

(2000) 03 GUJ CK 0117
In the Gujarat High Court

Case No : Special Civil Application No. 3763 of 1988

Dahyabhai K. Patel

APPELLANT

Vs

GSRTC

RESPONDENT

Date of Decision : 03-03-2000

Acts Referred:

Citation : (2001) 4 GLR 3668

Hon'ble Judges : R.R. Tripathi, J

Bench : Single Bench

Advocate : A.K. Clerk, for the Appellant; Hardik C. Rawal and S.N. Shelat, for the Respondent

Judgement

R.R. Tripathi, J.—The present petition is filed by the petitioner challenging the action of the respondent, Gujarat State Road Transport Corporation ("the Corporation" for brevity) for initiating and holding departmental inquiry against the petitioner and continuing the same even after the honourable acquittal of the petitioner on merits in Criminal Case No.254 of 1987. The challenge is mainly based on the action being arbitrary, capricious, discriminatory and in violation of the petitioner's fundamental rights.

2. When the matter is taken up for hearing, Shri Hardik Raval appearing for the Corporation pointed out that it is true that the petitioner was acquitted in Criminal Case No.254 of 1987, but at the same time, the Corporation is held liable to pay an amount of compensation of Rs.3,07,000/- with cost and interest at the rate of 12 % per annum from 24.4.1987 till the amount is deposited in the Court in Claim Case No.400 of 1987 and also in Claim Case No.559 of 1987. The Corporation is ordered to pay an amount of compensation of Rs.32,500/- with cost and interest thereon at the rate of 12% per annum from 19.6.1987 till the amount is deposited in the Court or recovered. It is the case of the Corporation that since the Corporation is held liable to pay the aforesaid compensation on the ground that the petitioner being held rash and negligent in driving the bus, the Corporation should be allowed to proceed further with the final show cause notice

which has already been issued by the Corporation and to pass appropriate orders of penalty.

3. When the petitioner had filed the present Special Civil Application, this Court while issuing notice on 16.7.1988, had passed the following order.

"Notice returnable on 2.8.1988. Ad interim relief limited to the extent that the Enquiry Officer may complete inquiry and send the report but after the issuance of the final show cause notice, if any. further proceedings should remain stayed and no penalty order shall be passed till further orders.

It is clarified that if the petitioner wants to examine any defence witnesses, they may be permitted to be examined by the Enquiry Officer before closing the inquiry."

Thereafter, this Honourable court has passed an order dated 19.2.1991 as under :

"Rule returnable on 11.3.1991. Interim relief granted earlier to continue."

Mr. Clerk, the learned counsel for the petitioner has contended that on the same facts, the Corporation ought not to have proceeded with the inquiry and that his prayers for quashing and setting aside the charge sheet dated 17.3.1987, Annexure "B" to the petition and the departmental proceedings thereof be granted. The prayer to that effect is as under :

"restraining the respondent authorities from continuing the departmental inquiry against the petitioner or passing any orders of penalty against the petitioner",

This prayer was not granted by this Court and the relief so far as not passing of any order of penalty against the petitioner is concerned, it was granted by way of interim relief.

4. Mr. Clerk for the petitioner fairly submits that as interim relief is granted by this Court at the initial stage is limited and in view of the fact that now there are two sets of findings available; one in criminal case and another in Motor Accident Claim Petition, he would like to make his submissions which have the bearing on the quantum of punishment. Mr. Clerk has submitted that at present the petitioner is 55 years of age and by now he has put in 32 years of service, of which 25 years of service as driver. In fact, in 1965, the petitioner had joined service as conductor. Thereafter, in 1975 he was taken as driver and the incident in question is a solitary one in his entire service career and even after the incident in question, the department did not think it fit to either suspend him or to put him on any other post than the post of driver, he has continued to serve as driver for all these years and there is nothing on record to show that any such other or similar incident has ever taken place. Mr. Clerk, the Id. advocate submitted that he will be satisfied if this Court makes necessary observations and recommendations to the Corporation to take into consideration the factors in favour of the petitioner which will warrant diminishing of penalty, if at all the Corporation is keen on imposing the same. Mr. Clerk has also submitted that the

petitioner is having liability of his family, consisting of his wife, two sons and a daughter, and the petitioner is also having liability of his estranged sister (tyakta). It is also submitted, of course orally that the petitioner was subjected to victimisation on account of his involvement in union activities, he being an office bearer in a particular union, the other union was out to see that the petitioner is given a stricter punishment so as to see that he is kept away and removed from service. Mr. Clerk has also submitted that in fact the details which are called for in similar such incidents, wherein the employees of the Corporation were involved in fatal accidents, they were meted out with only minor punishments and not only that in the case of one Shri D.P. Gogain, a driver who was involved in not one but more than one fatal accident cases, came to be subsequently promoted to the post of Traffic Inspector. These submissions are advanced besides the main submission about quantum of punishment.

5. On the other hand, Mr. Hardik Raval appearing for the corporation has submitted with all vehemence that once the petitioner is held responsible for rash and negligent driving and the same has resulted into the liability of huge amount of compensation payable to the claimant in MACT case, it should be left to the Corporation to proceed further with the final show cause notice and to impose appropriate penalty. Mr. Hardik Raval has also invited the attention of this Court to a judgment of the Honourable the Supreme Court dated 4.11.1997, in Civil Appeal No.3242 of 1982, in the matter between GSRTC v. A.F. Patel & others. The facts of the said case are not squarely similar to the facts of the present case as in that case the amount payable to the claimant was only Rs.12,745/-, and the same was directed by the Hon'ble Supreme Court to be recovered from the amount payable to the workman. In the opinion of this Court, the ratio of the said judgement will not be applicable to the facts of the present case as the facts of the present case are different than the case before the Honourable the Supreme Court.

6. Mr. Clerk, the learned advocate for the petitioner has rightly invited my attention to the facts which will have a direct bearing on the quantum of punishment in the form of the conduct of the petitioner at the time of the accident. Mr. Clerk invited my attention to the fact that the driver himself had taken the injured persons to the hospital and not only that subsequent thereto the driver himself filed FIR. Mr. Clerk has invited my attention to the aspect that the accident as is appearing from the record it cannot be said that the petitioner was rash and negligent in driving the bus. He has also invited my attention to the fact that while the bus was proceeding towards Santrampur from Lunawada, a cyclist was going and therefore, he had to slow down his bus. While he was almost in "halt" condition, the motor cycle which was coming from the opposite direction, lost its control and dashed with the extreme right hand side of the bus near head light, which will go to show that the bus was on its correct side and it was only on account of the motor cyclist losing his control that the motor cycle dashed with the bus. If the petitioner wanted to escape from his liability, he would not have acted in the manner in which he in fact acted. The fact that the

petitioner stopped his bus, took the victim persons to the hospital and lodged FIR goes to show that it was an accident in true sense and the petitioner cannot be held responsible for such a stray incident in any case not to an extent that it will result into an economic death not only that of the petitioner but that of his entire family. It is also necessary to appreciate at this juncture that right from 1975 the petitioner is serving as a driver and the incident in question has taken place in January 1987, for the first time in 12 years service. The petitioner has continued to serve as a driver after 1987, and till today nothing is brought on record to show that any such similar incident has recurred at the hands of the petitioner.

7. In view of the aforesaid discussion it will be just and proper to make the following observations regarding the quantum of punishment which is left to the Corporation in view of the ad interim relief granted earlier. The final show cause notice is already given to the petitioner, the petitioner shall file a reply to the said show cause notice within two weeks from the date of receipt of the certified copy of this judgement and thereafter the Corporation shall proceed further to pass appropriate penalty order, but keeping in mind that this is not a case wherein dismissal or harsh penalty putting the petitioner to the initial stage of pay scale is warranted, more particularly if the discussion made hereinabove is taken into consideration. Even at the cost of repetition, it may be stated that the petitioner has put in 32 years of long service of which 25 years of service is as a driver. He is on the verge of retirement having attained the age of 55 years. He is having full liability of his family coupled with additional liability of his estranged sister (tyakta). Looking to his immediate conduct also, which is already on record which goes to show that he had not avoided the liability arisen from such an accident and did not run away from the scene of occurrence. On the contrary the petitioner himself took the injured to the hospital and also lodged FIR. The Corporation is also expected of taking a proper note of the fact that in criminal case which is mainly on the point of "rash and negligent driving", the petitioner is acquitted by the criminal court. If the same standards of proof are not to be applied to the departmental proceedings, at least a well known principle of law can always be applied, namely, "act of negligence and misconduct are to be punished while mistakes are to be pardoned".

8. The other contention raised in the petition are not pressed at this stage reserving liberty to agitate the same at an appropriate stage.

9. It is also expected that whatever penalty is deemed fit to be imposed on the petitioner, the same will be made effective only prospectively.

10. The Special Civil Application is disposed of with the aforesaid directions. Rule is discharged. Ad interim relief granted earlier stands vacated with no order as to costs.