

(1984) 07 KAR CK 0015
In the Karnataka High Court
Case No : Writ Petition No. 20511 of 1980

B. Sreeramulu

APPELLANT

Vs

General Manager, K.S.R.T.C and Others

RESPONDENT

Date of Decision : 04-07-1984

Acts Referred:

Constitution of India, 1950 — Article 12, 226, 311 (2)
Industrial Disputes Act, 1947 — Section 10

Citation : (1984) ILR (Kar) 683 : (1984) 2 KarLJ 307

Hon'ble Judges : V.S. Malimath, C.J;R. S. Mahendra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Malimath,CJ.

1. This Writ Petition has come before the Division Bench on a reference made by Justice Chandrakantharaj Urs on the ground that there appears to be conflict between the decision of this Court reported in Mahabaleswar Pandari-nath Naik-v.-State of Karnataka & Others 1 and the decision of the Supreme Court reported in Suresh Koshy -v.-University of Kerala 2.

2. The Petitioner was a Conductor in the employment of Karnataka State Road Transport Corporation. A disciplinary enquiry was held against him and he was ultimately dismissed from service by an Order dated 3-12-1979, Annexure-E, passed by the third respondent. The Petitioner has challenged the said order in this Writ Petition on various grounds and has further prayed for a direction to the respondent to reinstate him in service as a Conductor and to grant him all consequential benefits flowing there from.

3. A preliminary objection was raised by Sri B.M. Chan-drashekharaiiah, learned Counsel appearing for the K.S.R.T.C. to the effect that this is not a case in which this 1. 1982(1) K.L.J. 105 2. [1969]1SCR317 Court ought to interfere under Article 226 of the Constitution, the Petitioner having an effective alternate

remedy available under the relevant provisions of the Industrial Disputes Act. He contended that if this Court were to interfere under Article 226 of the Constitution the respondents would be deprived of the valuable rights and privileges to which they would be entitled to if the dispute is referred for adjudication under the Industrial Disputes Act. In support of this contention, he relied upon a decision of Justice Rama Jois reported in *Hariba -v.- KSRTC*³ That was also a similar case in which a conductor of the KSRTC had challenged the order of his dismissal on various grounds. A contention was raised in that case on behalf of the KSRTC that the Writ Petition should be dismissed relegating the Petitioner to the remedy available to him u/s 10 of the I.D. Act. Justice Rama Jois, after considering the entire matter, has concluded as follows in paragraph 16 of the Judgment :

"The result of the discussion may be summed up as follows : When-ever a workman employed in an industry is dismissed or removed from service and the workman desires to challenge the legality of such action of the management of an industry, on grounds of violation of procedure, as regulated by the prescribed rules or rules of natural justice, the workman should resort to the remedy available u/s 10 of the Industrial Disputes Act and a Petition under Article 226 should not be entertained, notwithstanding the fact that the industry is under the management of a statutory Corporation or a body which is an "Authority" falling within the definition of the word "State" as defined in Article 12 and amenable to the writ jurisdiction of this Court under Art 226 of the Constitution."

The learned Single Judge dismissed the said Writ Petition of the Conductor reserving liberty to him to resort to the remedy available under the provisions of the Industrial Disputes Act. The said decision of Justice Rama Jois was challenged in Writ Appeal No. 1844/1983 and the appeal 3. 1983 (1) K.L.J. 261 came to be dismissed summarily on 26-10-1983. Sri Chandrashekhariah submitted that he has since received information that the SLP challenging the aforesaid orders has been dismissed by the Supreme Court.

4. We are in entire agreement with the view taken by Justice Rama Jois in *Hariba*'s case³ that whenever a work-man employed in an industry is dismissed or removed from service and the workman desires to challenge the legality of such action on the ground of violation of the prescribed procedure or the principles of Natural justice the workman should resort to the remedy available u/s 10 of the I.D. Act and that a petition under Article 226 of the Constitution should not be entertained particularly because the parties would be deprived of the valuable rights and privileges to which they would be entitled to if the dispute is adjudicated upon u/s 10 of the I.D. Act. But, it was contended by Sri Achar, learned Counsel for the petitioner that the principle laid down in *Hariba*'s case³ does not preclude the petitioner in this case from invoking the jurisdiction under Article 226 of the Constitution. It was contended that the grievance of the petitioner that he was not furnished with the report of the Enquiry Officer is in respect of a stage subsequent to the enquiry and that therefore the principle laid

down in Hariba's case does not apply to the facts of this case.

5. It is not possible to agree with the contention of Sri Achar for the obvious reason that the enquiry does not get concluded until a final order is made by the disciplinary authority. The Stage at which the Enquiry Officer's report is required to be furnished, according to the petitioner's own showing, is to enable him to make an effective representation against the proposed punishment and therefore that is necessarily to be made before the final order is made. Hence it is not possible to take the view that the principle laid down in Hariba's case³ does not apply to the facts of this case. As we are in agreement with the view taken in Hariba's case³ we have to decline to interfere under Article 226 of the Constitution relegating the petitioner to the remedy available to him under the Industrial Disputes Act.

6. We may as well consider if there is any conflict between the decision of this Court reported in Mahabaleswar's case¹ and the decision of the Supreme Court in Suresh Koshy's case². In Mahabaleswar's case¹ this Court was required to examine the effect of the amendment to Article 311(2) of the Constitution of India brought about by the Constitution (42nd Amendment) Act 1976, which provides that it is not necessary to afford an opportunity to make representation at the second stage of enquiry in regard to the penalty proposed to be imposed. This Court has held in that case that where the inquiring authority is not the disciplinary authority the report of the inquiring authority should be furnished to the delinquent failing which it would amount to denying reason-able opportunity of being heard contemplated under Article. 311(2) of the Constitution of India. In Suresh Koshy's case² which pertained to an action taken for misconduct against a student the Supreme Court held that there would be no breach of the principles of Natural Justice if the Vice-Chancellor did not make available to the student the copy of the report submitted by the Enquiry Officer. That was not a case in which the provisions of Article. 311(2) of the Constitution came up for consideration. It is in this background that it has been observed in that case in paragraph-15 as follows :

"There seems to be an erroneous impression in certain quarters evidently influenced by the provisions in Article 311 of the Constitution particularly as they stood before the amendment of that Article that every disciplinary proceeding must consist of two inquiries, one before issuing the show cause notice to be followed by another inquiry thereafter. Such is not the requirement of the principles of natural justice. Law may or may not prescribe such a course. Even if a show cause notice is provided by law from that it does not follow that a copy of the report on the basis of which the show cause notice is issued should be made available to the person proceeded against or that another inquiry should be held thereafter."

It is, therefore, clear that what came up for consideration in Suresh Koshy's case² is the requirement of the principles of Natural Justice and not the requirement of Article 311(2) of the Constitution. In Mahabaleswar's case¹ what

came up for consideration, before this Court was the requirement of Article 311(2) of the Constitution after the Constitution (42nd Amendment) Act, 1976, came into force. Besides, as rightly pointed out by Sri Achar, the Supreme Court has in *State of Maharashtra - v. - B. A. Joshi*⁴ held that the failure on the part of the competent authority to provide the delinquent with a copy of the report of the Enquiry Officer amounts to denial of reasonable opportunity contemplated by Article 311(2). The view taken by this Court in *Mahabaleswar*'s case¹ is therefore consistent with the law laid down by the Supreme Court in *B. A. Joshi*'s case⁴, and it is the said decision that has been followed by this Court in *Mahabaleswar*'s case¹. Hence, the question of there being a conflict between the two decisions as observed in the order of reference does not arise.

7. Sri Chandrashekharaiyah, learned Counsel for the K.S.R.T.C. rightly and fairly, has taken the stand that this is a fit case for referring the dispute u/s 10 of the I.D. Act. We have therefore no doubt that if the petitioner makes an appropriate request in that behalf, he will not find it difficult to get a proper reference made expeditiously as the dispute is an old one.

8. For the reasons stated above, we decline to interfere and dismiss this Writ Petition reserving liberty to the petitioner to avail himself of the remedy under the relevant provisions of the Industrial Disputes Act. No costs.

4. [1969]3SCR917