

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 1751 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 ?

Whether this case involves a substantial question
of law as to the interpretation of the
4 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

SUNIL R JOSHI - Respondent(s)

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Appearance :

MR HARDIK C RAWAL for Petitioner(s) : 1,
MR NV ANJARIA 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 26.4.04 passed by the Labour Court, Kutch. The respondent who was engaged as a driver by the petitioner Corporation had

remained unauthorizedly absent from 13th December 1994 continuously. After issuance of chargesheet and upon conclusion of the departmental inquiry ex-parte, the Disciplinary Authority imposed punishment of dismissing the respondent from service by an order dated 30th June 1995. The respondent not only remained absent from service till the date of his dismissal, but also did not participate in the inquiry proceedings. Though his appeal was dismissed in August 1996, no further steps were taken by him till raising of the reference before the Labour Court in the year 2000. The Labour Court in the impugned award observed that the workman has produced medical reports and considering such reports, it could be seen that he was ill from 13.12.94 till 30.6.95. The Labour Court observed that the punishment imposed was disproportionate. In exercise of power under section 11-A of the Industrial Disputes Act, therefore, the Labour Court set aside the order of dismissal and directed his reinstatement with full backwages.

2. A few salient features of the present case can be noted. The respondent had put in barely about four years of service by the time he unauthorizedly remained absent for about six months. During the departmental

proceedings, he remained absent from service and from the inquiry. In a short service career, earlier also he had shown such behaviour and was punished repeatedly for unauthorized absence. Though the departmental appeal filed by the workman was dismissed in the year 1996, the reference was raised only in the year 2000. The Labour Court in its impugned award observed that the punishment is not commensurate with the proved misconduct. Eventually, however, the order came to be passed by which reinstatement was granted with full backwages.

3. In the decision 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 give reasons as to why it felt the punishment does not commensurate with the proved charges. It was observed that the scope of interference is limited and restricted to exceptional cases. It was further observed that a mere statement that the punishment is disproportionate would not suffice. In the present case, the respondent showed a distinct lack of sincerity towards his service and remained absent on number of occasions without sanction of leave. The Labour Court on the basis of the documents

which were never produced before the department and which were tendered on record for the first time before the Labour Court concluded that the respondent had valid reason to remain absent. Eventually, after finding that the penalty is disproportionate, the Labour Court allowed the reference and granted reinstatement with full backwages.

4. I find that on all counts, the Labour Court seriously erred in passing the impugned award. The petitioner had through a validly conducted departmental inquiry proved the charges against the respondent. The charges in totality of the facts and circumstances of the case were not insignificant. The penalty imposed could not have been stated to be shocking to the conscience of the Court.

5. In above view of the matter, I find that the award of the Labour Court cannot be sustained and the same is required to be and is hereby set aside. Rule is made absolute accordingly with no order as to costs.

(Akil Kureshi, J.)

(vjn)