

(2016) 06 GUJ CK 0008
In the Gujarat High Court

Case No : Special Civil Application No. 5529 of 2005

Jamnadas Panchanbhai Bilodia

APPELLANT

Vs

Divisional Controller G.S.R.T.C.

RESPONDENT

Date of Decision : 06-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10(1)

Citation : (2016) 2 CLR 967 : (2016) 151 FLR 901 : (2017) LabLR 445

Hon'ble Judges : Mr. K.M. Thaker, J.

Bench : Single Bench

Advocate : Appearance Deleted, for the Appellant; Mr. Dipen Desai, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. K.M. Thaker, J. (Oral) - In this petition, the respondent workman has challenged award dated 13.4.1998 passed by the learned Labour Court, Junagadh in Reference (LCJ) No.283 of 1998. By the said award, the learned Labour Court directed the petitioner corporation to pay, after reducing the petitioner by two stages in the pay scale, the amount payable towards gratuity and to also pay the other amounts payable towards retiral benefits considering the petitioner's service as continuous until the date when he reached the age of superannuation.

2. Today, at the time of hearing of present petition, learned advocate for the respondent submitted that in the order dated 15.6.2005, the Court had directed that the present petition should be heard along with Special Civil Application No. 3730 of 2004.

3. He further submitted that in the said petition, i.e. Special Civil Application No.3730 of 2004, the corporation had challenged the very same award which is challenged in present petition, i.e. the award dated 13.4.1998 passed by the learned Labour Court in Reference (LCJ) No.283 of 1998. He also submitted that

present petition is cross/counter petition filed by the workman against the same award which came to be challenged by the corporation earlier in point of time i.e. in Special Civil Application No. 3730 of 2004. Learned advocate for the respondent also supplied a copy of the judgment dated 1.8.2012 passed by the Court in Special Civil Application No. 3730 of 2004. In the said judgment, the Court has observed, inter alia, that:

"6. I have heard learned Counsel for the parties and have gone through the order of the Labour Court as well as the documents produced on the record. The labour Court, in my view, has rightly found that the misconduct alleged against the respondent-workman stood proved in the departmental inquiry. It is not in dispute that the petitioner had not issued tickets to three of the passengers, which was his duty. The Labour Court, however, found that it is not proved that any amount has been misappropriated by the petitioner and by holding so reduced the punishment of dismissal from service to lowering the respondent in two stages in his basic pay. Here, it is required to be noted that, even if, some passengers might have tried to save the respondent-workman by saying that they have not paid money, in the departmental inquiry, the department can draw adverse inference, in this behalf. It is not in dispute that, in any case, the respondent had not issued tickets, obviously, with an oblique motive. By the aforesaid action of the respondent-workman, the petitioner-corporation was put to financial loss, though, the same may be of only a few rupees. It is, further, required to be noted that it is not a solitary incident, since, in the past also the respondent-workman was subjected to penalty for about 43 such misconducts. The last of such misconduct was the one, in connection with which the services of the respondent-workman came to be terminated. The details of misconducts committed by the respondent-workman, which were produced before the Labour Court, are produced at Page 54 onwards in the compilation of this petition. As per the misconducts mentioned at Sr. Nos. 1, 9, 10, 1320 and so on, the petitioner was found not to have issued tickets and in some of the cases it was also found that, though, he had collected fare from the passengers, had not issued tickets to them. In short, the respondent-workman was a habitual defaulter, who was in the habit of not issuing tickets to the passengers, which is proved from his past conduct, and though, the same was brought to the notice of the Labour Court, it is surprising that the Labour Court has stated that the defaults/misconducts committed by the respondent-workman were not of serious nature.

7. While exercising the powers under Section 11A of the Industrial Disputes Act, 1947, the Labour Court was required to apply its mind. In this behalf, reference is required to be made to a decision of the Supreme Court in the case of "Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Limited) Etc. v. Secretary, Sahakari Nourkara Sangh Etc.", reported in 2000(0) GLHELSC 12650, wherein the Hon'ble Apex Court held that in case of proved misappropriation, irrespective of the fact that whether the amount is large or small, the question of considering the past record of the employee concerned

does not arise and since, it is the discretion of the employer to consider the same in a given case, the Labour Court could not have reduced the penalty imposed by the employer in such cases.

8. At this stage, reference is also required to be made to another decision of the Apex Court in "U.P. State Road Transport Corporation v. Suresh Chand Sharma", reported in 2010 (0) GLHELSC 48444, wherein the Apex Court has held that while deciding a case, the Court is under an obligation to record reasons, however, brief the same may be, since, the nonobservance of the same would be contrary to principles of natural justice and would vitiate the judicial order.

9. In the case on hand, in my view, once it is proved that the respondent-conductor had not issued tickets to several passengers, coupled with the fact that he had committed about 43 such defaults in the past, the Labour Court was not justified in reducing the penalty of dismissal, as imposed by the petitioner-S.T. Corporation, to lowering the respondent in two stages in his basic pay. The powers under Section 11A of the Industrial Disputes Act, 1947, are required to be exercised judiciously and not mechanically. In the instant case, the Labour Court, apparently, committed an error, while exercising the powers under Section 11A of the Act, by reducing the penalty imposed on the respondent. Hence, the order of the Labour Court impugned in this petition cannot be sustained.

10. In the result, this petition is Allowed. The order passed by the Labour Court, Junagadh, in Reference (LCJ) No. 283 of 1998, dated 13.04.1998, is quashed and set aside. Rule is made absolute."

4. It is pertinent to note that by the said judgment dated 1.8.2012, the Court allowed the said petition being Special Civil Application No.3730 of 2004 which was filed by the corporation against the very same award which is challenged by the workmen in the said petition.

5. It is also relevant to note that by the said order dated 1.8.2012, this Court allowed the employer's/corporation's petition and set aside the award dated 13.4.1998 passed in Reference (LCJ) No. 283 of 1998 (which is challenged by the workmen in present petition).

6. Actually, in view of the said judgment and order dated 1.8.2012 in Special Civil Application No.3730 of 2004, the award does not survive and consequently, the workmen's petition against the award dated 13.4.1998 in Reference (LCJ) No.283 of 1998 (which is already set aside by this Court vide judgment dated 1.8.2012 in Special Civil Application No. 3730 of 2004) also does not survive. Since the award dated 13.4.1998 is already set aside, the relief prayed for by the petitioner in present petition does not survive and does not deserve to be granted.

7. For the reasons recorded by the Court in the judgment and order dated 1.8.2012 in Special Civil Application No. 3730 of 2004, this petition deserves to be rejected. Therefore, this petition is accordingly disposed of. Rule is discharged.