

**(1993) 02 GUJ CK 0023**  
**In the Gujarat High Court**

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|------------------------------------------|------------|
| Gujarat State Road Transport Corporation | APPELLANT  |
| Vs                                       |            |
| Danaji Sukaji Kodiyar                    | RESPONDENT |

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**Date of Decision :** 12-02-1993

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 11A

**Citation :** (1994) 1 GLR 87 : (1994) 2 LLJ 1113

**Hon'ble Judges :** J.M. Panchal, J;A.P. Ravani, J

**Bench :** Division Bench

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**Judgement**

Ravani, J.—Rule.

Since no order adverse to the respondent-Workman is being passed it is not necessary to serve notice of rule upon him. In facts of the case the matter is ordered to be heard today.

2. The petitioner-Gujarat State Road Transport Corporation has challenged the legality and validity of the award dated April 13, 1992 passed by the Labour Court, Rajkot, by which the respondent-workman has been ordered to be reinstated on his original post of conductor with continuity of service, but without back wages. The grievance of the petitioner-Corporation is that the Labour Court has imposed no punishment on the respondent-Workman though he has been found guilty. It is submitted that withholding of entire back wages is no punishment and some punishment must have been imposed upon him by the Labour Court while exercising powers u/s 11-A of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act")

3. The respondent-workman was serving as conductor for a period of about eleven years when he was discharged from service on August 29, 1989. It was alleged against him that on March 3, 1988 he was working as conductor of Bhuj-Nakhatrana Road in Kutch District. At that time his bus was checked and it was found that he had not issued tickets to four passengers who had boarded the bus from Loria. It was also found that two tickets were wrongly punched and other

two passengers were also not issued tickets. On these allegations departmental inquiry was held and it was found that he was guilty of the misconduct alleged against him. At the conclusion of the departmental inquiry he was ordered to be dismissed from service.

4. The respondent-workman raised industrial dispute which was referred to the Labour Court, Rajkot. The Labour Court held that having regard to the past service record of the workman and having regard to the facts and circumstances of the case the punishment of dismissal from service imposed upon the respondent - workman was not justified. Therefore the Labour Court, as per its award dated April 13, 1992, directed that the respondent - workman be reinstated in service on his original post with continuity of service, but without back wages.

5. The petitioner-Corporation has felt aggrieved by the award inasmuch as the Labour Court has imposed no punishment upon the workman. It is submitted that when the Labour Court found that the misconduct alleged against the workman was proved, some punishment must have been imposed by the Labour Court while exercising powers u/s 11-A of the Act. In support of this submission reliance is placed on Division bench judgment of this Court in Special Civil Application No. 8386 of 1992 (with Special Civil Application No. 8707 of 1992) decided on December 22, 1992. In that case the workman - Conductor was charged with misconduct of not issuing tickets to twelve passengers. At the conclusion of the departmental inquiry he was ordered to be dismissed from service. In reference before the Labour Court the Labour Court found that the misconduct alleged against the workman was proved, but in the opinion of the Labour Court the punishment of dismissal from service was not justified. Therefore the Labour Court directed that the workman be reinstated in service with continuity of service, but without back wages. Against this award the Corporation filed Special Civil Application No. 8386 of 1992 and the respondent-workman also filed Special Civil application No. 8707 of 1992 before this High Court. The Corporation prayed for some punishment to be imposed, while the workman prayed for award of back wages. This Court rejected the petition filed by the workman. While considering the contention of the Corporation that some punishment should have been imposed, this Court has made observations as follows :

"Having carefully gone through the award, we find that the Labour Court was right in coming to the conclusion that the misconduct was proved. However, this was the first act of misconduct on the part of the Conductor and, therefore, the punishment of dismissal has been rightly found to be disproportionate. The Labour Court was justified in interfering with the order of punishment. But withholding of the back wages is not an order of punishment and, therefore, the Labour Court ought to have passed some order of punishment provided under the service rules. As that has not been done, the petition filed by the Corporation will have to be allowed to that extent".

After making the aforesaid observations the Court directed that punishment of stoppage of three increments without cumulative effect be imposed upon the workman. Relying on the aforesaid observations and the judgment of this Court it is submitted that in this case also punishment of stoppage of three increments without cumulative effect be imposed upon the workman.

6. The decision of this Court referred to hereinabove does not lay down any principle that while exercising powers u/s 11-A of the Act the Labour Court or the Tribunal is bound to impose some punishment. What punishment should be imposed is ordinarily a question to be decided on the basis of facts and circumstances of each case and particularly the individual circumstances of the ground, his socio-economic back ground, his service record and the surrounding circumstances in which he might have been compelled to commit the misconduct are some of the factors which are required to be taken into consideration while deciding the question of punishment. These factors would naturally vary from case to case and from individual to individual. Depending upon the facts and circumstances of the case this Court thought it imposed some punishment provided under the service rules. Division Bench of this Court has not interpreted the provisions of Section 11-A of the Act and has not considered the question as to whether the Labour Court or the Tribunal is bound to impose punishment whenever it considers that the order of discharge or dismissal from service was not justified and reinstatement was required to be ordered. It is true that this Court has observed that withholding of the Labour Court ought to have passed some vice rules. But these observations are required to be read in the back ground of the required to be confined to the fact and circumstances of the case because this Court did not consider the width and amplitude of the power of the Labour Court and that of the Tribunal u/s 11-A of the Act and in fact this Court has not considered the provisions of Section 11-A of the Act. Therefore the aforesaid observations made by this Court in the back ground of the facts of that case cannot be read as universal proposition of law laid down by this Court. This is the only correct way of reading the judgment of this Court.

7. Section 11-A of the Act reads as follows :-

"11-A Powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workmen :

Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National tribunal, as the case may be, is satisfied that the order of discharge or dismissal was not justified it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require :

Provided that in any proceeding under this Section the Labour Court, Tribunal or National Tribunal, as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter."

The pre-condition for exercise of powers u/s 11-A is that there should be satisfaction by the Labour Court or the Tribunal that the order of discharge or dismissal was not justified. Once such satisfaction is arrived at, the Labour Court or the Tribunal may set aside the order of discharge or dismissal and direct reinstatement of the workman "on such terms and conditions, if any, as it thinks fit or give such other reliefs to the workman, including award of any lessers punishment in lieu of discharge or dismissal as the circumstances of the case may require". The phrase "on such terms and conditions, if any, as it thinks fit" gives clear indication of the powers of the Labour Court or the Tribunal. While directing reinstatement of the workmen the Labour Court may impose any terms or conditions. Such term or condition, may be one that the workman be not paid his back wages. The section also empowers the Labour Court to impose lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. However, again it may be noted that it is left to the discretion of the Labour Court or the Tribunal. The Labour Court or Tribunal may not impose lesser punishment in lieu of discharge or dismissal. In the circumstances of the case the Labour Court may think it proper that the agonies of the departmental inquiry and the prolonged, litigation before the Court may be sufficient punishment to the workman and may think that the workmen be directed to be reinstated without imposition of a condition as regards back wages. Whether to award back wages or not would be a term and a condition of reinstatement. This may be taken into consideration by the Labour Court. In the instant case the Labour Court has found that the workman was not required to be reinstated with back wages. Therefore, it is directed that the workman be reinstated without back wages. On this score it cannot be said that the Labour Court has exercised its discretion u/s 11-A in perverse or unreasonable manner so as to call for interference in exercise of the powers under Art. 227 of the Constitution of India.

8. Here reference may be made to a decision of the Supreme Court in the case of Baldev Singh v. Presiding Officer, Labour Court, Patiala, reported in 1984 (4) SCC 519. Therein a driver of the Punjab Roadways was charged for causing damage to the Punjab Roadways to the extent of Rs. 22.50 by taking the bus of which he was the driver through some other route. In the departmental inquiry he was held guilty of the charge and his services were ordered to be terminated. On reference, the Labour Court was satisfied that the inquiry held against him was just and fair but the punishment awarded was harsh and not in consonance with the nature of the charges levelled against him. Therefore the Labour Court directed that the dismissal be set aside, and the workman be reinstated with continuity of service, but without back wages. The period of forced idleness was ordered to be treated as leave of the kind due and in case no leave was due as leave without pay. The matter was carried upto the Supreme Court. In para 9 of the reported decision the Supreme Court has observed that the order setting

aside the dismissal and the direction to reinstate the workman without back wages and to treat the period of absence as leave of the kind due and in case no leave was due the same be treated as leave without pay was just and proper. After referring to this punishment the Supreme Court has observed as follows :

"This award of the Tribunal is in conformity with the provision of section 11-A of the said Act. There is no lack of jurisdiction or want of jurisdiction in making the order in question and it cannot be said that the order is contrary to the provision of Section 11-A of the said Act which vests the labour Tribunal to whom a dispute has been referred with jurisdiction to pass appropriate orders which the Tribunal will think proper and expedient in the facts and circumstances of the case. We do not find any infirmity far less any illegality in the above order of the Tribunal."

9. Again, reference may be made of another decision of the Supreme Court in the case of *Roma Kant Misra v. State of Uttar Pradesh*, reported in 1983 (3) SCC 346. In that case the workman who was an office-bearer of the worker's union and had put in fourteen years' of service was charged for misconduct for disorderly behaviour or conduct likely to cause breach of peace threatening an employee within the premises and conduct prejudicial to good order and discipline. On departmental inquiry he was held guilty and was ordered to be dismissed from service. In the reference the Labour Court held that the termination of service of the workman was legal and proper. The High Court rejected the petition under Art. 227 of the Constitution of India. In SLP before the Supreme Court, the Supreme Court has made observations in paras 6 and 7 of the reported decision as follows :

"The punishment must be for misconduct to some extent misconduct is a civil crime which is visited with civil and pecuniary consequences. In this case it has resulted in dismissal from service. In order to avoid the charge of vindictiveness, justice, equity and fair play demand that punishment must always be commensurate with the gravity of the offence charged. In the development of Industrial Relation norms we have moved far from the days when quantum of punishment was considered a managerial function with the Courts having no power to substitute their own decision in place of that of the management. More often the Courts found that while the misconduct is proved the punishment was disproportionately heavy. As the situation then stood, courts remained powerless and had to be passive sufferers incapable of curing the injustice. Parliament stepped in and enacted Section 11-A of the Industrial Disputes Act".

After reproducing Section 11-A of the Act, the Supreme Court has further observed :

"It is now crystal clear that the Labour Court has the jurisdiction and power to substitute its measures of punishment in place of the managerial wisdom once it is satisfied that the order of discharge or dismissal was not justified in the facts and circumstances of the case".

10. In above view of the settled legal position it cannot be said that the Labour

Court or the Tribunal has no jurisdiction to give direction as regards reinstatement of the workman without back wages. The direction not to pay back wages would be a term and or condition on which reinstatement is directed. Having regard to the facts and circumstances of the case this direction cannot be said to be in any way unjust, arbitrary or perverse so as to call for interference in exercise of the powers under Art. 227 of the Constitution of India. There is no substance in the petition. Hence rejected. Rule discharged.