

(2014) 08 GUJ CK 0112

In the Gujarat High Court

Case No : Special Civil Application No. 1577 of 2014

Divisional Controller, Gujarat State Road Transport Corporation

APPELLANT

Vs

Mohanbhai Somabhai Parghi and Others

RESPONDENT

Date of Decision : 20-08-2014

Acts Referred:

Citation : (2015) 145 FLR 300

Hon'ble Judges : Paresh Upadhyay, J.

Bench : Single Bench

Advocate : Deepak G. Aloria, for the Appellant; Hemant Makwana for Prakash V. Chavda, for the Respondent

Final Decision : Allowed

Judgement

Paresh Upadhyay, J.? Heard Mr. Deepak G. Aloria, learned advocate for the petitioner-Corporation and Mr. Hemant Makwana for Mr. Prakash V. Chavda, learned advocate for the contesting respondent - Workman.

Rule. Mr. Makwana, learned advocate waives service of notice of rule on behalf of respondent No. 1.

Challenge in this petition is made to the award passed by the Industrial Tribunal, Rajkot dated 18.10.2013 in Reference (IT) No. 143 of 2009, whereby punishment imposed by the petitioner Corporation is set aside.

2. Learned advocate for the petitioner has submitted that, the respondent was working as a Driver with the petitioner Corporation and on 14.4.2000,, the bus, which was driven by him, met with an accident and one motorcyclist had died. The respondent Driver was prosecuted departmental and in the departmental inquiry, punishment of withholding of increments for five years was imposed vide order dated 26.6.2002. It is submitted that the said punishment got over in five years i.e. in the year 2007, and the respondent retired on attaining the age of superannuation on 31.1.2009. It is submitted that only after the retirement, he

moved the labour machinery and ultimately the matter was referred for adjudication to the Industrial Tribunal, Rajkot by the Appropriate Authority of the Government vide order dated 25.11.2009, which came to be registered as Reference (IT) No. 143 of 2009 by the Tribunal, on which the impugned award is passed. It is submitted that the Corporation had raised various contentions, including that the initiation of proceedings by the workman lacked bona fide, coupled with the fact that, even on merits he did not have any case. It is submitted that the Industrial Tribunal ought not to have interfered in the matter and this petition be allowed, by setting aside the award of the Tribunal.

3. On the other hand, learned advocate for the contesting respondent has submitted that, the Industrial Tribunal has recorded finding to the effect that the respondent ought not to have been punished at all, and therefore, this Court may not interfere. It is submitted that though there was some delay on the part of the respondent, delay on its own should not come in the way of the respondent. It is submitted that this Court may not interfere in the award passed by the Industrial Tribunal and the petition be dismissed.

4. Having heard learned advocates for the respective parties and having gone through the material on record, this Court finds that, there was substantial force in the argument of the Corporation before the Industrial Tribunal that the initiation of the proceedings by the workman lacked bona fide. The punishment order was of 26.6.2002, which was not only not challenged during the entire currency of five years, but it was not challenged even during the entire service tenure of the concerned workman. The initiation of proceedings by the concerned workman after retirement, that the punishment withholding of increments before about seven years when he was in service was illegal, required closer scrutiny by the Industrial Tribunal. From the record it transpires that the Tribunal has not addressed this issue at all. In the present case, on the ground of delay, the respondent had disintitiled himself to claim any relief from the Industrial Tribunal. The impugned award on this ground needs interference by this Court.

5. Additionally, after examining the merits of the matter, the Tribunal has recorded finding to the effect that, the workman could not be held responsible for the accident, or could not be held to be negligent in his driving. In paragraph 9 of the award, reasons are recorded by the Industrial Tribunal in this regard. Having gone through the said reasons recorded by the Tribunal, this Court finds that, the Tribunal had not held the inquiry to be illegal. If that was so, opportunity ought to have given to the Corporation, which it did not. The Tribunal abruptly and illegally jumped to the conclusion that the Driver should not be held to be negligent or for the accident, for which he was punished. The finding recorded by the Tribunal in this regard was without any basis and is unsustainable in law. Thus even on merits, the Tribunal has committed error in setting aside the punishment order dated 26.6.2002.

6. Viewing from any angle, the impugned award can not be permitted to stand in eyes of law. Therefore the impugned award needs to be quashed and set aside.

7. Attention of this Court is invited to the fact that, for the said accident, the Driver was tried before the competent Court also and in the said proceedings, he was acquitted vide judgment and order dated 25.10.2013. In this regard, it needs to be recorded that, the departmental inquiry was neither dependent on the criminal proceedings, nor the same was the explanation for challenging the order of the year 2002 in the year 2009, nor it has any bearing on the ultimate outcome, since the acquittal is of the year 2013 and Reference was made in the year 2009. Thus, the acquittal of the workman in the criminal trial, being Criminal Case No. 309 of 2000 in the Court of Judicial Magistrate First Class Upleta dated 25.10.2013 would not take the case of the workman any further. For the reasons recorded above, this petition is allowed. The impugned award is quashed and set aside. Rule is made absolute. No order as to costs.