

**(1998) 05 GUJ CK 0015**

**In the Gujarat High Court**

**Case No :** Civil Revision Application No's. 845, 846 and 847 of 1996, 1314 to 1318 and 1545 of 1997 and 141 of 1998

Gujarat State Road Transport Corporation

APPELLANT

Vs

Ravji Tapubhai Goti

RESPONDENT

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**Date of Decision :** 08-05-1998

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 9  
Industrial Disputes Act, 1947 — Section 2 , 2A

**Citation :** (1998) 2 GLR 1418

**Hon'ble Judges :** N.N. Mathur, J

**Bench :** Single Bench

**Advocate :** Y.S. Lakhani and P.C. Kavina, for the Appellant; D.H. Waghela, N.B. Tiwari, H.K. Rathod and P.J. Kanabar, for the Respondent

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## **Judgement**

N.N. Mathur, J.—The following questions of law arise for consideration in these revision applications filed by the Gujarat State Road

Transport Corporation against its employees designated as conductor and dismissed from service after having found them guilty of misconduct

under ""Discipline and Appeal Procedure for the Gujarat State Road Transport Corporation Employees"". The order of dismissal has been stayed

by way of injunction by the different Civil Courts in exercise of power under Order 39 Rules (1) and (2) C.P.C.

Q. 1. ""Whether the Civil Courts has jurisdiction to entertain the suit challenging the imposition to penalty of dismissal having been found guilty of

misconduct under ""Discipline and Appeal Procedure for Gujarat State Road Transport Corporation Employees Rules ?

Q. 2. ""Whether while dismissing the suit as premature or withdrawn the Civil Court has power to give direction not to give effect to prospective

penal order for a specified period to enable the party to approach the Court by way of fresh suit or to avail of any other remedy ?

Q. 3. ""Whether the Civil Court has power to grant stay of departmental inquiry under the Discipline and Appeal Procedure for the Gujarat State

Road Transport Corporation employees in exercise of power under Order 39 Rules (1) and (2) of CPC ?

Q. 4. ""Whether the Civil Court should exercise its discretionary power in favour of the employee who has been found guilty of misconduct on the

charges of corruption on some ipse dixit to undo the act of internal management at interim stage ?

Question No. 1 :

2. The principles as regards the jurisdiction of the Civil Court in relation to dispute between the employer and the employees have been well-

settled by series of decisions of the Apex Court as well as of this Court. The three Judges Bench judgment in the Rajasthan State Road Transport

Corporation & Anr. v. Krishnakant, reported in 1995 2 CLR 180 after consideration of all earlier judgments, has finally recorded the relevant

principles in this regard as follows :-

1. Where the dispute arises from general law of contract, i.e. where reliefs are claimed on the basis of the general law of contract, a suit filed in

Civil Court cannot be said to be not maintainable, even though such a dispute may also constitute an ""industrial dispute"" within the meaning of S.

2(k) or S. 2A of the Industrial Disputes Act, 1947.

2. Where, however, the dispute involves recognition, observance or enforcement of any of the rights or obligations created by the Industrial

Disputes Act, the only remedy is to approach the forums created by the said Act.

3. Similarly, where the dispute involves the recognition, observance or enforcement of rights and obligations created by enactments like Industrial

Employment (Standing Orders) Act, 1946 - which can be called "sister enactments" to Industrial Disputes Act - and which do not provide a forum

for resolution of such disputes, the only remedy shall be to approach the forums created by the Industrial Disputes Act provided they constitute

industrial disputes within the meaning of S. 2(k) and S. 2A of Industrial Disputes Act or where such enactment says that such dispute shall be either

treated as an industrial dispute or says that it shall be adjudicated by any of the

forums created by the Industrial Disputes Act. Otherwise, recourse to Civil Court is open.

4. It is not correct to say that the remedies provided by the Industrial Disputes Act are not equally effective for the reason that access to the forum depends upon a reference being made by the appropriate Government. The power to make a reference conferred upon the Government is to be exercised to effectuate the object of the enactment and hence not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one *ex facie*. The power conferred is the power to refer and not the power to decide though it may be that the Government is entitled to examine whether the dispute is *ex facie* frivolous, not meriting an adjudication.

5. Consistent with the policy of law aforesaid, the Supreme Court thought, it fit to commend to the Parliament and the State Legislature to make a provision enabling a workman to approach the Labour Court/Industrial Tribunal directly, i.e. without requirement of a reference by the Government in case of industrial disputes covered by S. 2A of the Industrial Disputes Act. This would go a long way of removing the misgivings with respect to the effectiveness of the remedies provided by the Industrial Disputes Act.

6. The certified Standing Orders framed under and in accordance with the Industrial Employment (Standing Orders) Act are statutorily imposed conditions of service and are binding both upon the employer and employees, though they do not amount to "statutory provisions". Any violation of these Standing Orders entitles an employee to appropriate relief either before the forums created by the Industrial Disputes Act or the Civil Court is open according to the principles indicated above.

7. The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to Civil Courts. Indeed, the powers of the Courts and Tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such reliefs as they think appropriate in the circumstances for putting an end to an industrial dispute.

3. It is contended by the learned Counsel that the plaintiff-respondent is a workman and as such the subject-matter being of Industrial Disputes, the Labour Court has only jurisdiction to entertain such disputes. The Civil Judge has exceeded the jurisdiction in granting injunction inasmuch as in view of the judgment of the Apex Court in the Rajasthan S.R.T. Corporation (supra) the civil suit itself is not maintainable. He submits that the present case is covered by para (2) of the principles laid down by the Apex Court in the case of Rajasthan S.R.T. Corporation (supra). The Learned Counsel submits that in that case also the conductors of the Rajasthan State Road Transport Corporation were dismissed from service after having found them guilty of misconduct. The injunction was granted by the Civil Court which was confirmed by the High Court. However, the Apex Court applying the principles laid down therein held that the suit filed by the employees of the Rajasthan State Road Transport Corporation was not maintainable. The learned Counsel submits that the present case is squarely covered by the said decision.

4. In my view there is no substance in the contention raised by the learned Counsel. In Rajasthan State Road Transport Corporation's case (supra) the employees are governed by the certified Standing Orders framed under and in accordance with industrial Employment Standing Orders (Central) Rules, 1946. The said Standing Orders define misconduct and prescribe the procedure for conducting the disciplinary proceedings against such employees. It appears that said Corporation has not framed Regulations prescribing the conditions of service of its employees in exercise of powers under S. 45 of the Road Transport Corporation Act, 1950. However, in the case of State of Gujarat in exercise of power under S. 45 of the Road Transport Corporation Act, 1950 Regulations have been framed prescribing the conditions of services of its employees which is known as ""Gujarat State Road Transport Employees Service Regulations"". Regulation 80 empowers the Corporation to specify the acts of misconduct or omissions liable to be treated as ""acts of misconduct"" or minor lapses or delinquencies."" It empowers the Corporation to prescribe the procedure for dealing with the cases of acts of misconduct and minor lapses and delinquencies. The provision also authorises to appoint appropriate authority to impose punishment and hear the appeals and other disciplinary action. In exercise of powers under Regulation 80

the Corporation has framed Rules known as ""Discipline and Appeal Procedure for Gujarat State Road Transport Corporation Employees

(hereinafter referred to as the ""Discipline and Appeal Rules""). Clause 5 provides for misconduct and procedure. It is held by a Division Bench of

the Gujarat High Court in the case of Amarsing v. G. S. R. T. C. reported in 1980 21 GLR 500 that Rules and Regulations framed by the State

Road Transport Corporation are statutory and have the force of law. This gives statutory status to the employees. Any violation of the statute while

terminating the services of such employees entitles them to seek relief of a declaration that the order is null and void. The challenge of the order

inflicting penalty on the delinquent not on the ground of violation of any Standing Order but based on the violation of common law, contending that

their case is governed under the Discipline and Appeal Rules, clearly falls under category I referred in the Rajasthan State Road Transport

Corporation's case (supra). Thus, in my view the Civil Court has jurisdiction to adjudicate the dispute between Gujarat State Road Transport

Corporation and its employees.

Question Nos. 2 and 3 :

5. It is noticed that the Courts have been passing contingent injunction order restraining the employer not to give effect to order if passed against

the employee, penal in nature, for a specified period while dismissing the suit as withdrawn or premature or for some other reasons, on sympathetic

ground, with a view to enable the plaintiff to challenge the order inflicting penalty. In my view such a practice is not only illegal but the order is

without jurisdiction. A thing which cannot be done directly, cannot be permitted to be done indirectly. Once the suit is dismissed for any reason,

the Court has no jurisdiction to pass an order which the Court could not have passed if the suit was not disposed of. This Court in Dharamji Fataji

Head Constable Vs. State of Gujarat and Another, has disapproved such sort of practice. However, such relief has been granted relying on some

of the orders passed by this Court in Special Civil Application Nos. 8408 of 1987, 4033 of 1987 and 60 of 1985. It may be noticed that such

orders have been passed by this Court in exercise of its extraordinary powers under Art. 226 of the Constitution. Such powers are not vested with

Civil Courts either under Order 39 Rules (1) and (2) or even 151 C.P.C. Similarly,

when the proceedings before the Departmental Authorities are pending, it would be inappropriate to interdict by any sort of stay or injunction order, except in a rare case of established mala fides. While dealing with such prayers the Court must bear in mind, what A. P. Ravani, J. said in Dharamji Fataji's case (supra) that :

It would be better if the Civil Courts keep in mind that in their anxiety to protect the interest of each and every individual plaintiff, if they go on granting such interim orders, the entire system may come to a standstill. Therefore, it is better that some hardships may be caused and suffered by the individual rather than the system itself may break down.

Question No. 4 :

6. The Civil Courts have stayed the order of dismissal having found infirmity in the inquiry, relying on some of the decisions of this Court. Reference

may be made to the decisions in the case of Amumiyani Pirmiyani Kadri Vs. Gujarat State Road Transport Corporation and Others, ,

Chandrashanker Chunilal v. State of Gujarat reported in 1977 (2) SLR 270. In Amumiyani's case (supra) the Court found that there was a

contravention of principles of natural justice. There was also violation of some of the provisions of the Discipline and Appeal Rules. That was a

case in second appeal. This was not a case of consideration of application for temporary injunction. Whether there is compliance of principles of

natural justice or not it depends upon various factors which is to be decided in the suit. No final decision can be taken at interlocutory stage. It

depends upon how far the principles of natural justice has to be followed. Justice Krishna Iyer in the case of The Chairman, Board of Mining

Examination and Chief Inspector of Mines and Another Vs. Ramjee, he said that ""natural justice is to unruly horse, no lurking land mine nor a

judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential

processual propriety being conditioned by the facts of each situation, no breach of natural justice can be complained of. Unnatural expansion of

natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating"". Justice Krishna Iyer in

another case, Shyam Lal Yadav and Others Vs. Smt. Kusum Dhawan and Others, has said that it would be strange jurisprudence which would

paralyse autonomous bodies if Courts can intervene on some ipse dixit to undo acts of internal management against employees. Thus, the

compliance of the provisions of law and the principles of natural justice is essentially a question of many facets, cannot be examined in depth and

detail at the stage of temporary injunction. Interim injunction being discretionary, the Court should circumvent in granting injunction against public

body more particularly in the case where there is an allegation of corruption. It is unfortunate that the decision of this Court reported in Dharamji

Fataji's case (supra) which deals with the question of granting of injunction in a corruption case, at interim stage, has been followed by the trial

Courts and the first appellate Courts more in breach, forgetting that it is a binding decision. It is expected from the learned Judges to follow

scrupulously the said decision which has direct bearing on the subject. If the said judgment is followed in right perspective there can be no reason

for any Court to grant injunction in the matter of infliction of penalty on a charge of corruption. However, it is also expected from the Corporation

to review such cases periodically during trial as well and adopt a practical approach, to ensure that on final decision, Corporation is not saddled

with payment of huge sum in the name of back wages etc. Cases, where Corporation is required to pay huge sum, for the reason of apparent

lapses, the responsibility of the erring officer should be fixed. In a fit case, full or part recovery can also be made from such officer. The Courts

should take up such cases on priority and decide expeditiously. One year should be the outer limit.

Now keeping in view, aforesaid, I proceed to deal with the each case on its individual merit.

C.R.A. No. 845 of 1996 :

7. In this case the allegation against the plaintiff is that while working as conductor with the defendant Corporation he was given charge-sheet on 2-

6-1986 in which the allegations were made that he misappropriated certain amount while he was on duty on 23-3-1986 : These allegations have

been found proved in enquiry. However, the learned Judge has granted injunction against order of dismissal and in his opinion there is infirmity in the

enquiry, in view of the decision of this Court in A. P. Kadri v. Gujarat State Road Transport Corporation (supra). Only on this ground, it cannot

be said there is prima facie case. Even if there is a prima facie case, it is not obligatory on the Court to grant injunction on such ipse dixit. It is an established law that an injury which can be compensated in terms of money, no interim relief can be granted. In view of this, the learned Judge has committed material illegality in exercise of jurisdiction in granting injunction against the order of dismissal of the plaintiff-respondent.

C.R.A. No. 846 of 1996 :

8. In this case the plaintiff-respondent is a conductor with the defendant-Gujarat State Road Transport Corporation. He was served with a charge-sheet on 5-6-1993. It is alleged that while he was on duty on 21-5-1993 he played malpractices and misappropriation with an intention to cause financial loss to the defendant by not issuing tickets to the passengers though fare was recovered from them. The Enquiry Committee found the charges proved and therefore, passed an order of dismissal on 28-6-1995. The Court below granted injunction relying on the decision in the case of A. P. Kadri (supra). For the reasons and conclusions arrived at in the Civil Revision Application No. 845 of 1996, in my view the learned Judge has committed material illegality in exercise of jurisdiction in granting injunction against the order of dismissal.

C.R.A. No. 847 of 1996 :

9. In this case the respondent-plaintiff was charge-sheeted on 17-12-1993. It is alleged that while he was on duty as a bus conductor he misappropriated certain amount. The Enquiry Committee found the charges proved against him. The learned Judge has found infirmity in the enquiry in view of the decision of this Court in A. P. Kadri's case (supra). For the reasons and conclusions arrived at in C.R.A. No. 845 of 1996, in my view the learned Judge has committed material illegality in exercise of jurisdiction in granting injunction against the order of dismissal.

C.R.A. No. 1314 to 1318 of 1997 :

10. All these revision applications arose out of the order dated 11.8.1997 passed by the Joint District Judge, Rajkot. In all these applications the plaintiff-respondents are conductors. The Enquiry Committee has found the charges of corruption proved against them. The trial Court found prima facie case in favour of the plaintiffs and therefore, directed to maintain status quo till disposal of the suit. Against the said order the Corporation

preferred an appeal to the District Court. Along with the appeal an application Exh. 4 has been filed seeking interim relief pending appeal. By the impugned order the District Judge has directed to maintain status quo. The impugned orders do not indicate if the learned Judge has considered that it was a case for grant of stay order, on appeal filed by the Corporation. It is expedient that the Court rehears the matter and pass fresh order or may decide the appeals itself finally.

C.R.A. No. 141 of 1998 :

11. In this case the plaintiff has been dismissed as the Enquiry Committee found the charges of corruption proved against him. The learned Judge found that there is a violation of principles of natural justice inasmuch as in spite of five opportunities given to the reporter nobody remained present on behalf of the complainant's side. The Enquiry Committee based its finding on documentary evidence without examining any witness. The Supreme Court in *State of Haryana and Another Vs. Rattan Singh*, has held that it was not necessary for the Corporation to examine the passengers or any of them found to be without ticket though having paid fare to the delinquent at the relevant time. These are the questions which are to be examined during the course of trial. In my view the learned Judge has committed material illegality in exercise of jurisdiction in granting temporary injunction against the established norm.

C.R.A. No. 1545 of 1997 :

12. In this case pending enquiry the plaintiff filed civil suit for declaration and permanent injunction. He also filed an application for interim injunction which was rejected by the 8th Joint Civil Judge (S.D.), Rajkot dated 9.6.1997. On appeal the learned Judge granted injunction directing the defendant-Corporation that in the event of order of dismissal or removal, if any, passed against the plaintiff in the disciplinary proceedings, the same shall not be implemented for a period of 15 days from the date of service of such order upon the respondent. In spite of such of the fact that the decision of this Court in the case of *Dharamji Fataji Head Constable Vs. State of Gujarat and Another*, was brought to the notice of the learned Judge which is a binding decision, the Court has chosen to grant interim injunction relying on some of the orders passed by this Court in Special Civil Application Nos. 8408 of 1987, 4033 of 1987 and 60 of 1985. I have

said in earlier part of this judgment that such an order is

without jurisdiction and deserves to be struck down. Thus, the learned appellate Judge has exceeded the jurisdiction in directing not to implement

order of dismissal or removal if passed, for a period of 15 days.

13. In view of the aforesaid the following order is made in each revision application :

C.R.A. Nos. 845, 846 and 847 of 1996 :- All three Revision Applications are allowed and the impugned orders in each Revision Application

granting injunction below Exh. 5 and confirmed by the respective appellate Courts in appeal are quashed and set aside. Application Exh. 5 of the

plaintiff-respondent is rejected. However, the trial Court is directed to dispose of the main suit by 31.12.1998. Rule made absolute in each

Revision Application.

C.R.A. Nos. 1314, 1315, 1316, 1317 and 1318 of 1997 :- These Civil Revision Applications are allowed, impugned orders in each Revision

Application are quashed and set aside. The appellate Court should rehear the application for stay filed by the Corporation, and decide afresh

keeping in view the law laid down in this judgment and other relevant law, but in any case main appeals should be decided by 31.7.1998. Rule

made absolute in each Revision Application.

C.R.A. No. 141 of 1998 :- This Revision Application is allowed and the orders of both the Courts below granting injunction below Exh. 5 and

confirmed by the Appellate Court are quashed and set aside. Application Exh. 5 is rejected. The trial Court is directed to dispose of the main suit

by 31.12.1998. Rule made absolute.

C.R.A. No. 1545 of 1997 :- This Revision Application is allowed. The order dated 17.6.1997 passed by the 4th Extra Assistant Judge, Rajkot is

quashed and set aside. Rule made absolute.

Applications allowed.