

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 517 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE D.H.WAGHELA

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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

Versus

DALPATBHAI N TANDEL

Appearance:

1. Special Civil Application No. 517 of 1994
Ms. Jyotsna Sadhu for MR SK BUKHARI for Petitioner.
MR MUKESH H RATHOD for Respondent No. 1
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CORAM : HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 30/06/2004

ORAL JUDGEMENT

1. This petition under Article 227 of the
Constitution challenges the award and order dated 25-6-93

of the Labour Court, Valsad, in Reference LCB no.112/90, whereby the respondent-workman is awarded reinstatement in service with 50% back wages. It was fairly conceded by the learned Counsel Ms. Jyotsna Sadhu appearing for Mr. S.K. Bukhari that during the course of proceedings before the Labour Court, Departmental Inquiry conducted against the respondent was not held to be valid and the only conclusion that could be gathered from the facts on record was that the respondent had remained absent on duty for about a month in the year 1994, and he had disobeyed the instruction to report on duty by refusing to accept the communication in that regard. Thus, in short, the charge of disobedience was held to have been proved after appreciation of evidence, and in view of the earlier record of service of the respondent, the Labour Court had awarded reinstatement with 50% back wages in exercise of its powers under Section 11A of the Industrial Disputes Act, 1947.

2. The impugned award, as aforesaid, is made in exercise of the jurisdiction conferred upon the Labour Court, and it would not be appropriate to interfere with the same in exercise of powers under Article 226 of the Constitution, particularly, when the reasoning and findings recorded by the Labour Court are not shown to be in any way perverse, unreasonable or illegal. The petition was admitted in March 1994 and the operation of the impugned award was stayed only to the extent of the part by which back wages were ordered to be paid. Even before that the respondent is stated to have been reinstated. Thus, the controversy is reduced to examining the propriety of the grant of back wages at the rate of 50%. According to the impugned order, 50% of back wages are denied by way of punishment in view of the proved misconduct, and record of service of the respondent. The learned Counsel for the respondent submitted that, in such circumstances, the petitioner should not be further punished by reducing back wages. As against that the submission of the petitioner was that, even 50% of back wages for the period of nine years was too high, when punishment was held to be warranted. In these facts and circumstances, the quantum of punishment cannot be weighed in golden scale, and the discretion exercised by the Labour Court is normally not required to be interfered with. However, in view of the fair concession made by the learned Counsel for the respondent that back wages may be suitably reduced, if thought fit, the impugned order is modified to the extent that the petitioner shall be required to pay only 40% of back wages to the respondent. The petition is partly allowed and the impugned award shall stand modified to

the extent that the back wages payable to the respondent under the award shall be reduced to 40%. The learned Counsel for the petitioner made a statement that, the amount now required to be paid to the respondent will be paid within a period of six weeks from today. Rule is made absolute accordingly.

(D.H.Waghela,J.)

stanley-dhw.