

(2008) 12 KAR CK 0004

In the Karnataka High Court

Case No : Writ Appeal No's. 2164 of 2007 and 43 of 2008

Belliyappa Gowda

APPELLANT

Vs

Karnataka State Road Transport Corporation and Another

RESPONDENT

Date of Decision : 14-12-2008

Acts Referred:

Karnataka State Road Transport Corporation (Cadre and Recruitment) Regulations, 1982 — Regulation 20 (3)
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 47, 72

Citation : (2009) 121 FLR 690 : (2009) 2 KarLJ 527 : (2009) 1 KCCR 581

Hon'ble Judges : P.D. Dinakaran, C.J.;V.G. Sabhahit, J

Bench : Division Bench

Advocate : Narayana Bhat, Subba Rao, Company in W.A. No. 43 of 2008 and L. Govindraj, in W.A. No. 2164 of 2007, for the Appellant; Narayana Bhat, Subba Rao, Company Advs. in W.A. No. 2164 of 2007 and L. Govindraj, for Respondents-1 and 2 in W.A. No. 43 of 2008, for the Respondent

Judgement

P.D. Dinakaran, C.J.—These appeals arise against the common order dated 10-9-2007 passed by the learned Single Judge in W.P. No. 41449 of 2003 (Belliyappa Gowda v. Karnataka State Road Transport Corporation Bangalore and Anr. ILR 2007 Kar. 5325), filed by the appellant in W.A. No. 43 of 2008, challenging the award dated 25-1-2003 passed by the Labour Court, Mangalore, in I.D. Application (LCM) No. 55 of 1999, dated 25-1-2003, wherein, the Labour Court rendered a finding that the injury sustained by the writ petitioner was not during the course of employment, but, owing to the assault with a private individual and therefore, physical disability, which incapacitated him to work as a conductor, falls outside the scope of employment, which enabled the respondent-Karnataka State Road Transport Corporation, which will be (hereinafter referred to as the "Management") to pass an order compulsorily retiring him under the Karnataka State Road Transport Corporation Employees' Compulsory Retirement Rules, 1984, and thus, refused to set aside the order passed by the management dated 29-6-1999, compulsorily retiring the writ petitioner, who will be

(hereinafter referred to as the "workman") from service. Aggrieved by the said order, the workman has preferred W.A. No. 43 of 2008 and the management has preferred W.A. No. 2164 of 2007.

2. Aggrieved by the award dated 25-1-2003 passed by the Labour Court, the workman filed W.P. No. 41449 of 2003, reiterating the submissions made before the Labour Court and placed reliance on Section, 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, the 1995 Act") and contended that the order of the management dated 29-6-1999, compulsorily retiring the workman is illegal.

3. Per contra, the management resisted the writ petition on the ground that the order of compulsory retirement dated 29-6-1999 came to be passed pursuant to the direction dated 11-8-1998 passed in W.P. No. 19963 of 1998 (Belliyappa Gowda v. Karnataka State Road Transport Corporation Bangalore and Anr. 2000(5) Kar. L.J. 7, directing the management to constitute a Medical Board and ascertain as to whether any incapacity had been earned by the petitioner-workman while discharging his duties as a conductor in the Corporation; in case, if it was found that he had sustained such incapacity/disability, while discharging his duties, the management would consider the advisability of changing his cadre/post befitting his physical conditions and alternatively, if it was found that he had not sustained any incapacity or disability in discharging his duties, the management would direct the workman to discharge his duty, for which he was appointed. It was further ordered that keeping in view the disability, if the workman was unable to discharge the duty for which he was appointed, then the provisions as contained in the retirement regulations may be invoked.

4. It was not disputed before the learned Single Judge that the Medical Board had certified that the workman appeared before them on 14-6-1999 and it was found that he was actually suffering from Orthopedic Problem like OA(R) knee and SOA(R) hip with various deformities of both hip and knee (R) side and he was unfit to work as conductor with travelling and was advised to do light work. On the report of the Medical Board referred to above, the management issued show-cause notice on 25-6-1999, calling upon him to show cause as to why he should not be given compulsory retirement on the ground that he was incapable to perform his duty as a conductor. On receipt of the same, the workman offered his explanation dated 28-6-1999. Not satisfied with the explanation offered by the workman, the management by proceedings dated 29-6-1999, held that the workman failed to prove that he met with an accident and got injured while on duty and as the Medical Association had certified that he was incapable to perform the duty as a conductor, compulsorily retired him from service with immediate effect as per KS.R.T.C. Employees' Compulsory Retirement Rules, 1984, and the same was confirmed by the award of the Labour Court dated 25-1-2003. It was contended by the management that the order giving compulsory retirement to the workman, does not suffer from any illegality or irregularity. According to the management, the order of the compulsory

retirement came to be passed only in pursuance of the order of this Court dated 11-8-1998 made in W.P. No. 19963 of 1998, strictly adhering to the procedure and the directions contained therein.

5. Learned Single Judge, after hearing both sides and following the decision of the Apex Court in Kunal Singh Vs. Union of India (UOI) and Another, and the decision of the Division Bench of the High Court of Judicature, Kerala, in the case of The F.A.C.T. Ltd. and Another Vs. A. Gopinatha Panicker, , by his order dated 10-9-2007, set aside the award dated 25-1-2003 made in I.D. Application (LCM) No. 55 of 1999 and directed the management to reinstate the workman, but, with 50% back wages and with continuity of service to the alternative suitable post and also to consider his entitlement for promotion within four weeks from the date of receipt of copy of the order.

6. However, the management has chosen to file present Writ Appeal No. 2164 of 2007, questioning the impugned order of reinstatement and grant of consequential benefits to the workman. Similarly, workman has also filed W.A. No. 43 of 2008 against disallowance of 50% back wages.

7. Hence, both the appeals are heard together.

8. Mr. L. Govindraj, learned Counsel for the management placing reliance on the decision of the House of Lords in Smith v. East Elloe Rural District Council and Ors. (1956) All ER 855, contends that the order dated 11-8-1998 passed in W.P. No. 19963 of 1998 was binding between the parties, unless the same was set aside in the proceedings known to law. Learned Counsel also brings to the notice of the Court, Regulation 20(3) of the Karnataka State Road Transport Corporation (Cadre and Recruitment) Regulations, 1982. He further submits that in view of the earlier order of this Court in W.P. No. 19963 of 1998, dated 11-8-1998, Medical Board was constituted to ascertain as to whether any incapacity was earned by the workman and having regard to Regulation 20(3) of the Regulations referred to above and that since the workman was found unfit to continue as a conductor, the management invoked the KSRTC Employees' Compulsory Retirement Rules, 1984 and compulsorily retired him from service and the same does not suffer from any illegality. Therefore, it is contended that the impugned order of reinstatement is illegal and is liable to be set aside.

9. On the other hand, Mr. Narayana Bhat, learned Counsel for the workman reiterated the submission made before the learned Single Judge.

10. We have given our careful consideration to the submission of both the sides.

11.1 The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 came to be passed to spell out the responsibility of the State towards the prevention of disabilities, protection of rights, provision of medical care, education, training, employment and rehabilitation of persons with disabilities. Section 47 of the 1995 Act is mandatory and even though there is an order, as per Section 72 of the 1995 Act, the position of this Act has got an

overriding effect. Of course, there is an order governing between the parties, which came to be passed in W.P. No. 19963 of 1998 on 11-8-1998, wherein, there is no reference to the position of the 1995 Act. On the other hand, the fact remains that the management invoking the KSRTC Employees' Compulsory Retirement Rules, has passed the order compulsorily retiring the workman. As per Section 72 of the 1995 Act, the provisions of the 1995 Act or the rules made thereunder shall be in addition to, and not in derogation of any other law for the time being in force or any rules, order or any instructions issued thereunder, enacted or issued for the benefits of persons with disabilities.

11.2 In this regard, it is apt to refer Regulation 20(3) of the Karnataka State Road Transport Corporation (Cadre and Recruitment) Regulations, 1982, which empowers the management to provide suitable equivalent or lower job to an employee incapacitated during the discharge of his duties to perform the duties of a particular category of post held by him. It is only referring to this Regulation 20(3), this Court by order dated 11-8-1998 in W.P. No. 19963 of 1998, issued directions referred to above.

11.3 As per Section 72 of the 1995 Act, benefits conferred under the said Act is in addition to the right conferred under Regulation 20(3) of the KSRTC (Cadre and Recruitment) Regulations and also in addition to the orders or any instruction issued thereunder. The order of this Court dated 11-8-1998 in W.P. No. 19963 of 1998 came to be passed by placing reliance on Regulation 20(3) of the KSRTC (Cadre and Recruitment) Regulations.

11.4 In our considered opinion, the right conferred u/s 47 of the 1995 Act, is in addition to the right conferred under Regulation 20(3) of the KSRTC (Cadre and Recruitment) Regulations.

11.5 As regards the order, which came to be passed in W.P. No. 19963 of 1998, dated 11-8-1998, it is a settled law that there is no estoppel against a statute. If that be so, more particularly, when the order in W.P. No. 19963 of 1998 came to be passed on 11-8-1998, the 1995 Act, was strictly in force. In that view of the matter, the decision of the House of Lords" has no application to the facts and circumstances of the case.

12. For all these reasons, we are of the considered opinion that the workman is entitled for the entire benefits and the order of the compulsory retirement passed by the management dated 29-6-1999 is liable to be set aside and the award dated 25-1-2003 passed in I.D. Application (LCM) No. 55 of 1999, confirming the order of the management dated 29-6-1999 is also liable to be set aside, because the Division Bench of the High Court of judicature, Kerala in Fertilisers and Chemicals Travancore Limited"s case, has held that it is immaterial whether the disability has occurred during the course of employment or outside the scope of employment.

13. Writ Appeal No. 2164 of 2007 filed by the management is dismissed. Writ Appeal No. 43 of 2008 filed by the workman is allowed and the award passed by

the Presiding Officer, Labour Court, Mangalore, in I.D. Application (LCM) No. 55 of 1999 confirming the order of compulsory retirement of the appellant in W.A. No. 43 of 2008 passed by the respondent-KSRTC, dated 29-6-1999 is set aside and consequently, the workman is entitled to be reinstated with full back wages and continuity of service and other consequential benefits.