

(2010) 09 GUJ CK 0010

In the Gujarat High Court

Case No : Special Civil Application No. 1839 of 2001 and Civil Application No. 14246 of 2008 in Special Civil Application No. 1839 of 2001 and Special Civil Application No. 7870 of 2000

G.S.R.T. Corpn.

APPELLANT

Vs

Kadarbhai H. Laganai C/ H.K. Rathod

RESPONDENT

Date of Decision : 29-09-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2010) 09 GUJ CK 0010

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : Dipen A. Desai, for the Appellant; Mukesh H. Rathod, for the Respondent

Judgement

M.R. Shah, J.—As common question of law and facts arise in both of these petitions and they arise out of common judgment and award, they are being disposed of by this common judgment and order.

2. Special Civil Application No. 1839 of 2001 has been preferred by the petitioner - Gujarat State Road Transport Corporation challenging the impugned judgment and award dated 20th October, 1999 passed by Labour Court, Vadodara in Reference (LCB) No. 448/1996, by which, the Labour Court, Vadodara has directed the petitioner to reinstate the respondent - workman with 25% backwages with continuity in-service.

3. Special Civil Application No. 7870 of 2000 has been preferred by the workman challenging the aforesaid judgment and award passed by the Labour Court, Vadodara in Reference (LCB) No. 448 of 1996 so far as denying backwages of 75%.

4. A departmental inquiry came to be initiated against the workman on the ground of absenteeism for the period from 01/01/1995 to 31/01/1995 and in the

departmental inquiry charge and misconduct of remaining absent unauthorizedly for the period from 01/01/1995 to 31/01/1995 came to be proved and consequently Disciplinary Authority passed an order of imposing punishment of dismissal. Being aggrieved by and dissatisfied with the order of dismissal, the Workman raised industrial dispute, which was referred to the Labour Court, Vadodara, which was numbered as Reference (LCB) No. 448 of 1996 and the Labour Court, Vadodara by impugned judgment and award dated 20/10/1999 partly allowed the said Reference by directing the petitioner to reinstate the respondent- workman with 25% backwages with continuity in-service while exercising power u/s 11-A of the Industrial Disputes Act. Being aggrieved by and dissatisfied with the impugned judgment and award dated 20/10/1999 passed by the Labour Court, Vadodara in Reference (LCB) No. 448 of 1996, the respective petitioners have preferred the respective petitions.

5. Mr. Dipen Desai, learned advocate appearing on behalf of the Corporation has submitted that considering the fact that charge and misconduct of remaining absent unauthorizedly for the period from 01/01/1995 to 31/01/1995 came to be proved in the departmental inquiry and the same is not challenged, Labour Court materially erred in directing the petitioner to reinstate the respondent-workman with 25% backwages with continuity in-service.

6. Mr. Rathod, learned advocate appearing on behalf of the respondent-workman has submitted that son of respondent-workman had died, he remained absent without leave and considering the fact that the respondent-workman was not habitual offender of remaining absent, Labour Court has rightly exercised the discretion u/s 11-A of the Industrial Disputes Act. He has further submitted that the workman had already retired on attaining the age of superannuation on 30/06/2003, it is requested to modify the impugned judgment and award even by denying the full backwages and imposing some further punishment of withholding of one increment with permanent future effect so the respondent-workman can get retiral benefits. The above statements have been made by Mr. Rathod, learned advocate appearing on behalf of the respondent, on instruction received from his client.

7. Mr. Dipen Desai, learned advocate appearing on behalf of the Corporation has requested to pass an appropriate order considering the facts and circumstances of the case.

8. Having heard the learned advocates appearing on behalf of the respective parties and considering the period of absenteeism of one month only and in past, no such defaults are alleged against the respondent-workman and considering the fact that now the respondent-workman had already retired on attaining the age of superannuation on 30/06/2003 and in the facts and circumstances of the case, it appears to the Court that if respondent-workman is denied 100% backwages and punishment of withholding of one increment with permanent future effect is imposed, it will meet the ends of justice and it can be said to be sufficient punishment upon the respondent-workman.

9. In view of the above and for the reasons stated hereinabove, the judgment and award dated 20th October, 1999 passed by Labour Court, Vadodara in Reference (LCB) No. 448 of 1996 is hereby modified to the extent that the petitioner to reinstate the respondent-workman without backwages but with continuity in-service and further punishment of withholding of one increment with permanent future effect is imposed. As it is reported that the respondent-workman has already retired on attaining the age of superannuation on 30/06/2003, the respondent shall be paid all retiral benefits accordingly. Rule is made absolute to the aforesaid extent in Special Civil Application No. 1839 of 2001 and Rule is discharged in Special Civil Application No. 7870 of 2000. No costs.

10. In view of disposal of the main petition, no order in Civil Application No. 14246 of 2008 in Special Civil Application No. 1839 of 2001 and the same is also accordingly disposed of. No costs.