

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11716 of 2001

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?

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

AMRUTLAL DUNGERDAS MOCHI

Appearance:

1. Special Civil Application No. 11716 of 2001
MR HARDIK C RAWAL for Petitioner No. 1
MR MUKESH H RATHOD for Respondent No. 1
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CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 26/12/2003

ORAL JUDGEMENT

By filing this petition, S.T.Corporation has
challenged the award passed by the Presiding Officer,
Labour Court, Ahmedabad dated 27-10-1999, by which the

Labour Court has rejected the prayer of the respondent-workman for reinstatement as the concerned workman has already reached the age of superannuation, however, petitioner-Corporation was directed to consider the entire period of absence from duty, i.e from the date of removal till the date on which the petitioner reached the age of superannuation, as leave without pay. The Labour Court has also directed that for intervening period 50% backwages should be paid.

2) The facts leading to the present petition are as under :

3) At the relevant time, the respondent-workman was serving as a "conductor". He was subjected to a departmental inquiry and a charge sheet was issued on 7-9-1992 alleging that on 31-7-1992, the respondent-workman was on duty as a "conductor" in the bus enroute to Vansvada to Ahmedabad. It was found that he had issued 28 tickets and such bundle of tickets was found from the tray, which was wrapped in a piece of paper. There were other charges about insubordination as well as negligence also. After the completion of inquiry, the respondent-workman was removed from service. The concerned workman thereafter challenged the said order by way of raising an industrial dispute, which was referred to the Labour Court for adjudication being Reference (LCA) No.1217/1995. The defence of the concerned workman was that he had not reissued any tickets and by mistake some used tickets remained in his possession. Before the Labour Court, the concerned workman gave a pursis at Exh.9 stating that inquiry proceedings are just and proper, reserving his right to challenge the legality of such inquiry and he had also pressed into service the provisions of Section 11-A of the Industrial Disputes Act. The reasoning of the Labour Court is finding place in para 10 of the award, which is as under :

"I have gone through the case papers available before me and I have thoroughly studied the papers on record. Inquiry papers clearly proves that as tickets were unutilised which were found from his cash box. But first party has failed to prove malafide motive or intention to reuse the same and logically we can presume that if he had malafide intention he ought to have kept the tickets with him (in his pocket) and not in the cash box. The tickets found from the cash box is not an attempt of commission of offence, hence, I give the benefits of doubt in favour of workman.

As per the age recorded at Exh.15, it shows that he was completed 58 years of age and he is supposed to retire on 30-4-1999, hence, prayer of reinstatement is not granted. Hence, I pass the following order."

4) This is the only reasoning given by the Labour Court in its award. It is required to be noted that the Labour Court has found that the inquiry papers clearly proves that even though the unutilised tickets were found from the cash box of the petitioner, the employer has failed to prove malafide motive or intention and if there was malafide intention, he would not have kept such tickets in the cash box and he would have kept the same with him. The Labour Court, in my view, has no jurisdiction to give such benefit of doubt. The concept of giving benefit of doubt is not available in domestic inquiry. Even on the basis of some evidence on record, the disciplinary authority is entitled to reach to a particular conclusion. It is interesting to note that after recording the said finding, the Labour Court has not granted prayer for reinstatement as in the meantime the petitioner has reached the age of superannuation. The Labour Court, ultimately, ordered that the intervening period be treated as leave without pay. In spite of the said observation in the operative part of the order, it has directed payment of 50% backwages. Once the Labour Court has found that the intervening period, i.e. from the date of removal till the age of superannuation of the concerned workman, should be treated on leave without pay, then there was no question of awarding 50% backwages for the said intervening period. It is not in dispute that the petitioner has already reached the age of superannuation on 30th April, 1999. Under the circumstances, the said award of backwages is required to be set aside. However, considering the fact that the petitioner has retired in the year 1999, while setting aside the award of payment of backwages, rest of the award of the Labour Court is not disturbed and the concerned workman shall be treated to be in continuous service but he shall not be entitled to any backwages as awarded by the Labour Court. The effect of the order would be that the respondent-workman will be entitled to get retiral dues as per the award of the Labour Court and for that purpose his service be treated as continuous and the intervening period, i.e. from the date of removal till he reached the age of superannuation, should be treated as leave without pay.

5) Mr.Rathod, however, argued that the concerned

workman may be given at least 20% backwages for the intervening period. Looking to the nature of misconduct, which is proved in inquiry, it is not possible to accept the said request. The Labour Court, in fact, has taken charitable view by ordering reinstatement in service and treating him in service till the date of superannuation. Since the Labour Court has exercised this power under Section 11-A of the Industrial Disputes Act, the said finding is not disturbed by this Court in this petition. However, in the facts and circumstances of the case, no backwages can be awarded to the respondent-workman. Therefore, the submission of Mr.Rathod is rejected.

6) This petition is accordingly partly allowed. The order of the Labour Court with regard to the backwages is quashed and set aside, and rest of the order of the Labour Court is confirmed. On the basis of this order, whatever retiral dues are required to be paid to the workman shall be paid to him within a period of one month from today. Rule is made absolute accordingly with no order as to costs.

7) In view of this order, nothing further is required to be done so far as challenge to the review order is concerned.

(P.B.Majmudar,J.)

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