

(2000) 03 GUJ CK 0037

In the Gujarat High Court

Case No : Special Civil Application No. 494 of 1987

Dahyabhai Purabhai Vankar

APPELLANT

Vs

Executive Engineer

RESPONDENT

Date of Decision : 03-03-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2000) 03 GUJ CK 0037

Hon'ble Judges : H.K. Rathod, J

Bench : Single Bench

Advocate : D.T. Soni, for the Appellant; Siddhiben Talati, AGP for Respondent
Nos. 1, 2, for the Respondent

Judgement

H.K. Rathod, J.—Heard Ms. Siddhiben Talati, learned AGP for the respondents.

2. The facts of the present petition, in short are that the petitioner was employed by the respondent as daily rated labourer on or about 21.9.1981 and the petitioner had worked as such from 21.9.1981 to 24.9.1982 and, thereafter, the petitioner was promoted to the post of watchman. He worked from 25.9.1982 to 18.3.1983 as such and, thereafter, due to closure of certain work, he was reverted as labourer and from 19.3.1983 to 3.2.1984, the petitioner had worked as daily rated labourer and thereafter, the petitioner was again promoted as watchman from 4.2.1984 and continued to remain as such upto 29.8.1984. Service of the petitioner was terminated on 29.8.1984 which was challenged by the petitioner before the labourer court through union and the labour court decided the matter in favour of the petitioner and thereafter, the petitioner was reinstated in service from 12.4.1985 with continuity of service and from 12.4.1985, he worked as watchman under the respondents. According to the respondents, thereafter, services of the petitioner was terminated on the ground of alleged theft in godown under the Sub. Dn. No. IV at GOhai Colony at night between 24 and 25th September, 1985. According to the petitioner, till August, 1985, he was working in the cement godown and thereafter the petitioner was

orally transferred to steel godown under the Sub Division No. IV. The petitioner was assigned only night duty. Thereafter, the petitioner was prosecuted on the basis of the said complaint and on the basis of the said charge of theft, the petitioner's service was terminated illegally. In this petition, the petitioner has moved draft amendment which was allowed on 21.8.1991 and accordingly, the amendment was carried out and paragraph 7A, 7B and 7C has been added to the petition. The main challenge in this petition is to quash and set aside the order of termination and to restrain the respondents permanently from terminating his services and to regularize his service as he completed five years' service and by amendment, the petitioner has prayed to direct the respondents to pay full back wages with continuity of service and to extend to the petitioner benefits of the Government Resolutions dated 17th October, 1988 and 23rd October, 1988.

3. In this petition, initially, while issuing notice on 18.2.1987, this court has ordered status quo qua the petitioner and thereafter the petition was admitted and ad interim relief was granted directing the respondents to suspend the order of termination and to permit the petitioner to discharge his duties as watchman and to pay him salary regularly from month to month and notice as to interim relief was issued for finalizing the interim relief which was made returnable on 18.4.1988 and thereafter this court, under its order dated 10.10.1988, vacated the ad interim order which was earlier made by this Court. Against the said order vacating ad interim order, the petitioner preferred Letters Patent Appeal No. 391 of 1988 before the Division Bench of this court and the said appeal was allowed by the Division Bench of this Court after hearing the parties and the order dated 10.10.1988 vacating the ad interim order was quashed and the earlier order granting ad interim relief was confirmed. Thereafter, according to the petitioner, the petitioner was reinstated in service by the respondents on 25.3.1988 and the petitioner is continuing in service as per the order dated 15.3.1988.

4. In this petition, affidavit in reply has been filed by the executive engineer, Project Construction Dn.I Himatnagar on 13th March, 1992 against which, the petitioner has filed affidavit in rejoinder on 3.4.1992.

5. It is the contention of the petitioner that since his service was terminated on the charge of theft, it was a stigmatic order and before passing such order, the respondents ought to have held departmental inquiry against him which has not been held. No charge sheet was served to the petitioner and in criminal proceedings, which were initiated against the petitioner has ended in acquittal of the petitioner on 8th January, 1988 and thereafter, the respondent has not initiated any further criminal proceedings against the petitioner and no criminal proceedings are pending against the petitioner nor any departmental inquiry has been initiated in so far as the petitioner is concerned and therefore, since the impugned order of termination is based on the charge of theft levelled against the petitioner, same is required to be quashed since it has been passed without giving any opportunity to the petitioner. It has been pointed out on behalf of the respondent that the service of the petitioner was terminated on account of theft

which has occurred while he was on duty which shows utter negligence in performance of duty on the part of the petitioner and therefore, the petitioner was removed from service by the respondents.

6. In their affidavit in reply, the respondents have not pointed out that in view of the allegation and/or charge of negligence and dereliction of duty, whether any departmental inquiry was held against the petitioner or not and whether the petitioner was served with the chargesheet or not prior to removal of the petitioner from service. Therefore, the fact remain that the service of the petitioner was terminated on the basis of allegation of theft, negligence, carelessness, dereliction of duty but for that, no departmental inquiry was initiated against the petitioner and the petitioner was not served with any chargesheet for the same and straightway, on that ground, the service of the petitioner was terminated and the petitioner was, thus, removed from service. No opportunity has been given to the petitioner before taking such action. No further development has been placed on record by the respondents and considering the observations made by the Division Bench in the Letters Patent Appeal preferred by the petitioner, I am of the opinion that the termination order which has been passed against the petitioner is against the principles of natural justice and the same is required to be quashed and set aside. The law on this score is quite settled by various decisions of the apex court as also the decisions of this Court that even in case of temporary employees, whose services were terminated on disciplinary ground without holding any inquiry, it has been held that the same shall not be permissible and as such, the order would cast stigma on the career of such an employee. In case of *Bharat Coop. Bank Ltd. and another versus K.L.Baria*, reported in 1998(2) C.L.R 105, it has been held that even if permitted under the Standing Orders, the termination by way of simplicitor cannot be resorted to where it is a case of specific allegation of misconduct and in such circumstances, departmental inquiry is necessary to prove that allegation or charge. The order of termination passed against the petitioner is, thus, against the principles of natural justice and is arbitrary and, therefore, hit by Art. 14 and 16 of the Constitution of India and is, therefore, required to be quashed and set aside.

7. According to the petitioner, his service was terminated on 11.2.87 and he remained out of job upto 25th March, 1988 and in rejoinder paragraph 8, the petitioner has claimed back wages for the aforesaid period. In his rejoinder, the petitioner has submitted that through out the aforesaid period, the petitioner was not employed anywhere and he maintained his family on the charities of his brother and other relatives. The petitioner has, thus, averred in paragraph 8 of his rejoinder that he has not been gainfully employed during the intervening period when he was out of job. These averments of the petitioner have not been controverted by the respondents by filing any counter to the rejoinder filed by the petitioner. Therefore, since I am holding that the order of termination is required to be quashed and set aside. Once, when the order of termination or removal is set aside, as a consequence thereof, back wages would be the normal

relief required to be granted in favour of the petitioner unless it is established by the respondents that the petitioner has been gainfully employed elsewhere. Here, in the instant case, since the respondents have not established that the petitioner has been gainfully employed elsewhere during the intervening period, the petitioner is entitled for the back wages for the period from 11th February, 1987 to 25th March, 1988 as per the decision in case of Hindustan Tin Works Private Limited, reported in AIR 1979 SC page 75.

8. Now, in so far as the prayer for regularization is concerned, the petitioner has claimed that on the basis of the Government Resolutions dated 17th October, 1988 and 23rd October, 1988, the petitioner is entitled for the benefit of regularization. Such relief cannot be straightway granted in absence of any material on record. Therefore, it would be just and proper to direct the competent authority of the respondents namely the Secretary, Irrigation Department to consider and decide the prayer of the petitioner for regularization on the basis of the Government Resolutions dated 17th October, 1988 and 23rd October, 1988 within some reasonable period, after hearing the petitioner with a further direction to pass reasoned and speaking order in case if the respondents are of the view that such benefits cannot be extended to the petitioner on the basis of the aforesaid Government Resolutions.

9. In view of the above, following order is passed:

10. This petition is partly allowed. The impugned order of termination is quashed and set aside. The respondents are directed to pay to the petitioner the back wages for the intervening period from 11th February, 1987 to 25th March, 1988 within three months from the date of receipt of writ of this order. The respondents are further directed to consider and decide as to whether the petitioner is entitled for the benefit regularization of his services on the basis of the Government Resolutions dated 17th October, 1988 and 23rd October, 1988 within three months from the date of receipt of writ of this order. Rule is made absolute to the aforesaid extent with no order as to costs.