

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7731 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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

DIVISIONAL CONTROLLER

Versus

NAGARDAS K PATEL

C/O PRAKASH C LANGALIA

Appearance:

1. Special Civil Application No. 7731 of 2000
MR KM PARIKH for Petitioner No. 1
MR MUKESH H RATHOD for Respondent No. 1
RULE SERVED for Respondent No. 2
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CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 26/12/2003

ORAL JUDGEMENT

The S.T. Corporation has challenged the award
passed by the Labour Court, Bhavnagar, in Reference (LCB)

No.32 of 1989 by which the Labour Court has ordered reinstatement of the concerned workman with full back-wages for the intervening period and imposed order of penalty of withholding of three increments with future effect. The concerned workman was serving as a helper in the S.T. Corporation. He was subjected to departmental enquiry on the ground that he remained absent unauthorisedly from 1.12.1987 to 21.1.1988. It seems that even in the inquiry the respondent-workman was not present. Therefore, ultimately, by an order dated 29th July, 1988 he was dismissed from service, which ultimately resulted into industrial dispute. The say of the concerned workman was that though he had submitted the medical certificate of municipal hospital, which, according to the respondent, was received by the management on 12.2.1988, the same was not considered by the Corporation.

2 The Labour Court, after considering the evidence on record and after considering the facts and circumstances of the case, came to the conclusion that the penalty imposed on the said workmen is disproportionate and while invoking the provisions of Section 11A of the Industrial Disputes Act, 1947 the Labour Court set aside order of dismissal. However, since in the meanwhile the respondent-workman had reached the age of superannuation on 31st May, 1993, the Labour Court did not grant the benefit of reinstatement but the Labour Court ordered that the concerned workman shall be entitled to reinstatement with full back-wages till the date of his superannuation with the penalty of stoppage of three increments.

3 Mr Ketan Parikh, the learned advocate for the petitioner-corporation states that this is a case in which the labour Court should not have granted full back wages as it is proved in the inquiry proceedings that the respondent-workman has remained absent without submitting the leave report. I have gone through the order of the Labour Court and in my view the order of the Labour Court is not required to be interfered with as the Labour Court has considered the quantum of penalty at the time of resorting to Section 11A of the I.D. Act. Since the workman has already reached the age of superannuation the Labour Court has rightly ordered the continuity of service till the said date. The Labour Court itself has imposed penalty of stoppage of three increments with future effect upon the respondent-workman. Hence, the order of the Labour Court, so far as it awards reinstatement is concerned, is not required to be interfered with except the order which grants payment of

full back wages to the workman. In my view, instead of full back wages, the concerned workman shall be entitled to 50% of the back wages. The order of the Labour Court is accordingly modified to the aforesaid extent. The petitioner-corporation is directed to calculate whatever amount that is payable to the respondent-workman and pay the same to the respondent-workman within two months from today.

4 In view of what is stated hereinabove, the petition is partly allowed. Rule is made absolute accordingly with no order as to costs.

(P.B. Majmudar, J.)

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