
(1971) 12 KL CK 0027
In the High Court Of Kerala

A. Davood Khan and Another

APPELLANT

Vs

State of Kerala and Others
 K.R. Achutha Warriar Vs
M.K. Ambujan and Others

RESPONDENT

Date of Decision : 22-12-1971

Acts Referred:

Constitution of India, 1950 — Article 226

Road Transport Corporations Act, 1950 — Section 3, 34, 45, 52

Citation : (1972) 2 LLJ 110

Hon'ble Judges : M.U. Isaac, J

Bench : Single Bench

Judgement

M.U. Isaac, J.—These writ petitions arise out of the same facts; and they seek the same reliefs. Hence they have been heard jointly, and are being disposed of by this common judgment. The documents produced in both the cases are more or less the same; and I shall be referring in this judgment to the exhibits in O.P. 3607 of 1969.

2. The Transport Department of Travancore Cochin recruited a large number of conductors in 1952, on the advice of the Public Service Commission. The petitioners in these cases, and respondents 1 to 4 in O.P. No. 3997 of 1969 were included in the advice list of the Commission. Respondent No. 4 in both cases is the same. Pursuant to the advice, the petitioners were appointed, but the said respondents were refused appointment, though they had higher ranks than the petitioner, in view of adverse police reports about them. However, these respondents were again advised for appointment by the Commission a few years later, and they were appointed on the basis of the said advices. Respondents 1 and 2 were appointed in 1958, while the third respondent was appointed in 1960 and the fourth respondent was appointed in 1956.

3. The Kerala State Road Transport Corporation (hereinafter referred to as the Corporation) was established with effect from 15-3-1965, by the State Government in exercise of its power u/s 3 of the Road Transport Corporation Act,

1950 (hereinafter referred to as the Act). The existing transport undertaking of the State Transport Department, along with all persons employed in the said department, was transferred to the Corporation with effect from 1-4-1965. Accordingly, the services of the petitioners and respondents 1 to 4 in O.P. No. 3997 stood transferred to the Corporation. Section 34 of the Act empowers the Government to give general instructions to the Corporation after consultation with it regarding recruitment, conditions of service and training of its employees, etc. The Corporation is bound to follow them. The Government have accordingly given instructions as per Notification No. 4936/TC4/65/PW, dated 22nd March, 1965. Section 45 of the Act empowers the Corporation to make regulations for the administration of the affairs of the Corporation, and in particular for the matters enumerated therein. One of them is conditions of appointment and service and the scales of pay of its officers and servants. Instruction No. 8 provides that all rules made and all orders and notifications issued by the State Government applicable to the State Transport Undertaking immediately before it was taken over by the Corporation shall continue in force as if they had been made or issued by the appropriate authority under the Act or the Rules thereunder, until they are altered or repealed by the competent authority. Accordingly, the Kerala State and Subordinate Services Rules, 1958. (hereinafter referred to as the State Service Rules) became applicable to the Corporation. Instructions Nos. 11 and 12 read:

11. The Corporation shall guarantee continued employment to all such personnel as are transferred for service under the Corporation, under the same terms and conditions of service as were applicable to them under Government immediately before such transfer.

12. The Corporation shall pay to the employees so transferred their pension, gratuity and provident fund according to the relevant rules, notifications and orders of Government in force and applicable to them immediately before such transfer as and when such benefits accrue.

4. On 22-8-1968, the Governor of Kerala in exercise of his powers under Rule 39 of the Kerala Service Rules issued a Notification, G.O. Ms. No. 283/68/Home, copy of which is marked as Ext. R-2, making the following orders in relaxation of the existing rules:

(1) The candidates who have been appointed to the Public Service on cancellation of the department orders, will be given rank and seniority in the category to which they are advised, as on the date of their original advice or selection. They will also be given rank and seniority in any higher non-selection posts to which they would have been promoted had they been appointed as per the original advice, after satisfactory completion of probation in the category to which they were originally advised/selected and given notional increments in such higher cadre, subject to the above condition.

(2) The period between the date of original advice and the date of actual

appointment of such candidates will be counted as duty under Rule 12(7), Part I, K.S.R. for purposes of increment and pension but not for leave. The period will be counted as duty for increment in the higher grade also in case where these individuals would have got promoted to the higher non-selection post on a date prior to the actual appointment, but only after satisfactory completion of probation in the category to which they are originally advised/selected. In either cases, arrears of pay will not be given.

(3) Similarly, they will also have to qualify in the tests prescribed for the post, but will be given two years' time for acquiring test qualifications. This will be in relaxation of general Rule 13-A of the Kerala State and Subordinate Services Rules. But if their turn for promotion arises during this period their cases will be considered for promotion even if they may not have passed the tests.

The Corporation decided to extend the benefits of Ext. R-2 to its employees. Ext. P-3, dated 26-6-1969, is a memorandum issued by its General Manager informing all its officers of the said decision. Ext. P-3 reads:

In pursuance of the decision of the Corporation, all officers and sections in chief office are informed, that all the service benefits admissible under the Government Order, M.S. No. 283/68/Home, dated 22-8-68, are extended to those persons who were denied appointment in the former State Transport Department on adverse report of police verification and who were later given appointment after reviewing the original orders prior to 1960, subject to the condition, that they shall not be eligible for any back arrears of pay and allowances.

Accordingly, the seniority of all conductors in the Corporation was refixed with the result that respondents 1 to 4 in O.P. No. 3997 who were below the petitioners as per seniority list prepared as on 1-4-1965, were assigned much higher ranks than the petitioners. Ext. P-4, dated 18-7-1969, is the order of the General Manager refixing seniority of the said respondents. These writ petitions have been filed to quash Ext. P-4 and to restrain, the Corporation from taking any steps to implement the said order.

5. The petitioners in O.P. No. 3607 contended that Rule 39 of the Kerala Service Rules, by its own terms, does not apply to the Corporation, that the adoption by the Corporation of Ext. R-2, the order issued by the Governor under the said Rule, would offend the other provisions of the Kerala Service Rules which the Corporation has adopted, and that the decision of the Corporation to adopt Ext. R-2, was, therefore, invalid. There was some discussion at the Bar regarding the constitutional validity of the above rule; but that question does not arise here, as admittedly Ext. R-2 "is not binding on the Corporation, had it not been adopted by the Corporation. Shri S. Easwara Iyer, counsel for the third respondent, in O.P. No. 3997, submitted, that the State Service Rules in their application to the Corporation have only the legal position of regulations made by the Corporation u/s 45 of the Act, and that the petitioners are not entitled to any relief under

Article 226 of the Constitution, as violation of such regulations amounts only to a breach of the contract of service. It is by instruction No. 8 of the general instructions given by the Government u/s 34 of the Act, that the State Service Rules have been made applicable to the Corporation. Under the said instruction, these rules would apply as if they had been made by the appropriate authority under the Act. The power of the Corporation under the Act is only to make regulations; and, therefore, counsel is right in his submission that the State Service Rules in their application to the Corporation have only the force of regulations made by it u/s 45 of the Act. In support of his contention that the petitioners are not entitled to relief under Article 226 of the Constitution for violation of the regulations, counsel referred me to the decision of the Supreme Court in *Executive Committee, U.P. Warehousing Corporation Vs. Chandra Kiran Tyagi*, . In that case, the respondent who was an employee of the Warehouse Corporation¹ was dismissed from service for misconduct after an enquiry as required by the regulations made by the Corporation under the Agricultural Produce (Development and Warehousing) Corporations Act, 1956. The respondent filed a suit for a declaration that his dismissal was illegal, and for other reliefs. The trial Court held that the dismissal was bad under law, as if the enquiry conducted against the respondent did not comply with Regulation No. 16. That decision was upheld by the High Court; but the Supreme Court reversed the decision holding that the regulations though made by the Corporation in exercise of its statutory powers, only laid down the conditions of service of its employees, that they had no force as statutory rules, and that the respondent's only remedy for his dismissal from service in breach of the regulations was only to sue for damages. The Court stated:

In the instant case, a breach has been committed by the appellant of Regulation 16(3) when passing the said order of dismissal, inasmuch as the procedure indicated therein has not been followed. The Act does not guarantee any statutory status to the respondent, nor does it impose any obligation on the appellant in such matters. As to whether the rules framed u/s 52 deal with any such matters, does not arise for consideration in this case as the respondent has not placed any reliance on the rules and he has rested his case only on Regulation 16(3). It is not in dispute that, in this case, the authority who can pass an order of dismissal has passed the same. Under those circumstances, a violation of Regulation 16(3), as alleged and established in this case, can only result in the order of dismissal being held to be wrongful and, in consequence, making the appellant liable for damages. But the said order cannot be held to be one which has not terminated the service, albeit wrongfully, or which entitles the respondent to ignore it and ask for being treated as still in service.

6. The above position was affirmed by the Supreme Court in *Indian Airlines Corporation Vs. Sukhdeo Rai*, . In that case, the respondent who was dismissed from the service of the appellant, filed a suit for a declaration, that his dismissal was illegal and void and he continued in service, since the disciplinary enquiry conducted against him had been in breach of the procedure laid down by the

regulations made by the appellant, u/s 45 of the Air Corporation Act, 1953. The trial Court decreed the suit, which was confirmed by the High Court. The Supreme Court reversed that decision, holding that the respondent was not entitled to get such a declaration. The Court said:

The regulations contain the terms and conditions which govern the relationship between the Corporation and its employees. Though made under the power conferred by the statute, they merely embody the terms and conditions of service in the Corporation but do not constitute a statutory restriction as to the kind of contracts which the Corporation can make with its servants or the grounds on which it can terminate them.

7. The position would be the same, when an employee of the Corporation complains about violation of the provisions of the State Service Rules, which have been made applicable to the Corporation by virtue of instruction No. 8 of the general instructions issued by the Government u/s 34 of the Act. But the respondents before me are confronted with another difficulty. The petitioners were employees in the State Transport Department, whose services were transferred to the Corporation. The terms and conditions of their service are protected by instructions 11 and 12. Accordingly, the transferred employees are entitled to continue employment under the Corporation on the same terms and conditions as were applicable to them immediately before their transfer to the Corporation. This attracts the application of the State Service Rules. Thus the transferred employees get statutory protection of the said rules. In other words, the State Service Rules apply differently to the transferred employees and to the persons appointed by the Corporation in its service. The application of Ext. R-2, the order issued by the Governor under Rule 39 of the State Service Rules, to the transferred employees of the Corporation would, therefore, be violative of the statutory protection available to persons like the petitioners under the State Service Rules, by virtue of instructions Nos. 11 and 12.

8. The petitioners in these cases have got a common contention, namely respondents 1 to 4 in O.P. No. 3997 would not fall within the ambit of Ext. P-3, the memorandum issued by the General Manager of the Corporation, extending the benefits of Ext. R-2 to the employees of the Corporation. The argument is that Ext. P-3 makes the said benefits available only to those who were denied appointments in the State Transport Department on adverse police report and who were later given appointments after reviewing the original orders prior to 1960, and that these respondents are persons who were appointed on fresh advices by the Public Service Commission, and not persons appointed "after reviewing original orders." It was contended on behalf of respondents 1, 2 and 4 in O.P. 3997 that they are persons appointed later after reviewing the original orders refusing appointments to them. This contention cannot stand in the light of the documents marked Exts. P-3 and P-4 in O.P. No. 3997, which show that these persons were subsequently advised for an appointment and that it was on the basis of those advices that they were appointed. The counter affidavit filed

by the third respondent in this O.P. concedes that he was appointed on the basis of such an advice. All of them contend that they did not apply for fresh selection, and that the Public Service Commission revived its original advice of 1952 as a result of the Government's decision to review the orders refusing their appointment on the basis of adverse police reports. It may be that a fresh selection was not made ; though it is very unlikely. Whatever that may be, it is irrelevant. The " Commission made fresh advices; and it was on the basis of those advices that they were appointed. The Commission has no power to review its advice. If the appointments of these respondents were made as a result of a review of the earlier orders refusing to appoint them, then there was no need for the fresh advices from the Commission; the Government could have straightaway appointed them. Therefore, the contention that these appointments would fall within the ambit of Ext. P-3 cannot be sustained.

9. It was further contended on behalf of these respondents, that the order of the State Government, Ext. R-3, dated 2-5-1969, is a clarification of Ext. R-2, and that the said respondent would come within the ambit of Ext. R-2, by virtue of this clarification. I do not think that Ext. R-3 would improve the position. Suffice to say that the Corporation has by its memorandum, Ext. P-3, adopted only Ext. R-2 and not Ext. R-3. The above contention is not, therefore, available to these respondents.

10. In the result, I hold that adoption by the Corporation of the order, Ext, R-2. issued by the Governor under Rule 39 of the Kerala State and Subordinate Services Rules and the re-fixation of seniority by the Corporation as per Ext. P-4 are invalid and ultra vires. Accordingly, I quash Ext. P-4 and direct the Corporation to fix the seniority of the petitioners as on 1-4-1965 in accordance with the Kerala State and Subordinate Services Rules. The petitioners would be entitled to promotions and all other benefits on that basis. In the circumstances of the case, I make no order as to costs.