

(2001) 06 GUJ CK 0037

In the Gujarat High Court

Case No : Special Civil Application No. 512 of 2001

G.S.R.T. Corpn.

APPELLANT

Vs

Nizamkhan Mehmadvkhan Pathan

RESPONDENT

Date of Decision : 21-06-2001

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2001) 06 GUJ CK 0037

Hon'ble Judges : R.R. Tripathi, J

Bench : Single Bench

Advocate : Hardik C. Rawal, for the Appellant; G.K. Rathod, for the Respondent

Final Decision : Dismissed

Judgement

Ravi R. Tripathi, J.—The present application is filed by Gujarat State Road Transport Corporation (hereinafter referred to as "G.S.R.T.C." for short), challenging the award dated 16th June, 2000 passed by the Labour Court in Reference (LCV) No. 1608/1998.

2. Mr. Raval, learned Advocate appearing for the petitioner-Corporation, relied on a judgement of the Apex Court in the matter of Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Noukarara Sangha Etc., , wherein the Apex Court has held as under :

"6. As stated above, the learned Single Judge and the Division Bench in writ appeals confirmed the findings given by the Labour Court that charges against the workmen for breach of trust and misappropriation of funds entrusted to them for the value mentioned in the charge-sheet had been established. After giving the said findings, in our view, the Labour Court materially erred in setting aside the order passed by the management removing the workmen from service and reinstating them with 25% back wages. Once an act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employees in service. Law on tis point

is well settled. (Re: Municipal Committee, Bahadurgarh v. Krishnan Behari). In U.P. SRTC v. Basudeo Chaudhary this Court set aside the judgement passed by the High Court in a case where a conductor serving with U.P. State Road Transport Corporation was removed from service on the ground that the alleged misconduct of the conductor was an attempt to cause loss of Rs. 65 to the Corporation by issuing tickets to 23 passengers for a sum of Rs. 2.35 but recovering @ Rs. 5.35 per head and also by making entry in the waybill as having received the amount of Rs.2.35, which figure was subsequently altered to Rs. 2.85. The Court held that it was not possible to say that the Corporation removing the conductor from service has imposed a punishment which is disproportionate to this misconduct. Similarly in Punjab Dairy Development Corporation Ltd. v. Kala Singh, this Court considered the case of a workman who was working as a Dairy Helper-cum-Cleaner for collecting milk from various centres and was charged for the misconduct that he inflated the quantum of milk supplies in the milk centres and also inflated the quality of fat contents where there were less fat contents. The Court held that in view of the proof of misconduct a necessary consequence will be that the management had lost confidence that the workman would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the power u/s 11-A of the I.D. Act to grant relief with minor penalty."

3. Mr. Raval, learned Advocate for the petitioner-Corporation, also relied upon one another judgement of the Apex Court in the case of Karnataka State Road Transport Corporation Vs. B.S. HulliKatti, reported in (2001) 2 SCC 574, wherein the Apex Court has in no uncertain terms laid down the law as under :

"6. It is misplaced sympathy the Labour Court in such cases when on checking it is found that the Bus Conductors have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with the company. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare.

7. In our opinion, the order of dismissal should not have been set aside, but we are informed that in the meantime, the respondent has already superannuated. We therefore, on the special facts of this case, do not set aside the order of reinstatement, but direct that the respondent would not be entitled to any back-wages at all but he would be entitled to the retiral benefits."

4. This is a case which can be said to be an example of "uncalled for sympathy" towards a workman against whom misappropriation is proved not only in the present case, but, even in the past, he has number of such instances. The Labour Court itself has recorded as many as 28 such incidents, but, according to the learned Judge of the Labour Court, except in one, the amount involved was not large. The instance which is recorded at Serial No.4 of the Default Card, was

grave enough for which annual increments were required to be stopped for a period of six years. This is mentioned to show that the respondent-workman can be said to be in habit of committing such irregularity-misappropriation of the public funds. The reasoning given by the learned Judge for having exercised the discretion u/s 11-A is thoroughly misconceived and does not appeal to this Court. Hence, the judgement and award of the learned Judge is quashed and set aside. Rule is made absolute. No order as to costs.