

(2010) 07 GUJ CK 0085

In the Gujarat High Court

Case No : Special Civil Application No. 9284 of 2004

Gujarat State Road Transport Coporation

APPELLANT

Vs

Rajabhai Keshabhai Marwada

RESPONDENT

Date of Decision : 28-07-2010

Acts Referred:

Citation : (2010) 07 GUJ CK 0085

Hon'ble Judges : K. S. Jhaveri, J

Bench : Single Bench

Advocate : Ashish M. Dagli, for the Appellant; Kishor M. Paul, for the Respondent

Judgement

K.S. Jhaveri, J.—This petition is directed against the judgement and award dated 3rd January 2004 passed by Labour Court, Bhuj in Reference (LCJ) No. 117 of 2000 whereby the petitioner Corporation was directed to reinstate the respondent with continuity of service with back wages.

2. The respondent was serving as driver with petitioner Corporation. He remained absent from duty from 13th August 1998 onwards without prior permission. He was therefore chargesheeted and departmental inquiry was conducted which resulted into dismissal of the petitioner from service. The respondent filed first departmental appeal which came to be dismissed. Thereafter the respondent raised a dispute which was recorded as Reference (LCJ) No. 117 of 2000 before the Labour Court, Bhuj. The Labour Court set aside the dismissal order and directed the petitioner Corporation to reinstate the respondent with continuity of service and back wages. It is this order which is challenged in the present petition.

3. Heard the learned Advocates for the respective parties and perused the relevant documents on record. As a result of this exercise it is found that the guilt against the respondent was proved and he had remained absent from duty without prior permission. However, such a misconduct would not warrant dismissal from the service and the Labour Court has rightly set aside the

dismissal order. At the same time, there is misconduct on the part of the respondent and the Labour Court has not imposed any penalty upon the respondent. The respondent had remained absent without prior permission. The respondent being a driver, on account of unauthorised absenteeism the administration was paralyzed. Therefore some penalty could have been imposed upon the respondent. Having considered the case and perused the material on record, and also looking to the past four defaults on the part of the respondent, I am of the view that interest of justice would be met by not granting back wages to the respondent especially when he has not worked on the post during the interregnum period. It is also required to be noted that there was no plea nor evidence or proof to show that from the alleged dismissal of his service till the date of the award the respondent was not in gainful employment.

4. In the premises aforesaid the impugned judgement and award qua the back wages is quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs. The respondent shall be reinstated in service with continuity of service within four months from today.