

Mafatlal Naraindas Barot vs Divisional Controller, State ... on 13 December, 1965

Equivalent citations: 1966 AIR 1364, 1966 SCR (3) 40, AIR 1966 SUPREME COURT 1364

Bench: P.B. Gajendragadkar, K.N. Wanchoo, M. Hidayatullah, V. Ramaswami

PETITIONER:
MAFATLAL NARAINDAS BAROT

Vs.

RESPONDENT:
DIVISIONAL CONTROLLER, STATE TRANSPORT CORPORATION AND

DATE OF JUDGMENT:
13/12/1965

BENCH:
SATYANARAYANARAJU, P.
BENCH:
SATYANARAYANARAJU, P.
GAJENDRAGADKAR, P.B. (CJ)
WANCHOO, K.N.
HIDAYATULLAH, M.
RAMASWAMI, V.

CITATION:
1966 AIR 1364 1966 SCR (3) 40
CITATOR INFO :
R 1971 SC1828 (11)
RF 1973 SC 855 (24,26)
RF 1975 SC1331 (26,27,31,171,188,189)
R 1976 SC 888 (31)
R 1980 SC 840 (11)
RF 1989 SC 341 (11)

ACT:
Dismissal-employee absent without leave and failing to report for duty when directed-Dismised on payment of two months' salary in lieu of notice-Regulations governing service condition providing for opportunity to show cause against proposed punishment not complied with--Property of dismissal.

HEADNOTE:

The appellant, who was a permanent employee of the respondent State Transport Corporation, proceeded on 15 days' leave on January 15, 1962 and thereafter applied for an extension of his leave on medical grounds. This extension was refused and although the appellant was directed to report for duty immediately, he continued to be absent and wrote to the respondent on March 3, 1963, intimating him of his inability to join duty as he was still not well. By an order of the respondent dated March 9, 1962, the appellant's services were terminated with effect from January 16, 1962 on the ground of long absence.

After his representations and an appeal to higher authorities in the Corporation had been rejected, the appellant filed a petition for a writ of Certiorari to quash the dismissal order, but this petition was dismissed in limine.

It was contended on behalf of the appellant that in accordance with Clauses 4(b), 38 and 40 of Schedule A to the Regulations governing his service conditions, a charge should have been framed against him and that he was entitled to an opportunity to show cause against the proposed 'punishment. On the other hand it was the respondents' contention that though the order of dismissal referred to long absence as the cause of termination, the termination itself was not by way of punishment and the only right of the appellant under Regulation 61 was to two months' notice in lieu of pay; and that an examination of the correspondence and the circumstances of the case showed that the appellant had been given to opportunity to show cause and that there was in fact and in substance compliance with the rules of natural justice.

HELD : The order of termination passed against the appellant must be quashed as it was bad in law since it contravened the provisions of cl. 4(b) of the Regulations and also the principles of natural justice. [44 B]

Clauses 38 and 40 provided that absence without leave and without reasonable cause, and failure, without sufficient cause.. to report for duty when directed amount to acts of misconduct. Under clause 4(b) it was therefore obligatory on the part of the respondent to give the appellant a reasonable opportunity to show cause, by providing him with a copy of the charge or charges as well as the statement of the allegations that had been made against him. [43 F]

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil APPEAL No. 757 of 1964.

Appeal by Special Leave from the Judgment and Order, dated the 28th May, 1963 of the Gujarat High Court in Special Civil Application No. 419 of 1963.

R. Gopalakrishnan, for the appellant.

N. S. Bindra and B. R. G. K. A char, for the respondent. The Judgment of the Court was delivered by Satyanarayana Raju, J. This appeal, by special leave, is against the judgment and order of the High Court of Gujarat at Ahmedabad, dated May 28, 1963, dismissing in limine an application filed by the appellant under Art. 226 of the Constitution.

The facts material for the purposes of this appeal may be briefly stated. 'Me appellant was a permanent employee of the State Transport Corporation, Gujarat, hereinafter referred to as the Corporation. At the material time he was employed as a Writer in the Visnagar Depot of the Corporation in Mahasana District. On January 15, 1962, the appellant applied to the Divisional Controller, State Transport, Mahasana, for leave for 15 days on the ground that he had to attend to his 'personal work. On January 16, 1962, he was transferred from Visnagar to Ambaji where there was a vacancy in the office of the Depot Manager. On January 31, 1962, a formal order transferring the appellant from Visnagar to Ambaji was passed, and he was directed to join duty at Ambaji.

On that date, the appellant applied for extension of leave on medical grounds but his request was refused by an order, dated February 15, 1962. He was directed to report for duty at Ambaji within 48 hours of the receipt of notice failing which, he was warned, he would be removed from service. On March 3, 1962, the appellant wrote a letter to the Divisional Controller intimating him of his inability to join duty as he was still not well. To this letter, he enclosed a medical certificate.

By an order, dated March 9, 1962, the services of the appellant were terminated with effect from January 16, 1962, on the ground of long absence. The appellant made a representation to the Divisional Controller on March 17, 1962 and thereafter preferred an appeal to the General Manager of the Corporation. Both of them were rejected. A further appeal preferred by him to the L9SUPCI/66--4 4 2 appellate Committee was also unsuccessful. The Committee held that the leave applications of the appellant were made only with a view to evade joining duty at Ambaji. The appellant applied to the High Court of Gujarat under Arts. 226 and 227 of the Constitution, impleading the Divisional Controller as respondent, for the issue of a writ of certiorari to quash the order of dismissal. His petition was dismissed in limine on May 28, 1963. On June 17, 1963, the appellant applied for a certificate to appeal to this Court but it was refused. Thereafter he applied for special leave and that was granted by this Court. It may be stated at the outset that the respondent is an autonomous statutory Corporation formed under the provisions of the Road Transport Corporations Act, 1950. It is not disputed that the appellant could not invoke the provisions of Art. 311 of the Constitution.

The short question for determination in the appeal is whether the appellant was entitled to an opportunity to show cause against the proposed punishment as required by regulation No. 61 of the Regulations which govern the service conditions of the employees of the Corporation. It is admitted that no charge was framed against him nor was he given an opportunity to show cause.

It is contended for the respondent that though the order of termination referred to long absence as the cause of termination, the termination itself was not by way of punishment and the only right of the appellant was to two months' pay in lieu of notice under regulation No. 61, that assuming that the termination was by way of punishment, the appellant, as would be evident from the correspondence and the circumstances of the case, had been given an opportunity to show cause and that there was in fact and in substance compliance with the rules of natural justice. We may, at this stage, read the relevant regulations which admittedly govern the service conditions of the employees of the G Corporation. Regulation No. 61 provides as follows :

"The service of an employee, who does not hold a permanent appointment in State Transport or a lien on a permanent appointment in any Government Department from which he is transferred, are liable to be terminated by the Competent Authority by giving a calendar month's notice or a calendar month's pay in lieu :

Provided that the services of casual workers and part time workers may be terminated without any notice;

Provided further that a permanent employee of State Transport shall be entitled to 60 days' notice or 60 days' pay in lieu."

Clauses 38, 40 and 4 (b) of Schedule A to the Regulations provide:

"38. Irregular attendance, absence without leave and without reasonable cause and absence without permission."

40. Failure, without sufficient cause, to report, when directed, for duty, on the part of an employee to whom the leave he has applied for is refused."

"4(b). A person against whom action is proposed to be taken for any act of misconduct, shall be provided with a copy of the charge or charges as well as a statement of allegations that have been made against him, and over which enquiry is being held."

Clause 3 defines two classes of offences named acts of misconduct and minor lapses and delinquencies, respectively and sub cl. (ii) of cl. 3 states inter alia that the misconducts are those specified in Schedule A. Regulations 38 and 40 provide that irregular attendance, absence without leave and without reasonable cause and failure, without sufficient cause, to report, when directed, for duty amount to acts of misconduct. Clause 4(b) is specific and clear. Under that clause, it is obligatory on the part of the respondent, to give the appellant a reasonable opportunity to show cause, by providing him with a copy of the charge or charges, as well as the statement of the allegations that have been made against him. Admittedly, the respondent did not frame a charge against the appellant nor conduct any enquiry.

It is true that the respondent may visit the punishment of discharge or removal from service on a person who has absented himself without leave and without reasonable cause, but this cannot entail automatic removal from service without giving such person reasonable opportunity to show cause why he be not removed. The appellant is entitled to a reasonable opportunity to show cause which includes an opportunity to deny his guilt and establish his innocence which he can do, only when he knows what the charges levelled against him are and the allegations on which such charges are based. In our judgment the appellant was entitled to an opportunity to show cause against the action proposed to be taken against him.

The order of termination passed against the appellant is bad in law since it contravenes the provisions of cl. 4(b) of the Regulation and also the principles of natural justice. In all the circumstances of the case, we are satisfied that the impugned order must be quashed. A writ of certiorari will accordingly issue quashing the order of dismissal, but this will not preclude the respondent from making a fresh enquiry against the appellant after giving him reasonable opportunity to show cause as provided under cl. 4(b) of the regulations.

The appeal is accordingly allowed, but there will be no order as to costs.

Appeal allowed.