

(2013) 02 GUJ CK 0051

In the Gujarat High Court

Case No : Special Civil Application No. 3541 of 2007

Gujarat State Road Transport Corporation

APPELLANT

Vs

Bharatkumar Natvarlal Modi (Deceased)

RESPONDENT

Date of Decision : 06-02-2013

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A, 11A

Citation : (2013) 137 FLR 373

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

Bench : Single Bench

Advocate : Falguni D. Patel, for the Appellant; K.V. Gadhia, for the Respondent

Judgement

K.S. Jhaveri, J.—By way of this petition, the petitioner has challenged the judgment and award dated 4.3.2006 passed by the Labour Court, Bhuj-Kuchchh, in Reference (LCB) No. 155 of 1998 whereby the Labour Court granted reinstatement with continuity of service and 10 per cent back wages. The facts of the case, in brief, are that the respondent workman remained absent from his duty despite refusal of his leave report by the authority. Therefore, charge-sheet was issued to the workman. After holding departmental proceedings, the petitioner dismissed the workman from service vide order dated 18.10.1995. Therefore, he raised industrial dispute by filing Reference before the Labour Court. The Labour Court, after considering the evidence on record, passed the award as aforesaid. Hence the petitioner is before this Court.

Learned Counsel for the petitioner has submitted that the workman was already reinstated in service. However, during the pendency of the petition, he has died. Therefore, his legal heirs were brought on record. Since, the workman was already in service, the only question which comes for consideration of this Court is back wages. He has submitted that the Labour Court has not assigned any reasons for granting 10 per cent back wages. Therefore, the order of the Labour Court is required to be set aside.

2. I have heard learned Counsel for the petitioner. The only question left for consideration is back wages. The Labour Court while exercising powers u/s 11-A of the Industrial Disputes Act, ought not to have granted back wages. No reasons are assigned by the Labour Court for granting back wages. In that view of the matter, back wages is required to be set aside. Even otherwise, on the basis of "no work no pay" policy, back wages should not be granted. The Labour Court has substituted the order to dismissal to reinstatement with continuity of service. In my view, the Labour Court while exercising powers u/s 11A of the Industrial Disputes Act, ought to have imposed some penalty on the workman. However, in my view, in view of the death of the workman, no penalty is imposed on the workman.

In the result, the petition is partly allowed. Considering the evidence on record, reinstatement with continuity of service of the workman is confirmed. However, the direction to pay 10 per cent back wages to the workman is quashed and set aside. Rule is made absolute to the aforesaid extent. No order as to costs.