

(2010) 08 GUJ CK 0217

In the Gujarat High Court

Case No : Special Civil Application No. 13638 of 2005

Gujarat State Road Transport Corporation

APPELLANT

Vs

Ravubha D. Vala

RESPONDENT

Date of Decision : 25-08-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 11(A)

Citation : (2010) 08 GUJ CK 0217

Hon'ble Judges : K. S. Jhaveri, J

Bench : Single Bench

Advocate : Ashish M. Dagli, for the Appellant; Anshin H. Desai, for the Respondent

Judgement

K.S. Jhaveri, J.—By way of present petition, the petitioner has inter alia prayed for quashing and setting aside the judgment and award dated 25th May 2004 passed by the Labour Court, Rajkot in Reference (LCR) No. 240 of 1999, whereby the Labour Court has partly allowed the Reference of the respondent workman and directed the petitioner herein to reinstate the respondent with continuity of service and 50% backwages.

2. The facts in brief are that the respondent was charge-sheeted for disciplinary proceedings in relation to an incident where the respondent was allegedly found to have committed certain irregularities while driving. Ultimately, the disciplinary authority imposed the punishment of dismissal, which ultimately came to be upheld in the First Appeal as well as in the Second Appeal.

3. Against the said order of dismissal, the respondent raised a dispute, which was referred to the Industrial Tribunal, Rajkot. The Tribunal, after hearing both the sides, allowed the reference partly by way of the impugned award. Hence, this petition.

4. Mr. A.M. Dagli, learned advocate for the petitioner, has submitted that the judgment and award passed by the Labour Court is unjust and improper. It is

submitted that the grave misconduct is proved against the respondent. It is submitted that it is also proved that the respondent had allowed his nephew to go without issuing him any ticket. Hence, the impugned judgment and award is required to be quashed and set aside.

5. Mr. Anshin Desai, learned advocate for the respondent, has submitted that the judgment and award passed by the Labour Court is just and proper and the same is passed after taking into consideration the pros and cons of the matter as well as evidence produced on record. Hence, present petition is required to be dismissed.

6. Having regard to the rival contentions raised by the learned advocates for the respective parties, averments made in the petition as well as the documentary evidence produced on record, it transpires that the Labour Court has appreciated the evidence on record and after going through the pros and cons of the matter and it has rightly granted reinstatement in exercise of powers u/s 11(A) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). The view taken by the Labour Court qua reinstatement and continuity of service is absolutely just and proper.

7. Insofar as granting of backwages by the Labour Court is concerned, it is required to be noted that when the respondent has not worked at all, there is no question of granting him any backwages. Even the Apex Court in the recent decision has laid down a ratio "no work, no pay". Thus, the Labour Court has erred in granting backwages to the respondent looking to the facts and circumstances of the case.

8. In view of aforesaid, I am of the opinion that the judgment and award qua reinstatement and continuity of service is required to be upheld. However, so far as the judgment and award qua backwages is concerned, the same is required to be quashed and set aside.

9. For the foregoing reasons, present petition is hereby partly allowed. The impugned judgment and award dated 25th May 2004 passed by the Labour Court, Rajkot in Reference (LCR) No. 240 of 1999, is hereby quashed and set aside only qua 50% backwages. The impugned judgment and award qua reinstatement and continuity of service is hereby upheld. Rule is made absolute to the aforesaid extent. No order as to costs.

10. It is hereby clarified that the respondent be granted ensuing benefits within a period of seven months from today.