

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 5686 of 2010****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE KS JHAVERI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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GUJARAT STATE ROAD TRANSPORT CORPORATION....Petitioner(s)

Versus

BHUPENDRASINH A PADHIAR C/O J S BRAMBHATT & 1....Respondent(s)

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Appearance:

MR HARDIK C RAWAL, ADVOCATE for the Petitioner(s) No. 1

RULE SERVED for the Respondent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE KS JHAVERI

Date : 16/01/2013

ORAL JUDGMENT

1. This petition has been filed by the present petitioner with the following prayers:

"(A) be pleased to allow this petition.

(B) be pleased to issue a writ of certiorari or any other appropriate writ, order or direction by quashing and setting aside the impugned award/order dated 30.8.2006 passed by the Industrial Tribunal, Vadodara in Complaint (I.T.) No.1 of 1993 in Reference (I.T.) No.97 of 1988 at Annexure-A and award/judgment dated 29.5.2008 in Review Application (I.T.) 2 of 2006 at Annexure-B and further be pleased to confirm the dismissal order dated 22.12.1992.

(C) pending admission, hearing and final disposal of this petition, be pleased to stay the operation, implementation, execution and enforcement of the impugned award/order dated 30.8.2006 passed by the Industrial Tribunal, Vadodara in Complaint (I.T.) No.1 of 1993 in Reference (I.T.) No.97 of 1988 at Annexure-A and award/judgment dated 29.5.2008 in Review Application (I.T.) 2 of 2006 at Annexure-B.

(D) be pleased to pass such other and further orders may be deemed just and proper looking to the facts and circumstances of the case and in the interest of justice."

2. The short facts leading to filing of this petition are that the respondent-workman was

serving as a Conductor with the petitioner-Corporation. In 1981, the respondent-workman was dismissed for an act of gross misconduct. In the department appeal, a lenient view was taken and the order of reinstatement by placing the workman in the minimum pay-scale was passed. The respondent workman challenged the same by raising the industrial dispute which was referred and numbered as Reference (I.T.) No.97 of 1988 and the same was pending before the Industrial Tribunal, Vadodara. After reinstatement, the respondent workman did not improve and commit another misconduct of misappropriation on 18.06.1987. A departmental inquiry was held against the petitioner. Meanwhile, the respondent-workman was transferred to Rajkot by order dated 17.08.1987. After giving full opportunity of hearing to the respondent workman, a second show cause notice dated 01.02.1988 was issued by the petitioner-Corporation and all the papers were sent to the Divisional Controller, Rajkot on 16.03.1988 for further proceedings. On

the aforesaid date, no notice is pending, Reference (I.T.) No.97 of 1988 was served on the petitioner-Corporation. After hearing the respondent workman, the petitioner Corporation passed the order of dismissal on 22.12.1992 and approval application was also preferred on the same day before conciliation officer, Rajkot and the action of dismissal was approved by the conciliation officer, Rajkot. The respondent workman thereafter preferred an Application for interim order in pending Reference (I.T.) No.97 of 1988 being Complaint (I.T.) No.1 of 1993. The respondent workman was reinstated on 10.09.1997. Thereafter, once-again, in case of another misconduct of misappropriation, the respondent workman has been dismissed by Jamnagar Division on 18.06.2004. The main Reference (I.T.) No.97 of 1988 was also decided finally by award dated 07.06.1999 and instead of the order of placing the respondent workman in the basic pay scale, the Tribunal awarded payment of stoppage of three increments without permanent effect. The

petitioner challenged the said award dated 07.06.1999 passed by the Industrial Tribunal, Vadodara in Reference (I.T.) No.97 of 1988 by filing Special Civil Application No.933 of 2000 which came to be partly allowed by this Hon'ble High Court vide order dated 01.05.2000 and this Hon'ble Court was pleased to enhance the punishment to stoppage of three increments with permanent effect. Hence the petition.

3. Mr.Hardik C. Rawal, learned counsel for the petitioner states that the learned Judge of the Tribunal erred in assuming jurisdiction under Section 33(A) of the I.D. Act, 1947 and further erred in ordering 100% back-wages and confirming the reinstatement by ignoring the past record, serious misconduct committed by the respondent. The learned Judge of the Tribunal also erred in misinterpreting the direction issued by this Court while remanding the matter. The learned Judge also failed in appreciating that Reference No.97 of 1988 was already disposed of and when

the approval was granted by the authority under the I.D.Act, 1947 at Rajkot, where was no jurisdiction or reason to entertain complaint under Section 33(A) of the I.D. Act, 1947.

3.1 Mr.Rawal, learned advocate for the petitioner further states that the respondent-workman has expired during the pendency of the petition and his legal heirs are ordered to be brought on record.

4. Though served, none appears on behalf of the respondent.

5. I have heard learned counsel for the petitioner and perused the material on record. I have also gone through the judgment and award of the Industrial Tribunal and find that the Industrial Tribunal has rightly passed the judgment and award. I do not find any infirmity much less any perversity in the impugned order passed by the Industrial Tribunal. The Industrial Tribunal has given cogent and convincing reasons

in passing the award. Apart from that learned advocate for the petitioner is not in a position to show anything from the record to take a different view in the matter. Therefore, the present petition deserves to be dismissed and the same is accordingly, dismissed. Rule is discharged.

(K.S.JHAVERI,J.)

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