

(2010) 09 GUJ CK 0108

In the Gujarat High Court

Case No : Special Civil Application No. 5186 of 2007

Gujarat State Road Transport Corporation

APPELLANT

Vs

Prahladbhai S. Rami

RESPONDENT

Date of Decision : 15-09-2010

Acts Referred:

Constitution of India, 1950 — Article 227
Industrial Disputes Act, 1947 — Section 17B

Citation : (2010) 09 GUJ CK 0108

Hon'ble Judges : Mukesh R. Shah, J

Bench : Single Bench

Advocate : Hardik C. Rawal, for the Appellant; Kishor M. Paul, for the Respondent

Final Decision : Allowed

Judgement

M.R. Shah, J.—By way of this petition under Article 227 of the Constitution of India the petitioner-Gujarat State Road Transport Corporation has prayed for an appropriate writ, order or direction quashing and setting aside the impugned Judgment and award dated 31/12/1002006 passed by the Labour Court, Himatnagar in Reference (L.C.H.) No. 34/2002 by which the Labour Court has partly allowed the Reference directing the petitioner to reinstate the respondent without back wages but with continuity of service.

2. The respondent was serving as a Conductor. Departmental Inquiry was initiated against him by issuing chargesheet alleging inter alia that at the time of checking by the checking squad on 20/04/2000 while he was on duty on Fatepur to Vijapore route it was found that 20 unpunched tickets were in the box, which was in the hidden place and though it is shown that 70 tickets have been sold the amount/fare recovered was with respect to 25 tickets only and it was also found that Rs. 982/- were found to be in short. Thus, the respondent had misappropriated a sum of Rs. 982/- and it was also found that the tickets were not cut in seriatum. In the departmental inquiry the charge and misconduct

alleged against the respondent came to be proved and the respondent came to be dismissed from service considering the fact that earlier also the respondent has committed 22 defaults in past. Being aggrieved and dissatisfied with the order of dismissal the respondent raised industrial dispute, which was referred to the Labour Court, Himatnagar, which was numbered as Reference (L.C.H.) No. 34/2002 and the Labour Court held that the final account is to be written at the end of the trip and, therefore, it cannot be said that the respondent has committed any misappropriation of the amount and the Labour Court also held that at the most it can be said to be mishandling of the account and mishandling of the tickets, and, therefore, the Labour Court quashed and set aside the order of dismissal and passed an order directing the petitioner to reinstate the respondent without back wages, however with continuity of service. Being aggrieved and dissatisfied with the impugned Judgment and award passed by the Labour Court in Reference (L.C.H.) No. 34/2002 the petitioner has preferred the present Special Civil Application under Article 227 of the Constitution of India.

3. Shri Hardik Raval, learned advocate appearing on behalf of the petitioner has vehemently submitted that the Labour Court has materially erred in holding that there is no misappropriation by the respondent. It is further submitted that the Labour Court has materially erred in taking the matter too lightly by holding that at the most it can be said to be mishandling of the account and mishandling of issuance of tickets, which has not been issued seriatum. It is submitted that in the departmental inquiry, which was not challenged by the respondent, the charge and the misconduct alleged against the respondent came to be proved and, therefore, when the legality and validity of the inquiry was not challenged by the respondent, the Labour Court has materially erred in holding that there was no misappropriation and that the respondent has not committed any misconduct. It is submitted that as such it was admitted by the respondent with respect to having found 20 unpunched tickets from the hidden place of the box as well as shortage of Rs. 982/-, and, therefore, the finding given by the Labour Court is contrary to the evidence on record and perverse, which deserves to be quashed and set aside.

4. The present petition is opposed by Shri Kishore Paul, learned advocate appearing on behalf of the respondent. It is submitted that, on appreciation of evidence, the Labour Court has specifically held and found that the respondent has not committed any misconduct of misappropriation of the amount. It is further submitted by him that 20 unpunched tickets were found from the box and the same was mentioned in the record also. It is further submitted that as rightly observed by the Labour Court the final account is to be settled at the end of the trip and the CWA is to be finally submitted at the depot and the respondent had deposited the entire amount at the depot with respect to 70 tickets and, therefore, as rightly observed by the Labour Court there is no misappropriation of any amount by the respondent. It is submitted that so far as not issuing the tickets in seriatum is concerned, the Labour Court has rightly considered it as mishandling of issuance of the tickets and, therefore, the respondent is rightly

punished by denying back wages. It is submitted that the respondent has already attained the age of superannuation on 30/06/2010 and, therefore, it is requested not to interfere with the impugned Judgment and award passed by the Labour Court so as to enable the respondent to get the retrial benefits. It is further submitted that at the most some additional punishment can be imposed.

5. Heard the learned advocates appearing on behalf of the respective parties at length. It is not in dispute that the charge and the allegation against the respondent-Conductor was with respect to misappropriation of Rs. 982/- and with respect to 20 unpunched tickets found from the hidden place of the box and of not issuing the tickets in seriatum. It is not in dispute that at the relevant time when there was raid by the checking squad, Rs. 982/- were found to be less in the CWA and there was entry with respect to 25 tickets only though in the CWA entry was made with respect to selling of 70 tickets. It is also not in dispute that 20 unpunched tickets were found from the hidden place of the box. However, it is the case on behalf of the respondent that the entry of 70 tickets in the CWA was inclusive of 20 unpunched tickets, which was found from the box. May be it is so, but the fact remains that 20 unpunched tickets were found from the hidden place of the box. It is also required to be noted that at the relevant time Rs. 982/- were found to be less at the time of checking by the checking squad. If 70 tickets would have been sold and the respondent would have collected the fare with respect to 70 tickets at the relevant time the account was required to be tallied. It is also not in dispute that at the relevant time it was found that the tickets were not sold in seriatum. The aforesaid conduct on the part of the respondent is required to be considered considering the past conduct of the respondent. It is to be noted that there were 22 defaults in the past. Unfortunately, the Labour Court has considered the above lapse as mishandling of the amount and/or mishandling of issuance of the tickets only. However, the Labour Court has not considered the aforesaid conduct and charge proved against the respondent and has not considered his earlier past 22 defaults and has held that the finding given by the Inquiry Officer was on mis appreciation of evidence and as stated hereinabove the respondent has not challenged the legality and validity of the departmental inquiry. Considering the aforesaid facts and circumstances of the case, the Labour Court has materially erred in quashing and setting aside the order of dismissal directing the petitioner to reinstate the respondent may be without back wages but with continuity of service. Now so far as the contention on behalf of the respondent that he has now attained the age of superannuation on 30/06/2010 and some lesser punishment be imposed so that he can get the retirement benefit is concerned, the aforesaid cannot be accepted. It is to be noted that as such for all these years the respondent has got the benefit of wages u/s 17B of the Industrial Disputes Act. However, considering the nature of allegation and the charge and misconduct proved against the respondent and considering the past 22 defaults, no further punishment other than dismissal can be passed.

6. In view of the above and for the reasons stated hereinabove, the present

petition succeeds. The impugned Judgment and award passed by the Labour Court dated 31/12/2006 in Reference (L.C.H.) No. 34/2002 is hereby quashed and set aside. Rule is made absolute to the aforesaid extent. No cost.