

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.6026 OF 2002

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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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? : 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?

STATE OF GUJARAT

Versus

BHAGWATIBHAI LAXMANBHAI PATEL

Appearance:

Mrs. Hansa Punani, AGP for Petitioner

MR. A.K. CLERK for Respondent

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 28/10/2004

ORAL JUDGEMENT

1. The State of Gujarat, through the Deputy Executive Engineer, Division No.2, Road & Building Sub Division, Surat, is before this Court being aggrieved of judgement and award dated 8th February, 2002 passed by the Labour Court, Surat in Reference (LCS) No.213 of

1992. The learned Judge was pleased to allow the Reference and direct the present petitioner to reinstate the respondent-workman with 100% back-wages.

2. The case of the respondent-workman was that: he was serving as a driver on Tanker No.GQC-4167 since 1985; that he was not given the attendance card or pay-slip; that he was getting salary of Rs.800=00 per month; that he was in service upto April-1991 and till then, he was paid on voucher. In the months of May and June-1991, though he was allowed to work, his signatures were not taken. Thereafter, since 8th July, 1991, Deputy Engineer, Shri S.O.Gandhi, asked him to work in Division-2 of the Establishment. There, he was deployed on Truck bearing No.5976 or any other truck, for transporting metal. Thereafter, from 3rd March, 1992, Shri K.O.Patel, Deputy Executive Engineer, stopped paying him on voucher and started paying him at the rate of Rs.50 to Rs.55 per day. The respondent-workman objected to the same and insisted that he be allowed to work as permanent employee and be paid salary by signing the muster roll. For that, he filed a complaint before the Labour Officer on 23rd March, 1992 and demanded that he be paid the salary of a work-charged driver. Being offended of that, by oral Order dated 1st May, 1992, Shri Vanani terminated the respondent-workman.

3. The case of the respondent-workman is summarised by stating that since 1985, the workman served as a driver and he was paid monthly salary of Rs.800=00 to Rs.900=00; that he was working in Sub.Division-1 or Sub.Division-2 as per the requirement of the petitioner-Establishment; and, that he was paid salary by allowing him to sign the muster roll. Thus, the act of terminating his services w.e.f. 1st May, 1992 is illegal, unreasonable and an unfair labour practice, hence, he be reinstated with back-wages.

4. Earlier, by Judgement and Order dated 28th January, 1997, the learned Judge of the Labour Court had allowed the Reference of the respondent-workman and ordered reinstatement within 30 days from the publication of the award, with full back-wages and also costs of Rs.700=00 of the Reference. Being aggrieved of that, the petitioner had filed Miscellaneous Application No.88 of 1997, which was allowed and the original Reference No.213 of 1992 was ordered to be taken on file.

5. The petitioner filed its reply by Exh.23 wherein, after narrating the case of the respondent-workman, it is stated that all these averments be proved by the

respondent-workman as they are not admitted.

6. The respondent-workman filed an Application-Exh.11 requesting that, the petitioner shall produce Log Books of four vehicles bearing Registration Nos.GTT-1329, GTT-4914 for the year 1986-87 and Registration Nos.GTT-5771 and GTK-5976 for the year 1987-91. The application was replied by the petitioner by filing Exh.30, wherein it was stated that Vehicle No.GTT-1329 was never under this Sub.Division and that, Log Book of Vehicle No.GTT-4964 is not available for the present, it is under investigation and as and when it is found, the same will be produced. While, the xerox copies of the Log Book of Vehicle Nos.GTT-5771 and GTK-5971 (sic, 5976) were produced. The learned Judge has recorded that reply-Exh.30 is filed without any affidavit, supporting the contents of the same. The learned Judge has discussed the evidence produced by the petitioner-Establishment in detail and has held that he is of the opinion that the Log Book of Vehicle No.GTT-4964 is 'hold back' and, therefore, an adverse inference be drawn against the petitioner-Establishment.

7. This is a matter wherein Reference was filed in the year 1992. Earlier, a judgement and award was passed on 28th January, 1997, but then, on filing Miscellaneous Application No.88 of 1997, the same was recalled and the Reference was again taken up for hearing. Thereafter, the judgement and award, which is under challenge in this petition, was passed.

8. The learned AGP, Mrs.Hansa Punani, for the petitioner, strenuously tried to assail the present judgement and award on the ground that the learned Judge has committed an error in not appreciating the contents of the documentary evidence produced before the learned Judge. She submitted that the xerox copies of Log Books of Vehicle Nos.GTT-5771 and GTK-5976 were produced, and on appreciation of the contents of the same, the learned Judge ought to have held that the respondent-workman has not worked as his signatures were not found in the Log Books. She further submitted that from the record, which was available with the learned Judge, it was clear that the respondent-workman had worked only for 146 days and, therefore, the impugned judgement and award ought not to have been passed. The same is required to be quashed and set aside.

9. Mr.A.K.Clerk, learned Advocate appearing for the respondent-workman, submitted that the learned Judge has not committed any error in passing the award of

reinstatement with 100% back-wages as he has given cogent reasons for reaching to the said conclusion. He submitted that besides the evidence in the form of Log Books, other evidence by way of deposition of the witnesses, who were examined on behalf of the Department and the evidence of the respondent-workman himself was before the Court, which is considered in detail. The learned Advocate emphatically submitted that the learned Judge has appreciated the document, Mark-31/3, a letter/chit written by one Shri P.D.Patel, who was serving as Work Assistant. The contents of the said letter/chit are considered in detail. The learned Judge has also considered other documentary evidence, being Mark-15/1 (Exh.17) and Mark-15/2 (Exh.18) and upon appreciation of all these relevant material, the learned Judge has come to the conclusion that the case put forward by the petitioner-Establishment is not acceptable. The learned Judge has rightly not believed that the respondent-workman had abandoned the job.

10. In view of the rival contentions and in view of the detailed discussion/appreciation of evidence by the learned Judge, this Court finds that there is no case made out by the petitioner to interfere with the impugned judgement and award. Hence, this petition fails and is dismissed. Rule is discharged. No order as to costs.

(Ravi R. Tripathi, J.)

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