

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1579 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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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
4 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

DHIRAJLAL RANCHHODBHAI - Respondent(s)

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Appearance :

MR ASHISH M DAGLI for Petitioner(s) : 1,

RULE SERVED for Respondent(s) : 1,

MR PANKAJ R DESAI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 30/06/2006

ORAL JUDGMENT

1. This matter was notified along with Civil Application NO. 12290 of 2005 filed in this matter, which is disposed of today.

2. With the consent of the learned advocates for the parties and in the peculiar facts and circumstances of this case, this matter has been taken up for final hearing today.

3. In this petition, petitioner has challenged the award passed by the labour court, Jamnagar in Reference No. 109 of 2001 dated 28.6.2004 wherein the labour court has granted reinstatement with continuity of service without back wages for intervening period. Along with the said award of reinstatement without back wages for intervening period, labour court has also imposed punishment of stoppage of three annual increments of the respondent workman with recurring effect. This Court (Coram : Hon'ble Mr. Justice D.N. Patel) passed following order in this petition on 19.4.2005 :

1. "The present petition has been preferred against the award dated 28th June, 2004 in Reference (LCJ) No. 109 of

2001 passed by the Labour Court, Jamnagar, whereby the respondent workman has been ordered to be reinstated in service.

2. The learned counsel for the petitioner Corporation makes a statement upon instructions that subject to the final outcome of the petition, the petitioner shall reinstate the respondent workman in service within a period of two weeks from today. Ad-interim relief granted in terms of para 11(C) is modified to the effect that so far as reinstatement is concerned, now, there is no interim stay. So far as difference in salary is concerned, the operation and execution of the award passed by the Labour Court, Jamnagar is hereby stayed until the final hearing of the petition. Direct Service is permitted."

4. Thus, in view of the above order of this court, reinstatement is not stayed and direction has been issued by this court to corporation to reinstate workman in service within two weeks from the date of the order. This order has been issued by this court on the basis of the statement made by the learned advocate Mr. A.M. Dagli for Corporation, subject to final out come of the petition.

5. Learned advocate Mr. Dagli appearing for corporation has submitted that the respondent workman was working as a Conductor and he was served with a charge sheet dated 9th September, 1997 and, thereafter, departmental inquiry was initiated against him for remaining absent for a period from 1.8.1997 to 31.8.1997 and ultimately, after completion of departmental inquiry, on 26.2.1998, respondent was dismissed from service. Thereafter, dispute was raised by workman on 26.9.2000 which was then referred for adjudication. Learned advocate Mr. Dagli submits that in past, similar type of misconduct was committed by workman and therefore, past record of workman was bad, therefore, labour court has erred in granting reinstatement in favour of workman who has remained absent without prior permission of the Corporation. According to his contention, absence of workman without prior permission of the corporation has disturbed the administration of the corporation and the corporation has not been able to run buses timely and ultimately, it resulted into hardship to the passengers, therefore, labour court ought not to have exercised powers under section 11-A of the ID Act, 1947.

6. On the other hand, learned advocate Mr. P.R. Desai appearing for the workman has submitted that the workman had remained absent from duty for a period of about thirty days due to sickness. He was having length of service of about 25 years, therefore, labour court was right in setting aside the punishment while exercising the powers under section 11A of the ID Act, 1947. According to his submission, labour court has not committed any error while exercising powers under section 11A of the ID Act and also while interfering with the punishment imposed by the corporation and, therefore, impugned award made by the labour court would not call for any interference of this court in exercise of the powers under Article 227 of the Constitution of India. He also submitted that recently, workman has retired from service on his having reached the age of superannuation. According to his submission, while granting reinstatement without back wages for intervening period, labour court has also imposed punishment of stoppage of three annual increments with future effect for the misconduct of his remaining absent without prior leave and, therefore, award made

by labour court is balanced award and, therefore, no interference is warranted in exercise of the powers under Article 227 of the Constitution of India and, therefore, this petition is required to be dismissed.

7. I have considered the submissions made by the learned advocates for the parties. I have also perused impugned award made by the labour court. Labour court has perused documentary evidence produced before it by the corporation vide Exh.7 and has observed from the record that the workman was sick, was not able to attend duty, therefore, he was not able to get prior permission from the corporation. Labour court also considered length of service of workman (25 years) and considering the gravity of misconduct, labour court found that the punishment of dismissal from service is unjustified and harsh, therefore, labour court came to the conclusion that while granting reinstatement some punishment having permanent effect is required to be imposed, therefore, labour court imposed punishment of stoppage of three annual increments with recurring effect. Further, while granting reinstatement,

considering the misconduct of remaining absent without prior permission, labour court also refused to grant back wages for the intervening period and denied total back wages over and above the punishment of stoppage of three annual increments with cumulative effect, which also amounts to punishment as per the decision of the apex court in case of Jitendra Sinh Rathor versus Shri Baidyanath Ayurved Bhavan Ltd., reported in AIR 1984 976. Considering all these aspects of the matter, according to my opinion, labour court was right in passing the award in question and in doing so, labour court has not committed any error warranting interference of this Court in exercise of powers under Article 227 of the Constitution of India. Further, learned advocate Mr. Dagli appearing for corporation has not been able to point out any infirmity and/or jurisdictional error committed by the labour court while passing the award in question. Therefore, there is no substance in this petition and same is required to be dismissed.

Accordingly, this petition is dismissed. Rule is discharged. Interim relief granted earlier shall stand vacated. No order as to costs.

(H.K. Rathod,J.)

Vyas