

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 1321 of 2005****For Approval and Signature:****HONOURABLE MR.JUSTICE M.R. SHAH**

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- Whether Reporters of Local Papers
1 may be allowed to see the
judgment ?
- 2 To be referred to the Reporter or
not ?
- 3 Whether their Lordships wish to see
the fair copy of the judgment ?
- Whether this case involves a
substantial question of law as to
4 the interpretation of the
constitution of India, 1950 or any
order made thereunder ?
- 5 Whether it is to be circulated to
the civil judge ?
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**GUJARAT STATE ROAD TRANSPORT CORPORATION -
Petitioner(s)**

Versus

KUNDANSINH ANUPSINH SOLANKI - Respondent(s)

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Appearance :

MR ASHISH M DAGLI for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,
MR GK RATHOD for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 05/09/2005

CAV JUDGMENT

1. By way of this petition under Article 227 of the Constitution of India, Gujarat State Road Transport Corporation has challenged the legality and validity of the Judgement and Award passed by the Labour Court, Godhra in Reference (LCG) No.229 of 1999 dtd.16/6/2004 by which, the Labour Court Godhra directed the petitioner to reinstate the respondent workman with full back-wages.

2. The respondent workman was working as a Fuel Clerk at the relevant time i.e. on 11/1/1994 and a Departmental Inquiry came to be initiated against him with an allegation that on 11/1/1994, a Diesel Tanker had come to the Depot and the

same was to be emptied in the Diesel Tank and at that time, the Depot Manager, Halol had personally come at the Pump and on measuring the diesel in the Tank, it was found that there was shortage by 445 litres. It was also found that the respondent workman had taken Rs.200=00 from that driver of the tanker and reported to the authorities that the tanker is fully empty while in fact it was not. After the departmental inquiry, the respondent workman was dismissed from service w.e.f. 1/10/1996, against which, the respondent filed first departmental appeal which came to be dismissed vide order dtd.19/11/1996. Against the said order of dismissal, the workman had preferred second departmental appeal which also came to be dismissed vide order dtd.21/1/1999. That thereafter the respondent workman raised an industrial dispute by approaching the appropriate authority and the appropriate authority referred the dispute to the Labour

Court, Godhra for its adjudication and the same came to be allowed by the learned Presiding Officer, Labour Court, by the impugned Judgement and Award and directed the petitioner Corporation to reinstate the respondent workman on his original post with full back wages and continuity of service along with all other consequential benefits. Being aggrieved by and dissatisfied with the same, the petitioner Corporation has preferred the present petition under Article 227 of the Constitution of India.

3. Mr.Dagali, learned advocate appearing on behalf of the petitioner Corporation while assailing the impugned Judgement and Award passed by the Labour Court has vehemently submitted that looking to the charge proved against the respondent workman, the Labour Court ought not to have granted reinstatement with full back wages. It is also further submitted that the misconduct is found to be proved during the course of the

departmental inquiry and when the legality and validity of the inquiry was not challenged, the Tribunal ought not to have interfered with the punishment imposed by the disciplinary authority. He has also further submitted that the Labour Court has materially erred in interfering with the order passed by the competent authority on the ground that the driver of the Tanker was not examined, on the contrary the officer who was present, has made a report and the papers of the departmental inquiry clearly indicates the misconduct committed by the workman during the course of the employment. He has also further submitted that looking to the allegations and the charge proved against the respondent workman, the workman indulging into mal-practice and dealing with the public property, Labour Court ought not to have granted the order of reinstatement. Consequently, it is requested to allow the present petition.

4. Mr. Mukesh Rathod, learned advocate appearing on behalf of the respondent workman has vehemently submitted that in fact the concerned workman had not taken any amount from the driver of the Tanker at the time when the Diesel Tanker was emptied and in fact, the Driver of the Tanker was also not examined. He has also further submitted that when the first appellate authority passed an order to grant reinstatement in the cadre of Clerk on a lower pay scale of Clerk and no back wages for the interim period was awarded, it was not open for the second appellate authority to suo-motu cancel the said order and even the cancellation of the order passed by the first appellate authority is against the principle of natural justice. It is also further submitted that the diesel is required to be emptied in a underground tank and at that time Depot Manager had to remain present and it is his duty to verify the tanker whether it is properly and fully emptied or not, but the

Depot Manager had not done anything and so far as the shortage of 445 ltrs. Diesel is concerned, the said shortage was carried forward for a long time and it is not the loss of once. In fact, the Depot Manager has made a plan against the concerned workman and the liability was shifted on th shoulder of the concerned workman. Consequently, it is requested to dismiss the present petition.

5. Heard the learned advocates appearing on behalf of the parties. The respondent workman was serving as a Fuel Clerk at the relevant time and the allegation and the charge proved against the respondent workman is that at that time when the Depot Manager, Halol had personally come at the Pump and measured the diesel in the Tank, it was found that the diesel was short by 445 ltrs. And at that time a diesel tanker had come in the depot and the same was to be emptied in the diesel tank and that the respondent workman had

taken Rs.200 from the driver of the Tanker and reported to the authorities that the tanker is fully emptied, while in fact it was not. It is also required to be noted that the respondent workman was on the post of Trust and was dealing with the public property. It is also required to be noted that in fact there was confessional statement of the respondent before the Depot Manager wherein he has admitted the charge leveled against him. However, subsequently during the course of the departmental inquiry, he has changed his version. Be that it may, after holding the departmental inquiry, the disciplinary authority has held the charge proved against the respondent workman. Considering the charge and the misconduct proved against the respondent workman, which are very serious in nature and considering the post held by the respondent workman and he was dealing with the public property and was holding the post of trust, the Labour Court has materially erred in

directing the petitioner Corporation to reinstate the respondent workman that too with full back wages. It is also required to be noted that as such, the respondent workman has not challenged the departmental inquiry. The main thing which has been weighed with the Labour Court is that the Corporation ought to have taken into consideration the equal responsibility of the Depot Manager who under the guidelines issued by the Corporation in this regard was supposed to remain present at the time of Tanker being emptied in the diesel tank and it is only in the presence of the Depot Manager that the Tanker is to be emptied and he has to ensure himself that the Tanker is fully emptied. The Labour Court, taking into consideration the fact that no material is placed on record showing that the Depot Manager was given similar treatment for dereliction of duty, has passed the impugned Judgement and Award directing the petitioner Corporation to reinstate the respondent workman

with full back wages.

6. The learned advocate appearing on behalf of the petitioner has also submitted that even the departmental inquiry was also initiated against Mr.SL Ninama, Depot Manager Manager being Charge No.173 of 1994. It is required to be noted that there is confession by the respondent workman and therefore, assuming that merely because against some other person, departmental inquiry is not initiated who is equally responsible, cannot be a ground for not taking any action against another employee, who is found to be guilty and against whom the charge and misconduct is proved. I have also gone through the relevant materials and the evidence of the witnesses produced by the learned advocate appearing on behalf of the respondent workman. Considering the same as well as the allegation and the charge and misconduct proved against the respondent workman which according to this Court

is very serious misconduct and the petitioner was dealing with the public property working in the Corporation as a Fuel clerk and the charge proved against the petitioner that by taking an amount of Rs.200 from the driver of the Tanker, though the Tanker was not fully emptied, it is reported to the authorities that the Tanker was fully emptied and it was found that there was shortage of 445 Ltrs. On the ground of loss of confidence also, the Labour Court ought not to have passed the impugned Judgement and Award granting reinstatement to his original post so as to enable the respondent workman to indulge into such type of misconduct again. Considering the allegation and the misconduct proved against the respondent workman, the second appellate authority was justified in setting aside the order passed by the first appellate authority. considering the overall facts and circumstances of the case, the respondent cannot be continued to be on service and that too on the same post.

7. For the reasons as aforesaid, the petition succeeds. The impugned Judgement and Award passed by the Labour Court, Godhra in Reference (LCG) No.229 of 1999 dtd.16/6/2004 is hereby quashed and set aside. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

(M.R.SHAH,J.)

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