

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CIVIL APPLICATION NO. 5796 of 2020**  
**With**  
**R/SPECIAL CIVIL APPLICATION NO. 9351 of 2020**

**FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE HEMANT M. PRACHCHAK**

Approved for Reporting	Yes	No
	Yes	-

MUKESH BAVANJIBHAI PARGHI

Versus

THE DIVISION CONTROLLER & ANR.

Appearance:

KHUSHBU D CHHAYA(8093) for the Petitioner No.1

HAMESH C. NAIDU for the Respondent No.1

MRUNAL DHOLARIA AGP for the Respondent No. 2

**CORAM:HONOURABLE MR. JUSTICE HEMANT M. PRACHCHAK**

**Date : 06/03/2026**

**JUDGMENT**

1. Special Civil Application No.5756 of 2020 is filed by the petitioner - employee under Articles 226 and 227 of the Constitution of India seeking following reliefs:-

- (a) *This Hon'ble Court may kindly be pleased to issue a writ of certiorari, mandamus, prohibition or any other writ or order and be pleased to;*
- (b) *To quash and set aside the order and award passed by the Labour Court in Ref (LCR) No.49/2018 dated 22.11.2019 by*

*declaring the same as illegal.*

(c) *To pass an order against the respondent No.1 to reinstate the petitioner on his original post with continuity of service and full back wages with all incidental benefits flowing from the continuity of service.”*

2. Special Civil Application No. 9351 of 2020 is filed by the petitioner - employer under Articles 226 and 227 of the Constitution of India for quashing and setting aside the impugned award dated 22.11.2019 passed by the learned Senior Civil Judge, Labour Court No.2, Rajkot in Reference (LCR) Case No. 49/2018.

3. The facts of the present case, in nutshell, are that the employee was serving with employer as a driver and his services came to be terminated on the ground that he had consumed liquor while he was on duty on the route from Jhalod to Jasdan and he was intoxicated, due to which Criminal Case No.378/2015 was filed before the Judicial Magistrate, First Class, Gondal whereby he was acquitted by the learned Magistrate and despite this fact, the petitioner was terminated from the services without following due procedure. Being aggrieved, the petitioner had preferred Reference (LCR) Case No. 49/2018 before the Labour Court, which came to be dismissed.

4. Heard Ms.Khushbu Chhaya, learned counsel for the petitioner and Mr.Hamesh Naidu, learned counsel for respondent No.1 - employer at length.

5. Ms.Khushbu Chhaya, learned counsel for the petitioner has submitted the same facts which are narrated in the memo of petition and has also submitted that the petitioner was terminated from the services without initiating any inquiry and/or departmental

proceedings and, therefore, the order of termination cannot be passed against the petitioner. She has submitted that the Labour Court has committed an error of law and facts in passing the impugned award and the same deserves to be quashed and set aside. She has submitted that the penalty imposed upon the petitioner is harsh and disproportionate to the charge levelled against him and, therefore, instead of terminating the petitioner from the services, he could have been put in original post or stopped increment for future effect, however, straightway the order of termination was passed and, therefore, the order of punishment deserves to be quashed and set aside.

5.1 Ms.Chhaya, learned counsel has further submitted that the Labour Court has recorded the finding that the charges were proved against the petitioner, which fact is unjust, illegal and arbitrary and against the settled principles of law. Over-and-above, the grounds agitated in the memo of petition, Ms.Chhaya, learned counsel has submitted that the impugned award passed by the Labour Court deserves to be quashed and set aside and the petition filed by the employee deserves to be allowed and the petition filed by the employer deserves to be dismissed.

5.2 In support of her submissions, Ms.Chhaya, learned counsel for the petitioner has relied upon the following decisions:-

- (i) Ram Lal Vs. State of Rajasthan and others, AIR 2024 SC 637 : 2024 (1) SCC 175;
- (ii) Pinky Meena Vs. High Court of Judicature for Rajasthan at Jodhpur, AIR 2025 SC 3013;
- (iii) Gopalbhai Jagdishbhai Bhddhadev Vs. State of Gujarat, 2025

- (3) GLR 1787;
- (iv) Hajabhai Markhibhia Nandaniya Vs. District Agriculture Officer, 2026 JX (Guj) 13;
- (v) Jyotindrasinh Hemuba Vaghela Vs. Divisional Controller in Special Civil Application No. 7012 of 2025 dated 27.06.2025;

6. Mr.Hamesh Naidu, learned counsel for the respondent - employer has submitted that the petitioner was appointed on probation for a period of two years and even probation period was not completed and before that the petitioner was found to be intoxicated while on duty and, therefore, he abandoned the bus along with the passengers, for which, the prohibition case was registered before the Gondal Police Station. He has submitted that the defence raised by the petitioner that he was sick and, therefore, he had consumed some medicine and he had not consumed any liquor, despite this, he had driven the bus from Jhalod upto Gondal and he had not informed the conductor with regard to his sickness nor had he informed any of the authorized person at S.T. Bus Depot. He has submitted that on the contrary, the petitioner abandoned the bus upto Gondal and informed the conductor that he arranged another driver to reach at the destination of Jasdan and then he went to hospital at Gondal for treatment, but that defence was not tenable in the eyes of law and believable. He has submitted that the petitioner has not produced any documentary evidence which suggests that he was sick on the relevant day and he was taking treatment of his sickness of the concerned doctor nor produced any prescription of the doctor or medical certificate and did not give the name of the concerned doctor, who has prescribed the medicine. He has submitted that in fact, the disciplinary proceedings initiated against the petitioner where also he has not produced any evidence with regard to his

sickness and not raised any such contention and, therefore, the disciplinary authority has terminated the service of the petitioner and the Labour Court has confirmed the order passed by the disciplinary authority. He has submitted that this Court may not interfere with the order of punishment passed by the authority and, therefore, the petition being meritless deserves to be dismissed and the order passed by the Labour Court deserves to be confirmed.

7. It appears that the Coordinate Bench of this Court admitted Special Civil Application No.5796 of 2020 on 11.01.2021 and on 14.08.2020, Special Civil Application No. 9351 of 2020 also admitted and granted interim relief.

8. Having considered the facts and circumstances of the case and the submissions canvassed by learned counsel for the respective parties, the issues involved in the petition, which are posed before this Court for determination, are as under:-

- (i) Whether the Labour Court was rightly justified while passing the impugned award where the reference of the employee was dismissed and order of punishment imposed by the employer was confirmed or not?
- (ii) Whether the punishment imposed by the employer was harsh and disproportionate to the charge levelled against him or not?
- (iii) Whether the contention with regard to the fact that without following procedure or without initiation of any disciplinary proceedings or inquiry, the order of removal can be passed against the employee or not?

9. Considering the above referred facts and the charge levelled against the employee, it appears that on 30.09.2014, while the employee was on duty on the route from Jhalod to Jasdan, he had consumed liquor and when he reached at Gondal Depot he abandoned the bus and asked the conductor to arrange another driver to reach at Jasdan and then he went to the Civil Hospital, Jasdan for taking treatment. The concerned department has issued show-cause notice, which was replied by the employee and he was given sufficient opportunity to produce relevant documentary evidence to prove the charge levelled against him was illegal and unjust and he failed to produce any documentary evidence. It was also the contention of the employee before the disciplinary authority that he being permanent employee of the Corporation and, therefore, the disciplinary proceedings provided under the standing order and under the Discipline and Appeal Rules of the Corporation, the petitioner could have been given proper opportunity to disproportionate the charge levelled against him and without initiating departmental inquiry, he was removed from the services which itself is against the settled principles of law and principles of natural justice. The said fact is not justified as petitioner was appointed on probation and he has not completed the probation period and, therefore, till completion of probation period, the petitioner cannot be considered as permanent employee. However, the disciplinary authority has issued show-cause notice against which the petitioner has filed reply and he has not submitted any evidence in support of his contention and, therefore, the order to remove the petitioner from the services cannot be said to be disproportionate and harsh. In fact, the driver having responsibility of the life of the passengers carried in the S.T. Bus and without considering such fact, if the driver consumed liquor

while he was on duty, it is serious misconduct on the part of the employee and, therefore, the order of dismissal or removal cannot be said to be disproportionate. The Labour Court has, while passing the impugned award, observed that the employee had not filed any application challenging the legality and validity of the inquiry initiated by the disciplinary authority and unless and until it is challenged by the employee before the Labour Court, the Labour Court cannot exercise the power in case of quantum of punishment. In the present case, the charge levelled against the petitioner was serious in nature and there is misconduct on the part of the petitioner which was proved and even the criminal case was registered against the petitioner and he was charge-sheeted by the concerned police station merely because he was exonerated or acquitted by the concerned Court, automatically, he cannot be entitled for reinstatement of service. The disciplinary proceedings and the criminal case are on different footing and such evidence of the criminal case is required to be proved by the prosecution beyond reasonable doubt.

10. It appears that on the basis of the complaint, the respondent had issued show-cause notice on 09.06.2015 and the same was replied by the petitioner and, thereafter, on 02.12.2015, the petitioner was removed from the services. During the inquiry proceedings, the petitioner was given proper opportunity to lead evidence, however, he has neither led any evidence to challenge the legality and validity of the inquiry nor raised any objection nor challenged the same before the Labour Court and, therefore, the order of punishment imposed by the disciplinary authority is disproportionate or harsh. The Labour Court, while exercising the jurisdiction under Section 11A, has found that the order of punishment was disproportionate to the charge and under that circumstances, the Labour Court can interfere with. The

scope of interference in the order on the ground of quantum and punishment is well decided by the Hon'ble Supreme Court and this Court in the case of (1) **Uttar Pradesh State Road Transport Corporation Vs. Vinod Kumar, 2008 (1) SCC 115**, (2) **Union Of India Vs. P.Gunasekaran, AIR 2015 SC 545**, (3) **Pradeepkumar Thakur Vs. State Bank of India and another, 2024 (2) GLH 149** and (4) **G.M. (Operations) S.B.I Vs. R. Periyasamy** reported in **(2015) 3 SCC 101** . It is relevant to note that the complaint being C.R.No.II 542/2014 lodged by the Manager, Jasdan Depot against the employee for the offence under Section 66(1)A r/w. Section 85(1) and (3) of the Prohibition Act, for which he was charge-sheeted and merely because the employee was acquitted by the competent Court does not mean that he is entitled for the relief as sought for in the reference automatically. Even the conductor namely Ashwinbhai Manubhai Miyatra, who was on duty along with the present petitioner, has given the statement to the Traffic Inspector that when they reached near Virnagar Aatcot boundary at Gondal at that time the petitioner abandoned the bus bearing Registration No. GJ-18-Y-9109 and he got down from the bus and, therefore, the conductor has informed the concerned Depot Manager to send another driver to carry the bus to Jasdan. Considering the fact that the petitioner was appointed for a fixed period of five years and first two years was the probation period and during the probation, if the employee commits any irregularity or misconduct, he will be removed from the services and, therefore, considering the said fact and misconduct on the part of the petitioner, the order of removal passed by the respondent cannot be said to be disproportionate and harsh.

11. Considering the ration laid down by the Hon'ble Supreme Court in the case of **P. Gunasekaran** (supra) and in the case of **Vinod**

**Kumar** (supra) and in the case of **Pradeep Kumar** (supra) with regard to proportionality or quantum of punishment, the Court has very limited scope to interfere with the findings recorded by the disciplinary authority. Under such circumstances, the award passed by the Labour Court, in my opinion, is just and proper and in consonance with the settled law and therefore no interference is required to be called for and hence, the petition being meritless deserves to be dismissed.

12. In the case of **P. Gunasekaran** (supra), the Hon'ble Supreme Court has held and observed in para 19 as under:-

*"19. Equally, it was not open to the High Court, in exercise of its jurisdiction under Article 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford dictionary is "moral uprightness; honesty". It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc. In short, it depicts sterling character with firm adherence to a code of moral values."*

13. On perusal of the impugned award, it clearly transpires that the Labour Court has not committed any error of fact and law in appreciating the evidence on record and in passing the award. Even on re-appreciation of the evidence, it clearly transpires that the petitioners have miserably failed to prove their case beyond reasonable doubt. Therefore, the impugned award of the Labour Court

is sustainable in the eyes of law and the present petitions deserve to be dismissed.

14. In view of the above and considering aforesaid facts and circumstances of the case and the aforesaid decisions of the Hon'ble Supreme Court as well as this Court, the present petitions are devoid of merits and the same deserves to be dismissed.

15. In the result, the petition stands dismissed. Rule is discharged. Interim relief, if any, granted earlier shall stand vacated forthwith. There shall be on order as to costs.

16. In view of the disposal of Special Civil Application No.5756 of 2020, Special Civil Application No.9351 of 2020 stands dismissed. Rule is discharged. Interim relief, if any, granted earlier shall stand vacated forthwith. There shall be on order as to costs.

**(HEMANT M. PRACHCHAK,J)**

V.R. PANCHAL