

(2012) 08 GUJ CK 0070

In the Gujarat High Court

Case No : Special Civil Application No. 3730 of 2004

Gujarat State Road Transport Corpn.

APPELLANT

Vs

Jamnagas Panchanabhai Bhilodia

RESPONDENT

Date of Decision : 01-08-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A, 17(B)

Citation : (2013) 136 FLR 973 : (2012) 3 GLH 290 : (2013) LLR 174

Hon'ble Judges : P.B. Majmudar, J

Bench : Single Bench

Advocate : Dipen Desai for Petitioner 1, for the Appellant; M.R. Vivek Bhamre for Mr. L.N. Medipally for Respondent 1, for the Respondent

Judgement

Mr. P.B. Majmudar, J.—By way of this petition, the petitioner-Gujarat State Road Transport Corporation has challenged the order passed by the Labour Court, Junagadh, in Reference (LCJ) No. 283 of 1998, dated 13.04.1998, whereby the Labour Court passed the order of reinstatement in favour of the respondent-workman, and thereby, reduced the penalty of dismissal from service to lowering the respondent in two stages in his basic pay. The respondent was working with the petitioner as conductor. It is alleged that, on the relevant date, while the respondent was on his duty on a bus on Amblash-Keshod route, a surprise checking of the said bus was carried out. During the checking, it was found that the respondent had not issued tickets to three of the passengers and on the basis of the same a departmental inquiry was conducted against him and on completion thereof, he was ordered to be removed from the service on the ground that the misconduct alleged against him stood proved. The respondent-workman, thereafter, raised an industrial dispute, which was numbered as Reference (LCJ) No. 283 of 1998. The labour Court, in the impugned order, recorded that the misconduct of non-issuance of tickets to the passengers, as alleged against the respondent, stands proved. However, it reduced the punishment of removal of service of the respondent to lowering him in two stages in his basic pay in exercise of powers under Section-11A of the Industrial

Disputes Act, 1947. Aforesaid order is challenged by the petitioner-S.T. Corporation in this petition

2. It is pertinent to note that while admitting the petition, this Court stayed the order of the Labour Court subject to payment of benefits under Section- 17(B) of the Act to the respondent. Mr. Dipen Desai, learned Counsel for the petitioner, at this juncture, has submitted that since, subsequently, the respondent-workman attained the age of superannuation, aforesaid order was modified by this Court holding that the same will not be applicable.

3. Mr. Desai, learned Counsel for the petitioner-S.T. Corporation, has submitted that misconduct alleged against the respondent-workman stood proved, which is of a serious nature, whereby it is alleged that the respondent-workman did not issue tickets to three of the passengers travelling on a bus enroute to Amblash-Keshod with an oblique motive. Learned Counsel has placed reliance on the past record of the respondent, which was placed before the Labour Court and the same is forming part of the compilation at Pages-54 onwards. On the basis of the same, learned Counsel argued that it is not a case, wherein the exercise of powers under Section-11A of the Industrial Disputes Act by the Labour Court is justified and the labour Court has committed an error.

4. On the other hand, Mr. Vivek Bhamre, learned Advocate for Mr. Medipally, learned Counsel for the respondent-workman, vehemently opposed the petition and supported the order of the Labour Court.

5. I have heard learned Counsel for the parties and have gone through the order of the Labour Court as well as the documents produced on the record. The labour Court, in my view, has rightly found that the misconduct alleged against the respondent-workman stood proved in the departmental inquiry. It is not in dispute that the petitioner had not issued tickets to three of the passengers, which was his duty. The Labour Court, however, found that it is not proved that any amount has been misappropriated by the petitioner and by holding so reduced the punishment of dismissal from service to lowering the respondent in two stages in his basic pay. Here, it is required to be noted that, even if, some passengers might have tried to save the respondent-workman by saying that they have not paid money, in the departmental inquiry, the department can draw adverse inference, in this behalf. It is not in dispute that, in any case, the respondent had not issued tickets, obviously, with an oblique motive. By the aforesaid action of the respondent-workman, the petitioner corporation was put to financial loss, though, the same may be of only a few rupees. It is, further, required to be noted that it is not a solitary incident, since, in the past also the respondent-workman was subjected to penalty for about 43 such misconducts. The last of such misconduct was the one, in connection with which the services of the respondent-workman came to be terminated. The details of misconducts committed by the respondent-workman, which were produced before the Labour Court, are produced at Page-54 onwards in the compilation of this petition. As per the misconducts mentioned at Sr. Nos. 1, 9-10, 13-20 and so on, the

petitioner was found not to have issued tickets and in some of the cases it was also found that, though, he had collected fare from the passengers, had not issued tickets to them. In short, the respondent workman was a habitual defaulter, who was in the habit of not issuing tickets to the passengers, which is proved from his past conduct, and though, the same was brought to the notice of the Labour Court, it is surprising that the Labour Court has stated that the defaults/misconducts committed by the respondent-workman were not of serious nature.

6. While exercising the powers under Section- 11A of the Industrial Disputes Act, 1947, the Labour Court was required to apply its mind. In this behalf, reference is required to be made to a decision of the Supreme Court in the case of Janatha Bazar (South Kanara Central Co-operative Whole Sale Stores Limited) Etc. Vs. The Secretary, Sahakari Nourakara Sangha Etc., , wherein the Hon"ble Apex Court held that in case of proved misappropriation, irrespective of the fact that whether the amount is large or small, the question of considering the past record of the employee concerned does not arise and since, it is the discretion of the employer to consider the same in a given case, the Labour Court could not have reduced the penalty imposed by the employer in such cases.

7. At this stage, reference is also required to be made to another decision of the Apex Court in U.P. State Road Transport Corporation Vs. Suresh Chand Sharma, , wherein the Apex Court has held that while deciding a case, the Court is under an obligation to record reasons, however, brief the same may be, since, the non-observance of the same would be contrary to principles of natural justice and would vitiate the judicial order.

8. In the case on hand, in my view, once it is proved that the respondent-conductor had not issued tickets to several passengers, coupled with the fact that he had committed about 43 such defaults in the past, the Labour Court was not justified in reducing the penalty of dismissal, as imposed by the petitioner-S.T. Corporation, to lowering the respondent in two stages in his basic pay. The powers under Section- 11A of the Industrial Disputes Act, 1947, are required to be exercised judiciously and not mechanically. In the instant case, the Labour Court, apparently, committed an error, while exercising the powers under Section- 11A of the Act, by reducing the penalty imposed on the respondent. Hence, the order of the Labour Court impugned in this petition cannot be sustained. In the result, this petition is ALLOWED. The order passed by the Labour Court, Junagadh, in Reference (LCJ) No. 283 of 1998, dated 13.04.1998, is quashed and set aside. Rule is made absolute.