
(2003) 03 GUJ CK 0009
In the Gujarat High Court

Case No : Special Civil Application No. 5115 of 2002 with C.A. No. 6235 of 2002

Gujarat State Road Transport Corporation	APPELLANT
Vs	
Ramdevsinh Aditsinh Gohel	RESPONDENT

Date of Decision : 26-03-2003

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2003) 3 GLR 1962

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

Bench : Single Bench

Advocate : Ashish M. Dagli, for the Appellant; Kishore M. Paul, for the Respondent

Judgement

Ravi R. Tripathi, J.—The present petition is filed by the Gujarat State Road Transport Corporation ("the Corporation" for short) being aggrieved of the judgment and award dated 20th July, 2001 passed by the Labour Court, Valsad in Reference (L.C.V.) No. 656 of 1999, whereby the respondent-workman was reinstated with continuity of service and punishment of stoppage of three increments with future effect is ordered. The award, as it purports, orders grant of full back wages, but then the word, reinstatement "with" back wages, is tampered. (The word, "sivay" in vernacular has been scored of and the word, "sahit", is written by hand and some signature purporting to authenticating the correction is made).

2. The matter has a chequered history and gives a picture which is a matter of concern to all. The matter starts with a transfer order dated 6th February, 1996 of the respondent-workman from Surat to Valsad. The respondent-workman instead of carrying out that transfer order, abstained from work and did not resume duty. He continued to do so despite notices for resumption of duty dated 29th February, 1996 and 22-5-1996. The petitioner-Corporation, therefore, charging the respondent-workman for remaining unauthorisedly absent from 9-3-1996 to 29-6-1996 issued charge-sheet and ordered departmental inquiry. In

the departmental inquiry, the charge was held to be proved and the respondent-workman was dismissed by an order dated 27th November, 1996.

3. The respondent-workman approached the Industrial Tribunal by filing Complaint No. 60 of 1996 alleging that there being a pending Reference, being No. 64 of 1996, he could not have been transferred from Surat to Valsad. The said complaint application came to be decided on 23rd June, 1998, but, till then, the respondent-workman did not disclose the factum of dismissal to the Industrial Tribunal, and in absence of that information, the transfer order came to be quashed and set aside.

4. The respondent-workman then approached this Court by filing Misc. Civil Application No. 31 of 1991 complaining non-compliance of the order of the Industrial Tribunal passed in Complaint No. 60 of 1996 and prayed that he should be allowed to resume duty at the same place as the transfer order stands quashed. It is a matter of significance that the petitioner also did not disclose to this Court that during the pendency of the complaint, the respondent-workman was already dismissed from service by order dated 27th November, 1996. It was disclosed by the Corporation by placing that fact on record and submitting that therefore, there is no question of allowing the applicant to resume duty as the applicant stands dismissed from service, This Court, therefore, observed as under in the order dated 26th February, 1999 passed in Miscellaneous Civil Application No. 31 of 1999:

"The affidavit-in-reply filed by the respondents would go to show that ultimately there has been the orders of dismissal dated November 27, 1996. Placing reliance upon this development, learned Counsel Mr. Hardik Raval for the respondents says that now these proceedings would not survive and they require to be disposed of.

... we are of the opinion that because of the order of dismissal, now the above said orders regarding the reposting cannot be enforced, and therefore, these proceedings require to be disposed of. We order accordingly. Notice shall stand discharged. No costs."

5. Mr. K. M. Paul, learned Advocate for the respondent-workman, submitted at one stage that the respondent-workman was directed by this Court to challenge the order of dismissal by filing appropriate proceedings. The said submission is without any substance or merits in view of the order of this Court dated 26th February, 1999, which reads as under :

"Learned Counsel for the petitioner Mr. Rathod says that the above orders of dismissal shall have to be challenged by the petitioner by taking out appropriate proceedings before the appropriate forum. We simply record the say coming from the learned Counsel without expressing any opinion thereupon."

6. The respondent-workman, thereafter, filed a Reference before the Labour Court, Valsad, which came to be allowed by the judgment and award under

challenge in this petition.

7. Mr. A. M. Dagli, learned Advocate appearing for the petitioner-Corporation, submitted that the impugned judgment and award is required to be quashed and set aside inasmuch as the learned Judge has erred in quashing the order of dismissal and imposing a penalty of stoppage of three increments and granting full back wages which will result into an expenditure of Rs. 2,49,012=00 to the public exchequer. He submitted that the learned Judge has mainly relied upon the fact that the Industrial Tribunal has allowed the Complaint No. 60 of 1996 by the order dated 23rd June, 1998, and therefore, the misconduct alleged against the respondent-workman does not survive, and therefore, the order of dismissal passed by the authorities is required to be quashed and set aside.

Mr. Dagli submitted that the important aspect of the matter is that the learned Judge has held that "the respondent-workman is guilty of misconduct". He has further observed that "the respondent-workman ought to have reported for duty when the Industrial Tribunal did not grant him stay in Complaint No. 60 of 1996", but placing heavy reliance on the fact of quashing of the transfer order in the said Complaint, the learned Judge has passed the impugned award of reinstatement with full back wages and awarded punishment of stoppage of three increments with future effect.

8. In view of the fact that the learned Judge has recorded a finding that the respondent-workman was guilty of misconduct, there was no reason for awarding full back wages (as the copy reads vernacular word, "sahit" after scoring of the word "sivay"). Once the workman is guilty of the misconduct and he is awarded punishment of stoppage of three increments with future effect, there is no justification in awarding "back wages". The learned Judge ought to have appreciated that the order of quashing of the transfer order dated 23rd June, 1998 was passed, as the fact of order of dismissal passed on 27th November, 1996 was suppressed by the respondent-workman. In fact, a serious view of the matter should have been taken and the order of dismissal should have been maintained. This is a case wherein the respondent-workman does not report for duty on transfer despite the notices to resume duty and remains unauthorisedly absent for a long period from 9-3-1996 to 29-6-1996; and thereafter, he files a complaint wherein he does not disclose the adjudicating forum that during the pendency of that complaint, he is already dismissed from service. Then, the respondent-workman approaches this Court by filing contempt proceedings in which also he suppresses the fact of the order of dismissal and complains that as the order of transfer is already quashed, he should be allowed to resume duty. It is only after the petitioner-Corporation places this fact on record before the Division Bench of this Court in Misc. Civil Application No. 31 of 1999 that the Division Bench disposed of the matter.

9. In the aforesaid facts and circumstances of the case, this is a fit case to exercise the jurisdiction under Article 227 of the Constitution of India. The petition is allowed. The judgment and award dated 20th July, 2001 passed by the

Labour Court, Valsad in Reference (L.C.V.) No. 656 of 1999 is quashed and set aside insofar as it grants back wages. The judgment and award is modified. The punishment of stoppage of three increments with future effect is substituted by punishment of stoppage of five increments with future effect.

It is reported that pursuant to the order dated 5th March, 2003, the respondent-workman has reported at the transferred place. Taking into consideration that the matter is old enough and now to punish the respondent-workman with the penalty of economic death will work very harsh not only to the respondent-workman but also to his family members, the order of reinstatement is not disturbed. The petition is allowed with costs of Rs. 10,000=00. Rule is made absolute to the aforesaid extent only.

10. In view of the disposal of the main Special Civil Application, the Civil Application No. 6235 of 2002 does not survive and the same is disposed of accordingly.