

(1992) 10 GUJ CK 0002
In the Gujarat High Court

Gujarat State Road Transport Corporation	APPELLANT
Vs	
Chandulal G. Rasadiya	RESPONDENT

Date of Decision : 14-10-1992

Acts Referred:

Citation : (1993) 1 GLR 442

Hon'ble Judges : M.B. Shah, J;B.S. Kapadia, J

Bench : Division Bench

Judgement

M.B. Shah, J.—The common question involved in these two petitions is whether the State Transport Corporation is required to follow the procedure prescribed for dismissal of its employee under the Discipline & Appeal Procedure with regard to a "Badli worker" before removing his name from the waiting list prepared for the Badli workers on the ground of grave misconduct by the Badli workers.

2. In Special Civil Application No. 89 of 1990 the respondent was given work as a Conductor as Badli worker on 30th March, 1982. It is alleged against him that he has not issued tickets to 4 passengers who boarded the bus from village Matira and were go to Kerala on Amreli - Babra Road. For the said misconduct of misappropriation explanation of the respondent was called for by show cause notice dated 1st October, 1982 why his name be not cancelled from the waiting list of Badli workers. After considering his reply, his name was cancelled from the waiting list with permanent effect by an order dated 15th October, 1982 passed by the competent authority of the State Transport Corporation. Against that order, the respondent approached the Labour Court vide Reference (LCR) No. 265 of 1983. The Labour Court, Rajkot, by its award dated 18th July, 1989 directed the State Transport Corporation to reinstate the name of the respondent in the waiting list at its original place without any back wages on the ground that the Corporation has not held a full-fledged departmental inquiry against the respondent for his alleged misconduct. That order is challenged by filing Special Civil Application No. 89 of 1990.

3. In Special Civil Application No. 129 of 1990 the respondent was assigned duty

as a Badli worker as a Conductor on 3rd March, 1987 in a bus plying between Gandhidham and Anjar. On checking of the bus it was found that the respondent had collected fare from the 8 passengers but he had not issued tickets. It was also found that he had not collected fare from 3 passengers and had not closed the way bill. After issuing show cause notice and considering the explanation of the respondent his name was struck off from the waiting list. Against that order, the respondent approached the Labour Court by way of Reference (LCR) No. 1776 of 1987. The Labour Court by its award dated 9th June, 1989 set aside the order of the competent authority and directed that the name of the respondent be reinstated in the original position in the waiting list without back wages. That order is challenged before this Court by filing Spl. C. A. No. 129 of 1990.

4. In both these matters, the Labour Court has arrived at the conclusion that before removing the name of the Badli worker from the waiting list for the misconduct, full-fledged inquiry as contemplated by the Discipline and Appeal Procedure is required to be followed.

5. Mr. Shelat, learned Advocate appearing on behalf of the petitioner, vehemently submitted that Badli worker has no right to continue in service and that rules do not provide for holding full-fledged inquiry for removing the name of the Badli worker from the waiting list, and, therefore, the Labour Court committed gross error in holding that before removing the name of the Badli worker from the waiting list of the Badli workers, the petitioner was required to follow the procedure applicable to the regular employee of the Corporation is on the face of it illegal and erroneous. For this purpose he has placed reliance upon the judgment of the Supreme Court in the case of Prakash Cotton Mills Pvt. Ltd. Vs. Rashtriya Mills Mazdoor Sangh, and in the case of S. Govindaraju Vs. Karnataka S.R.T.C. and Another,

6. As against this, the learned Advocates for the respondents submitted that even though the respondents were Badli workers, as their services were terminated on the ground of misconduct, which would have stigma against them all throughout their life, the petitioner was required to hold full-fledged inquiry before removing their names from the waiting list of Badli workers.

7. Before appreciating the contentions of the learned Advocates for the parties, it would be necessary to refer to the settlement arrived at between the State Transport Corporation and the employees. As per the settlement the Corporation is required to prepare a waiting list of the workers.

(1) From that waiting list first the employee is to be appointed as a Badli worker; .

(2) if Badli worker has continued to work for at least one year the Corporation is required to appoint him as a daily-rated worker after taking into consideration his service and the conduct;

(3) if daily-rated worker has completed 240 days of service, then the Corporation

is required to appoint him on the time-scale if there is vacancy after taking into consideration his service and conduct;

Further, the Gujarat State Road Transport Corporation has framed the Discipline & Appeal Procedure for the Gujarat State Road Transport Corporation Employees under Regulation 80 of the Gujarat State Transport Employees' Service Regulations. It applies to the employees who are in service of the Corporation with such exceptions as may have been specifically provided. The Gujarat State Transport Employees' Service Regulations specifically provide that Daily Wage Earner means a person employed at such daily rates of pay as may be fixed by the Competent authority. Regulation 16 defines who is the employee of the State Transport Corporation. It reads as under:

Employee means a person employed by the Transport, Gujarat, but does not include a daily wage earner as defined in Regulation 14 except for the purposes of disciplinary action and punishment as provided in these regulations.

8. In view of the aforesaid Regulation learned Advocate Mr. Shelat submitted that the Corporation is required to hold full-fledged departmental inquiry as contemplated under the Discipline and Appeal Procedure only in those cases where a person is appointed as daily wage earner as defined in Regulation 14 and not with regard to Badli workers. He further submitted that Badli workers are not having any status with regard to (heir employment; the assignment of work to them is purely ad hoc in place of regular employees who are absent on a particular date; vis-a-vis those in the S. T. Corporation the Badli workers are not having status of S. T. employees and they are free to get employment anywhere else at their free will.

9. In our view, the aforesaid contention of the learned Advocate for the petitioner cannot be accepted when a Badli worker's name is to be removed from the waiting list on the ground of his alleged grave misconduct. It is true that "Badli workers" are not employees of Corporation in view of Regulation 16. Therefore, the Discipline and Appeal Procedure is not required to be followed in case of "Badli workers". However, it should be noted that because of the adverse verdict of grave misconduct against the Badli worker:

- (i) it would stigmatize him for his life-time;
- (ii) it would also affect his reputation;
- (iii) his chances of getting service in S.T. Corporation or in Government Department would be bleak, and
- (iv) his livelihood may in certain cases would be at stake.

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 from the waiting list prepared by the Corporation, there is no necessity of holding a full-fledged inquiry. This would be in violation of principles of natural

justice as the person would be condemned unheard which would affect him for the life-time. It is true that at the relevant time there was no administrative instruction issued by the S. T. Corporation for holding departmental inquiry against the Badli worker for his alleged misconduct, therefore the Corporation was not required to follow the procedure prescribed for employees of the S.T. Corporation for holding departmental inquiry. At the same time the Corporation has realised this defect and hence on 20th October, 1987 it has issued a Circular that even with regard to Badli workers, for their alleged misconduct the procedure prescribed for holding departmental inquiry for employees is required to be followed. In any case, as stated above if the procedure prescribed under the Rules was not applicable at the relevant time, yet the Corporation was required to follow the Rules of natural justice before arriving at the conclusion that "Badli worker" has committed grave misconduct.

10. Mr. Shelat, the learned Advocate for the petitioner, however, submitted that as held by the Supreme Court in the case of 5". S. Govindaraju Vs. Karnataka S.R.T.C. and Another, in a situation where Rules framed by the Corporation do not stipulate for affording any opportunity to the employee, the principles of natural justice would be attracted and the employee would be entitled to an opportunity of explanation but no elaborate inquiry would be necessary. According to his submission, giving an opportunity of explanation would meet the bare minimal requirement of natural justice.

11. In our view, this submission is totally unfounded. In the aforesaid case no doubt the Court dealt with Badli worker of Karnataka Road Transport Corporation whose name also was deleted from the select list prepared for the purpose of appointment as conductor as and when vacancy arise. His name was also included in the Badli list of workers and in pursuance thereof he was given employment. His name was removed on the ground of his being found "unsuitable" for the post. In that situation the Court held as under:

The relevant provision of Regulation 10(5) provides that during temporary/Badli appointment a candidate if terminated/removed from service as unsuitable for the post he will forfeit his chance for the appointment in terms of his selection. There is no dispute that the appellant's services were terminated on the ground of his being found unsuitable for the appointment and as a result of which his name was deleted from the select list, and he forfeited his chance for appointment. Once a candidate is selected and his name is included in the select list for appointment in accordance with the regulations he gets a right to be considered for appointment as and when vacancy arises. On the removal of his name from the select list serious consequences entail as he forfeits his right to employment in future. In such a situation even though the regulations do not stipulate for affording any opportunity to the employee, the principles of natural justice would be attracted and the employee would be entitled to an opportunity of explanation, though no elaborate enquiry would be necessary. Giving an opportunity of explanation would meet the bare minimal requirement of natural

justice. Before the services of an employee are terminated, resulting into forfeiture of his right to be considered for employment, opportunity of explanation must be afforded to the employee concerned.

(Emphasis supplied)

It should be noted that in the aforesaid case "Badli workers name was removed from the select list only on the ground that he was found unsuitable for the post. No action was taken against him for any misconduct which would stigmatize him for all the time to come. Even in that set of circumstances the Court has held that on the removal of the name of an employee from the select list serious consequences entail as he forfeits his right to employment in future. But as his name was removed on the ground of unsuitability for the post, the Court held that even in this situation bare minimal requirement of natural justice should be followed. That means the employee should be given an opportunity of explanation. This would not cover those case where Badli worker is removed from the waiting list for appointment to the regular post on the ground of alleged serious misconduct such as misappropriation. In such a type of situation bare minimal requirement of natural justice would not meet the situation.

12. It is true that Badli work are neither temporary nor regular employees and they do not have any guaranteed right of employment. For this purpose Mr. Shelat has relied upon the observations of the Supreme Court in the case of Prakash Cotton Mills Pvt. Ltd. Vs. Rashtriya Mills Mazdoor Sangh, wherein the Court has held that Badli workman is not entitled to the closure compensation which would have been payable to other categories of employees. In that content the Court has observed as under:

It is not in dispute that Badli workmen get work only in the absence, temporary or otherwise, of regular employees, and that they do not have any guaranteed right of employment. Their names are not borne on the muster rolls of the establishment concerned. Indeed, a Badli workman has no right to claim employment in place of any absentee employee. In any particular case, if there be some jobs to be performed and the employee concerned is absent, the Company may take in a Badli workman for the purpose. Badli workmen are really casual employees without any right to be employed. It has been rightly submitted by the learned Counsel for the appellant that the Badli employees could not be said to have been deprived of any work to which they had no right and, consequently, they are not entitled to any compensation for the closure.

As stated, we entirely agree with the learned Advocate for the petitioner that Badli workers are not having any right to hold any post or that they are not having any status as employees of the Corporation, but at the same time it cannot be said that they can be stigmatized for their alleged misconduct without following the principles of natural justice. In our view, what sort of procedure for establishing the alleged misconduct against the Badli workman is required to be followed would depend upon the alleged misconduct of the workman as well as

his contention in reply to the show cause notice. If the workman does not dispute the allegation made against him in the show cause notice, then it may not be necessary to hold any further inquiry. Similarly, if he does not reply to the show cause notice, it may not be necessary to hold any further inquiry. If he admits some allegations which are serious, then also it may not be necessary to hold the inquiry. In a case where in reply to the show cause notice the workman disputes the allegation made against him, then any statutory authority is bound to hold proper inquiry which can be said to be in conformity with the principles of natural justice before arriving at the conclusion that the alleged misconduct which has serious consequences is proved.

13. Mr. Rathod, learned Advocate for the respondent, for this purpose rightly relied upon the decision of the Supreme Court in the case of *Sur Enamel and Stamping Works (P) Ltd. Vs. Their Workmen*, In that case the Court was required to consider a situation where there were no rules framed before termination of the employees' services and the employees' services were terminated by the Company for causing wilful insubordination or disobedience whether alone or in combination with another or others, of many orders of the superior or of the management. The enquiring authority arrived at the conclusion that workmen were unable to explain as to why these persons (other person who were examined by the management) would be making the reports against them falsely. Thereafter the services of the employees were terminated. In that context it was observed that it has been laid down by the Court in a series of decisions that if an industrial employee's services are terminated after a proper domestic enquiry held in accordance with the rules of natural justice and the conclusions reached at the enquiry are not perverse the Industrial Tribunal is not entitled to consider the propriety or the correctness of the said conclusions. Thereafter the Court pertinently observed that some employees have misunderstood the decisions of the Court to mean that the mere form of an enquiry would satisfy the requirements of Industrial Law and the Court held as under:

An enquiry cannot be said to have been properly held unless, (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined-ordinarily in the presence of the employee in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and (v) the enquiry officer records his findings with reasons for the same in his report.

Same principle has been reiterated in the case of *Meenglas Tea Estate Vs. Its Workmen*, wherein it is held as under:

It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross-

examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character this requirement must be substantially fulfilled before the result of the enquiry can be accepted.

1a. the case of Managing Director, Uttar Pradesh Warehousing Corporation and Another Vs. Vijay Narayan Vajpayee, also the Court has held as under:

The rules of natural justice in the circumstances of the case, required that the respondent should be given a reasonable opportunity to deny his guilt, to defend" himself and to establish his innocence which means and includes an opportunity to cross-examine the witnesses relied upon by the appellant-Corporation and an opportunity to lead evidence in defence of the charge as also a show cause .notice for the proposed punishment.

14. In view of the aforesaid decisions, it would be difficult to" uphold the contention raised by the learned Advocate for the petitioner that in these cases the petitioner was not required to hold an elaborate inquiry for the misconduct of the respondent-Conductors. In both the, petitions the Conductors" names are removed from the waiting list on the alleged.

ground of misappropriation of bus ticket fare as it is alleged that at the time of checking the buses on the relevant dates the Conductors had not issued the tickets after recovering fare and on such other grounds. In both the cases the Conductors have denied the allegations made against them. In spite of this, the petitioner has not held any further inquiry. As both the Conductors have denied the allegations 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 delinquents ought to have been permitted to put relevant questions by way of cross-examination if they desired. They also ought to have been given further chance to lead evidence in support of their case. In our view, this would be the barest requirement of holding an inquiry in this type of grave misconduct. In the present cases Bus Conductors are not removed on account of unsuitability. If they are removed without casting any stigma, then in that case further inquiry is not necessary. In this view of the matter, it cannot be said that the order passed by the Labour Court calls for any interference.

In the result, both the petitions are dismissed. Rule discharged with no order as to costs.