

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SECOND APPEAL NO. 159 of 1994****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE C.L. SONI**

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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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G.S.R.T.C. & 2 ORS. & 2....Appellant(s)**Versus****LALAJIBHAI LAVAJIBHAI....Defendant(s)**

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Appearance:

MR HARDIK C RAWAL, ADVOCATE for the Appellant(s) No. 1 - 3

MR VH DESAI, ADVOCATE for the Appellant(s) No. 1 - 3

MR PK SHUKLA, ADVOCATE for the Defendant(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE C.L. SONI**Date : 30/11/2012**

ORAL JUDGEMENT

1. This appeal, under Section 100 of the Code of Civil Procedure, is at the instance of original defendants against whom the respondent-plaintiff filed Regular Civil No. 1054 of 1987 seeking declaration that the charge-sheet dated 8th April 1981, the order of punishment dated 31st March 1982 confirmed by the 1st and second Appellate authorities are illegal, improper and in violation of principles of natural justice. It is further prayed in the suit that the defendants have no authority to withhold any increments of the plaintiff in pursuance of the aforesaid order of punishment. The plaintiff has also prayed for injunction restraining the defendants from implementing or acting upon the order of punishment passed by the defendants. It is the case of the plaintiff that the defendants had served charge-sheet dated 8th April 1981 alleging that the plaintiff had committed acts of misconduct on 20th February 1981 and a departmental inquiry was conducted and ultimately the order of punishment imposing punishment of stoppage of three increments with permanent effect was imposed by the defendant No. 3 by the order dated 31st March 1982. It is the further case of the plaintiff that the order of punishment is in gross violation of principles of natural justice as the plaintiff was not given proper opportunity to

defend his case and the finding arrived at by the departmental authority is based on surmises and conjectures and therefore, the order of punishment is illegal, unjust and improper.

2. The suit was resisted by defendants by filing written statement wherein it was pointed out that during the 16 years service period of the plaintiff, the plaintiff had committed at least 14 misconducts and in one case, the plaintiff was already dismissed from service but thereafter he was taken back in service. It is also stated that the plaintiff was given full opportunity to defend his case and after following due departmental proceedings, punishment of stoppage of three increments, was imposed upon him and therefore, there was no breach of principles of natural justice. The defendants also raised objection with regard to the jurisdiction of the Civil Court, to decide the suit of the plaintiff.

3. The main issue framed by the learned trial judge was to the effect that whether the order of punishment dated 31st March 1982, confirmed by the Appellate authority was illegal and in breach of principles of natural justice.

4. Before the trial court none of the parties adduced oral evidence. Both the parties relied on the documentary evidence. On the basis of the appreciation of the documentary evidence, the trial judge came to the conclusion that the charge against the plaintiff of non-issuance of tickets to the passengers after taking money from them was proved in departmental inquiry and the plaintiff was given opportunity to defend his case and there was no illegality in the conduct of departmental inquiry. On the basis of such conclusion reached, learned trial judge dismissed the suit by judgment and decree dated 18th March 1992.

5. The respondent therefore filed Regular Civil Appeal No. 18/1992. Learned Appellate Judge recorded finding of fact that the plaintiff has admitted that though he collected money from three passengers of one group still did not issue tickets to them and therefore the competent authority was justified in holding that there was dishonest intention on the part of the plaintiff and therefore, the fact that the way bill was opened was not of any help to the plaintiff. As regards non-supply of documents, learned Appellate Judge observed that the plaintiff was supplied with all the necessary documents and the reply of the plaintiff to the

show cause notice was considered by the competent authority. However, learned appellate Judge has reversed the judgment and decree passed by the learned trial judge and interfered with the order of punishment imposed by the competent authority on the ground that during the departmental proceedings inquiry officer had put some questions to the plaintiff and thus the inquiry officer acted as a prosecutor and also as a judge and therefore the ultimate order of punishment imposed upon the plaintiff could be said to be in breach of principles of natural justice. On the above reasoning learned judge allowed the appeal of the respondent and quashed and set aside the judgment and decree passed by the learned trial judge and declared the order of punishment of withholding three increments of the plaintiff as illegal, unconstitutional and in violation of principles of natural justice and also declared that the defendants have no right to withhold three increments of the plaintiffs on the basis of the impugned order. The learned Appellate Judge also granted permanent injunction against the defendants from implementing the order of punishment dated 31st March 1981. It is this judgment passed by the learned Appellate Judge which is challenged before this Court in this appeal.

6. This Appeal was admitted by order dated 25th August 1984 on following substantial question of law :

(a) Whether the Civil Court has jurisdiction to adjudicate a dispute where the relations between the plaintiff and the defendant are of employer and employee, and the employee is a “workman” within the meaning of Industrial Disputes Act ?

6.1 The plaintiff has challenged the order of punishment on the ground of breach of principles of natural justice. As per settled principles of law, on above said ground the Civil Court has jurisdiction to entertain such suit. Therefore in view of the latest law, the above referred substantial question of law framed while admitting the appeal is not required to be considered. In the facts of the case, Civil Court has jurisdiction to decide the suit of the plaintiff.

6.2 However, learned advocates have argued that the question remains to be decided as to whether the order of punishment is in violation of principles of natural justice. First Appellate Court has reversed the judgment and decree passed by the learned trial judge and interfered with the order of punishment imposed by the competent authority on the ground that inquiry officer cross-examined the respondent which is in violation of principles of natural

justice. This appeal is therefore now required to be decided on the following substantial question of law:

“Whether putting some questions to the delinquent (plaintiff) during the inquiry proceedings would vitiate the inquiry and the ultimate order of punishment for misconduct against the plaintiff when it is found to have been proved, during the inquiry on the basis of evidence available before the inquiry officer.”

7. I have heard learned advocates for the parties. Learned advocate Mr. Raval appearing for the appellants has submitted that it is not the case of the plaintiff that the plaintiff was not given sufficient opportunity to defend himself in inquiry. He further submitted that the plaintiff in his reply before the inquiry officer had tried to give explanation under what circumstances he could not issue tickets to the three passengers, and therefore, there is no dispute that the plaintiff had not issued tickets to the three passengers.

8. Mr. Raval further submitted that the reporting officer who conducted inspection of the bus and found that the plaintiff had not issued tickets to the three passengers was examined before the inquiry officer who has given statement in the inquiry that the plaintiff had not given

tickets to three passengers though the plaintiff had got amount on the said tickets from the said passengers. He has also stated that the bus was not local bus and therefore, it was not open to the plaintiff to collect money during the transit and to issue ticket. This witness was cross-examined by the plaintiff. From the evidence of this witness it was clearly proved that the plaintiff had not issued tickets to three passengers after getting money from the passengers. Mr. Raval learned advocate has further pointed out that the plaintiff in past committed 14 defaults and his past service record was tainted. He further pointed out that one of the misconducts led to his dismissal from service which was subsequently reviewed and he was taken back in service. Mr Raval therefore pointed out that the evidence of the reporting officer was sufficient to prove the guilt of the plaintiff and the plaintiff was imposed punishment of only stoppage of three increments and therefore, there was no reason to interfere with such punishment by the Appellate Court which was Civil Court. The Civil Court has no power or jurisdiction to interfere with the punishment imposed by the competent authority after due departmental inquiry. He therefore, urged to allow this Second Appeal on the above raised substantial question of law by this Court.

9. In reply to the submissions made by learned advocate Mr. Raval, learned advocate Mr. Shukla submitted that once the Appellate Judge has found that inquiry officer had put certain questions to the plaintiff during the inquiry by way of cross-examination of the plaintiff, the inquiry officer acted not only as a prosecuting agency but also as a judge and such act would amount to breach of principles of natural justice and would ultimately vitiate the inquiry, and this Court may not interfere with such finding of fact given by learned Appellate Judge. He submitted that it really comes out from inquiry proceedings that inquiry officer had cross-examined the plaintiff which was directly related to the charge leveled against the plaintiff and therefore, he acted as prosecuting agency as also a judge which is not permissible as per the settled principles of law. He submitted that the inquiry officer has based his conclusion on such cross-examination done by himself. Mr. Shukla submitted that once the inquiry officer has cross-examined the plaintiff during the inquiry, even if there was evidence by the reporting officer that was not to be considered in ultimate conclusion against the plaintiff and the entire inquiry proceedings would stand vitiated and consequently the order of punishment would also stand vitiated. He thus

submitted that learned Appellate Judge having not committed any error of law, this Court may not interfere with the judgment and decree passed by the learned Appellate Judge.

10. Having heard learned advocates for the parties and having perused the judgment and decree passed by the Courts below with the record and proceedings of the case, it appears that the plaintiff was charged with misconduct of non-issuance of the tickets to three passengers after getting money from them. The plaintiff was given show cause notice to which the plaintiff had also replied. In the reply the plaintiff has not disputed the non-issuance of the tickets to three passengers and as per the explanation in his reply the reason for not issuing tickets was that the process of giving tickets to the passengers was in progress when checking official entered the bus at which stage three passengers remained to be issued with the tickets. As per his explanation the way bill was still open and therefore it was not that those three passengers were not to be issued tickets.

11. From the reply one thing is very clear that three passengers were not issued tickets. Now if we look at the

statement of the reporting officer who was examined during the inquiry, the reporting officer has stated that the plaintiff was found not to have issued tickets to the passengers though the plaintiff had already collected Rs 2.10 from those three passengers. The statement of those passengers were recorded and in fact the copies of the statement were also given to the plaintiff. During the inquiry proceedings the plaintiff had stated that he would not like to have assistance of representative and conducted the inquiry himself. The plaintiff cross-examined the reporting officer during the inquiry and nothing advantageous to the plaintiff could be brought on record by the plaintiff. Thus the evidence of the reporting officer remains unchallenged as regards non-issuance of the tickets to three passengers by the plaintiff after getting the amount equivalent to three tickets from those passengers by the plaintiff. In my view, there was sufficient evidence to prove the charge against the plaintiff during the course of the inquiry wherein the plaintiff was given enough opportunity to defend himself and present his case. At this stage, it is required to be noted that learned Appellate Judge himself has observed in the impugned judgment while dealing with the argument of learned advocate for the respondent that it is proved that the plaintiff has not

given tickets to three passengers and the competent authority is justified in holding that there was dishonest intention on the part of the plaintiff in not issuing tickets to three passengers. Learned Appellate Judge has also observed that the plaintiff was given necessary documents and also an opportunity to defend himself.

12. I have gone through the records of inquiry proceedings and especially the questions put by the inquiry officer during the inquiry to the plaintiff, I find that the inquiry officer had started putting some formal questions to the plaintiff as to whether the plaintiff accepts the guilt or not, as to whether the plaintiff has got the copy of the charge-sheet or not as to whether the plaintiff needs assistance of representative or not and in process of putting such question to the plaintiff the inquiry officer has further put three more questions to know from the plaintiff as to how many passengers boarded the bus from the initial point of transit of bus, as to whether three passengers remained to be issued with the tickets. Such questions might be termed to be questions like cross-examination in respect of charge levelled against the plaintiff. However, as discussed above and considering the statement of the reporting officer before the inquiry officer at length and cross-examination by

the plaintiff it cannot be said that the charge against plaintiff is not proved. Putting question by the inquiry officer to the plaintiff even if not permissible in the eye of law, on considering the other evidence on record if the charge is proved, the same would not vitiate the inquiry and the ultimate order of punishment. Therefore in my view learned Appellate judge ought not to have interfered with the judgment and decree passed by the trial judge as also with the order of punishment passed by the appellants. In my view learned Appellate Judge has exceeded and overstepped his jurisdiction as a civil Court and therefore judgment and decree passed by the learned Appellate Judge is required to be quashed and set aside and that of the trial court is required to be restored. Accordingly on the above raised substantial question of law, this Appeal is allowed and the judgment and decree passed by learned Appellate Judge is set aside. The judgment and decree passed by the trial court is restored.

(C.L.SONI, J.)

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