

(2008) 01 GUJ CK 0030

In the Gujarat High Court

Case No : Special Civil Application No. 24515 of 2007

Gujarat State Road Transport Corporation

APPELLANT

Vs

Sadhikbhai A. Chauhan

RESPONDENT

Date of Decision : 10-01-2008

Acts Referred:

Industrial Disputes Act, 1947 — Section 11A

Citation : (2008) 01 GUJ CK 0030

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : H.S. Munshaw, for the Appellant; Prabhakar Upadhyay, for Respondent 1, for the Respondent

Judgement

H.K. Rathod, J.—Heard learned advocate Mr. H.S. Munshaw appearing on behalf of petitioner and learned advocate Mr. N.D. Sonagara for learned advocate Mr. Prabhakar Upadhyay appearing on behalf of respondent.

2. RULE. Learned advocate Mr. Sonagara waives service of notice of rule on behalf of respondent.

3. With the consent of both the learned advocates, matter is taken up for hearing and final disposal today.

4. In the present petition, petitioner has challenged the award passed by Industrial Tribunal, Bhavnagar in Reference (IT) No. 91 of 1998 dated 26th April 2007. The Industrial Tribunal has set aside the punishment order dated 14th June 1995, wherein, punishment was imposed to put the respondent workmen in a minimum time scale for the post of helper and no arrears because of setting aside the punishment order is available to the respondent workman.

5. Learned advocate Mr. Munshaw submitted that Industrial Tribunal has committed gross error in setting aside the punishment order imposed by Corporation, because, looking to the past record of the respondent workman, he was habitual offender by remaining absent repeatedly and on various occasions,

punishment has been imposed by the Corporation, even though, his conduct was not improved. Therefore, before passing the dismissal order, the one chance was given to workman to put him minimum timescale in the post of helper. He also submitted that Tribunal has come to conclusion that departmental inquiry is held to be legal and valid. Even finding has been accepted by the Tribunal, even though, interference u/s 11A is also contrary to the principles laid down by the Apex Court in various decisions. He further submitted that Labour Court's interference when workman remained absent for 33 days intermediately without any justification and without prior permission entitled the punishment which has been imposed by Corporation, therefore, no interference by the Tribunal is required, therefore, award may be set aside.

6. Learned advocate Mr. Sonagara submitted that respondent workman was remained absent from 2nd January 1995 to 7th January 1995, 16th January 1995 to 4th February 1995, 14th February 1995 to 18th February 1995 and 24th February 1995 to 25th February 1995. The reason for absent is that his grandmother was sick all of sudden and there was no other person available in his house for treatment and maintenance his grandmother and therefore, due to this all of sudden sickness of grandmother of respondent, respondent workman has to stay at Bhavnagar and not able to resume the duty. He was not having sufficient time to send the report to the Corporation and when he resumed the duty, thereafter, a leave report was submitted by respondent workman with a reason of sickness of grandmother. He further submitted that there is no malafide intention on the part of respondent workman and he obtained unnecessary leave from the Corporation. He submitted that workman has justified the reason to remain absent, meaning thereby that, proper cause was justified or disclosed by the workman before the Corporation to remain absent, but, Industrial Tribunal has rightly considered that looking to the gravity of misconduct, punishment is harsh and unjustified while exercising the powers u/s 11A of the Industrial Disputes Act, 1947. He also emphasis that Tribunal has not given any arrears to the workman, it means, there is no financial loss caused to the Corporation. Only, an increment which has been curtailed by putting him minimum timescale of helper category which has to be released, so, at least, workman may get proper wages to maintain the family, otherwise, if punishment remained continue, workman was not able to maintain the family in such salary received of the minimum timescale in the post of helper. Therefore, Tribunal has rightly passed the award.

7. I have considered the submissions made by both the learned advocates appearing on behalf of respective parties and I have also perused the award passed by Tribunal. The misconduct is proved against workman. The reason may be good, but, procedure was not followed by the workman. The discipline is to be maintained by the employee while working with the Corporation, who is a public body handling the transport service in the whole State. If one employee, all of sudden, remained absent, it will disturb the entire machinery of the Corporation. A scheduled bus may not be started in time and passengers may have some

difficulty. Similarly, in workshop, a bus may not be prepared/repared in time, the passengers may have difficulty. Therefore, these are the inconvenience and hardship caused to the Corporation. If any employee, all of sudden, remained absent, therefore, prior permission was not obtained, so, misconduct was proved. Considering the past record and similar misconduct was also consider by the Tribunal and Tribunal's finding is accepted, then, only question is that Tribunal come to conclusion that punishment imposed by Corporation by order dated 14th June 1995 is little harsh and unreasonable, but, on what basis, for that, there is no reason given by Tribunal. What factors have been taken in mind or consideration by the Tribunal while setting aside the entire punishment imposed by Corporation. Merely used the words that punishment is little harsh and unreasonable is not enough for Tribunal to give cogent reason in support of his conclusion that on what basis, he come to conclusion that punishment is little harsh and unreasonable and why he has not imposed any lessor punishment to the respondent. So, Tribunal has not properly applied its mind while setting aside the punishment order dated 14th June 1995 and no other lessor punishment is imposed.

8. Therefore, according to my opinion, after considering the submissions made by both the learned advocates, if three increments of the workman are stopped with cumulative effect will meet the end of justice between the parties.

9. Therefore, while maintaining the award passed by the Industrial Tribunal, the respondent workman has to suffer a one more punishment of stoppage of three increments with cumulative effect and Corporation is entitled to impose such punishment to the respondent workman. But, it is made clear that punishment of putting him in minimum timescale in the post of helper, which is also set aside by the Corporation, is confirmed, but, aforesaid punishment of stoppage of three increments with cumulative effect is to be imposed by the Corporation.

10. Accordingly, award passed by Industrial Tribunal, Bhavnagar in Reference (IT) No. 91 of 1998 dated 26th April 2007 is hereby modified to the aforesaid extent. The respondent workman is not entitled any amount of arrears for the award modified by this Court.

11. Accordingly, rule is made absolute to the aforesaid extent. Interim relief, if any, shall stand vacated.