
(2015) 01 GUJ CK 0039
In the Gujarat High Court
Case No : S.C.A. No. 4835 of 2014

Divisional Controller

APPELLANT

Vs

Labour Court and Others

RESPONDENT

Date of Decision : 30-01-2015

Acts Referred:

Citation : (2015) 145 FLR 495 : (2015) 1 LLJ 635 : (2015) 2 LLN 676

Hon'ble Judges : N.V. Anjaria, J.

Bench : Single Bench

Advocate : G.M. Joshi, for the Appellant; P.C. Chaudhari and Paritosh Calla, Advocates for the Respondent

Final Decision : Allowed

Judgement

N.V. Anjaria, J.—Rule. Learned advocate Mr. Paritosh Calla waives service of notice of Rule on behalf of respondent No. 1 and learned advocate Mr. RC. Chaudhari waives service of notice of Rule on behalf of respondent Nos. 2.1 to 2.4.

1.1. In the facts of the case and as per the request and consent of learned advocates appearing for the parties, the petition is taken up for final consideration, making Rule returnable forthwith.

By filing the present petition, the petitioner-Corporation has challenged judgment and award dated 21.03.2013 passed by Labour Court, Godhra, in Reference (LCG) No. 850 of 1999. The Labour Court, thereby, allowed workman's Reference in part, and directed the first party employer-Corporation to pay 25% backwages for the period from the date of dismissal of the workman till the date he died, and further directed to pay the consequential retiral benefits, treating his services to be continuous; cost of Rs. 1,001/- was awarded.

2. The workman had invoked the jurisdiction of Labour Court challenging his dismissal from service and seeking relief of reinstatement with backwages. Statement of Claim was filed at Exh. 4, to which a reply came to be filed by the

first party employer. However, during the pendency of the reference proceedings, the second party-workman expired and his heirs and legal representatives came to be impleaded under Exh. 18 application.

2.1. The workman was employed as a conductor with the petitioner-Corporation. When he was on duty on 21.02.1998, in a bus plying between Dahod to Ujjain, the Checking Squad of the Corporation intercepted the bus and found that the workman had committed irregularities by collecting fare from the passengers traveling in the bus, without issuing tickets to them. A report was made and charge-sheet No. 83 of 1998 came to be issued to the workman. The charges leveled against him in the charge-sheet were that (i) he had collected an amount of Rs. 40/- from two passengers of one group traveling from Dhar Station, Indore (ii) In the similar way, from two other passengers of one group, the respondent-conductor had collected Rs. 68 without giving them the tickets; they were traveling from Rajgadh to Indore (iii) from yet another passenger traveling from Rajgadh to Indore, Rs. 34/- was collected by way of fare, but no ticket was issued. It was further noticed that the conductor had parted with wrongly punched tickets of denomination of Rs. 10/- which were given to a passenger who had disembarked from the bus, and that the said tickets were not shown to have been sold in the way-bill. Furthermore, an amount of Rs. 183/- was found less in the cash-bag of the respondent-conductor. A regular departmental inquiry was held against the respondent-conductor and he came to be dismissed by order dated 15.09.1999.

2.2. The Labour Court recorded a clear finding that the factum of the workman having received the money towards fare without giving tickets was established and the charge was proved. Before the Labour Court, the workman filed Pursis (Exh. 14) and gave up contention as regards the legality and fairness of the inquiry. The heir and wife of the deceased workman gave her evidence (Exh. 26). Considering the facts and evidence before it, the Labour Court took view that since the workman was not to be reinstated as already died, it would be a proper relief if 25% backwages are awarded for the interregnum and the workman is paid consequential benefits.

3. Learned advocate Mr. Gautam Joshi submitted that the misconduct committed by the workman was serious and the same was proved. It was submitted that the Labour Court was not justified in showing sympathy and that it could not have taken a lenient view by giving back-wages and consequential benefits. According to his submission, the penalty of dismissal was a proper and proportionate and would have been imposed, had the workman not died. On the other hand, learned advocate Mr. P.C. Chaudhari for the respondent-workman submitted that the workman had put in long service, that there was no past misconducts shown and since the workman died during the pendency of the reference, the relief of 25% backwages and consequential benefits granted was not liable to be interfered with.

4. From the facts and the charged proved, it I could not be gainsaid that the

misconduct committed by the respondent-workman was of misappropriation by collecting fare without issuing tickets. He was a conductor and was holding a position of trust under the Corporation. The statement of the reporter, the statements of the passengers, the important circumstance of amount of cash being found less in the cash-bag of the workman etc. were the relevant and reliable evidence amongst other evidence which rightly weighed with the Enquiry Officer in holding the workman guilty and the finding of the Labour Court that the charge was proved, was eminently just and proper. The contention of learned advocate for the petitioner that the penalty of dismissal was to be the appropriate punishment, could not be brushed aside lightly.

5. In the aforesaid view, the grant of 25% arrears of salary for the period from the date of dismissal till the date of death by the Labour Court, has to be excepted and could not be sustained. At the same time, taking into consideration the total facts and weighing the circumstances of the case, the direction of the Labour Court for paying consequential and retiral benefits with continuity of service deserve to be maintained. Therefore, while maintaining rest of the part of the impugned judgment and award, the portion thereof whereby the Labour Court granted 25% arrears of salary, is hereby set aside.

5.1. The Corporation is directed to pay to the heirs and legal representatives of the deceased workman, who are eligible to receive, the consequential retiral benefits as per the judgment and award of the Labour Court upheld herein, within eight weeks from today.

The petition is allowed in the aforesaid terms. The Rule is made absolute to the said extent.