

(1996) 07 GUJ CK 0038
In the Gujarat High Court

Desha Mulji

APPELLANT

Vs

Divisional Controller, G.S.R.T.C.

RESPONDENT

Date of Decision : 01-07-1996

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 161

Citation : (1997) 1 GLR 136

Hon'ble Judges : S.D. Pandit, J

Bench : Single Bench

Judgement

S.D. Pandit, J.—Desha Mulji-the petitioner before me was working as a driver under the Divisional Controller, Gujarat State Road Transport Corporation, Junagadh Division. On 27-4-1975 he was driving the bus of the Corporation from Una to Rajkot. When he was near Akshaya Mandir in Gondal town, a bus running from Bhuj to Junagadh came from the opposite direction and there was a head on collision. In the said accident, four persons met with death and 46 persons sustained injuries.

2. On account of the said accident, the respondent started departmental inquiry against the present petitioner for alleged act of rash and negligent driving and causing damage to the bus. During the pendency of the said departmental inquiry, criminal prosecution took place against the present petitioner.

Similarly, proceeding under the Motor Vehicles Act for claiming damages was also initiated before the Motor Accidents Claims Tribunal. The Motor Accidents Claims Tribunal gave its decision on 31-12-1976. In the said proceeding the Motor Accidents Claims Tribunal had found that the petitioner was not at all rash or negligent and was not responsible for the said accident and no amount was awarded against him. The criminal trial also ended on 29-8-1978 in clear acquittal of the present petitioner. The petitioner had produced judgments in both the proceedings before the inquiry officer. The inquiry officer had examined only one witness in the said proceeding. He came to the conclusion that the

petitioner was negligent in driving his vehicle and that by the act he has caused loss and damage to the Corporation. He, therefore, awarded the punishment of dismissal against the present petitioner. The petitioner had challenged the finding of the inquiry officer before the appellate authority as per the service rules of the Corporation but he did not meet with any success in the said appeal. He, therefore, approached the Labour Court and the following dispute was referred to the Labour Court:

Shri Desha Mulji should be reinstated to his original post with full back wages or not?

In the Labour Court only the petitioner was examined. The Corporation had chosen not to examine any witness. They had only produced certain documents. On considering the material before the Labour Court, the learned Presiding Officer of the Labour Court found that the order of termination of services was a disproportionate punishment though he agreed with the finding of the departmental inquiry that there was negligence on the part of the present petitioner. He, therefore, passed the following order:

The order of termination of service of the workman Desha Mulji is set aside and Gujarat State Road Transport Corporation is ordered to reinstate the workman Desha Mulji on his original post with continuity of service but without back wages within one month from the date of publication of the award. In case of default the workman will be entitled to full back wages from the date of default till reinstatement.

Gujarat State Road Transport Corporation is ordered to pay cost of Rs. 250/- to the workman.

3. The petitioner has preferred the present petition under Article 227 of the Constitution of India only as regards the denial of back wages to him by the Labour Court.

4. There is no dispute of the fact that as regards the accident in question, there was criminal prosecution against the present petitioner which resulted into his clear acquittal on 29-8-1978. In the claim for damages before the Motor Accidents Claims Tribunal, he was completely exonerated from the liability to pay damages by the order dated 31-12-1976. Thus, before the decision of the inquiry officer in the departmental proceedings, there was finding of the Criminal Court as well as the Civil Court that the accident in question had not taken place due to either rash or

negligent driving of the present petitioner. The finding of the Motor Accidents Claims Tribunal being a finding of the civil Court and when the Corporation was a party to the said proceeding, said finding is binding against the Corporation and it was not open for the inquiry officer to come to a contrary conclusion. No doubt, the learned Presiding Officer of the Labour Court has mentioned that the Corporation had to pay compensation of Rs. 2,06,543/-. It is an admitted fact

that the other bus involved in the said accident was also belonging to the Corporation. The Tribunal had found that the bus which was running from Bhuj to Junagadh was driven rashly and negligently and which resulted into the said accident, consequently the Corporation was liable to pay compensation on account of vicarious liability. Merely because the Corporation was held to be liable to pay compensation on account of the said accident in question it could not be said that said compensation was awarded on account of any act of the present petitioner. The learned Presiding Officer of the Labour Court has observed in para 9 of his judgment as under:

The order of the Motor Accident Claims Tribunal, Rajkot is produced on record. The Tribunal has clearly held that the workman was not at fault at all but the accident took place on account of negligence and carelessness on the part of the driver of the Bhuj-Junagadh bus. The learned Tribunal took into consideration the evidence and all attendant circumstances. Panchnama, width of the road and position of both the buses lying on the scene of accident were taken into consideration. It was observed that Bhuj-Junagadh bus had proceeded on the wrong side of the road and it dashed with the bus coming from opposite side; that Una-Rajkot bus was lying on its side in right side footpath and both left side wheels were at the footpath, and that Bhuj-Junagadh bus was being driven rashly and negligently and in high speed. The Motor Accidents Claims Tribunal, Rajkot exonerated the workman. Though the order of the Criminal Court is not on record, it is not disputed that the workman is honourably acquitted in criminal case.

From the above observations of the learned Presiding Officer of the Labour Court, it is quite clear that the learned Presiding Officer of the Labour Court was aware that the Motor Accidents Claims Tribunal had found that the appellant was not at all rash and negligent. It seems that the learned Presiding Officer of the Labour Court was influenced by the statement of one P.I. Shri Gohil. It is submitted before me by Shri Rathod that said statement was not recorded either by the inquiry officer or before the Labour Court. But it was merely a statement recorded by the police u/s 161 Cr. P.C. Now apart from it, it must be observed that the learned Presiding Officer of the Labour Court has misconsidered and has drawn wrong inference from the said statement of Mr. Gohil. Mr. N.B. Gohil has stated that the driver of Bhuj-Junagadh bus had suddenly raised the speed of his vehicle when he came near Akshay Mandir. He is attributing the high speed to the driver of the Bhuj-Junagadh bus and not to the person driving the Una-Rajkot bus. The material which was produced before the Presiding Officer, Labour Court was also clearly showing that the petitioner had taken his bus to the extreme left hand side and on seeing that the bus on the opposite direction was coming on his bus, he had driven the said bus on the left hand side footpath in order to save the accident but in spite of the same, collision has taken place. When there is clear evidence on record to show that the petitioner has taken his bus to his extreme left hand side and had driven his bus even to the left hand side footpath even to avoid the accident, it would be the traversery of justice to

hold him negligent by holding that he ought to have stopped his bus because had he stopped his bus on the road, the bus would have been more safe as there would have been a mere collision between the two buses.

5. Therefore, in view of the above discussion the learned Presiding Officer of the Labour Court was not at all justified in coming to conclusion that he was concurring with the finding of the inquiry officer that there was negligence on the part of the present petitioner and consequently he deserves to be punished departmentally. The material on record clearly shows that the finding of the inquiry officer as well as the finding of the Presiding Officer of the Labour Court is totally a travesty of justice. The finding of the Labour Court is perverse in view of the material on record. This Court exercising power under Article 227 of the Constitution of India is bound to set aside such a finding. I, therefore, hold that the finding of the Labour Court that there was negligence on the part of the petitioner and that the petitioner deserves some punishment is not at all justified and that the same is to be quashed and set aside.

6. But merely because I have come to the conclusion that there was no negligence on the part of the petitioner, and the petitioner could not be said to be responsible for the accident in question. I am unable to accept the contention of Mr. Rathod that the petitioner is entitled to back wages in view of the material on record. The learned Advocate for the respondent stated that the petitioner himself has stated in his examination- in-chief that after dismissal, in question, he was working and he was earning Rs. 100/- to 150/- every month. The learned Advocate for the petitioner has cited before the case reported in *Rajinder Kumar Kindra Vs. Delhi Administration through Secretary (Labour) and Others*, in support of his contention that the petitioner is entitled to back wages. But if the facts of that case are considered then it would be clear that said case is not applicable to the case before me. In that case, the workman during the period of his wrongful dismissal was staying with his father-in-law along with his wife and children. He was helping his father-in-law in business. His father-in-law was maintaining the workman as well as his family members. Therefore, in view of the said admitted position, the Labour Court had not awarded him back wages and that finding of the Labour Court has been set aside by the Apex Court by observing as under:

Industrial Disputes Act, 1947 (XIV of 1947)- Schudele 2 item 3-Dismisssal of employee for misconduct-Dismisssal set aside and reinstatement ordered-Award of back wages-Employee during forced absence for maintaining his family helping his father-in-law in his coal depot and living with him having no other source-Held that it was not gainful employment-If this could be gainful employment, begging by the employee would as well be gainful employment, in the circumstances the employee was entitled to full backwages and all consequential benefits.

In support of his submission, he has relied upon the above decision of the Supreme Court that during his absence from service he was not gainfully

employed so as to reject the claim for back wages and there is no evidence on record to show that he was gainfully employed during the period of his absence from service. It has been observed by the Apex Court that he and his family members were living with his father-in-law and that he had no other alternative source of maintenance and he was helping his father-in-law in absence, was a natural conduct as his father-in-law and that maintaining him and his family members. In the case before me, the workman himself has admitted in his examination-in-chief that he was working during the period in question, viz., the period of his wrongful dismissal and he was earning Rs. 100/- to Rs. 150/- p.m. There was no gratuitous action on the part of any relation of him. But it was a voluntary act of the workman of getting temporary employment and the amount as per his own admission will have to be taken into consideration while awarding back wages.

7. Thus, on the finding that there was no justification for the dismissal of the petitioner from service he is entitled to only back wages subject to deduction of the amount at the rate Rs. 150/- per month from the date of his dismissal till the date of his reinstatement. Thus, I hold that the present petition will have to be allowed and the order of the learned Presiding Officer of the Labour Court dated 25-6-1984 will have to be modified by deleting the following words from the said order, "but without back wages within one month" and in its place the following words be inserted, "but with all back wages subject to the deduction of Rs. 150/- p.m. from the date of dismissal till date of reinstatement within two months from the date of publication of the award." Rest of the order of the Labour Court is maintained.

In the circumstances, parties to bear their own costs.