IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1748 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers 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 ?

4 Whether this case involves a substantial question of law as to 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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GUAJRAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)

Versus

AMBUBHAI SHANABHAI RATHOD - Respondent(s)

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Appearance :

MR HARDIK C RAWAL for Petitioner(s) : 1,
MR BHARAT JANI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 31/08/2005

ORAL JUDGMENT

In the present petition, the petitioner has challenged the legality of the award dated 31st July 2004 by which the Labour Court was pleased to set aside the penalty of dismissal of service imposed on the respondent

by the petitioner-Corporation. The Labour Court was instead pleased to direct reinstatement of the respondent-workman as a fresh appointee.

2. The respondent who was working as a Conductor was proceeded against departmentally for having committed misconduct of having collected Rs.11.50 by way of ticket fares from the passengers without issuing tickets. Upon conclusion of the departmental inquiry, by an order dated 28.10.94, the respondent came to be dismissed from service. In the impugned award, the Labour Court recorded that by writing dated 21.12.93, the respondent had admitted the charge and the charge was thus validly proved. However, the Labour Court relying on circular No.1498 issued by the Corporation found that the penalty of dismissal ought not to have been imposed. In the result, the dismissal order was set aside and the workman was ordered to be reinstated as a fresh appointee.

3. The fact that the charge of carrying ticketless passengers after collecting fare from them was proved is not seriously in dispute. Thus the proved charge against the respondent was one of misappropriation of public money. The circular which the Labour Court referred to

was issued on 12th May 1995. Quite apart from the question whether the circular was applicable and could have been enforced against the Corporation so as to interfere with the order of penalty imposed by the disciplinary authority, obviously when the disciplinary authority passed the impugned order, the circular was not in existence and therefore could not have been utilised by the Labour Court to interfere with the order of penalty.

4. In the case of Regional Manager, UPSRTC v. Hoti Lal, AIR 2003 SC 1462, the Hon'ble Supreme Court observed that the Court or the Tribunal while dealing with the quantum of punishment has to record reasons as to why it felt that punishment does not commensurate with the proved charges. It was observed that the scope of interference is very limited and restricted to exceptional cases. It was a case where a Conductor had misappropriated 16 rupees of fare collected from the passengers. It was in this regard observed that if the charged employee holds the position of trust where honesty and integrity is the inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. When the

person deals with public money or is engaged in financial transactions or acts in fiduciary capacity, highest degree of integrity and trustworthiness is must and unexceptionable.

5. Learned advocate appearing for the respondent-workman submitted that the respondent was not guilty of serious misconduct and at best it could have been said to be his negligence or inefficiency in discharge of his duties. No such case is established on record. Simply by stating so before the authorities or before the Court, the charge of serious misconduct of misappropriation of fare cannot be converted into one of negligence or inefficiency. Neither the employer nor the Labour Court accepted the version of the workman in this regard.

6. Learned advocate for the respondent relied on the decision of the Hon'ble Supreme Court in the case of Kailash Nath Gupta v. Inquiry Officer, Allahabad Bank, AIR 2003 SC 1377 and contended that for procedural lapses, punishment of dismissal would not be warranted. As noted earlier, charge which was proved against the respondent was one of misappropriation of fare collected and not of procedural defects.

Reliance was also placed on a decision of this Court in the case of Gujarat State Road Transport Corpn. v. Maganlal Bhikhahbai Raval, 2002 LAB.I.C.391 and on the decision of the Hon'ble Supreme Court in the case of State of Mysore v. Mache Gowda, AIR 1964 SC 506. On the basis of these decisions, it was contended that the past record if not made part of the departmental proceedings cannot be relied upon by the employer to justify the ultimate punishment. With the above proposition, there cannot be any dispute. In the present case, the incident itself in isolation was sufficient to prevent the court from interfering with the order of punishment imposed by the employer and ought to have been held so by the Labour Court. In the decision of Janatha Bazar v. Secretary, Sahakari Noukarara Sangh, AIR 2000 SC 3129, the Hon'ble Supreme Court observed that in case of proved misappropriation, there is no question of considering past record. It is the discretion of the employer to consider the same in appropriate cases. Quite apart from this, the total length of service put in by the respondent by the time he was found to have committed the above misconduct was barely one-and-a-half years. In such a short span, if it is found that the respondent has

shown early signs of exhibiting lack of integrity, there is no question of showing any leniency in such cases. In that view of the matter, even in absence of any service record, there is no scope for interfering with the order of penalty. When the learned advocate for the respondent requests for leniency or lesser punishment, it is at this stage that this Court cannot shut its eyes to the past service record. The petitioner has produced on record the default card of the respondent indicating as many as 6 defaults of collection of fare without issuing tickets. Though affidavit in reply has been filed by the respondent, these factual aspects have not been denied. In that view of the matter, when the question of showing leniency arises, it is not possible for this Court to ignore the realities and keep out of consideration the fact that in a span of about one-and-a-half years, the respondent had indulged in as many as 6 to 7 instances of collecting fair without issuing tickets.

7. In the result, I find that the Labour Court erred in interfering with the order of penalty imposed by the petitioner. The award of the Labour Court is therefore liable to be and is hereby set aside. The petition is accordingly allowed. Rule is made absolute accordingly

with no order as to costs.

(Akil Kureshi, J.)

(vjn)