

**(2019) 07 GUJ CK 0120**

**In the Gujarat High Court**

**Case No : R/Special Civil Application No. 10596 Of 2019**

Gujarat State Road Transport Corporation Through Divisional  
Controller

**APPELLANT**

**Vs**

Bhanubhai Sartanbhai Rabari

**RESPONDENT**

**Date of Decision : 08-07-2019**

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 33(C)(2)  
Constitution Of India, 1950 — Article 227

**Citation : (2019) 07 GUJ CK 0120**

**Hon'ble Judges : Bhargav D. Karia, J**

**Bench : Single Bench**

**Advocate : Niral R Mehta**

**Final Decision : Allowed**

## **Judgement**

1. By this petition under Articles 227 of the Constitution of India, the petitioner has prayed for following relief(s):

(A) Be pleased to admit and allow this petition.

(B) Be pleased to issue a writ of certiorari or any other appropriate writ, order or direction, quashing and setting aside the order dated 01.04.2019

passed below Exh.16 passed in Recovery Application No.10 of 2017 by the learned Presiding Officer, Labour Court, Himmatnagar.

(C) Pending admission till final disposal of this petition, the Hon'ble Court be pleased to stay the implementation, operation and execution of the

impugned order dated 01.04.2019 passed below Exh.16 in Recovery Application No.10 of 2017 by the Ld.Presiding Officer, Labour Court,

Himmatnagar.

(D) ...

2. The short facts of the case are that the respondent's workman, who was working as a Driver with the petitioner's Corporation remained unauthorized absent with effect from 19.08.1998. The petitioner's Corporation, therefore, issued a notice dated 30.10.1998 directing him to report on duty. However, in spite of service of notice, the respondent did not resume the duty and later on, sent an undated letter. The petitioner, therefore, because of continuous absenteeism of the respondent, vide notice dated 19.11.1998, again directed the respondent to report on duty, which was also remained unanswered. Therefore, charge sheet dated 04.12.1998 was issued. As there was no response from the respondent nor the respondent appeared in the departmental inquiry, the departmental inquiry was concluded by examining the witnesses of the petitioner's Corporation and the respondent was held guilty. It appears that, thereafter, 2nd show cause notice dated 10.03.1999 was issued to call upon the respondent to reply on the issue of quantum penalty which was also not replied by the respondent, and therefore, on 23.03.1999, order of dismissal of the respondent from the service was passed.

3. The respondent, feeling aggrieved by the order of dismissal passed by the petitioner's Corporation, preferred a departmental appeal after a period of limitation and without offering any explanation for the same. The said appeal was rejected in absence of sufficient explanation vide order dated 10.05.2000.

4. The respondent, thereafter, approached the Labour Court after delay of 8 years by filing Reference (L.C.H) No.14 of 2008 for reinstatement with continuity of service along with full backwages.

5. The respondent filed a statement of claim vide Exh.6 contending inter alia that during the period of absenteeism with the petitioner's Corporation, the respondent was going through a difficult social situation, as his father expired on 18.10.1998 and at that point of time, he was on duty and on receipt of news of death of his father, immediately he rushed to his Village:Jantral. It was contended that leave report was also sent by post to the S.T.Corporation, Khedbrahma. It was further stated that due to death of the father, the respondent became unconscious and fell down and received severe injury on his waist. Therefore, the petitioner could not remain present on his duty. It was further contended that when he went for attending his

duty on 15.01.1999, at that point of time, he submitted all the documents i.e. death certificate and medical reports of treatment. It was further

contended that he submitted leave report from 06.02.1999 to 31.03.1999, which was rejected, and thereafter, he was not permitted to resume the duty.

The respondent, therefore, filed a complaint before the Assistant Labour Commissioner under provisions of the the Industrial Disputes Act, 1947

(herein after referred to as the "Act"). Thereafter, Assistant Labour Commissioner has referred a reference to the Labour Court, Himmatnagar,

which was registered as Reference (L.C.H) No.14 of 2008.

6. The petitioner's Corporation did not file any written Statement, and therefore, the right to lead the evidence was closed by the Labour Court.

7. The Labour Court, after considering the oral as well as documentary evidence produced by the respondent's workman, partly allowed the reference

by directing the petitioner's Corporation to reinstate the respondent on his original post with continuity of service along with 25% back wages vide

judgment and award dated 19.02.2013.

8. Being aggrieved by the aforesaid judgment and award, the petitioner herein had approached this Court by filing Special Civil Application No.14314

of 2013 and the respondent's workman also approached this Court by filing Special Civil Application No.9070 of 2013 against non-granting of 100%

backwages. This Court (Coram:K.M.Thaker, J.) heard the matters together and by order dated 22.03.2016 modified the judgment and award of

Labour Court as under:

"For the foregoing reasons and in light of the above discussed facts and circumstances, the award and final direction by the learned Labour Court

deserves to be modified. Therefore, following order is passed:

10.1 By way of penalty for remaining absent without leave, the respondent's workman shall be visited with penalty of stoppage of two increments with

future effect and direction to pay backwages is modified and reduced to 15%.

10.2 so far as the period of subsequent to the date of award is concerned, in view of the scope of the petition, it is not for this Court to pass any

direction, however, it would be appropriate to clarify the fact that this Court had never granted any interim relief staying the operation of the award

impugned in this petition and that therefore, the direction to reinstate the

concerned workman remained in operation.

10.3 The amount payable in light of the award passed by the learned Labour Court as modified by this order, shall be paid as expeditiously as possible

and preferably within eight weeks from today.â??

9. Pursuant to the aforesaid judgment and award passed by the Labour Court, the petitioner did not reinstate the respondentâ??workman and ultimately,

he attained the age of superannuation on 01.05.2015. The respondentâ??workman, therefore, filed Recovery Application No.10 of 2017, claiming

Rs.6,47,422/â?? with 9% interest towards his salary of 27 months from 19.02.2013 to 01.05.2015. The Labour Court, vide order dated 01.04.2019, partly

allowed the Recovery Application by directing the petitioner to pay Rs.4,91,383/â?? from 15.04.2013 till the date of his superannuation i.e. 31.05.2015.

10. The petitioner has challenged the aforesaid order dated 01.04.2019 passed by the Labour Court before this Court by praying aforesaid reliefs.

11. Heard Mr.Niral Mehta, learned advocate for the petitionerâ??Corporation.

12. Learned advocate for the petitionerâ??Corporation submitted that during the pendency of the writâ?? petition though the judgment and award of the

Labour Court was not stayed and the respondentâ??workman has also reached to the age of superannuation on 01.05.2015, except one letter dated

03.05.2013, the respondent had not made any serious efforts and/or made any grievance before this court for his reinstatement.

13. Learned advocate for the petitionerâ??Corporation submitted that the Labour Court has not appreciated the scope and ambit of Section 33(C)(2) of

the Act which has resulted into serious miscarriage of justice.

14. Learned advocate for the petitionerâ??Corporation submitted that the Labour Court ought not to have allowed the recovery application mechanically

without appreciating the fact that the respondent has not persuaded his right within reasonable time limit for seeking compliance of the order of the

reinstatement.

15. Learned advocate for the petitionerâ??Corporation submitted that on the basis of principle of No Work No Pay the Labour Court could not have

allowed the recovery application under Section 33(C)(2) of the Act. He further submitted that no prudent jobless person would sit idle inspite of order

of the reinstatement in force. He further contended that the Labour Court did not consider the fact that the respondent would have been gainfully

employed within period from 2013 to 2015. He, therefore, prayed that impugned order dated 01.04.2019, passed in Recovery Application No.10 of

2017 passed below Exh.16 deserves to be quashed and set aside.

16. It is not in dispute that the judgment and award dated 19.02.2013 passed by the Labour Court in Reference (L.C.H) No.14 of 2008 was

challenged before this Court and there was no stay granted by this Court during the pendency of the reference. It was therefore, open to the

petitioner to Corporation to reinstate the respondent workman in the service in absence of any stay granted by this Court and when the respondent

was not reinstated pursuant to the order passed by the Labour Court as per provisions of Section 33(C)(2) of the Act, the respondent workman is

entitled to receive the amount of wages as per order passed by Labour Court, which was later on modified by this Court on 22.03.2016. It would

therefore be germane to refer to Section 33(C)(2) of the Act which reads as under:—

“(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money

and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may,

subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate

Government [within a period not exceeding three months:]

[Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in

writing, extend such period by such further period as he may think fit.]—

17. On perusal of the aforesaid provision, it is clear that where any workman is entitled to receive from the employer any money or any benefit which

is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit

should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court and accordingly

where Labour Court has considered and passed the judgment and award dated 13.02.2016, in Reference (L.C.H) No.14 of 2008 and this Court has

modified the said judgment and award vide judgment and order dated 22.03.2016 and held that the respondent is entitled to receive benefit of salary together with backwages at the rate of 15%, Labour Court is empowered to pass order in recovery application.

18. The Labour Court has relied upon the judgment of this Court and has rightly passed the impugned order directing the petitioner's Corporation to pay Rs.4,91,383/- from 15.04.2013 till the date of his superannuation i.e. 31.05.2015.

19. In view of the aforesaid provisions of law and as per the direction given by this Court in the judgment and order dated 22.03.2016 passed in

Special Civil Application No.14314 of 2013 with Special Civil Application No.9070 of 2013 and in view of the foregoing reasons, there is no error

committed by the Labour Court which requires interference by this Court while exercising extraordinary jurisdiction under Article 227 of

the Constitution of India. The petition is therefore devoid of any merit and the same is summarily rejected. No order as to costs.