

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**LETTERS PATENT APPEAL NO. 406 of 2014****In****SPECIAL CIVIL APPLICATION NO. 4621 of 2004****With****CIVIL APPLICATION NO. 3163 of 2014****In****LETTERS PATENT APPEAL NO. 406 of 2014****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE JAYANT PATEL****Sd/-****and****HONOURABLE MR.JUSTICE C.L. SONI****Sd/-**

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
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 ?	No
5	Whether it is to be circulated to the civil judge ?	No

AJENDRASINH MALSINH DABHI**Versus****GUJARAT STATE ROAD TRANSPORT CORPORATION****Appearance:****MR ANKIT Y BACHANI, ADVOCATE for the Appellant****MR HARDIK C RAWAL, ADVOCATE for the Respondent****CORAM: HONOURABLE MR.JUSTICE JAYANT PATEL****and****HONOURABLE MR.JUSTICE C.L. SONI****Date : 30/09/2014**

CAV JUDGMENT
(PER : HONOURABLE MR.JUSTICE C.L. SONI)

1. This appeal under Clause 15 of the Letters Patent is filed against the judgment dated 14.10.2010 passed by the learned Single Judge in the petition preferred by the respondent herein challenging the award dated 12.12.2003 passed by the Labour Court for reinstatement of the appellant without back wages but with stoppage of one increment with future effect.

2. Learned Single Judge has held that the charge against the appellant of producing false and fabricated typed copy of the school leaving certificate containing different date of birth than original date of birth of the appellant was established and proved in the departmental inquiry. Learned Single Judge has further observed that it is not appreciable how the Labour Court has just taken the above false certificate as typographical error or mistake on the part of the appellant. Learned Judge, therefore, came to the conclusion that Labour Court was not justified in exercising the powers under Section 11A of the Industrial Disputes Act ('the Act') and interfered with the punishment imposed upon the appellant. On such conclusion, the learned Single Judge set aside the award of the Labour Court and ordered to restore the dismissal order passed against the appellant by the respondent Corporation.

3. We have heard learned advocates for the parties.

4. Learned advocate Mr. Ankit Bachani for the appellant submitted that it was never an attempt on the part of the appellant to establish that his correct date of birth was 1.6.1961. Mr. Bachani submitted that in fact, when the appellant was called by the office of the Corporation to fill in the particulars in his service book, he had provided typed copy of the school leaving certificate wherein mistake

had crept in, in recording of correct date of birth. However, on the basis of such typed copy of the school leaving certificate, the appellant was charged to have produced false certificate to make out that his correct date of birth was 1.6.1961 and not 1.6.1957. Mr. Bachani submitted that in fact, if there was any intention on the part of the appellant to take undue advantage of more four years' of service by giving wrong date of birth at the time of preparation of his service book, the appellant would not have initially produced school leaving certificate containing date of birth of 1.6.1957 and also would not have stated in the departmental inquiry that his correct date of birth was 1.6.1957. Mr. Bachani submitted that the Labour Court having found that there appears to be bonafide mistake in mentioning 1.6.1961 as birth date in typed copy of school leaving certificate committed no error in exercising discretion under Section 11A of the Act and granted reinstatement to the appellant without any back wages. Mr. Bachani submitted that the learned Single Judge ought not to have interfered with such discretion exercised by the Labour Court available with it under Section 11A of the Act. Mr. Bachani thus urged to allow the petition.

5. Learned advocate Mr. Hardik Rawal appearing for the respondent Corporation submitted that it was not a mistake of the appellant but a deliberate act of the appellant to produce false certificate to see that he could get four years more in service. Mr. Rawal submitted that even during the inquiry, the appellant tried to justify that his correct date of birth was 1.6.1961 and therefore, it cannot be said that the appellant had no intention to produce false certificate. Mr. Rawal submitted that it was not that a simple mistake was committed by the appellant while producing typed copy of the school leaving certificate. If that was so, typed copy would have matched with the earlier copy of the school leaving certificate produced by the appellant in respect of other particulars. Mr. Rawal

submitted that in the departmental inquiry, the charge against the appellant was proved on the basis of the evidence. The appellant never challenged the legality of the departmental inquiry. Therefore, if the inquiry was duly and legally conducted and if in such inquiry, the finding was recorded on the basis of the evidence led in the inquiry, the punishment imposed upon the appellant on conclusion of the inquiry could not have been interfered with by the Labour Court. Mr. Rawal submitted that in fact, there was serious charge against the appellant of giving bribe to the officer of the Corporation to record his birth date on the basis of the typed copy of the school leaving certificate. Such charge stood proved and established against the appellant. Mr. Rawal submitted that Labour Court was not justified in interfering with the punishment imposed by the Corporation and the learned Single Judge, therefore, has rightly set aside the award passed by the Labour Court by the impugned judgment. He thus urged to dismiss the petition.

6. Having heard learned advocates for the parties, it appears that undisputably, the charge against the appellant of producing typed copy of the school leaving certificate with incorrect date of birth stood duly proved in the departmental inquiry. Learned advocate Mr. Bachani submitted that typed copy of the school leaving certificate produced could not be said to be forged certificate. However, the fact proved in the inquiry was appellant's misconduct of producing certificate with incorrect date of birth with an intention to get it recorded in his service book. It is required to be noted that the officer who was attempted to be bribed to record incorrect date of birth on the basis of the typed copy of the school leaving certificate had immediately informed the higher officers and a criminal complaint was also lodged against the appellant. But, Mr. Bachani would then submit that the appellant is acquitted of the criminal charges. However, such acquittal of the appellant could not take away the

finding recorded in the departmental inquiry on the basis of the evidence led during the inquiry, whereby it was clearly proved and established that the appellant had produced such typed copy of the school leaving certificate which contained incorrect date of birth to see that he wanted said date of birth to be recorded in his service book.

7. Before the Labour Court, the departmental proceedings were not under challenge. However, the Labour Court compared two different copies of the school leaving certificate; one typed copy containing date of birth as 1.6.1961 and other one produced by the appellant when he entered in service which contained the date of birth as 1.6.1957 and recorded that there appeared to be no difference in date and month of Birth and therefore, it could be a mistake in recording the year of birth while typing the certificate. On such basis, the Labour Court recorded that the punishment of removal from service imposed upon the appellant could not be said to be legal and proper. The Labour Court considered that incorrect date of birth recorded in the typed copy of certificate was bonafide and not serious one and exercised the discretion under Section 11A of the Act in favour of the appellant.

8. We find that once the charge against the appellant was proved in the departmental inquiry, it was not open to the Labour Court to compare two certificates and to observe that the punishment was not legal and proper.

9. On perusal of the copy of the order of removal of the appellant from service, we find recorded therein that the appellant in fact initially insisted that his correct date of birth was 1.6.1961. The concerned officer who was handed over initial inquiry then collected certificates from different schools, wherefrom it was found that the

correct date of birth of the appellant was 1.6.1957 as initially recorded when the appellant entered into the service. The appellant then during the inquiry stated that his correct date of birth was 1.6.1957. Such stand of the appellant was with obvious intention to save himself from any disciplinary action but then on the basis of the evidence during the inquiry, the charge against the appellant to get his incorrect date of birth recorded on the basis of false certificate was proved.

10. We, therefore, find that learned Single Judge has rightly interfered with the award passed by the Labour Court. The appeal therefore, must fail. It is accordingly dismissed. No order as to costs.

11. In view of the order passed in the Letters Patent Appeal, Civil Application would not survive and same shall stand disposed of accordingly. Notice discharged. Interim relief, if any, stands vacated.

Sd/-
(JAYANT PATEL, J.)

Sd/-
(C.L.SONI, J.)

Omkar