
(1981) 08 KAR CK 0051
In the Karnataka High Court
Case No : WP 2358/79

Boraiah, H.B.

APPELLANT

Vs

K.S.R.T.C. and Another

RESPONDENT

Date of Decision : 28-08-1981

Acts Referred:

Karnataka Contract Carriages (Acquisition) Act, 1976 — Section 19(4)

Citation : (1982) 1 KarLJ 101

Hon'ble Judges : M. Rama Jois, J

Judgement

1. The petitioner who was an employee of an Ex-contract Carriage Operator has prayed for the issue of a writ of mandamus directing the respondents to absorb him in the service of the Corporation in terms of sub-sec. (3) of S. 19 of the Karnataka Contract Carriages (Acquisition) Act, 1976, by giving effect to the order made by the authority constituted under sub-sec. (4) of S. 19 of the Act.

2. The writ petition is in the orders list. By consent of both counsel, the petition is taken up for final hearing.

3. The petitioner was originally employed as a helper on the establishment of a private Contract Carriage Operator whose contract carriage was acquired under the provisions of the Act. Sub-sec. (3) of S. 19 of the Act provides that such of the employees of the Ex-contract Carriage Operators who were workmen as defined under the provisions of the Industrial Disputes Act and who were exclusively employed by the Ex contract Carriage Operators, shall, subject to the ratio prescribed in the proviso to sub sec. (3), be absorbed in the services of the Corporation. As the Corporation did not absorb the petitioner in its service, the petitioner made an application before the authority constituted under sub-sec. (4) of S. 19 of the Act. Under the said provision, whenever there is a dispute, the authority has the power to decide as to whether a particular person was a workman as defined under the Industrial Disputes Act and as to whether he was exclusively employed by the Ex-contract Carriage Operator in connection with the vehicle acquired. As the Corporation disputed the claim, the petitioner

approached the said authority. By an order made on 5-3-1981, the Deputy Commissioner (the competent authority) held that the petitioner was a workman and was also a whole-time employee of an ex-operator. The authority further held as follows:

"As per ratio also there is still scope for appointment of helpers.

Therefore, the K.S.R.T.C. is hereby directed to appoint Sri H.B. Boraiah as "Helper" in the Corporation as an employee of the Corporation on the same terms and conditions applicable to the employees holding corresponding posts in the Corporation".

Aggrieved by the said order, the Corporation preferred an appeal before the State Government. The appellate authority confirmed the order of the authority by its order dated 5-8-1981. Copies of both these orders are produced at the time of hearing.

4. Sri K.N. Subba Reddy, learned counsel for the petitioner, submitted that in view of the orders passed by the authorities, a writ of mandamus should be issued to the Corporation to absorb the petitioner in its service as a helper. Sri B.M. Chandrashekhariah, learned counsel appearing for the Corporation, submitted that the decision of the original authority as well as the appellate authority to the extent, a declaration is made to the effect that the petitioner was a workman and that he was exclusively employed by an Ex-contract Carriage Operator was within their competence, but the further direction given by the authorities to the effect that the petitioner was within the ratio and he should be absorbed in its service as a helper was without authority of law and therefore a writ of mandamus as prayed for by the petitioner cannot be granted.

5. In my view, the contention urged for the Corporation is sound. As stated earlier, sub sec. (4) only authorises the authorities to decide as to whether an ex employee was a workman and further whether he was exclusively employed by an Ex-contract Carriage Operator. The question as to whether such workman falls within the ratio of absorption as provided in the proviso to sub sec. (3) is a decision required to be taken by the Corporation itself.

6. In the circumstances, I make the following order:

(1) Rule made absolute. A writ in the nature of mandamus shall issue to the respondents to consider the case of the petitioner for absorption in the service of the Corporation as against a suitable post having due regard to the ratio prescribed under the proviso to sub sec. (3) of S. 19 of the Act.