

CASE NO.:
Appeal (civil) 4868 of 1999

PETITIONER:
Karnataka State Road Transport Corporation & Another

RESPONDENT:
S.G. Kotturappa & Anr.

DATE OF JUDGMENT: 03/03/2005

BENCH:
N. Santosh Hegde & S.B. Sinha

JUDGMENT:
J U D G M E N T

W I T H

CIVIL APPEAL NO.4869 OF 1999

S.B. SINHA, J :

INTRODUCTION :

The Respondents were appointed as Badli Conductors by the Appellant herein. Their services having been found to be not satisfactory were terminated by an order dated 11.11.1983 and 9.9.1980 respectively. Industrial disputes in relation thereto having been raised by the Respondents herein, references were made by the State of Karnataka for adjudication thereof before the Presiding Officer, Labour Court, Bangalore which were marked as Reference Nos.57 of 1986 and 42 of 1983. By reason of awards dated 21.3.1987 and 31.10.1986, the respective orders of termination of the Respondents passed by the Appellant herein were held to be bad in law on the premise that the principles of natural justice had not been complied with and the workmen were directed to be reinstated in service with full back wages. The Appellant herein filed writ petitions thereagainst before the Karnataka High Court which by reason of the impugned judgments were dismissed. The Appellant is, thus, before us.

FACTUAL BACKGROUND :

The factual aspect of the matter may be noticed by us from Civil Appeal No.4868 of 1999.

The Respondent was appointed by a Memo. Dated 13.5.1982 in substitute vacancies arising out of Suspension Pending Enquiry/Suspension as a measure of specific punishment and absent cases etc., inter alia, on the following terms and conditions :

"1. You as a Badli (sic) is not an appointee in the Corporation and do not have any right merely because your services are so utilized on day-to-day basis.

2. You are not entitled to any kind of leave or other facilities to which the regular employees are entitled to.

3. You are not transferable from place of your utilization so long as you remain Badli.

4. You will be eligible for payment of wages for the number of days you are utilized for the job as such either daily or monthly, as per the rates prevailing in the Corporation.

5. Your utilization as Badli will be discontinued if for any reason, your services are found not suitable for the job for which you are utilised as Badli."

Allegedly, the Respondent committed misconduct on 13 occasions and upon enquiries held in that behalf, minor punishments were imposed upon him. The history-sheet in relation to the said Respondent is as under :

"HISTORY SHEET

Name : H.S. Keshav Murthy, Conductor

Sl. No. Case No.	Nature of misconduct reported or nature of good work reported	Punishment Imposed
1. 1344/79	Non account of one un-punched ticket.	6.00 1.12.99 Warned
2. 1343/79	Non account of two tickets.	5.60 Warned
3. 1480/79	Non account of one luggage ticket Non account of one ticket.	2.30 \026 9.11.79 Warned
4. 1612/79	Non account of 2/1 tickets Issue of tickets on sight Disorder by behaviour Way bill irregularities	\026 13.11.79
Service Withdrawn		
5. 1615/79	Not issual of 4 tickets	\026 22.11.79
6. 1617/79	Not issual of 4 tickets Non account of 4 tickets Stopped from duty. Finally warned	25.2.80
7. 900/80	Damages to the property door of Veh. No.6651 and insubordinations	\026 1.5.80 Memo cost

recovered and
continued.

8.

1166/80

Hurriedly issue of 4 tickets & issued the
same to the passengers without punching \026

11.5.80

Stopped duty
for 7 days

9.

625/80

Possession of excess cash of Rs.45.30 \026

3.6.80

Stopped duty
for 10 days

10.

1457/80

Non issual of one ticket \026 9.8.80

Stopped duty
for 2 days

11.

1115/80

Re-issual of 14 tickets \026 14.8.80

Removed from
Badli list.

"

Relying on or on the basis of the said purported conduct on the part of
the Respondent herein during the aforementioned period, he was
discontinued from the select list as Badli and his name was removed
therefrom by an order dated 11.11.1983, stating :

"Sri S.G. Kotturrappa was utilized as a Badli
Conductor on badli basis under clear terms and
conditions stipulated in the order cited above as per
which the undersigned being the Competent Authority is
empowered to discontinue from utilization as Badli
Worker any of the select list candidate as and when he is
found not suitable during the period he is engaged on
badli duties.

During the period of utilization as Badli Woker,
his services were found to be unsatisfactory. He is
therefore found not suitable for the post for which he was
utilized as Badli and he is discontinued from utilization
as Badli and his name is removed from the Select list.
His chance for further appointment as Conductor in terms
of his selection, is forfeited."

IMPUGNED AWARD AND JUDGMENT :

The Labour Court as also the High Court passed the impugned
awards and judgment relying on or on the basis of a decision of this Court in
S. Govindaraju vs. Karnataka S.R.T.C. and Another [(1986) 3 SCC 273]
wherein it was held that as by reason of such discontinuance in service, the
Respondent had forfeited his chance of being appointed having been found
unsuitable therefor, it was imperative on the part of the Appellant herein to
afford an opportunity of hearing to him.

CONTENTIONS :

Mr. K.R. Nagaraja, the learned counsel appearing on behalf of the
Appellant herein, raised two submissions before us. Firstly, the learned
counsel would contend that having regard to the offer of appointment, the
Respondent did not derive any legal right to continue as a Badli worker.
Reliance in this behalf has been placed on State of Uttar Pradesh and

Another vs. Kaushal Kishore Shukla [(1991) 1 SCC 691]. The decision of this Court in S. Govindaraju (supra), according to Mr. Nagaraja, is not applicable to the facts and circumstances of this case inasmuch as the concerned workman therein having completed 240 days of service during the preceding twelve months derived a right to continue, and, thus, the conditions precedent for termination thereof as contained in Section 25-F of the Industrial Disputes Act, 1947 were required to be complied with, which provision has no application in the instant case. Secondly, compliance of principles of natural justice would have been rendered in futility inasmuch past misconduct committed by the Respondent herein stood admitted. It is further not in dispute that before imposing such punishment, the Respondent had been given an opportunity of hearing.

The learned counsel appearing on behalf of the Respondent, on the other hand, would submit that the Respondent herein underwent the process of selection in terms of the Karnataka State Road Transport Corporation (Cadre and Recruitment) Regulations, 1982 framed under Section 45 of the Road Transport Corporation Act, 1950 and, thus, derived a right to continue in service. It was contended that the conditions of service of the Badli workmen being governed by the statutory regulations as contra-distinguished from contractual terms, the right to continue in service is a statutory right. The disqualification as contemplated under Sub-Regulation (5) of Regulation 10, it was urged, deserves strict construction. As by reason of the order of termination of the service, the right of the Respondent to be taken in permanent service of the Appellant Corporation stood forfeited, the learned counsel for the Respondent would submit, the Respondents must be held to have suffered civil consequences.

CONDITIONS OF SERVICES :

The Road Transport Corporation Act, 1950 was enacted by the Parliament to provide for the incorporation and regulation of Road Transport Corporations. The Appellant-Corporation was constituted in terms of the provisions of the said Act. Section 45 of the 1950 Act empowers the Corporation to make regulations with the previous sanction of the State Government and the rules made thereunder for the administration of the affairs of the Corporation. Pursuant to or in furtherance of the said power, the Appellant framed the Karnataka State Road Transport Corporation (Cadre and Recruitment) Regulations, 1982. Before coming into force of the 1982 Regulations, the MSRTC C&R Regulations 1968 held the field, Regulation 16 whereof reads as under :

"16. Procedure for Appointment of Badlis.-

1. A 'BADLI' worker is one who is employed on a day to day basis in any vacancy caused by the absence of any employee and who is paid for the number of days he works as such, either daily or once in a month.

2. A list of Badli workers shall be maintained in a Depot or Workshops. The appointment of a Badli worker shall be made from among those in the list of Badli workers who are present at the Depot/Workshop, preference being given to the person who arrived first at the place of duty. If for any reason a Badli worker is not found suitable for the post, his name may be removed from the list of Badli workers.

3. A badli worker would be eligible for such day to day appointment as long as his name figures in the list of Badli workers."

The regulations are pointers to the fact that the rights of the Badli workers are not absolute in nature.

The 1982 Regulations came into force with effect from 1.1.1983 and Regulation 4 provides for eligibility for appointment and disqualifications for appointment, Sub-Regulation (6) whereof reads as under :.

"No person who has been convicted in an offence, involving moral turpitude by a Court of law or dismissed from service in this Corporation or Government, State or Central or any Local Bodies or any Industrial or Commercial concerns or other State Transport Undertakings for offence or misconduct involving moral turpitude, or a selected candidate removed/terminated for offence of misconduct while working as Badli in the Corporation shall be eligible for appointment."

The expression 'disqualification' in or opinion does not require strict construction in all situations as meaning thereof must be rendered keeping in view the text and context of the statute. [See K. Prabhakaran etc. vs. P. Jayarajan etc. (2005) 1 SCC 754].

Regulation 10 provides for procedure for appointment, Sub-Regulation (5) whereof reads as under :

"A selected candidate waiting for being appointed regularly in accordance with these Regulations may be appointed as a temporary employee before such regular appointment against a short term vacancy or as a substitute in place of regular employee under suspension pending enquiry or suspension as a measure of punishment or on leave for a period not less than one month but not exceeding 3 months."

It is not in dispute that by a judgment and order dated 13.2.1987 passed in Writ Petition Nos. 14625 to 14627 of 1986, the Karnataka High Court declared the last sentence relating to forfeiture in Regulation 10(5) as invalid, whereupon an amendment was introduced therein with effect from 13.9.1989 deleting the last sentence.

The power of appointment is vested in the Corporation by reason of the provisions of the said Act and the Regulations framed thereunder. 'Selected candidate' has been defined in Sub-Regulation (3) of Regulation 2 to mean a candidate whose name appears in a list of candidates selected for appointment to any service, class or category by the Selection Authority. The said Regulations provide for method of recruitment, the qualifications required therefor, the mode of selection, probation etc. A select list for appointment of the permanent workman is contained in Sub-Regulations (4) and (5) of Regulation 9. Such select list is to be prepared after interviewing the candidates who were found suitable therefor in order of merit. Sub-Regulation (5) of Regulation 10, however, postulates preparation of a wait list. The person whose name appears in such wait list may either be appointed as temporary employee or engaged as Badli worker on day to day basis in any vacancy caused by absence of any employee and would be paid for the number of days he works as such either daily or once in a month.

The mode of appointment, therefore, postulates appointment in three tiers. The status of a temporary employee is higher than a Badli worker. The names of Badli workers are not to be included in the select list but in the wait list. A select list of selected candidates prepared by the selection authority is required to be equal to the number of existing vacancies plus vacancies that may arise over a period of one year from the date of publication as may be assessed by the Selection Authority and only in exceptional cases, the validity thereof can be extended for a period not exceeding six months. The select list or the wait list, as the case may be,

therefore, does not have an indefinite life. A bare perusal of the memo. dated 13.5.1982 in terms whereof the Respondent was appointed clearly states that he was appointed in the Corporation and did not have any right merely because his services were so utilized on day to day basis. The services of a Badli worker may be discontinued, if for any reason he is not found suitable for the job for which his services were utilized as Badli. A Badli worker is eligible for payment of wages only for the number of days his services are utilized.

The contentions of the parties as regard the status of the Respondent are, therefore, required to be considered in the aforementioned backdrop.

It is not a case where the Respondent has completed 240 days of service during the period of 12 months preceding such termination as contemplated under Section 25-F read with Section 25-B of the Industrial Disputes Act, 1947. The Badli workers, thus, did not acquire any legal right to continue in service. They were not even entitled to the protection under the Industrial Disputes Act nor the mandatory requirements of Section 25-F of the Industrial Disputes were required to be complied with before terminating his services, unless they complete 240 days service within a period of twelve months preceding the date of termination.

Even where an adverse report regarding the work of a temporary Government servant is made or a preliminary enquiry on the allegation of improper conduct is carried out, the same would not stand in the way of the employer to terminate his service.

See Kaushal Kishore Shukla (supra). This Court in Kaushal Kishore (supra) distinguished its earlier decisions in Nepal Singh vs. State of U.P. [(1985) 1 SCC 56] and Ishwar Chand Jain vs. High Court of Punjab and Haryana [(1988) 3 SCC 370]. The Court noticed that since a temporary Government servant is entitled to protection of Article 311(2) of the Constitution in the same manner as a permanent Government servant, very often the question arises as to whether an order of termination is in accordance with the contract of service and relevant rules regulating the temporary employment or it is by way of punishment and held :

"3. In the instant case the respondent was a temporary government servant and there was adverse report regarding his work which was reflected in the adverse remarks made for the year 1977-78. The competent authority held a preliminary inquiry in the allegations of improper conduct in carrying out unauthorised audit of Boys Fund of an educational institution, on result of the preliminary enquiry no charges were framed against the respondent, no officer was appointed for holding the departmental inquiry instead the competent authority chose to terminate the respondent's services in exercise of its power under the terms of contract as well as under the relevant rules applicable to a temporary government servant. It never intended to dismiss the respondent from service. Holding of preliminary inquiry does not affect the nature of the termination order. The allegations made against the respondent contained in the counter-affidavit by way a defence filed on behalf of the appellants also do not change the nature and character of the order of termination. The High Court failed to consider the question in proper perspective and it interfered with the order of termination in a casual manner."

The terms and conditions of employment of a Badli worker may have a statutory flavour but the same would not mean that it is not otherwise contractual. So long as a worker remains a Badli worker, he does not enjoy a status. His services are not protected by reason of any provisions of the

statute. He does not hold a civil post. A dispute as regard purported wrongful termination of services can be raised only if such termination takes place in violation of the mandatory provisions of the statute governing the services. Services of a temporary employee or a badli worker can be terminated upon compliance of the contractual or statutory requirements.

NATURAL JUSTICE :

In Govindaraju (supra), the concerned workmen had worked for more than 240 days, his retrenchment came within the purview of Section 2(oo) (bb) of the Industrial Disputes Act. Despite the fact that provisions contained in Section 25-F of the Industrial Disputes Act had not been complied with, this Court held that as in terms of Sub-Regulation 5 of Regulation 10 his name should have been removed from the select list, serious consequences entail as he forfeited his right to employment in future and, thus, the principles of natural justice were required to be complied with though no elaborate enquiry would be necessary, holding :

"\005Giving an opportunity of explanation would meet the bare minimal requirement of natural justice. Before the services of an employee are terminated, resulting in forfeiture of his right to be considered for employment, opportunity of explanation must be afforded to the employee concerned. The appellant was not afforded any opportunity of explanation before the issue of the impugned order; consequently the order is rendered null and void being inconsistent with the principles of natural justice\005."

In that case it was held that the provisions of Section 25-F were not complied with. As the statutory requirements of payment of compensation were conditions precedent for retrenchment of the workman, it was invalid and operative, and, thus, it was not necessary for this Court to determine the larger question.

Govindaraju (supra) has been distinguished by this Court in Dr. J. Shashidhara Prasad vs. Governor of Karnataka and Another [(1999) 1 SCC 422]. The observation as regard the right of a person to remain in the select list was doubted in view of the subsequent decisions on the point. This Court categorically held that a person does not have a right to appointment only because his name had appeared in the select list. In a case of Badli worker, his name appears not in the select list but in the wait list. Even in a case where the order of termination is found to be bad in law, his name can only be considered to continue in the wait list and, thus, he could not have been automatically absorbed in the service.

In any event, in the instant cases, it has not been found that the Respondent was entitled, before his services were terminated, to receive compensation in terms of the provisions of Section 25-F of the Industrial Disputes Act. It was not a case where the services of the Respondent could have been terminated only in compliance with the provisions of Section 25-F and on the Appellant's failure to do so he had derived a right to continue in service. Furthermore, in Govindaraju (supra) there was no case of proved misconduct made out against the workman unlike the present cases. In this case, the Appellant's contention that before imposing the punishments upon the Respondent, opportunities of hearing had been granted to the concerned workman is not denied or disputed. Imposition of such punishment upon the workmen had not been questioned by them. They accepted the same and, thus, the same attained finality. The history-sheet of the Respondents clearly show that opportunities after opportunities had been given to them to improve themselves but they did not avail the same. It was in that situation if the services of the Respondents were found not satisfactory and they were continued from service, no fault can be found with the action the Appellant herein. There is another aspect of the matter which cannot be lost sight of. The High Court of Karnataka had declared the last sentence of Sub-Regulation (5) of Regulation 10 as invalid. In view of such declaration, the Respondent did not forfeit his right for being considered for appointment from the select list subject, of course, to fulfillment of other conditions, if

any. The question as to what extent, principles of natural justice are required to be complied with would depend upon the fact situation obtaining in each case. The principles of natural justice cannot be applied in vacuum. It cannot be put in any straight jacket formula. The principles of natural justice are furthermore not required to be complied with when it will lead to an empty formality. What is needed for the employer in a case of this nature is to apply the objective criteria for arriving at the subjective satisfaction. If the criterias required for arriving at an objective satisfaction stands fulfilled, the principles of natural justice may not have to be complied with, in view of the fact that the same stood complied with before imposing punishments upon the Respondents on each occasion and, thus, the Respondents, therefore, could not have improved their stand even if a further opportunity was given. [See Escorts Farms Ltd., Previously known as M/s Escorts Farms (Ramgarh) Ltd. vs. Commissioner, Kumaon Division, Nainital, U.P. and Others [(2004) 4 SCC 281, Bar Council of India vs. High Court of Kerala (2004) 6 SCC 311, A. Umarani vs. Registrar, Cooperative Societies and Others (2004) 7 SCC 112] and Divisional Manager, Plantation Division, Andaman & Nicobar Islands vs. Munnu Barrick and Others (2005) 2 SCC 237].

STATUS OF BADLI WORKERS

We have noticed hereinbefore the relevant provisions of the Regulations. The status of a Badli cannot be better than a probationer. If the services of the probationer can be terminated for not being able to complete the period of probation satisfactorily, there is no reason as to why the same standard cannot be held to be applicable in the case of Badli worker.

What would be the legal requirements for discharging a probationer on the ground of his unsatisfactory performance has recently been considered by us in Municipal Committee, Sirsa vs. Munshi Ram [JT 2005 (2) SC 117], wherein it was held :

"16. From the above, it is clear assuming that there was some sort of misconduct, as noticed in the evidence of the witnesses of the management in the cross-examination, the same could not be used as evidence by the Labour Court or by the appellate court for coming to the conclusion that an order of termination which is otherwise simpliciter in nature is motivated by any consideration other than the decision of the management as to the satisfactory nature of the workman concerned."

It was further observed :

"\005Assuming that there was an incident of misconduct or incompetency prior to his discharge from service, the same cannot be ipso facto be termed as misconduct requiring an inquiry, it may be a ground for the employer's assessment of the workman's efficiency and efficacy to retain him in service, unless, of course, the workman is able to satisfy that the management for reasons other than efficiency wanted to remove him from services by exercising its power of discharge."

The Appellant watched the conduct of the Respondents for an year and only on completion of the period during which the select list remained valid, terminated their services as having been found not satisfactory.

In Registrar, High Court of Gujarat and Another vs. C.G. Sharma [(2005) 1 SCC 132], this Court observed :

"\005The order of termination is termination simpliciter and not punitive in nature and, therefore, no opportunity needs to be given to the respondent herein.

Since the overall performance of the respondent was found to be unsatisfactory by the High Court during the period of probation, it was decided by the High Court that the services of the respondent during the period of probation of the respondent be terminated because of his unsuitability for the post. In this view of the matter, order of termination simpliciter cannot be said to be violative of Articles 14, 16 and 311 of the Constitution. The law on the point is crystallized that the probationer remains a probationer unless he has been confirmed on the basis of the work evaluation. Unless the relevant Rules under which the respondent was appointed as a Civil Judge, there is no provision for automatic or deemed confirmation and/or deemed appointment on regular establishment or post, and in that view of the matter, the contentions of the respondent that the respondent's services were deemed to have been continued on the expiry of the probation period, are misconceived."

CONCLUSION :

For the reasons aforementioned, the impugned judgments cannot be sustained which are set aside accordingly. The appeals are allowed. However, in the facts and circumstances of the case, there will be no order as to costs.