

(2012) 12 GUJ CK 0102
In the Gujarat High Court

Case No : Letters Patent Appeal No. 1139 of 2009 in Special Civil Application No. 28936 of 2007

Gujarat State Road Transport Corporation	APPELLANT
Vs	
Dilipsinh Devebha Zala	RESPONDENT

Date of Decision : 14-12-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2013) 2 LLN 152

Hon'ble Judges : V.M. Sahai, J;G.B. Shah, J

Bench : Division Bench

Advocate : Hardik C. Rawal, for the Appellant; Tushar L. Sheth, for the Respondent

Judgement

Honourable Mr. Justice G.B. Shah

1. This Letters Patent Appeal has been filed challenging the judgment and order dated 18.2.2009 passed by the learned Single Judge in Special Civil Application No. 28936 of 2007. We have heard Mr. Hardik C. Rawal, learned counsel for the appellant and Mr. T.L. Sheth, learned counsel for the respondent.

The respondent-workman Dilipsinh Devubha Zala was serving as a driver with the appellant. A charge sheet was issued to the respondent for remaining absent without prior permission from 01.2.1981 to 04.4.1981. After holding departmental inquiry as per the rules of the appellant-Gujarat State Road Transport Corporation (for short, "the Corporation"), the respondent was dismissed from service by order dated 25.6.1981. The respondent raised industrial dispute and challenged the above order after a delay of more than 12 years which was numbered as Reference LCR No. 6 of 2007. The said Reference was partly allowed by the Labour Court with a direction to reinstate the workman on his original post with continuity of service and without back wages. Being aggrieved by the said award, the appellant-Corporation approached this court by filing Special Civil Application which was dismissed by the learned Single Judge

by order dated 18.2.2008. Hence this Appeal.

2. Learned counsel for the appellant submitted that the respondent was dismissed from service on 25.6.1981 and the dispute was raised after a period of 12 years. The Labour court has committed gross error in granting reinstatement with continuity of service in favour of the respondent workman. The learned Single Judge also erred in ignoring the gross misconducts committed by the respondent driver and erred in confirming the benefit of continuity of service and reinstatement. He also submitted that the Reference filed after 12 years suggests that the respondent workman must have been gainfully employed elsewhere. Else he would have approached the Labour Court immediately after the dismissal order was passed. He further submitted that the respondent remained absent for about two months and not remained present in departmental inquiry. In spite of writing to the respondent to resume duty, he never bothered to remain present in the inquiry. Thus, ex-parte departmental inquiry was conducted and after issuing show cause notice, he was dismissed from service. He submitted that the Labour Court has wrongly come to the conclusion that the punishment of dismissal from service is very harsh. Learned counsel for the appellant, therefore, submitted that this appeal be allowed and the order passed by the learned Single Judge be set aside.

3. On the other hand, learned counsel for the respondent submitted that the Labour Court has not granted any back wages from the date of dismissal till the date of award. He stated that the workman remained absent because of sickness meanwhile departmental inquiry was completed ex parte and the dismissal order was passed. Therefore, the Labour Court has exercised the power u/s 11A of the Industrial Disputes Act, 1947 and modified the punishment. He finally submitted that the Labour Court as well as the learned Single Judge has rightly granted the benefit of continuity of service which is just and proper.

4. We have considered the above rival submissions in light of the order dated 18.5.2007 passed by the Labour Court in Reference No. 6 of 2007 and the order passed by the learned Single Judge dated 18.2.2008 in Special Civil Application No. 28936 of 2007. The Labour Court has granted reinstatement with continuity of service without back wages of the interim period. Learned Single Judge while passing the order dated 18.2.2008 observed that the Labour Court has not committed any error which requires interference by the court. The respondent was serving as a driver with the appellant Corporation. It is not in dispute that for about two months i.e. 1.2.1981 to 4.4.1981 the respondent remained absent from service unauthorisedly for which charge sheet was issued. The department has decided to hold departmental inquiry for which they have written letters to him. In spite of that the respondent workman remained absent in the departmental inquiry. Under the circumstance, the Corporation conducted the departmental inquiry ex parte and he was dismissed from service by order dated 25.6.1981. It is also not in dispute that the respondent raised industrial dispute and challenged the relevant order after a delay of more than 12 years. Referring

to para 5 of the order dated 18.5.2007 passed by the Labour Court in Reference (LCR) No. 6 of 2007, it appears that earlier also the respondent had not remained present and so in absence of the respondent workman, the Reference was dismissed on 9.4.2004. Thereafter the respondent had filed Misc. Application No. 50/2006 which was allowed and hence the matter was restored and re-numbered as Reference No. 6/2007. The learned Single Judge has observed that the appellant-Corporation has not challenged the terms of Reference before higher forum and the Labour Court has no jurisdiction to strike of the Reference only on the ground of delay. In our view, this finding is erroneous because the respondent has filed the delayed Reference and the case of the appellant-original petitioner is that continuity of service should not have been granted as the appellant is not at fault. It is true that the appellant-original petitioner has not challenged the Reference before the higher forum but that will not make the respondent entitled to continuity of service more particularly when the respondent has filed the Reference after more than 12 years. It can be presumed by any reasonable person that a bus driver like the respondent who was working with the appellant Corporation would generally never sit idle for 12 years but would keep him engaged or gainfully employed elsewhere during the period in question abandoning the cause of action and subsequently he decided to file Reference after 12 years as an afterthought. We find force in the submissions made by the learned counsel for the appellant. Such belated Reference suggests that the workman must have been engaged in employment or must have been gainfully employed during the interim period, otherwise he would have approached the Labour Court immediately after the dismissal from service. Regarding the 8 years" service and no bad past record of the respondent would definitely help the respondent only for reinstatement but in our considered view, the respondent is no way entitled to get continuity of service more particularly when the respondent had chosen to file delayed reference and so he will certainly not get premium on it by way of continuity of service. In our considered view, the learned Single Judge has erred in holding that the Labour Court has not committed any error in granting the reinstatement with continuity of service to the respondent workmen, more particularly when the Reference was filed after 12 years of delay. For the aforesaid, this Appeal is partly allowed. The judgment and award passed by the Labour Court is modified to the effect that the reinstatement of the respondent without back wages is confirmed. So far as the order regarding continuity of service is concerned, the same is hereby set aside.