page 75, wherein it is held that if the workman were always ready to work but they are kept away therefrom on account of invalid act of the employer, there is no justification in not awarding them full backwages which were very legitimately due to them. Lastly, Mr.Upadhyay has relied on the decision of the Hon'ble Supreme Court in the case of Ram Lakhan & Ors. v. Presiding Officer and Ors. reported in 2000 S.C.C. (L & S) 422, wherein it was held that subsistence allowance be paid to the appellant for the period of suspension at the said rate as provided under the Standing Orders or service rules and if there is no provision, they would be entitled to be paid full salary

even during the period of suspension.

6. Based on the aforesaid decisions of this Court as well as of the Hon'ble Supreme Court, Mr.Upadhyay has submitted that the award of the Labour Court so far as it relates to non granting of full backwages to the workman deserves to be quashed and set aside and the Corporation should be directed to pay full backwages to the workman right from the date of the dismissal to the date of the award.

7. I have considered the arguments advanced by Mr.Upadhyay learned advocate for the petitioner - workman in Special Civil Application no.1957/1988. I have also gone through the award passed by the Labour Court and the pleadings and averments made in the petition. I have also gone through the authorities cited by and relied on by Mr.Upadhyay. However, looking to the facts and circumstances of the case, I am of the view, that the Labour Court's award with regard to non granting of full backwages does not call for any interference while exercising the extra ordinary jurisdiction by this Court under Articles 226 and 227 of the Constitution of India. So far as the facts of the present case are concerned, very serious charge was levelled against the workman and looking to the nature and gravity of charge, it is difficult to have full fledged proof or evidence and the learned Labour Judge has rightly observed to that effect. It is precisely for this reason, it is observed thatt the charge was not proved. The learned Labour Judge has passed the award directing the Corporation to reinstate the workman. However, the charge was of such a nature that even doubt or suspicion raised against the workman with regard to his conduct, behaviour and character coupled with evidence and finding arrived at in departmental proceedings, it is not proper for any organisation to allow such person to work in the organisation. Herein in the present case, an inquiry was ordered, finding was recorded, explanation was sought for, reply was considered, chargesheet was given and, thereafter, after appreciation of the evidence, the order of dismissal was passed. Hence, it is not the case that the inquiry was conducted before the Labour Court for the first time. It is the final order passed by the competent authority which was challenged before the Labour Court and the Labour Court after considering the entire evidence on record passed the order. The authorities relied on by Mr.Upadhyay for the proposition that when the inquiry is conducted before the Labour Court the backwages should be awarded to the workman. The ratio of these decisions could not be invoked by the

workman in this case as the present case is quite distinguishable. Even other authorities cited by Mr.Upadhyay would not render any assistance to him as in this case the Labour Court has come to the conclusion that the workman should be reinstated without any backwages and this Court has not shown any indulgence to interfere in the order passed by the Labour Court. What is found in the present case is that the Labour Court, though passed order of reinstatement has declined to pass any order awarding backwages. Since the scope and ambit of the jurisdiction under Articles 226 and 227 of the Constitution of India is very limited and unless and untill the finding arrived at by the Labour Court is found to be absolutely perverse or unreasonable, the Court is normally not interfering with the award passed by the Labour Court. The Labour Court has drawn presumption looking to the facts and circumstances of the case that the workman being a driver might have earned his livelihood or he might have been gainfully employed, the said finding cannot be disturbed or interfered with simply on the submission that there was no base for arriving at such a conclusion or drawing of such presumption. When a co-workman files a complaint and putting his wife's chastity at stake, the same cannot be ignored on the ground that allegations were not proved beyond reasonable doubt. Principle of fake proof which is applied in the criminal proceedings cannot be applied in the Civil or departmental proceedings. In this view of the matter, the Labour Court's finding with regard to non granting of backwages cannot be held to be unjust or unreasonable. Taking an overall view of the matter, and having regard to the facts and circumstances of the case, I am of the view, that the Labour Court is justified in not awarding the backwages to the workman and hence the petition filed by the workman being Special Civil Application no.1957/1988 is dismissed. Rule is discharged with no order as to costs.

Both the petitions are accordingly dismissed and rule in each of the petitions are discharged with no order as to costs.

[K.A. PUJ, J.]

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