
(2001) 06 GUJ CK 0055

In the Gujarat High Court

Case No : Special Civil Application No. 664 of 2001

Gujarat State Road Transport Corporation

APPELLANT

Vs

Kantibhai Devkaranbhai Patel

RESPONDENT

Date of Decision : 21-06-2001

Acts Referred:

Citation : (2001) 06 GUJ CK 0055

Hon'ble Judges : R.R. Tripathi, J

Bench : Single Bench

Advocate : Ashish M. Dagli, for the Appellant; B.A. Vaishnav, for the Respondent

Final Decision : Partly Allowed

Judgement

Ravi R. Tripathi, J.—The present petition is filed by Gujarat State Road Transport Corporation (hereinafter referred to as "G.S.R.T.C." for short), challenging the judgement and award dated 26th September, 2000 passed by the Labour Court, Himmatnagar, in Reference (LCH) No. 747/1996.

2. The case of the petitioner-Corporation is that the respondent-workman was serving as a driver and since 22nd July, 1993, he remained unauthorisedly absent untill on 21st September, 1993 he reported for duty and produced medical certificate. Thus, he remained unauthorisedly absent for 56 days. The respondent-workman was served with a Charge-Sheet bearing No. 223/1993 on 11th September, 1993. After the respondent-workman was held guilty in the departmental inquiry, a notice was served on 12th April, 1994 for dismissal. On 21st June, 1994, the order of dismissal was passed.

3. The case of the respondent-workman is that during those 56 days, he had some problem in joints of both hands and therefore, he could not discharge his duties as a driver, therefore, he had to remain absent. It is also his case that he had intimated the authorities through his friend that he is not well and as and when he is fit, he will report for duty.

4. In paragraph-6 of the award, the Labour Court has said that on perusal of the Default Card of the respondent-workman (which is produced at page-29 in the petition), it is found that he has committed various defaults and for those defaults, he has already undergone punishment. Therefore, the present punishment is disproportionate. No further reasons are recorded for this conclusion. So far as the back-wages are concerned, it is mentioned in paragraph-7 of the award that he is not having any agricultural land and that he is not driving any private bus and on the basis of those two statements in the cross examination of the workman, the Labour Court came to the conclusion that it is not proved as to what income the respondent-workman was getting during the intervening period. Taking into consideration that since the year 1990, that is, from 05/05/1990 to 18/05/1990 and on six other instances, the respondent-workman had remained unauthorisedly absent and the present instance was the seventh in line. It is clear that he is in the habit of remaining unauthorisedly absent.

5. Mr. B. A. Vaishnav, learned Advocate appearing for the respondent-workman, submitted that in all probabilities, the respondent-workman has already reached the age of superannuation and therefore, there is no question of his being now getting the benefit of reinstatement. He also submitted that 50% back-wages, which are awarded, with continuity of the service, is also unreasonable in view of the fact that the petitioner-Corporation has not proved anything about the gainful employment of the workman and therefore, 100% back-wages should have been awarded. He submitted that the award is not required to be interfered with by this Court in this petition. He emphatically submitted that denial of 50% back-wages from 21/6/1994 till the date of the award, is sufficient punishment for having remained absent on account of sickness, due to which he was unable to discharge his duties as a driver. Mr. Vaishnav may be right, but, the fact remains that right from 1990 till the present incident, which took place in the year 1994, the respondent-workman had as many as seven instances of unauthorised absence and no punishment, awarded at the relevant time, could prove to be deterrent one. Therefore, this Court feels that the indulgence shown by the Labour Court is not warranted and the award of the Labour Court is required to be quashed and set aside.

6. Mr. Vaishnav, learned Advocate for the respondent-workman, in the alternative, submitted that the dismissal, if it is upheld, will deprive the respondent-workman of his retiral benefits, who has already reached the age of superannuation, and in the alternative, if he has not reached the age of superannuation, he may waive his right to get reinstated. In that view of the matter, the petitioner may be treated to have taken voluntary retirement and he may be paid retiral benefits.

7. In view of the aforesaid discussion, the judgement and award of the Labour Court ordering reinstatement and granting 50% back-wages is quashed and set aside. The petitioner-Corporation shall treat the respondent-workman to have

taken voluntary retirement. He shall be held entitled for the retiral benefits payable to him on the basis of the services rendered by the workman till the date of the dismissal, that is, 21/06/1994. The petition is partly allowed. Rule is made absolute to the aforesaid extent only with no order as to costs.