

**(2010) 09 GUJ CK 0022**  
**In the Gujarat High Court**

**Case No :** Special Civil Application No's. 8760 and 10772 of 2010

Divisional Controller

APPELLANT

Vs

Balwantsingh Chatur Singh Solanki

RESPONDENT

**Date of Decision :** 22-09-2010

**Acts Referred:**

Constitution of India, 1950 — Article 227  
Industrial Disputes Act, 1947 — Section 11A

**Citation :** (2010) 09 GUJ CK 0022

**Hon'ble Judges :** Mukesh R. Shah, J

**Bench :** Single Bench

**Advocate :** Kiran D. Pandey, for the Appellant; Mukesh H. Rathod, for the Respondent

## **Judgement**

M.R. Shah, J.—Rule. Shri Mukesh H. Rathod, learned advocate waives service of notice of Rule on behalf of the respondent in Special Civil Application No. 8760/2010.

As both these petitions arise out of one impugned judgment and award passed by the Labour Court, Himatnagar in Reference (LCH) No. 60/2004 and as such both the petitions can be said to be cross petitions, they are being disposed of by this common judgment and order.

2. Special Civil Application No. 8760/2010 has been preferred by the petitioner Gujarat State Road Transport Corporation challenging the impugned judgment and award dated 25.11.2009 passed by the Labour Court, Himmatnagar in Reference (LCH) No. 60/2004, by which the Labour Court has partly allowed the said reference directing the petitioner to pay all benefits available to the respondent inclusive of retiral benefits with 40% back wages from the date of termination i.e. 01.10.2002 to 31.10.2005.

Special Civil Application No. 10772/2010 has been preferred by the workman conductor challenging the aforesaid judgment and award passed by the Labour

Court, Himmatnagar in Reference (LCH) No. 60/2004 insofar as there is no specific order passed by the Labour Court in quashing and setting aside the order of termination and passing the order of reinstatement atleast till the workman attain the age of superannuation i.e. 31.10.2005.

3. Having heard the learned advocates appearing on behalf of respective parties, it appears that in a departmental inquiry, charge of remaining unauthorizedly absent for 20 days came to be proved. It is an admitted position that the workman did not participated in the inquiry. That on conclusion of the departmental inquiry and having found that the charge of remaining unauthorizedly absent for 20 days came to be proved and considering his earlier 11 misconducts/defaults, petitioner Gujarat State Road Transport Corporation passed an order of dismissal, which came to be challenged by the workman, which was referred to the Labour Court, Himmatnagar and which was numbered as Reference (LCH) No. 60/2004.

4. Ms. Kiran Pandey, learned advocate appearing on behalf of the petitioner Corporation has submitted that in the facts and circumstances of the case, when the charge and misconduct of remaining unauthorizedly absent came to be proved and considering the fact that there were 11 defaults committed by the workman in past, the learned Labour Court has materially erred in quashing and setting aside the order of dismissal and directing the petitioner to pay all consequential benefits available to the respondent with 40% back wages from the date of dismissal till the respondent attain the age of superannuation i.e. 31.10.2005. It is further submitted that in such a case and situation, the Labour Court has materially erred in exercising powers u/s 11A of the Industrial Disputes Act.

On the other hand, Shri Mukesh Rathod, learned advocate appearing on behalf of the respondentworkman has submitted that considering 29 years of service as a conductor and the charge proved against the workman with respect to remaining unauthorizedly absent for 20 days, when the Labour Court found that order of punishment and dismissal is disproportionate to the charge and misconduct proved and when the Labour Court interfered with the same and exercised discretion u/s 11A of the Industrial Disputes Act, the same is not required to be interfered by this Court while exercising powers under Article 227 of the Constitution of India. Shri Mukesh Rathod, learned advocate appearing on behalf of the workman has submitted, under the instruction of his client, that he has no objection if the impugned judgment and award passed by the Labour Court awarding 40% back wages from the date of termination till 31.10.2005 i.e. the date on which the respondent attain the age of superannuation, is quashed and set aside and petitioner is directed to pay the retiral benefits to the workman. It is submitted by him that as such, as so observed by the Labour Court in the impugned judgment and award, respondent has already been paid retiral benefits like provident fund, gratuity. Therefore, it is requested to consider the aforesaid.

5. Having heard learned advocates appearing on behalf of respective parties and considering the facts and circumstances, it appears that the charge of remaining unauthorizedly absent for 20 days came to be established and proved in a departmental inquiry. The aforesaid is required to be considered alongwith other 11 defaults committed by the respondent workman in the past. Under the circumstances, the Labour Court has committed an error in awarding 40% back wages from the date of dismissal till the respondent workman attain the age of superannuation. In the aforesaid facts and circumstances and considering the 11 defaults committed by the respondent, it is very debatable issue whether the Labour Court was justified in quashing and setting aside the order of dismissal passed u/s 11A of the Industrial Disputes Act. However, considering the fact that the respondent had 29 years of service and had already retired in the meantime and had attained the age of superannuation on 31.10.2005 and that he has already been paid benefits like provident fund, gratuity, it will be just and proper to confirm that part of the order by which the Labour Court has directed the petitioner to pay all retiral benefits to the respondent, which are as such already paid. However, the Labour Court is not justified in awarding 40% back wages from the date of dismissal till the respondent attain the age of superannuation i.e. 31.10.2005. Even Shri Rathod, learned advocate appearing on behalf of the respondent, under the instruction of his client, has agreed that if the respondent is paid the retiral benefits considering his 29 years of service and the impugned judgment and award passed by the Labour Court awarding 40% back wages from the date of dismissal i.e. 31.10.2005, is hereby quashed and set aside, he has no objection and therefore, the impugned judgment and award deserves to be quashed and set aside.

6. In view of the above, Special Civil Application No. 8760/2010 is partly allowed and in peculiar facts and circumstances and more particularly when the respondent has already attained the age of superannuation i.e. 31.10.2005 and he has already been paid retiral benefits like provident fund and gratuity, the impugned judgment and award passed by the Labour Court, Himmatnagar dated 25.11.2009 in Reference (LCH) No. 60/2004, is hereby quashed and set aside to the extent by which the Labour Court has directed the petitioner to pay 40% back wages and other benefits from the date of dismissal till 31.10.2005 and it is held that the respondent shall be entitled to only retiral benefits like provident fund and gratuity. Rule is made absolute to the aforesaid extent so far as Special Civil Application No. 8760/2010 is concerned and in view of the above, no further order is required to be passed in Special Civil Application No. 10772/2010 and is, accordingly, disposed of.