

(2008) 12 GUJ CK 0015

In the Gujarat High Court

Case No : Special Civil Application No's. 14161, 14163 to 14168 and 17181 of 2007

Sanjay C. Patel and Others

APPELLANT

Vs

Gujarat Urja Vikas Nigam Ltd. and Another

RESPONDENT

Date of Decision : 29-12-2008

Acts Referred:

All India Services (Discipline and Appeal) Rules, 1969 — Rule 6, 7

Constitution of India, 1950 — Article 227, 311

Contract Labour (Regulation and Abolition) Act, 1970 — Section 10(1)

Gujarat Electricity Board Establishment Manual and Service Regulations — Regulation 26

Railway Services (Conduct) Rules, 1966 — Rule 3(1)

Citation : (2009) 1 GLR 664

Hon'ble Judges : S.R. Brahmbhatt, J

Bench : Single Bench

Advocate : T.R. Mishra, for the Appellant; Rule Served by D.S. for Respondent Nos. 1 and 2 and Lilu K. Bhaya, for the Respondent

Judgement

S.R. Brahmbhatt, J.—This group of petitions involve almost identical facts and common question of law, hence, they were heard together and are being disposed of by this common judgment and order.

2. The petitioners in Petition No. 14161 of 2007 and Special Civil Application No. 14163 to 14168 of 2007 were working as helpers in Thermal Power Station at Gandhinagar of erstwhile Gujarat Electricity Board, now known as Gujarat Urja Vikas Nigam Limited. The petitioner in Special Civil Application No. 17181 of 2007 is Gujarat State Electricity Corporation Ltd., formerly known as Gujarat Electricity Board. In the petitions filed by the workmen, office order dated 12-6-2007 is impugned on the ground that the said order is passed contrary to the principle of law and ignoring the decision in the award dated 20-1-2007 passed in Reference (I.T.) No. 25 of 2004 where under the respondent Gujarat Electricity Board and its successor was directed to hold proper inquiry following

the procedure prescribed in Gujarat Electricity Board Establishment Manual, Chapter 8 and as per the prevalent Service Regulations. The Gujarat Urja Vikas Nigam Limited has challenged Award and order dated 20-1-2007 passed in Reference (I.T.) No. 25 of 2004 only so far as it contains direction for holding inquiry following the provisions of prevalent service regulations and in accordance with the provisions of Chapter 8 of Gujarat Electricity Board Establishment Manual in respect of Notice dated 26-11-2002, on the ground that said direction is not in consonance with the provision of law, and hence, the same deserve to be quashed and set aside.

3. For the sake of convenience, the workmen are going to be referred to as the "Petitioners" and the Gujarat Electricity Board or employer is going to be referred to as "Respondent" hereinafter.

4. Facts in brief deserve to be set out as under in order to appreciate the controversy involved in these petitions.

It was the case of the petitioners that they were working as contract labourers prior to 1996 at Thermal Power Station, Gandhinagar of Gujarat Electricity Board (hereinafter referred to as "G.E.B.-T.P.S." for the sake of brevity). The State of Gujarat in exercise of the power conferred by Sub-section (1) of Section 10 of the "The Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as the "Abolition of Contract Labour Act") issued Notification dated 9-6-1997 prohibiting employment of contract labour in the establishments specified thereunder which included G.E.B.-T.P.S., Gandhinagar. On abolition of the contract labour at G.E.B.-T.P.S., Gandhinagar, the contract labours were required to be absorbed as permanent employees of the then Gujarat Electricity Board, and accordingly, the present petitioners also came to be absorbed as employees of Gujarat Electricity Board. The petitioners were discharging their duties to the satisfaction of their superiors, however their services came to be terminated on 11-9-1998 or thereabout without affording them any opportunity of being heard or informing them about the reason for such abrupt termination. The petitioners therefore were constrained to file Special Civil Application No. 7928 of 1998 challenging the said termination orders. During pendency of the said petition the respondent decided to withdraw the order of termination of service of the petitioners and prayed for liberty for passing appropriate orders of the termination of service of the petitioners in accordance with law. In view of this decision, a statement came to be made before the Court in the aforesaid petition being Special Civil Application No. 7928 of 1998 wherein this Court (Coram : S.K. Keshote, J. as he then was) passed the following order on 24-6-1999.

The petitioners in this Special Civil Application are challenging the order of the respondent No. 1 terminating their services.

The Counsel for the respondent No. 1 makes a statement before this Court that the respondent No. 1 shall withdraw the order of termination of services of the

petitioners.

However, the Counsel for the petitioners state that the Board may be directed to reinstate the petitioners back in service within time-bound programme.

The Board has prayed for giving it liberty for passing appropriate orders of the termination of services of the petitioners in accordance with law. No such liberty has to be granted because it is always open to the Board to act in accordance with law where it considers necessary of termination of the services of the petitioners.

In view of the statement of the Counsel of the respondent No. 1, this petition has become infructuous and the same is dismissed. Rule discharged. The Board is directed to complete all the formalities of withdrawing the order of terminating the services of the petitioners and to reinstate the petitioners back in service within a period of seven days from today. No order as to costs.

5. Thus, the petitioners came to be reinstated as per the say of the petitioners on 12-7-1999. It is to be noted that after reinstatement of the petitioners on 12-7-1999 they came to be confirmed also vide order dated 25-10-1999 and the said order is placed on record of these proceedings. It is required to be noted that thereafter a show-cause notice came to be issued to the petitioners on 26-11-2002 calling upon the petitioners to show cause as to why their services shall not be terminated forthwith as they had never worked as contract labours prior to the appointed day, i.e. the day on which the contract labour came to be abolished in G.E.B.-T.P.S., Gandhinagar on 9-6-1996 or before that and as such they had obtained the employment fraudulently and fraudulent employment being void ab initio they were liable to be terminated forthwith. The petitioners gave detailed reply to the show-cause notice and thereafter on 16-1-2003 second show-cause notice came to be issued to them informing them that as the Board was to follow principle of natural justice, pursuant to the show-cause notice dated 26-11-2002, petitioners were afforded an opportunity for putting up their say and making oral as well as written representation on 27-1-2003 at 2-30 p.m. In the office of Chief Engineer (Generation), Gandhinagar.

6. The petitioners being aggrieved and dissatisfied with this attitude and approach of the respondent moved Special Civil Application No. 693 of 2003 and also issued through union a notice demanding settlement of dispute for dropping the said notice as the mandatory provision of holding inquiry had not been followed. Pursuant to the raising of industrial dispute with regard to not following the procedure and proceeding with the show-cause notice for termination the competent authority referred the matter for adjudication to the Industrial Court wherein it was registered as Reference (I.T.) No. 25 of 2004. As the matter was referred for adjudication to the competent industrial forum the petition being Special Civil Application No. 693 of 2003 came to be withdrawn on 10-2-2004.

7. The petitioners filed application for interim relief in I.T. Reference No. 25 of 2004 vide Exh. 7 for maintaining status quo with regard to their service condition

during pendency of the reference as there was genuine apprehension on their part that during pendency of the petition, as there was no stay order granted, their services would be terminated abruptly without following the due process of law. The Industrial Court after hearing rival contentions of the parties rejected the same vide order dated 6-10-2004 and fixed the matter for further hearing on 2-11-2004.

8. Being aggrieved and dissatisfied with the said order dated 6-10-2004 rejecting Exhibit-7 application for interim relief for maintaining status-quo with regard to service conditions during pendency of the reference, petitioners preferred writ petition being Special Civil Application No. 14106 of 2007 wherein they obtained ad-interim relief. Ultimately the said petition came to be disposed of by this Court (Coram : H. K. Rathod, J.) vide order dated 30-6-2006 issuing direction to the Industrial Tribunal (Gujarat) Ahmedabad to adjudicate and decide finally the Reference (I.T.) No. 25 of 2004 within a period of four months from the date of receiving copy of the said order without any further delay, and ordered continuation of interim relief granted by this Court on 25-10-2004 to continue till the date the award that may be rendered by the Industrial Tribunal in Reference (I.T.) No. 25 of 2004 becomes enforceable in law. The Tribunal rendered its award on 20-1-2007 which was communicated to the parties on 7-4-2007. In the said order, the Tribunal though did not quash the notice dated 26-11-2002 but declared that petitioners were entitled to receive full opportunity in the full-fledged inquiry as per the procedure prescribed in Chapter 8 of Establishment Manual and other service regulations prevalent in G.E.B. Pursuant to this award, it was expected as per the say of the petitioners that, the respondent would hold disciplinary proceedings in accordance with provision of Chapter 8 and afford opportunity of defending their respective cases in accordance with service regulations prevalent in G.E.B. But the respondent instead of following the procedure of inquiry as prescribed under Chapter 8 of the Establishment Manual and Service Regulations issued impugned order dated 12-6-2007 terminating the petitioners' service.

9. The petitioners in Special Civil Application No. 14161 of 2007 and Special Civil Application Nos. 14163 to 14168 of 2007 have preferred present petitions challenging this order dated 12-6-2007 in this set of petitions for the reasons and the grounds set out in the petitions. While the respondent-G.E.B. or its successor firstly passed the order dated 12-6-2007 without following the provisions of Chapter 8 of the Establishment Manual and Service Regulations, ignoring the mandatory direction of the Industrial Tribunal in its award dated 20-1-2007 but later on decided to challenge the same by filing Spl. C. A. No. 17181 of 2007.

10. It is required to be noted that the termination order dated 12-6-2007 was assailed in this group of petitions by the petitioners and on 14-6-2007 this Court (Coram : H.K. Rathod, J.) passed order issuing notice to the respondent which was made returnable on 22-6-2007. On 22-6-2007 this Court (Coram : H.K.

Rathod, J.) recorded that though served no one has appeared on behalf of the respondent and the Advocate for the petitioner's were requesting for grant of interim relief. When the petitioners services were terminated on 12-6-2007 and the petitions were filed on 13-6-2007 the Court had issued only notice on 14-6-2007 and not granted initial ad-interim relief against the termination order of 12-6-2007 with a view to give opportunity before passing ex parte ad-interim relief against the respondent, and hence, only notice was issued so that the respondent can appear and defend. The Court further recorded that as this opportunity was not availed, the Court granted ad-interim relief against implementation of the order of termination order dated 12-6-2007 with a direction to the respondent to reinstate the petitioners in service and the matter was fixed for confirmation of ad-interim relief on 17-7-2007.

On 19-7-2007 this Court (Coram : H. K. Rathod, J.) issued "Rule Expedited" and stayed the order of termination dated 12-6-2007. It appears that in the meantime the respondent also filed writ petition being Special Civil Application No. 17181 of 2007 challenging the award of the Tribunal passed on 20-1-2007 in Reference (I.T.) No. 25 of 2004, and therefore, this Court (H.K. Rathod, J.) on 5-9-2007 clubbed all the matters together and ordered it to be notified on 12-9-2007. On 12-9-2007 this Court (H.K. Rathod, J.) passed order indicating that the order dated 19-7-2007 needed to be clarified, and therefore, it was stated that the workmen concerned shall not take any steps against the employer for non-implementation of the order of this Court dated 19-7-2007.

11. The respondent filed petition as it is stated hereinabove being Special Civil Application No. 17181 of 2007 challenging the award dated 20-1-2007 passed in Reference (I.T.) No. 25 of 2004 only to the extent that it held that it was mandatory for the petitioners that is the present respondent to follow the procedure as prescribed in Chapter 8 of Establishment Manual and Service Regulations. Thus, these matters were clubbed together, heard and are being disposed of by this common judgment.

12. Learned Counsel Mr. Mishra for the petitioners in Special Civil Application No. 14161 of 2007 and Special Civil Application Nos. 14163 to 14168 of 2007 has contended that in the present case looking to the nature of allegation and other facts the respondent was under duty to conduct the departmental inquiry and take appropriate action as per the service regulations. Shri Mishra contended that the Tribunal has not entered into merits of the case and has merely directed to afford reasonable opportunity and conduct the departmental inquiry as per provision prescribed in Chapter 8 of the Establishment Manual and Service Regulations, and therefore, the order impugned which is passed without following the procedure is per se illegal and requires to be quashed and set aside.

13. Shri Mishra relied upon the decision of the Apex Court in case of Ajit Singh and Others Vs. State of Punjab and Another, and contended that the respondent's act of confirming the present petitioners after withdrawing the original order of termination of 1998, which was also passed after considering

the fact that the petitioners were allegedly not in service with the contractor at T.P.S., Gandhinagar, the respondent cannot brush aside the requirement of holding inquiry as per the service rules and Chapter 8 of the Establishment Manual and Service Regulations on a specious plea of so-called ab initio void employment. In the case cited also the Honourable Supreme Court observed that services of the even temporary Government servant cannot be terminated arbitrarily if such termination is tainted with arbitrariness than authorities" such act would not be justified on the ground of it action being in accordance with the terms of employment. In the instant case, after having confirmed the employees in light of the existing circumstances, it was not open to the respondent to deny them the legitimate right to be subjected to the inquiry wherein they would get the right to defend themselves properly. Therefore, not holding departmental inquiry in accordance with provision of Chapter 8 of Establishment Manual becomes arbitrary, capricious and render the order made pursuant thereto illegal.

14. Shri Mishra has also relied upon the decision of the Apex Court in case of State of M.P. and Others Vs. Keshav, and contended that in a given set of circumstance it was not open to the respondents to terminate petitioners" services without holding proper inquiry as envisaged under Service Regulations. The impugned order of termination is assailed only on the ground of not holding inquiry as directed by the Tribunal in its award dated 20-1-2007. Shri Mishra contended that the respondent was under duty to hold full-fledged inquiry before terminating the service and their right to defend themselves during the inquiry cannot be curtailed. The impugned order dated 12-6-2007, which was passed without holding full-fledged inquiry as directed by the Tribunal cannot be sustained and the same require to be quashed and set aside.

15. Ms. Bhaya, learned Counsel for the respondent and petitioner in Special Civil Application No. 17181 of 2007 has contended that the order passed by the Tribunal has not been challenged by the present petitioners and as per the order of the Tribunal dated 20-1-2007 passed in Reference (I.T.) No. 25 of 2004, the Industrial Tribunal has observed as could be seen from page 56 that the respondent has the right to take action against the petitioners herein, therefore, the demand of the petitioners to set aside notice dated 26-11-2002 has not been accepted by the Tribunal and it has given only one direction that the respondent should take action in respect of this notice as per Chapter 8 of the Establishment Manual and Service Regulations. Ms. Bhaya contended that on abolition of contract labour at T.P.S., Gandhinagar w.e.f. 9-6-1997 the contract labours were required to be absorbed in the regular employment of Gujarat Electricity Board. The petitioners claim that they were working in Skywin Erectors Contractor as could be seen from their identity card which were produced before the Tribunal in Reference (I.T.) No. 25 of 2004. They joined in service after 9-6-1997 with the contractor and those documents are produced at page 71 to 74. Thus, they were not entitled to be employed and fraudulently procured employment was void ab initio. Through, mistake or oversight this facts were not noticed by the respondent, and therefore, the petitioners were absorbed. In such facts and

circumstances the full-fledged inquiry is unwarranted as their absorption in regular employment was erroneous it was void ab initio, and therefore, there was no requirement of full-fledged inquiry as demanded.

16. Ms. Bhaya has further submitted that:

(1) it is the same unions who had brought to the notice of the respondent vide its letter dated 22-2-1998 that the petitioners and others were not working with the contractor before 9-6-1997 and in collusion with some of the contractors and officers of G.E.B. they have obtained employment and they were never on the roll of the contractor. Ms. Bhaya further contended that G.E.B., the predecessor of the present company started inquiry in the aforesaid aspect on 22-7-1998 and the report was prepared and it was brought to the notice of G.E.B. that the present petitioners had never been engaged by the contractor prior to the appointed day i.e. 9-6-1997, and therefore, it can be said that they had procured the employment production of false certificate. On 11-9-1998 the services of the petitioners were terminated with immediate effect. The petitioners filed petition challenging the same. And as the said order was passed without affording any opportunity of being heard the Board withdrew the same and made a statement before the Court in that petition that the respondent be granted liberty to terminate petitioners' services in accordance with law, and the Court observed that there was no requirement of reserving such liberty as it was always open to them to act in accordance with law. Accordingly, the petitioners were reinstated in service on 2-7-1999. As in the inquiry conducted earlier it was noticed that one officer of the Board was involved and show cause notice dated 26-11-2002 came to be issued to the petitioners giving all the details and calling upon the petitioners to show cause as to why their services should not be terminated as their appointment itself was void ab initio as it was illegal and as it was obtained by misrepresenting. They were called upon to put up their explanation or reply on 3-12-2002 at 2-30 p.m. The petitioners did not come out with any fact with regard to they being in employment but rather they started questioning the action. The explanation is therefore not indicating anywhere that they were in service prior to 6-9-1997 i.e. appointed date with Skywin Erectors Contractors. Once again, the Board called upon them to give appropriate reply vide notice dated 3-12-2002 but they did not remain present. On 16-1-2003 again a second show-cause notice was issued to the petitioners and it was made very clear to the petitioners that there was no need to conduct any departmental inquiry or to act in accordance with Chapter 8 of Establishment Manual or Service Regulations because this action can be taken against the employee who was appointed illegally. Since, their appointment was illegal there was no need to follow the procedure as provided in the service regulations. It was only in the interest of justice that they were called again to make representation if any in defense of their case on 27-1-2003 as per the notice dated 16-1-2003. On 27-1-2003 representative of the petitioners remain present but they did not come with any reply or document.

(2) Ms. Bhaya has further contended that in the reply filed by the G.E.B. before the Industrial Tribunal at Exhibit-11 it has been specifically contended in Para 13 that the petitioners have joined the contractor after 1-10-1997 and as they were not in employment on 9-6-1997 they were not eligible for absorption. It was by mistake of the respondent that the petitioners were given regular employment. The petitioners have misrepresented, and therefore, their services were terminated on 11-9-1998, and thereafter, because of the Court proceedings the petitioners have continued.

(3) Ms. Bhaya has further contended that the document in respect of Reference (I.T.) No. 76 of 1996 were also produced before the Industrial Tribunal wherein it was brought to the knowledge of the Tribunal that settlement which are arrived under this Notification and number of workers working in Ash Handling and Coal Mill Plant total 52 workers for which settlement had arrived, wherein the petitioners names did not figure. That also go to show that the petitioners were not in employment prior thereto. Ms. Bhaya further submitted that vide Exh. 18 petitioner Sanjay C. Patel was examined. It was necessary to bring to the notice of the Court that in the affidavit filed by Mr. Sanjay Patel no where he mentioned that he has been appointed prior to 9-6-1997. During cross-examination he has admitted that he was with Skywin Erectors Contractors and said company had given entity card to all workers have put up their signatures thereon the details given with photographs have been supplied by the workers themselves. All such photo I-cards have been produced at Exhs. 19/1 to 19/8. Therefore, this document which were produced along with affidavit go to show that their appointments with contractor were subsequent to the notification and they were not entitled to be absorbed in respondent. The show-cause notice and charge-sheet issued to the employee of the G.E.B., who had played role in appointing all such workers like petitioners who had joined after 9-6-1997, one Shri C.H. Shah were produced before the Industrial Tribunal. The names of the petitioners to whom appointment letters were issued by him also produced before the Industrial Tribunal. One Gunwantlal Nanalal Vyas had been examined at Exhibit-20 and he admitted in his cross-examination that their unions had filed Reference I.T. No. 76 of 1996 for absorbing all the workers of Sky win Erectors Contractors and he also admitted that in the said reference the names of the petitioners were not included. It was also admitted by him that their union has demanded that in view of the Notification all the workers who were working with the contractor upto 9-6-1997 were required to be absorbed.

(4) It is further submitted by Ms. Bhaya that respondent's officer Shri Rana who was D.G.M. at the relevant time had stated in his testimony that Skywin Erectors Contractor was given contract for Coal Mill Maintenance and Ash Plant operation and maintenance and some of the workers have been wrongly shown in the aforesaid contractor's register. That total 22 workers were shown which had increased to 40. He has also stated that after carrying out detailed examination about gate-pass, with their last C.P.F. deducted it has come to the knowledge that they were illegally regularised.

(5) That at Exh. 29 Majitsinh Darshansinh Bajwa has admitted that he along with Shri B. J. Patel had carried out was inquiry on the basis of the complaint received from the Union regarding illegality in regularising the workers. He has stated that after examining the Labour Officer, Contractors present muster roll, gate pass and other documents available with the workers, the report was prepared. He also confirmed that after proper inquiry notices for termination were issued to he petitioners.

(6) Ms. Bhaya has further contended that as the petitioners had committed fraud and obtained employment with the respondent on their misrepresenting that they were in employment with the contractor prior to 9-6-1997 their absorption and appointment in G.E.B. was not legal, and therefore, there was no question of carrying out any departmental inquiry in their case as if it was a misconduct committed during service tenure. Ms. Bhaya further contended that none of the employees were ever employee of the respondent, and none of them have misconducted as an employee requiring the respondent to take disciplinary action. The petitioners committed fraud in obtaining employment therefore that fraud not being misconduct as employee of G.E.B., it required no disciplinary inquiry under Chapter 8 as the employment itself is obtained by fraud it is a misconduct pre-employment and not misconduct during the employment requiring conducting of departmental proceedings.

(7) Ms. Bhaya further contended that the Industrial Tribunal has come to the conclusion that the respondent has right to take action against the petitioners, and therefore, notice dated 26-11-2002 has not been quashed. Therefore, subsequent to the issuance of notice dated 26-11-2002 petitioners were required to be give an opportunity to explain and to be heard which was granted to them and after following the principle of natural justice their services were terminated. She further submitted that the respondent have challenged the award of Industrial Tribunal only to the extent that it contains directions to the respondent to take action in accordance with Chapter 8 of the Discipline and Conduct Rules.

(8) Ms. Bhaya has further submitted that respondent have challenged the award of Industrial Tribunal only to the extent that it directed the respondent to take action in accordance with Chapter 8 of the Discipline and Conduct Rules. She has submitted that petitioners were governed by G.S.O. As the petitioners have obtained employment fraudulently they were governed by G.S.O. 7. The petitioners thus can be said to be back-door entrants and did not have any. right to continue as such on account of some mistake committed by the respondent in absorbing them employment. The Tribunal also come to the specific conclusion that respondent G.E.B. has right to take action against the repetitions, and therefore, the notice dated 26-11-2002 has rightly not been quashed and set aside, but the Tribunal has only directed that the opportunity of being heard be given to the petitioners and the procedure under Chapter 8 of Establishment Manual and Service Regulations be followed. The petitioners were given enough opportunity of representing their case, and therefore, it cannot be said that the

departmental inquiry was absolutely essential. The sole requirement was to afford them an opportunity and it was not the requirement to conduct the inquiry in accordance with Chapter 8 of Establishment Manual and Service Regulations as contended by the petitioners.

(9) Ms. Bhaya has further submitted that the order of the Tribunal as far as it directing to hold disciplinary inquiry as per service regulations and as per procedure prescribed in Chapter 8 Establishment Manual is absolutely erroneous, illegal and requires to be quashed and set aside. The provision of Chapter 8 do not prescribed obtaining fraudulent employment as misconduct and thus on that count also it cannot be said that Chapter 8 was applicable so far as the present petitioners are concerned. She further contended that the petitioners also sought to place reliance upon the settlement in Reference No. I.T. 264 of 1998, but the Industrial Tribunal has come to the conclusion that there was no such settlement which had taken place and no such document have been produced before the Tribunal.

16A. By way of further submission Ms. Bhaya has submitted that in affidavit-in-reply in Para 16 it was specifically stated on oath that copy of the settlement in Ref. I.T. No. 76 of 1996 is annexed and from that it is clear that names of the petitioners were not shown. She has further submitted that Akhil Gujarat Vidyut Kamdar Sangh had filed conciliation case before the Conciliation Officer wherein petitioners' names were included in the conciliation proceedings bearing No. 264 of 1998, copy of the strike notice along with Annexure-B thereto showing names of the petitioners in conciliation Case No. 264 of 1998 was also included therein. This also go to show that the petitioners were not in service of the contractor on the given date.

17. Ms. Bhaya relying upon the Apex Court decision in case of Union of India and others Vs. M. Bhaskaran, G. Radhakrishnan and C. Devan, contended that the employment secured by fraud render it voidable at the option of the employer and there is no estoppel. The Apex Court held that as the respondent employee had snatched employment in railway service by relying upon forged or bogus casual labourer service cards they were guilty of misrepresentation and fraud perpetrated on the appellant employer, and therefore, their employment itself was void and terminable at the option of the employer. Therefore, even independently of Rule 3(1)(i) and (iii) of the Railway (Conduct) Service Rules, such fraudulently obtained employment would not be held to be legally enforceable right and specious plea of Rule 3(1)(i) and (iii) of the Rules would not be applicable.

18. Ms. Bhaya has also relied upon another decision rendered by the Apex Court in case of R. Vishwanatha Pillai Vs. State of Kerala and Others, and contended that a person who has procured the employment fraudulently cannot be said to be holding a civil post, and therefore, there was no requirement of following provision of Article 311 nor was he protected thereunder. The another decision of the Apex Court cited by Ms. Bhaya is in case of The Superintendent of Post

Offices and Others Vs. R. Valasina Babu, wherein very basis of procuring employment namely caste certificate was cancelled by the Collector i.e. issuing authority and when the disciplinary proceedings were initiated and the employment was terminated on the ground that the fraudulently procured employment would not amount to holding civil post. Ms. Bhaya has further relied upon a case decide by the Apex Court in case of Bank of India and Another Vs. Avinash D. Mandivikar and Others, which is also on the same line. One more decision is in case of Bhaurao Dagdu Paralkar Vs. State of Maharashtra and Others, and submitted that in view of this the order impugned cannot be said to be an order without authority of law and or calling for interference. The petition of the respondent therefore be allowed and so far as the order of the Tribunal is concerned as it is directing to hold inquiry, said order may also deserve to be quashed and set aside.

19. This Court has heard learned Counsel for the parties and perused the award impugned and other documents attached to the petitions. The order impugned by the petitioners is the order dated 12-6-2007. This Court is called upon to examine the said order in light of facts and circumstances of the case. Before advertng to rival contentions of the parties following undisputed facts are required to be set out for appreciating the conduct of parties and their respective justification for the same:

(1) The Contract Labour Abolition Notification was issued on 9-6-1997 pursuant whereto the petitioners were absorbed and regularized at T.P.S., Gandhinagar.

(2) The petitioners were absorbed as regular employees vide order dated 30-6-1998.

(3) Respondent received a complaint dated 22-7-1998 with regard to certain employees not being in employment with the Contractors prior to the appointed day i.e. 30-6-1997 and yet they being absorbed on that basis as if they were entitled to be absorbed being in employment of contractor prior to 30-6-1997.

(4) The respondent appointed Committee of senior officers who held discreet inquiry and submitted report on 3-9-1998. The Committee inquired with many persons including the employee of the erstwhile contractor wherefrom they came to know that some 11 employees who were absorbed, were not known to him, meaning thereby, they Were not working with the Contractor. The Officer of G.E.B. Shri Chintan Shah informed "the Committee that Strike Notice was given in respect of these employees and they were regularized consequent to settlement in the case. The Committee has recorded that some of the persons were engaged by the contractor after the Award.

(5) The Preliminary Inquiry Committee further observed that on inquiry with Mr. Rana L.W.O. it was found as to what was the procedure for issuing gate passes etc. Shri Rana also informed the Committee that he had doubts about some employees were not originally working with the contractor at all and were getting benefit of regularization. As could be seen from page 83 on the compilation that

"later we called some of 11 (Eleven) contract labour who had joined the contractor after the date of notification and tried to ask them as regards any cash/kind transaction they had entered into so that they could be regularized in the Board later on. None of them told us regarding cash transaction but all of them told us that they were given assurance that they shall be regularized in Gandhinagar T.P.S." The Conclusions are also required to be noted:

Conclusions:

From the above, it is concluded as under:

(a) The instructions of General Manager (H.R.D.) that the number of contract labourers should not increase after the award of Contract Advisory Board are not followed by Shri Chintan Shah.

(b) Gate passes were issued on request by contractor without following the laid down procedure by the then Sr. Security Officer, Shri D.S. Pandian.

(c) The fact that Gate passes were issued to relatives were known to Shri Chintan Shah but this was not brought to the notice of Head Office while sending the proposal for regularising contract labourers.

(d) The Office Note dated 13-5-1998 floated by L.W.O. was not properly enquired into by Shri Chintan Shah.

Sd/- Sd/- Date: 3-9-1998 (M. D. BAJWA) (B. J. PATEL) Place: Baroda A.S.(1) I.R.O. (P)

(6) On the basis of this report dated 3-9-1998 the initial termination orders dated 11-9-1998 came to be issued which were subject-matter of challenge in Spl.C.A. No. 7928 of 1998 wherein respondents were permitted to withdraw the same under order dated 24-6-1999 by this Court (Coram : S.K. Keshote, J. as he then was)

(7) The petitioners were reinstated on 2-7-1999 and were confirmed by the Competent Authority of G.E.B. i.e. Chief Engineer vide order No. G.P.S./E.S.T.T./Confirm/14554 Gujarat Electricity Board Thermal Power Station, Gandhinagar dated 25-10-1999.

(8) Nothing was done for quite some time and only on 26-11-2002 a show cause notice came to be issued that too it did not contain any allegation with regard to any so-called fraud of obtaining job, but it talked about the petitioners' mistaken regularization by the Authorities. The Notice also did not contain any allegation with regard to petitioners making any false or mis-representation for obtaining job.

(9) The petitioners filed their reply to the show cause on 29-11-2002 contending that they were working with the contractor prior to the appointed day and after verifying their documentary evidence of serving with contractor prior to the appointed day i.e. 30-6-1997 they were not proceeded against and rather they

were confirmed in services of the Board as could be seen from page 92 on the compilation.

(10) The petitioners also contended in their reply dated 29-11-2002 that they are entitled to defend themselves in departmental inquiry if any and in fact without holding such inquiry their services could not be terminated.

(11) One more show-cause notice dated 26-1-2003 by the Board.

(12) Writ Petition being Spl. C.A. No. 693 of 2003, which came to be withdrawn vide order dated 10-2-2004 as the Reference No. 25 of 2004 was made.

(13) Tribunal vide its order dated 6-10-2004 rejected the ad-interim relief application Exh. 7 of the petitioners.

(14) The petitioners filed Spl.C.A. No. 14106 of 2004 and obtained interim order against termination and direction for conducting the reference within four months.

(15) The award dated 20-1-2007 directing the respondents to hold departmental inquiry in accordant with the provisions of Service Regulations and Chapter 8 of the G.E.B. Establishment Manual.

(16) The respondent did not comply with the direction and passed order dated 12-6-2007 termination of the services of the petitioner impugned in these petitions.

(17) The respondent also filed petition challenging the award dated 20-1-2007.

(18) This Court passed some interim orders.

(19) But later on clarified that petitioner would not be entitled to insist for compliance therewith.

20. Against the aforesaid indisputable factual backdrop the Court has to examine the impugned order dated 12-6-2007. It is required to be noted that the Respondents have challenged the award dated 20-1-2007 only so far as it contains direction for holding inquiry in accordance with the provisions of Service Regulations and the provisions of Chapter 8 of the G.E.B. Establishment Manual. Let us see the findings of the Tribunal for issuing such directions.

21. The Tribunal has set out provisions of Service Regulation 26 of G.E.B. Service Regulations and held that present petitioners were certainly entitled for being governed by these regulations.

22. The Tribunal has also extracted and elaborately discussed various provisions of The Gujarat Electricity Board Establishment Manual and its Schedule and recorded its unequivocal findings based thereon that present petitioners were entitled to be governed by those provisions.

23. The Tribunal has also extracted and elaborately discussed provisions of G.S.O. 236, 238, 239 and 275 of the Service Regulations and recorded its

findings based thereon that the present petitioners were entitled to be governed by the same.

24. This Court is of the considered view that those findings of the Tribunal in these facts cannot be said to be so perverse as to warrant any interference under Article 227 of the Constitution. In fact looking to the provisions of Service Regulations and G.E.B. Establishment Manual in light of the peculiar facts of the instant case there was no possibility of any other view of the matter but to hold that the petitioners were entitled to be governed by those provisions.

25. The submissions of Ms. Bhaya learned Advocate for the respondent that as impugned notice dated 26-11-2002 has not been quashed by the Tribunal the respondent were not under obligation to hold inquiry as per the provisions of Service Regulations and Chapter 8 of the Establishment Manual is bereft of any merits. The show cause notice dated 26-11-2002 and its reply if found unsatisfactory then the authority could have proceeded against the petitioners in accordance with the provisions of service regulations and provisions of Chapter 8 of the Establishment Manual. Non-quashing of Notice dated 26-11-2002 in itself cannot be said to be an exemption from following provisions as stated hereinabove especially so when the Tribunal has issued very specific direction to hold inquiry in accordance with those provisions.

26. This Court is unable to accept submissions of Ms. Bhaya learned Advocate for the respondent that as the petitioners had not worked with contractor prior to the appointed day i.e. 30-6-1997 they were not entitled to be absorbed and as such their initial appointment itself being not legal and valid they did not have right to be governed by any disciplinary provisions and the Board was not under obligation to hold any inquiry as directed by the Tribunal. First of all a question arises whether respondent has conclusively proved and established after following principles of natural justice and after giving full opportunity to the petitioners that petitioners did not work as Contract Labour at T.P.S. Gandhinagar prior to the appointed day i.e. 30-6-1997. The answer would be emphatic "No". The initial order of Termination dated 11-9-1998 was based upon a report of Preliminary Inquiry submitted by two senior officers on 3-9-1998. This inquiry was necessitated on account of some complaint received on 27-7-1998. It appears that the preliminary inquiry was essentially held for pinpointing involvement of one Shri Chintan Shah an officer of the Board against whom also later on departmental inquiry appeared to have been held. The preliminary fact-finding inquiry and its conclusions were at the best only tentative conclusions not sufficient to establish and prove conclusively that petitioners did not work before the appointed day with contractor so as to render their initial absorption and appointment illegal. When the factum of petitioners' non-serving as contract labour before appointed day remained to be established the entire premise for terming initial "absorption" as illegal would be knocked off.

27. Ms. Bhaya's submission that as the petitioners obtained initial absorption fraudulently and on misrepresentation of being in service with Contractor as

Contract Labour prior to the appointed day i.e. 30-6-1997 their initial absorption and appointment was vitiated and void ab initio which required no departmental inquiry for termination is also bereft of any merits and deserves to be rejected. The judgments and authorities cited at the Bar by Ms. Bhaya are not applicable to the peculiar facts and circumstances of instant case. Moreover, it cannot be said that they lay down any absolute proposition of law as canvassed before this Court. On the contrary, the much cherished rule of affording reasonable opportunity to party before passing any adverse orders makes it incumbent upon all to follow principles of natural justice in every case before inflicting any adverse order upon any party. This Court is of the view that few glaring facts need to be reiterated at the cost of repetition also for indicating as to why the respondents were under obligation for holding departmental proceedings and establishing therein that petitioners did not work before the appointed day i.e. 30-6-1997 before passing the impugned order dated 12-6-2007. (1) The petitioners' initial absorption was based upon verification of documents and on the authority being satisfied that they were working as contract labour prior to the appointed day i.e. 30-6-1997 with Contractor at T.P.S. Gandhinagar. (2) The respondent received some complaint dated 27-7-1998 for some persons not being in employment with contract labour yet being absorbed on that basis rendering such absorption illegal. (3) The respondent initiated only preliminary inquiry by two senior officers of the Board. (4) It was not the case of the Board that this was a full inquiry against the petitioners also. (5) It is not the case of the Board that it followed principles of natural justice in holding the said inquiry. (6) On the contrary the report dated 3-9-1998 makes it abundantly clear that the inquiry was essentially for pinpointing involvement of one Shri Chintan Shah an officer of the Board who later on faced full-fledged inquiry. (7) The report dated 3-9-1998 cannot be said to be proof much less sufficient proof of petitioners' non-serving as contract labour with contractor at T.P.S. prior to the appointed day i.e. 30-6-1997. (8) The initial order dated 11-9-1998 of Termination was based on this report. (9) As it was absolutely unsustainable in eye of law the respondents withdrew the same and reinstated the petitioner vide their order dated 2-9-1999 as they were permitted to withdraw the same by this Court in writ petition. (10) After withdrawal of initial termination order dated 11-9-1998 and petitioners' reinstatement on 2-9-1999 the respondents recorded petitioners' statements about their serving with contractor before the appointed day i.e. 30-6-1997 as could be seen from the reply of the petitioner dated 29-11-2002, the proceedings were dropped and petitioners were confirmed in services of Board vide order dated 25-11-2000. (11) The fact of petitioners being confirmed only in the year 2000 after their reinstatement has not been denied by the respondent in any of their communications. (12) The petitioners have taken specific stand to this effect in their reply dated 29-11-2002 which has not been dealt with by the respondents. (13) The Tribunal has in its Award dated 20-1-2007 passed in Reference I.T. No. 25 of 2004 specifically directed the respondents to hold departmental inquiry as per the provisions of G.E.B. Service Regulations and in accordance with the provisions of Chapter 8 of the G.E.B.

Establishment Manual. (14) The respondent did not challenge the said direction and passed the impugned order of termination dated 12-6-2007 blatantly ignoring the same. (15) It was not open to respondent to ignore the direction dated 20-1-2007 without it being challenged in and set aside by the competent Court. (16) The subsequent filing of the petition being Spl.C.A. No. 17181 of 2007 for challenging the said direction after flaunting the same would have no curing effect. (17) The testimony of witnesses before the Tribunal go to show that petitioners have some case to prove, and therefore, also it was not open to the respondents to ignore the direction of the Tribunal and pass the impugned order dated 12-6-2007. Thus, the submission of Miss Bhaya deserves to be rejected.

28. Ms. Bhaya relying upon the Identity Cards of the petitioners produced before the Tribunal contended that as they contain their date of appointment which is subsequent to the appointed day i.e. 30-6-1997 they cannot be said to have been in service prior to 30-6-1997 also merits rejection only. It rather go to show that the petitioners on production of such Identity Card did not mislead or misrepresented and perhaps respondents' initial stand in the termination order and subsequent notices, is therefore only of mistake in absorbing the petitioners and it did not contain any allegation of fraud or misrepresentation. It is nowhere stated by the present employer that in what way the employment was offered to the petitioners. Whether there were any prescribed application form to be filled in or whether there was any other documents required to be produced is not mentioned and there has to be a specific say that the forged documents were produced by the workmen. The document is in the form of I. Card containing specific date which go to show that they were employed after 1997 but that in itself would not be a conclusive proof to show that they were not employed prior thereto. Assuming for the argument purpose that they were employed on the basis of their serving with contractor as contract labour prior to 30-6-1997, then also it cannot be said that they had misrepresented.

29. The respondent have not produced any other material whereupon it could be said that the present petitioners represented any way differently or contended anything which can be said that it was false representation.

30. The initial order dated 11-9-1998 had been issued simply terminating petitioners' services and it did not contain any reason for terminating the services of the petitioners. It requires to be noted that the initial employment order where under the petitioners were absorbed or regularized and terms thereof have not been produced anywhere. The fact remains to be noted that the petitioners and other employees of the contractor employed on the contract labour got their right to be absorbed in regular employment only from 9-6-1998 that is the date on which the notification abolishing Contract Labour Act came to be issued. Meaning thereby, the termination which was effected on 11-9-1998 was issued without any reason, at least present petitioners were not party to any such inquiry nor were they even informed possible cause for termination. The

respondent during pendency of the Special Civil Application No. 7928 of 1998 on its own volition decided to withdraw the termination order and sought opportunity to act in accordance with law. "In accordance with law" is very important phraseology. The order of termination dated 11-9-1998 which did not disclose any reason, came to be withdrawn while seeking liberty to act in accordance with law. It is very important to note at this stage that the employer being Gujarat Electricity Board ought not to have issued the confirmation letters especially when they were aware about the fact that earlier order of termination dated the order dated 11-9-1998 was there and it was issued as per the say of the respondent only on account of fact-finding inquiry, wherein the present petitioners were not party and on coming to the knowledge of the fact that the petitioners had procured employment fraudulently and or they were not eligible to be regularised as they did not work with the contract labourer contractor prior to 9-6-1997 there was no need to issue confirmation letter. Having issued the confirmation letters, confirming all the petitioners vide order dated 25-10-1999 after withdrawing earlier termination order dated 11-9-1998 a question arise, whether it was thereafter open to the respondent to treat the petitioners as employees who obtained employment fraudulently and terminate their services without following the inquiry procedure prescribed under the applicable service regulations. The action of confirmation itself cannot be brushed aside or termed to be a mere routine work. Because action of confirmation does confer right upon the employees and corresponding duty upon the employer, where under the tenure is secured. It is not a new principle to be settled in service jurisprudence that the confirmed employee has secured tenure and assurance that his services will not be terminated without following due procedure of law and he would be governed by the service regulations vis-a-vis the temporary and or ad hoc and or probationer who does not enjoy the said protection.

31. It is not the case that the respondent that the notice came to be issued for the so-called irregularities or fraudulently obtaining employment by the petitioners only after they were confirmed on 25-10-1999. On the contrary, the irregularities or so-called fraud was detected by them prior to the petitioners' confirmation and as a result thereof, the initial termination orders dated 11-9-1998 came to be issued. After having withdrawing the same and after confirming the employees the respondent cannot again go back on the specious plea that as it was fraud prior to they being into service of G.E.B. it was not misconduct warranting any inquiry.

32. The petitioners have one more justification for seeking full-fledged inquiry as the Tribunal's order where present respondent was party has been completely ignored. It is required to be noted that the order and award of the Tribunal dated 23-1-2007 is an order and decree which is binding on both the parties and when the respondent were party and it was binding upon them, they could not have by-passed the same with impunity and issue the order of termination dated 12-6-2007 without following the procedure as prescribed under provision of Chapter 8 Establishment Manual and Service Regulations.

33. The respondent cannot be permitted to argue that the Tribunal's order could be so construed as to giving them opportunity to continue with their show-cause notice dated 24-11-2002 and pass appropriate order even in ignorance and or by not complying with the operative portion direction of holding proceedings as per the provision of service regulations as well as the provision of Chapter 8 of the Establishment Manual.

34. The petition being Special Civil Application No. 17181 of 2007 is clearly an example or manifestation of rendering the plea untenable and bad. Had there been any such understanding then the respondent ought not to have filed the petition at all, but the specific direction of the Tribunal which is a decree between the parties is to be fulfilled or complied with and unless it is not set at naught the same remains binding. The order dated 12-6-2007 is required to be viewed from this angle also.

35. Against this factual backdrop, the contention of Ms. Bhaya would not appear to be tenable in eye of law. The reliance placed upon various decisions are governing the peculiar facts and circumstances of those respective cases. There cannot be a dispute that fraud vitiates everything but in the instant case first of all the requirement of full-fledged inquiry cannot be ruled out as the employees were required to be clearly told as to what were their misrepresentation. Whereby such misrepresentation was given by writing or it is only based upon the I. Card which does not disclose they were any way projected to be in employment prior to the appointed date. If the employee had not projected themselves to be the employees prior to the date of appointed day, at the best it was a mistake to continue them. It cannot be said that it was fraudulent act on the part of the petitioners as they did not produce anything which can be classified to be a forged or bogus document. All these pleas are required to be answered and the necessary evidence will have to be given especially when the petitioners were confirmed subsequent to detection of mistake, or so-called fraud on the part of their own employee.

36. The authority relied upon by Ms. Bhaya in case of R. Vishwanatha Pillai Vs. State of Kerala and Others, . In the aforesaid case also, it was a case of procuring employment on false caste certificate and it was recorded by the Court that though there was no requirement of attracting Article 311, it was held that requirement of Article 311 and Rules 6 and 7 of All India Services (Discipline And Appeal) Rules, 1969 had been complied with. Therefore, even this judgment is also of no avail to the respondent in the peculiar facts of the present case, where there is admittedly no charge sheet is issued to the employees nor they have been subjected to specific allegation or they have been given documents indicating that those documents were forged documents.

37. The third case relied upon by Ms. Bhaya in case of The Superintendent of Post Offices and Others Vs. R. Valasina Babu, wherein the disciplinary proceedings were in fact initiated and it was recorded that the caste certificate which was basis for procuring employment itself had been revoked by the issuing

authority that is the Collector. That factor was very much there on the record. In the instant case, it is no where the case of the respondent that whether the documents produced were established to be obtained by fraud at least for holding proper inquiry.

38. In case of Bank of India and Another Vs. Avinash D. Mandivikar and Others, it is again the case of caste certificate of scrutiny and Committee's recommendation having no applicability to the present case. The last citation in respect of Bhaurao Dagdu Paralkar Vs. State of Maharashtra and Others, , it was regarding report of the Inquiry Committee appointed by the High Court with regard to going into merits of the false claim of Freedom Fighter's Pension Scheme, which has no applicability to the case of present case.

39. Assuming for the sake of examining contention of Ms. Bhaya with regard to no requirement of holding full-fledged inquiry is necessary, a question arise as to even as per the perception of the respondent, some inquiry is required. Can the inquiry which is undertaken against its own officer so as to presume that there was justification for passing order impugned in this petition. The answer is No.

40. In fact, assuming for the sake of examining the submission that the respondent was not liable to follow the provision of Chapter 8 of the Establishment Manual, then also, can it be said that the procedure adopted so far is to afford an opportunity to defend to the petitioners. The answer is No. First of all, it has not been brought on record that which document the petitioners have forged. Nor has it been brought on record that under which application/form the petitioners said that they have misrepresented there case for employment.

41. In what circumstances when the notice of fraud had been available yet the petitioners were confirmed by the respondent. The employer cannot say that they had not been interested in pursuing the matter any further and once they have been confirmed after the knowledge of so-called fraud, can the employer be permitted to take away the factor of confirmation or render it nugatory and treat it to be obtained on fraud, not requiring any inquiry.

42. The cases cited hereinbefore did not indicate anywhere clearly that the inquiry is not needed, and therefore, this Court is of the considered view that the order impugned deserves to be quashed and set aside, and accordingly, it is quashed and set aside.

43. In view of above, the petitions being Special Civil Application No. 14161 of 2007 with Special Civil Application Nos. 14163 to 14168 of 2007 arc partly allowed. The impugned order dated 12-6-2007 is hereby quashed and set aside and the respondents are directed to reinstate the petitioners of the above petitions forthwith with consequential benefits, as if said order has never been passed. The respondents are at liberty to hold full-fledged inquiry in accordance with the directions issued by the Tribunal in Reference (I.T.) No. 25 of 2004 dated 20-1-2007. Rule made absolute to the aforesaid extent only. However there shall be no order as to costs.

44. Special Civil Application No. 17181 of 2007 is required to be dismissed with an observation that the respondents who are petitioners in Special Civil Application No. 17181 of 2007 ought to have either followed strictly the directions issued by the Tribunal or else, ought to have challenged the same in appropriate proceedings before passing the order dated 12-6-2007, ignoring the direction and treating as if the direction were not existing at all. This conduct of the respondents deserve deprecation. The petition being Special Civil Application No. 17181 of 2007 is accordingly dismissed with cost. Notice discharged.

45. Registry is directed to keep copy of this judgment in each of the petitions.
FURTHER ORDER DATED 29-12-2008:

The request for staying the order has been made on behalf of the respondents. This request is strongly objected by the Counsel for the workmen, as despite there was repeated orders passed by various authorities on various occasions, the respondents-employer has not paid any heed to hold the inquiry. In view of this, the request for staying the order cannot be granted. Hence, it is rejected.