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Court : Gujarat

Decided On : Jan-21-2011

Judge : S.R.Brahmbhatt, J.

Acts : [Constitution of India](#) - Articles 226, 227

Appeal No. : SPECIAL CIVIL APPLICATION No. 590 of 2011.

Appellant : M K Malek.

Respondent : Divisional Controller.

Advocate for Pet/Ap. : MR GK RATHOD; MR MUKESH H RATHOD, Advs.

Judgement :

1. Heard learned advocate appearing for the petitioner. The petitioner second party-workman in Reference (I.T.) No.113 of 2000 passed by the Industrial Tribunal, Vadodara, has approached this Court under Articles 226 and 227 of the [Constitution of India](#), challenging the award dated 05.12.2009, rejecting the reference of the workman for the reason stated there under.

2. It was the case of the workman that he was working as a Head Mechanic in Padra depot of the Gujarat State Road Transport Corporation and he has received charge-sheet on 10.06.1993, containing charge that as a Head Mechanic he has to do the needful and rectify defects of buses which were notified to him by bus drivers for the buses allotted to the depot. Charge-sheet was replied and the inquiry was conducted. The punishment of dismissal came to be imposed by order

dated 27.01.1995. The workman carried the said order of dismissal into appeal which is known as First Appeal in service regulation. The appeal was allowed partly and the Appellate Forum on 17.11.1995 modified the punishment and he was reduced three stages in the pay scale and the time gap was treated as leave without pay. The Second Appeal preferred thereon came to be rejected. Being aggrieved and dis-satisfied with the same, the workman, through his union, raised Industrial Dispute which came to be referred to the appropriate forum wherein it is marked as (I.T.) No.113 of 2000. The Court after recording elaborately, its satisfaction with regard to the justness and adequacy of the punishment, came to the conclusion that the reference was required to be rejected and accordingly rejected vide order dated 05.12.2009. Being aggrieved by the decision of the said reference, the present petition is preferred as stated herein above.

3. Shri Rathod, learned advocate appearing for the workman contended that the charges were vague and when it was established that the non-attending of the work was complained but when it was actually a duty cast upon two members namely the Head Mechanic and/or A.W.S., then it ought not to have been treated to be sole responsibility of the Head Mechanic and accordingly charge-sheet ought not to have been issued to the workman only. It is contended that the A.W.S. is not issued any charge-sheet. Mr. Rathod has further submitted that the workman has in fact replied to the charge-sheet indicating therein that the repairing and/or removing the defect complained by a driver was not his sole responsibility. It was in fact duty cast upon the entire team and therefore, he alone could not have been imposed serious punishment which has resulted into tremendous monetary loss in these days of galloping of inflation. The workman has also pointed out that there is dearth of sharp paucity of gadgets and equipments for repairing and all adverse real circumstances which were relevant factors to be taken into consideration while assessing the responsibility of the workman-petitioner hereinafter. The punishment, therefore, ought to have been interfered with by the Industrial Tribunal and therefore, the award impugned should have been required to be quashed and set aside.

4. This Court is unable to accept the submission of learned advocate for the petitioner for the following reasons namely: (i) The workman has stated himself

that he was holding post of Head Mechanic and the duty assignment sheet produced and relied upon in the petition indicates the duty is upon Head Mechanic or A.W.S. meaning thereby the posts or the duty could be performed by either of the two.

(ii) Had there been a workman's case that he was not assigned his duty, it ought to have been established beyond doubt. But in the instant case it could be seen from the record that the workman did not even attempt to show that he was assigned his duty. On the contrary, the workman has come forward with reasons which according to him prevented him from attending driver's complaint with regard to defects in the buses were concerned. The workman has claimed paucity of gadgets and equipments, dearth of adequate staff and lack of team work etc. and merely naming the same would be of no avail in absence of cogent evidence led before the authority i.e. Inquiry Authority as well as Disciplinary Authority.

5. Be that as it may, suffice it to say that the original order of dismissal which at the relevant time the competent authority found to be appropriate itself is sufficient to indicate the seriousness of the lapse and gravity of offence or grossness of negligence likely to impair and damage the human life.

6. The Appellate Authority in its wisdom has in fact reduced the penalty of dismissal into that of reduction of the workman 2-3 stages lower in the grade but that in itself cannot be said to be a ground for absolving the workman completely of his responsibility and charge which have proved. The tribunal has recorded in adequate term that the charges were proved and those charges were of gross negligence and therefore the punishment awarded was appropriate. This Court under Articles 226 and 227 of the [Constitution of India](#) need not interfere with the same.

7. I am of the view that the award impugned in this petition cannot be said to be so perverse to call for any interference under Articles 226 and 227 of the [Constitution of India](#). In the result, the petition fails and it is accordingly dismissed. No costs.