

(2002) 11 AHC CK 0096

In the Allahabad High Court

Case No : C.M.W.P. No's. 40874 and 44688 of 2002

Arun Kumar Kaushik and Others

APPELLANT

Vs

Regional Manager, Meerut Region, U.P.S.R.T.C. and Others

RESPONDENT

Date of Decision : 15-11-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2003) 1 AWC 617

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Advocate : Siddhartha, for the Appellant; Avinish Mishra, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Srivastava, J.—These two petitions involve similar controversy to be decided and with the consent of the parties, they are being disposed of by a composite decision.

2. Subject matter of impingement in the present petition is the order dated 24.7.2002 passed by Regional Manager, U. P. State Road Transport Corporation, Sohrab Gate, Meerut, whereby terminating the contract as a consequence flowing from general order of the Corporation dated 22.2.2002 and consequential order dated 27.2.2002.

3. Civil Misc. Writ Petition No. 44688 of 2002, has been filed as a composite petition on behalf of seven petitioners. Similarly, Writ Petition No. 40874 of 2002, has been filed by equal number of petitioners for similarly relief. The petitioners claim to have been inducted into the service of the Corporation in the year 1999 on contract basis though on varying dates. The matrix of allegations in the petition is that the petitioners by reason their being dependants of retired employees of the Corporation, were appointed on contract basis and before harnessing them to the work as Conductors, they were imparted brief training so as to make them familiar with the Rules and Regulations of the Corporation and

also of road travelling.

4. Heard learned counsel for the petitioners and also Sri Avinish Mishra appearing for the respondents at prolix length. The learned counsel for the petitioner canvassed that persons appointed contemporarily along with the petitioners in the year 1997 have been retained in service while dispensing with the services of the petitioners in the Corporation and this action of the Corporation wears the taint of arbitrariness and suffers from the vice of discrimination and the order terminating the services of the petitioners commends itself to be set aside. He further canvassed that the petitioners were rightly engaged as conductors under the policy decision made by the Corporation and abnegation of rights created by the Corporation under the policy decision sans opportunity of hearing renders the order vitiated in law and on this count alone, the impugned order is liable to be quashed. He further submitted that the work and conduct of the petitioners during the period had been unimpeachable and they being unemployed persons and having regard to the fact that vacancies are still there, and also taking into reckoning the fact that they are dependants of retired employees of the Corporation and they were imparted training, the termination of their contract by one stroke of pen without affording opportunity of hearing leaves a gaping hole in the balloon of fairness expected of the competent authority in such matters. Sri Avinish Misra learned counsel appearing for the opposite parties in opposition contended that under the policy decision taken by the Corporation as far back as in June, 1994, certain private buses were articulated to be plied under agreement by the Corporation in June, 1994, in certain contingencies and for emergent need of peak season for which it was decided to engage conductors on contract basis from amongst retired employees of the Corporation and Army personnel. A Committee, proceeds the submission, was constituted for the said purpose headed by Regional Chief Manager and two others members consisting of Regional Managers (Service). Conditions stipulated in the policy decision dated 22.2.2002 for engagement being that such engagement on contract basis should be from amongst the Apprentices of the Corporation, retired employees of the Corporation and Ex-servicemen in case of peak season or in other contingencies. It is further contended by the learned counsel that petitioners do not fall in any of the categories provided in the policy decision and hence they were rightly disengaged by the impugned orders. He further contended that there is no indicia of discrimination at all inasmuch as 97 persons engaged in the year 1997 constitute categories different from the petitioners and they come within the periphery of the categories prescribed under the policy decision of the Corporation. It is further submitted that they are covered by the general orders issued by the Head Office and it was for this reason that they have been retained and allowed to work. The allegations of elements of arbitrariness, discrimination in violation of Articles 14 and 16 of the Constitution have been repudiated in no delphic terms.

5. I have considered the arguments made across the bar in all their ramifications. Learned counsel for the petitioners have not drawn attention of the

Court to any of the rule for regularisation, or policy decision of the Corporation in aid of the submission that the petitioners are covered either by policy decision of the Corporation taken on June 3, 1994 and consequent general orders or the policy dated 22.2.2002 or consequent orders issued by the Corporation. From a perusal of the aforesaid document, it crystallises that only three categories were prescribed for being engaged on contract basis in case of exigencies and peak seasons for such engagements as stated supra and dependants of retired employees of the Corporation do not form part of any of the categories prescribed by the Corporation in its policy decision. The learned counsel for the petitioners relied heavily upon letter dated 18th May, 1999, issued by Assistant Regional Manager and the contents of which are that those retired employees of the Corporation who are not willing to be engaged on contract basis, may get their sons who have passed intermediate examination and are between the age of 18 to 32 years, engaged in the Corporation on contract basis. This letter does not appear to have been issued pursuant to a policy decision of the Corporation nor does it appear to have been passed by a competent authority. It is borne out from the submissions made across the bar that the letter under reference has been issued by the Assistant Regional Manager as a result of some oral instructions from higher-ups and by any reckoning, these instructions cannot be elevated or exalted to the status of a policy decision of the Corporation. Concededly, the petitioners do not fall within any of the categories prescribed by the policy decision as stated, the action of dispensing with their services is neither discriminatory nor can be said to be wearing the taint of arbitrariness. Except stating that other persons have been retained while the services of the petitioners have been dispensed with, nothing of the sort has been adduced before the Court to hammer home the point that other persons engaged in the year 1997 and who have been retained vis-a-vis the petitioners form part of the category of the petitioners. Attention of the Court has not been drawn to any of the averments made in the writ petition nor any document has been brought to bear suggestive of the fact that those persons who have been allowed to be retained and function belong to the petitioners' category, i.e., are the dependants of retired employees of the Corporation, in the counter-affidavit, it is explicitly averred that those persons who have been retained in service and have been allowed to work in the Corporation were engaged under the policy decision of the Corporation. In the light of the aforestated facts, the arguments that the petitioners were discriminated against qua the similarly circumstanced persons who have been retained in service while the services of the petitioners have been dispensed with and consequently, the action of the opposite parties is vitiated being one militating against Articles 14 and 16 of the Constitution of India, have no cutting edge and cannot be sustained in law. Having regard to the above discussion, it cannot be gainsaid that the petitioners constitute a category different from the categories prescribed by the policy decision and by this reckoning, the action of the respondents in dispensing with the services of the petitioners commends itself to be termed as reasonable. The three categories prescribed by policy decision being experienced persons are capable of giving

better service to the Corporation qua the petitioners who have no qualifications to their credit except academic one and they are as raw as anyone in the open market. It is worthy of notice here that appointment on contract basis cannot be equated to regular appointments and when the Corporation has prescribed categories for appointment on contract basis, the petitioners have right to be considered only vis-a-vis other persons and no other benefit can be extended to them in the facts and circumstances of the case. Having regard to the submissions made across the bar and upon consideration of the materials on record, I am of the view that classification of three categories is quite reasonable and the petitioners cannot claim to have been discriminated against in the matter vis-a-vis the other persons who have been retained and allowed to function. Turning to second limb of argument, it brooks no dispute that mere existence of vacancies cannot furnish foundation for a right to the petitioner at par with the rights of those who have been appointed in any of the categories prescribed by the policy decision. Such grievance can arise and be entertained only if opposite parties indulge in exercises violative of the categories prescribed in the policy decision and such exercises result in appointment/engagement of any person on contract basis on consideration other than the policy decision of the Corporation. No such violation of the policy decision has been brought to the notice of the Court and in the circumstances, the argument falls to the ground.

6. Before closing his submissions, learned counsel for the petitioner commiseratingly submitted that a benign view of the matter may be taken in view of the fact that the petitioners have been performing their duties to the entire satisfaction of their superiors and without occasioning any loss to the Corporation since the year 1999 and that they have become familiar with the nuances of the job assigned to them and further that at this stage, it would be difficult for them to come by any job or eke out a living for themselves and their family. Having regard to the fact that petitioners were imparted brief training and they have been performing their duties since the year 1999, it is directed that the authorities concerned may consider their case in preference to others from the open market as and when the Corporation decides to engage on contract basis or otherwise conductors to meet requirements of special/peak season rush.

7. As a result of foregoing discussion, the petition fails and is dismissed in limine subject, however, to the above observations/directions.