

(1996) 04 GUJ CK 0028
In the Gujarat High Court
Case No : M.C.A. No. 1236 of 1994

Gujarat State Road Transport Corporation	APPELLANT
Vs	
Kanawala J.N.	RESPONDENT

Date of Decision : 09-04-1996

Acts Referred:

Citation : (1996) 3 GLR 85 : (1998) 3 LLJ 15

Hon'ble Judges : M.R. Calla, J;J.M. Panchal, J

Bench : Division Bench

Advocate : H.S. Munshaw, for the Appellant; C.L. Soni, for the Respondent

Final Decision : Allowed

Judgement

M.R. Calla, J.—Heard learned Counsel. Respondent-workman Shri J. N. Kanawala was working with Gujarat State Road Transport Corporation ("G.S.R.T.C." for short) as driver. By an order dated July 11, 1982 he was dismissed from service. He raised industrial dispute and thereupon reference being made the Labour Court, Surat passed an award in his favour on May 30, 1992 in Reference L.C.S. No. 597 of 1993 granting relief of reinstatement with continuity of service and full backwages. Against this award dated May 30, 1992 G.S.R.T.C. preferred Special Civil Application before this Court. That Special Civil Application No. 597 of 1993 was rejected on January 29, 1993 by Division Bench as at that time such matters were heard by the Division Bench. Later on G.S.R.T.C. preferred this Misc. Civil Application in the nature of Review Application and the order dated January 29, 1993 passed in Special Civil Application was sought to be reviewed. The petitioner-Corporation came out with the case that the respondent-workman had worked with the Municipal Corporation, Surat during the enforced idleness and therefore, he was not entitled to the backwages. It was submitted that this fact was concealed by the respondent-workman before the Labour Court and the petitioner-Corporation came to know this fact later on. On notice of Review Application being issued to the respondent, the respondent has come with an affidavit-in-reply dated March 15, 1996 wherein he has submitted that after his

dismissal dated July 11, 1982 during the pendency of the reference he got a job on daily wages from June 2, 1984 with the Municipal Corporation, Surat till July 31, 1986 and from August 1, 1986 he was regularised on the post of driver in the pay scale of Rs. 1150-1550 by Surat Municipal Corporation. In this affidavit he has also explained the circumstances in which he did not disclose the factum of his gainful employment before the Labour Court and has stated that after the award dated May 30, 1992 he was reinstated by the G.S.R.T.C. on October 23, 1992, but then he was in predicament as to whether he should continue with Surat Municipal Corporation or resume back in G.S.R.T.C. on September 14, 1995. He further submitted that he does not claim backwages from August 1, 1986 till September 14, 1995 when he resumed duties back in the G.S.R.T.C. because August 1, 1986 the date on which he was given regular appointment by Surat Municipal Corporation. That may be so but the fact remains that he has remained in gainful employment even during the period June 2, 1984 to July 31, 1986 may be on daily wages and therefore, he has to account for the amount which he has received as daily wages from Surat Municipal Corporation during the period from June 2, 1984 to August 31, 1986 also. Having heard learned Counsel and having gone through the circumstances explained in the affidavit-in-reply we are of the considered opinion that apart from the period from August 1, 1986 to September 14, 1995 the petitioner has also to account the amount received by him as daily wages from Surat Municipal Corporation from June 2, 1984 to August 31, 1986 and therefore, it will be in the fitness of the things in case the respondent-workman submits the details of the amount received by him from the Surat Municipal Corporation for the period June 2, 1984 to August 31, 1986 and such amount shall also be adjustable and in case the amount which he would have received had he been in the employment in the G.S.R.T.C. exceeds the amount of daily wages received by him from Surat Municipal Corporation, only the difference shall be payable to him. Accordingly, we recall the order dated January 29, 1993 whereby the Special Civil Application was rejected and on request of both the sides we proceed to modify the impugned award dated May 30, 1992 as under :

(1) Relief of reinstatement with continuity of service granted by the Labour Court in favour of the respondent-workman shall remain intact.

(2) Respondent-workman shall not be entitled to any backwages for the period August 1, 1986 to September 14, 1995.

(3) Should the respondent-workman submit details of the amount of wages received by him from Surat Municipal Corporation for the period June 2, 1984 to July 31, 1986 the G.S.R.T.C. shall prepare a statement of the amount which the respondent-workman would have received from the Corporation had he not been unlawfully dismissed and in case such amount is found to be in excess of the amount which has been received by the respondent-workman from the surat Municipal Corporation as daily wages only the difference shall be payable to the respondent-workman and such amount shall be made available in the hands of

the respondent -workman within a period of six weeks from the date the details are submitted by the respondent-workman before the Divisional Controller of G.S.R.T.C at Surat. It will also be open for the Divisional Controller of G.S.R.T.C., Surat to verify and check the details submitted by the respondent-workman from the office of the Municipal Corporation, Surat during this period of six weeks but whatever payment is found to be due as a result of the details submitted by the respondent-workman and the cross-checking if any from the Surat Municipal Corporation shall be completed at the earliest, but, not later than six weeks from the date the respondent-workman submits details.

(4) The respondent-workman shall of course be entitled to the full backwages for the period on and from the date of dismissal till June 1, 1984 and this amount shall also be paid into the hands of the respondent-workman by the respondent-Corporation within the period of six weeks.

2. The Application is accordingly allowed and the Rule is made absolute. No order as to costs.