

(2004) 02 GUJ CK 0015
In the Gujarat High Court

Case No : Special Civil Application No's. 7215 of 1989 and 3467 of 1990

Gujarat State Road Transport Corporation	APPELLANT
Vs	
Bharatkumar Purshotam Thakkar	RESPONDENT

Date of Decision : 19-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 02 GUJ CK 0015

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Hardik C. Rawal, for the Appellant; Upadhyay and Mukesh H. Rathod, for the Respondent

Final Decision : Dismissed

Judgement

K.A. Puj, J.—Since common question is involved in both these petitions, they are being disposed of by this common judgment.

2. In S.C.A. No. 7215 of 1989, the respondent was employed as a Badli-worker and his name was included in the waiting list of the Conductors. In course of his duty on 19.04.1987 as a Conductor in the bus plying between Bhuj and Kantvadh, the respondent was found, on checking to have committed the misconduct of misappropriation as he collected Rs. 4.30 ps. from the passengers travelling from Khavada to Dhoravar and he had not closed his way bill also.

3. For the aforesaid charges of misconduct, the delinquent - respondent was issued a show-cause notice dated 27.04.1987. The respondent has given his reply dated 30.04.1987 denying the charges levelled against him. The competent authority of the petitioner Corporation passed an order on 13/14.05.1987 cancelling the name of the delinquent from the waiting list of the Conductors. Against the said order of the competent authority of the petitioner Corporation, the respondent invoked the jurisdiction of the Labour Court and had filed Reference No. L.C.R. No. 1205 of 1987 and the Labour Court had passed an

order on 06.06.1989 directing the petitioner Corporation to place the name of the respondent in waiting list as it originally stood.

4. It is this order which is under challenge in S.C.A. No. 7215 of 1989.

5. In S.C.A. No. 3467 of 1990, the respondent was employed as Badli-worker by the petitioner Corporation and his name was included in the waiting list. He was offered job as and when work was available. In the course of his duty as Conductor in a bus plying between Dhrangadhra to Wankaner on 27.05.1985, it was found that the respondent had collected fare from 6 different group of passengers but had not issued tickets in their favour and thus, misappropriated public funds. The petitioner Corporation has issued a show-cause notice on the respondent on 15.04.1985 for the aforesaid charges and the respondent has given his reply to the show-cause notice. After considering the reply of the respondent, the respondent was also given an opportunity to appear in person and at the time of personal hearing, certain questions were put to the respondent. In response to the question whether he wants to take help from Union, he replied no. With regard to the case papers, he has said that he did not require the papers. However, he has not accepted the charge levelled against him and he has specifically denied that the charges levelled against the show-cause notice were acceptable to him. The petitioner Corporation has, thereafter passed an order in August 1985 deleting the respondent's name from the waiting list of the Conductors. The respondent thereafter, invoked the jurisdiction of the Labour Court, Rajkot being Reference No. L.C.R. No. 1462 of 1988 and the Labour Court vide its award dated 22.01.1990 set aside the order striking off the name of the respondent from the waiting list.

6. It is this order which is under challenge in S.C.A. No. 3467 of 1990.

7. Mr. Hardik C. Rawal, learned advocate appearing for the petitioner has submitted that the Labour Court, Rajkot has committed an error of law and set aside the order passed by the competent authority only on the ground that no departmental inquiry was held against the respondents in respect of charges. He has further submitted that respondents were merely a Badli-worker and, therefore, it was not necessary to hold a full-fledged departmental inquiry against them. The petitioner Corporation has issued show-cause notices pursuant to which reply was given by the respondents and after considering the said reply, an order was passed cancelling the name of the respondent from the waiting list and hence, the petitioner Corporation has complied with the provisions of principles of natural justice. Mr. Rawal has further submitted that the petitioner is a body whose activities are concerned with the service to the general public and it deals strictly with the cases of misappropriation by its employees. The petitioner Corporation cannot trust a person who committed the misconduct of misappropriation in the very beginning when his services were yet to be regularised. In support of his submission, he relied on the decision of this Court in the case of GUJARAT STATE ROAD TRANSPORT CORPORATION THROUGH GENERAL MANAGER V/S. FATESHSINH CHHATRASINH RAJ 2003 (3) G.L.H. 640

wherein it is held as under :-

"Let it be first mentioned that "BADLI WORKERS" are not employees of GSRTC in view of the Regulation 16 of the Gujarat State Road Transport Employees" Service Regulations. The discipline and appeal procedure is also not required to be adhered to in case of BADLI WORKERS. However, it is true that in case of Badli workers, principles of natural justice are required to be followed when they are to be discontinued or their names are to be deleted from the panel of Badli Workers upon some allegations, as not following the principle of natural justice assumes the colour of stigma. There can be no any dispute about this proposition of law. In short, though Badli Workers are not holding any post or not on the establishment or have no any status as "employees" of the Corporation, at the same time, in a given case, if such person is sought to be discontinued or his or her name is sought to be deleted from the panel of Badli Workers with stigma, he or she is required to be afforded with an opportunity of hearing. In other words, principles of natural justice are required to be observed. This proposition is based on the globally accepted doctrine that no man should be condemned unheard and audi alteram partem."

8. On the basis of the aforesaid judgment, Mr. Rawal has strongly urged that the issue involved in the present petition is concluded by the Division Bench judgment of this Court and hence, both these petitions be accordingly allowed.

9. Mr. Upadhyay, learned advocate appearing for the respondents in both the petitions has submitted that the issue involved in both these petitions is squarely covered in favour of the respondents by earlier judgment of this Court in the case of G.S.R.T.C. V/S. CHANDULAL G. RASADIYA 34 (1) G.L.R. 442. This decision has been considered by the later judgment of the Division Bench in the case of G.S.R.T.C. V/S. FATESHSINH CHHATRASINH RAJ (SUPRA) and the Division Bench was in conformity with the view expressed by the earlier Division Bench. Mr. Upadhyay has invited my attention to the observations made in para 7 of this later judgment wherein it is held that the legal proposition which was considered and the ultimate conclusion which was reached was very much and significantly reinforced by the reported Division Bench decision of this Court in the case of G.S.R.T.C. V/S. CHANDULAL G. RASADIYA (SUPRA). It was also observed that Regulations 14 and 16 of the The Gujarat State Transport Employees" Service Regulations are extensively explained, encouraged and propounded and the Division Bench has found that ultimate conclusions were also very much supported by the decision of the Hon"ble Supreme Court in the case of S. Govindaraju Vs. Karnataka S.R.T.C. and Another, .

10. The Division Bench of this Court in the case of G.S.R.T.C. V/S. CHANDULAL J. (SUPRA) at length discussed the issue arose in that petition and the relevant statutory rules and various authorities cited before the Court. The Division Bench has made certain distinction between a situation in which a name of the person is removed from the waiting list on the ground of unsuitability and the person on the ground of misconduct. In that context, Division Bench has held that when a

Badli-worker's name is to be removed from the waiting list on the ground of his alleged misconduct, full-fledged inquiry is required. It is further observed by the Division Bench that because of the adverse verdict of grave misconduct against the Badli-worker, it would stigmatize him for his life time, it would also affect his reputation and his chances of getting service in the Corporation or in Govt. Department would be bleak and his livelihood may in certain cases would be at stake. The Division Bench has further come to the conclusion that in this type of cases, it would be unreasonable and against the principles of natural justice to hold that as the person is a Badli worker and his name is only removed prepared by the Corporation, there is no necessity of holding a full-fledged inquiry. The Division Bench has further held that this would be in the violation of principles of natural justice as the person would be condemned unheard which would affect him for the life time.

11. As far as later decision of this Court is concerned, admittedly, in that case, the inquiry was held. As it is found from the judgment itself, that Inquiry Officer was appointed and he found the respondent workman as guilty as aforesaid and submitted his report to the Management which was accepted. As a result of this and since the respondent was not in fixed or temporary employment and since his name was enlisted in the list of Badli-worker who could be on willingness of both the parties in case of emergency when regularly selected workman either temporary or permanent are absent, the name of the respondent workman came to be deleted from the list of Badli-workers. Hence, the Division Bench of this Court in the later decision had decided the matter based on the peculiar facts of this case whereas in the case before the earlier Division Bench and in the cases before me, admittedly, no inquiry was held by the petitioner Corporation and without holding any full-fledged inquiry, if the petitioners' name was removed from the waiting list, it would certainly affect his chances for employment in the petitioner Corporation.

12. Even otherwise, what the Labour Court has done is merely issued the direction to the petitioner Corporation to retain his name as the same was removed without holding the full-fledged inquiry. No back wages for the interim period was awarded by the Labour Court and the workman has not come before this Court for that purpose.

13. Taking into consideration all these aspects of the matter, I am of the view that the contention raised by the learned advocate appearing for the petitioner Corporation that in these cases, the petitioner was not required to hold any elaborate inquiry for the misconduct of the respondent delinquent is not acceptable. In both the petitions, the name of the respondents was removed from the waiting list on the alleged ground of misappropriation of bus ticket fare as it was alleged that at the time of checking the buses on the relevant dates, the conductors have not issued the tickets after recovering fare and on such other ground. In both the cases, the respondents have denied the allegations made against them. In spite of this, the petitioner Corporation has not held any

further inquiry. As both the respondents have denied the allegation made against them, further inquiry ought to have been held and the department ought to have adduced evidence in support of the charges and the respondent ought to have been permitted to put relevant questions by way of cross-examination if they could so decide. They also ought to have been given further chance to lead evidence in support of their cases. This is the bare requirement of holding an inquiry in this type of grave misconduct and since the respondents were not removed on account of unsuitability and if they were removed without casting any stigma then in that case, further inquiry may not be necessary. However, the impugned orders passed by the Corporation were stigmatic orders and the inquiry is required to be held.

14. Even based on the earlier Division Bench Judgment of this Court, the learned Single Judge (D.P. Buch, J.) in the case of G.S.R.T.C. V/S. S.L. JADEJA, 2001 (91) F.L.R. 1136 has held that when a stigma has been attached to the respondent without following due process of law, the Court cannot uphold the said action on the part of the petitioner.

15. Taking over all view of the matter and considering the aforesaid legal position, this Court is of the view that there is no infirmity in the awards passed by the Labour Court and Court does not think it fit and proper to interfere in the same, while exercising its extraordinary writ jurisdiction under Article 226 of the Constitution of India. Both these petitions are accordingly dismissed. Rule discharged without any order as to costs.