

(1994) 09 KAR CK 0003

In the Karnataka High Court

Case No : W. A. No's. 1701 to 1724 of 1993 etc

Govindarajulu

APPELLANT

Vs

Karnataka State Road Transport Corporation

RESPONDENT

Date of Decision : 28-09-1994

Acts Referred:

Road Transport Corporations Act, 1950 — Section 34, 45

Citation : (1994) ILR (Kar) 3418 : (1995) 2 KarLJ 339 : (1995) 2 LLJ 573

Hon'ble Judges : S.A. Hakeem, J;J. Eswara Prasad, J

Bench : Division Bench

Advocate : K.Subba Rao, V. Gopala Gowda, Narendra Kumar Gunaki and V.S. Naik, for the Appellant; B.B. Mandappa, K. Lakshminarayana Rao, M.R. Shailendra and Meena Ramachandran, for the Respondent

Judgement

Eswara Prasad, J

1. These Appeals arise out of the Judgment of the learned Single Judge in a batch of Writ Petitions in which common Questions arose for Consideration. The learned Judge disposed the Writ Petitions with certain directions and the said Judgment was followed in other Writ Petitions which were also disposed in the light of the said Judgment and these Appeals are filed by the Writ petitioners against the said Orders.

2. The appellants were temporarily appointed to work as drivers and conductors in the Karnataka State Road Transport Corporation ("Corporation" for short) in various divisions in the State of Karnataka on temporary basis and were continued from time to time, for short periods and were not taken in service thereafter. Their claim was that pursuant to an advertisement dated 4.1.1992, calling for applications for being appointed to the posts of conductors and drivers, they were called for interviews and they were appointed in regular vacancies and that the respondent-Corporation acted arbitrarily in making the appointments on temporary basis for short periods though they were selected for being appointed to the posts and were replaced by another set of temporary

employees. They contend that their services should have been regularised and they should have been continued in service. These contentions are raised by the appellants who were appointed in Bangalore, Bellary and other Divisions. The contention of the appellants who were appointed in Hubli and Gadag Divisions is that they were illegally replaced by employees who were appointed in other Divisions by effecting transfers. Some of the appellants were appointed in Mysore Division for short periods of one week or 2 weeks" and were replaced by transfer from Bangalore Division. They have challenged such transfers as arbitrary and illegal and they claim that their services should have been regularised instead of replacing them by effecting transfers from other Divisions.

3. The stand taken by the respondent-Corporation was that the Notification calling for applications for being appointed to the posts of drivers and conductors was published by an advertisement dated 4.1.1992, pursuant to which, applications were received from the appellants and others. The Government of Karnataka issued an order imposing a ban on making recruitments until further orders. Pursuant to the ban imposed by the Government, the Corporation had to keep the recruitment of regular employees in abeyance on 13.2.1992. In the meanwhile, the Corporation had to make temporary appointments to meet the exigencies of service and to keep the transport services going. A common selection list was prepared without taking into consideration the roster and temporary appointments were made for short periods appointing the appellants and others, making it clear that their appointments are purely temporary and are made on an ad hoc basis, which are liable to be terminated and that they have no right to continue to hold the post, The appellants having accepted the terms and conditions of appointment cannot be permitted to take the stand that they were appointed on permanent basis and that they have a right to have their services regularised. The Government issued further directions to appoint persons belonging to S.C. and S.Ts. and pursuant to the said order, persons belonging to S.C. and ST. had to be accommodated. A common merit list was prepared, taking into consideration the roster and selections were made based purely on merit. In the case of conductors, the marks obtained by the candidates in the qualifying examinations namely S.S.L.C. were taken into consideration and the marks obtained at the trade test conducted for the post of drivers were considered in preparing the merit list. None of the appellants could be selected as they did not come up to the required standard. Thus they were replaced by persons who stood higher in the select list than the appellants and that they can have no grievance if they were not selected. There was no advertisement to the posts in Mysore, Hubli and Gadag Divisions where temporary appointments were made, to meet the requirements of the travelling public. Drivers and conductors had to be appointed for short periods on temporary basis to meet the requirements of the pilgrims going for jatras and other festivals and such persons cannot claim to be made permanent.

4. By the date of disposal of the Writ Petitions by the learned Single Judge on 22.2.1993, the selection list was not finalised. The learned Judge disposed the

Petitions, directing the respondent-Corporation to announce the results of the selections made pursuant to the advertisement and to make appointments without disturbing those who had already been selected and in service without affecting their seniority, in accordance with the ranking allotted to each of them in the select list. It was further directed that in respect of petitioners who were appointed and continued in service from time to time after being sponsored by the Employment Exchange should not be disturbed until permanent arrangements are made. The Corporation was directed to give weightage in future appointments made by the Corporation to such of the petitioners who have been selected but not appointed for various reasons and are age barred by the date of the order.

5. Mr. K. Gubba Rao, learned Counsel for some of the appellants contended that the appellants have, applied for being appointed as conductors and drivers pursuant to the advertisement calling for applications for being appointed to the posts of conductors and drivers in permanent vacancies. The appellants are qualified and applied for the said posts. They were called for interviews, trade tests were conducted for the posts of drivers and in the case of conductors, the marks obtained by the candidates in the qualifying examinations were taken into consideration and they were selected for the posts of drivers and conductors. In accordance with their merit in the merit list prepared after selection, they were appointed and that they have a right to be treated as permanent employees and to be continued. The respondent-Corporation adopted a dubious method by which orders appointing the appellants on temporary basis were issued and that they were replaced by different set of temporary appointees. He further contended that the Regulations which were in force on the date of the advertisement should have been followed and not the amended Regulations as the process of recruitment had already commenced. The action of the respondent-Corporation terminating the services of the appellants are arbitrary and illegal, as the appellants should have been deemed to be on probation and their services could not be terminated except for mis-conduct. In reply, Sri Laxminarayana, learned Standing Counsel for the respondent-Corporation contended that the initial selection list prepared by the Corporation was not in accordance with the Regulations and was prepared without taking into consideration the roster. On account of the ban on recruitment imposed by the Government, no regular selection could be made immediately and to meet the requirements of the travelling public, temporary appointments had to be made, pending the preparation of regular selection list. The appellants had therefore to be given temporary appointments for short periods. After the consolidated selection list was prepared in accordance with the amended Regulations and after taking into consideration the roster, the persons who ranked higher than the appellants were appointed on regular basis. The appellants who have obtained lesser ranks than those who were appointed on regular basis, cannot have a grievance. Regulation relating to selection to the posts of drivers and conductors was amended on 11.5.1992 in exercise of the powers conferred by Section 34 of

the Road Transport Corporation Act, 1950 ("the Act" for short) by the Government of Karnataka in consultation with the Corporation and the amended Regulations were scrupulously followed, that no illegality was committed by the Corporation and the Corporation has not acted arbitrarily or illegally. In respect of the other Divisions for which there was no advertisement calling for applications, the learned Counsel submitted that the appointments were made purely on temporary basis from among the candidates sponsored by the Employment Exchange. The persons who were selected in other Divisions based on the selection list were transferred and posted, replacing the temporary employees. The Corporation has the power to transfer employees from one Division to another and that the action of the respondent is not either illegal or arbitrary.

6. The records of the Corporation were perused by the learned Single Judge and they were also placed before us and we have gone through them. From the above stated facts and a perusal of the records it is seen that the respondent invited applications for filling up the posts of conductors and drivers on regular basis. After receiving applications, interviews were conducted and select lists were prepared without following roster. The Government of Karnataka imposed a ban on recruitments which is binding on the Corporation u/s 34 of the Act and the respondent had to stop making permanent recruitments. In order to maintain the services, the respondent had to make temporary appointments pending regular recruitments and the appellants were appointed on temporary basis. The respondent had to abide by the instructions of the Government directing the appointments of drivers belonging to S.C. and S.T. It is pertinent to note at this stage, that the appellants have not chosen to question the said direction of the Government which is also binding u/s 34 of the Act. The consolidated select list was prepared in accordance with the roster and ranks were assigned to the applicants in order of merit, based on the marks obtained by them in the qualifying examination in the case of conductors and the marks obtained in the trade tests in the case of drivers. It is also to be noted that the selection list is not questioned by the appellants, except in the case of 3 of the appellants namely:

1. Devendrappa

2. A. Veeresha 3. C. Srinivasuiu

Out of these three persons A. Veeresha had already withdrawn his appeal.

2. Devendrappa was said to be on duty on 27.8.1992 when he was called for interview. He had obtained a rank higher to the rank obtained by persons who were selected and appointed. Inasmuch as he was on duty on the date of interview and the necessary material was already with the respondent, he should be considered on the basis of his merit in the selection list and should be appointed regularly.

3. C. Srinivasalu claims that he obtained more marks than what is stated in the

selection list and that he is also entitled to an addition of 15 marks as he studied in a rural school. The respondent will have to consider his case also by verifying the claim made by him.

7. In order to appreciate the contentions of the learned Counsel the provisions of the Act and Rules will have to be considered. Section 34 of the Act empowers the State Government to give general instructions to be followed by the Corporation and is as follows:

"34(1) The State Government may, after consultation with a Corporation established by such Government, give to the Corporation general instructions to be followed by the Corporation and such instructions may include directions relating to the recruitment, conditions of service and training of its employees, wages to be paid to the employees, reserves to be maintained by it and disposal of its profits or stocks.

(2) In the exercise of its powers and performance of its duties under this Act, the Corporation shall not depart from any general instructions issued, under Sub-section (1) except with the previous permission of the State Government".

A reading of the said provision would show that the Corporation shall not depart from the general instructions issued by the State Government except with the previous permission of the State Government and the instructions issued by the Government relating to recruitment, conditions of service and training of its employees etc, which are binding on the Corporation.

8. Section 45 of the Act empowers the Corporation to make Regulations for administration of the affairs of the Corporation which include the conditions of appointment of service of its employees, with the previous sanction of the State Government. The scope of both these provisions were considered by the Supreme Court in *Mysore State Road Transport Corporation Vs. Gopinath Gundachar Char*,

9. It was held that the conjoint effect of Sections 14(3)(b), 34 and 45(2)(c) is that the appointment of officers and servants of the Corporation and their conditions of service must conform to the directions, if any, given by the State Government u/s 34 and the Regulations if any framed u/s 45(2)(c).

10. From a reading of Sections 34 and 45 of the Act and in the light of the Decision of the Supreme Court in *Mysore State Road Transport Corporation M.S.R.T.C v. Gopinath Gundachar* (supra), it is clear that the Corporation is bound by the directions given by the State Government u/s 34. The directions issued by the State Government, imposing a ban on recruitments was binding on the Corporation and the Corporation had to stop recruitment of employees during the period when the directions of the Government were in force. That is from 13.2.1992 when the ban was imposed and 22.2.1993 when the ban was lifted. The Corporation was also bound by the directions of the Government, directing the Corporation to fill up the vacancies by recruiting persons belonging to Scheduled Castes and Schedule Tribes in order to make up the backlog. The

Corporation was also bound by the directions of the Government to make recruitment by following roster. During the intervening period, the Corporation had to carry on administration of its affairs with the help of the employees by making temporary and adhoc appointments of drivers and conductors.

11. Sri Subba Rao, appearing for some of the appellants contended that the Regulations which were in force on the date of the notification calling for advertisement was published on 4.1.1992, should have been followed and not the amended Regulations which came into force subsequently with effect from 11.5.1992. In order to appreciate the contention of the learned Counsel, the relevant Cadre and Recruitment Regulations have to be referred to. Regulation 2(9) defines direct recruitment as the appointment made otherwise than by promotion or transfer from any post in the service of the Corporation or by obtaining loan of service from other undertakings. One of the methods of recruitment is by direct recruitment under Regulation 3(d). Regulation 4 lays down the eligibility for appointment. The procedure for selection in respect of the posts of drivers and conductors and others is prescribed by Regulation 6. Regulation 9 lays down the mode of selection of the candidates and the procedure for making appointments is prescribed by Regulation 10. Under Regulation 10(5), a selected candidate, waiting for being appointed regularly, may be appointed as a temporary employee before such regular appointment against a short term vacancy or as a substitute in place of regular employee. A select candidate is also liable to be engaged as a badli worker on a day-to-day basis in any vacancy caused by the absence of any employee. Regulation 9 empowers the Corporation to make temporary appointments to fill up the vacancies for short periods.

12. As stated earlier, Regulation 6 was substituted by the Karnataka State Road Transport Corporation (Cadre and Recruitment) (Amendment) Regulations, 1992. By Regulation 4 of the Amended Regulations, appending recruitments in the Corporation as on the date of commencement of the Amended Regulation, shall be finalised in accordance with the Amended Regulations. By virtue of this provision, the recruitments which were pending as on 11.5.1992 when the Amendment Regulations came into force, had to be finalised in accordance with the Amendment Regulations. Though the recruitments made pursuant to the notification dated 4.1.1992 commenced, the said recruitments were pending on the date when, the Amended Regulations came into force and had to be finalised only in accordance with the Amended Regulations. The contention of Sri Subba Rao cannot therefore be accepted in view of Regulation 4 of the Amended Regulations. Regulation 6-A of the Amended Regulations lays down the procedure for selection of candidates for all Class-III Posts other than drivers and Regulation 6-B lays down the procedure for selection for the posts of drivers. The procedure laid down under Regulations 6-A and B were followed by the Corporation in making the final select list. The contention advanced by Sri Subba Rao, Sri Gopalagowda and other learned Counsel for the appellants that the selection of the appellants in Divisions where the notification for recruitment was

issued were regularly selected is not borne out by records. The select list was not prepared by following the roster. In view of the directions of the State Government imposing ban on recruitments and the direction, to follow the roster and also the direction to fill up the posts by appointing candidates from Scheduled Castes and Scheduled Tribe Communities, the Corporation could not make regular appointments and had to make appointments on temporary basis, pending tantalization of the merit list, after following the roster. In the said circumstances, the appointment of these appellants could only be on temporary and adhoc basis and their appointments were not made after regular selection.

13: The next submission of the learned Counsel that the appellants should having been put on probation their services could not be terminated except for misconduct cannot be accepted. They were appointed purely on temporary basis and therefore the question of putting them on probation did not arise. The Corporation is empowered to make appointments on temporary basis under Regulation 19, where it is necessary in administrative interest. The Decision in CP. DAMODARAN NAYAR AND ANR. v. STATE OF KERALA AND ORS. AIR 1974 SC 1343 relied on by the learned Counsel has no application. That was a case in which the integration of Judicial Services in Kerala arose out of States Reorganisation and the Supreme Court held:-

"Hence the position in Madras is that continuous service of the appellant whether regular, temporary or emergency would have been taken into account for the purpose of seniority".

No such situation arises in this case. The persons appointed on temporary basis had to yield to the persons regularly appointed on the basis of merit. The Decision in WESTERN INDIA MATCH COMPANY LIMITED v. WORKMEN AIR 1973 SC 2650 relied on by the learned Counsel also has no relevance to the facts and circumstances of this case. In fact that was a case in which the Supreme Court held that it is settled law now that the Labour Court may interfere with the order of discharge where it is satisfied that it was made mala fide or was a measure of victimisation or unfair labour practice. It has also been held by the Supreme Court that the Labour Court may interfere with the order of discharge if it finds that the order is arbitrary or capricious or so unreasonable as to lead to the inference that it is not made bonafide. The appellants have not gone to the Labour Court but straightaway approached this Court under Article 226 of the Constitution of India. No evidence is placed on record to show that the action of the Corporation is malafide or was taken as a measure of victimisation or unfair labour practice.

14. The learned Counsel next relied on the Decision in D.S. PRABHUSWAMY AND ORS. v. KARNATAKA STATE ROAD TRANSPORT CORPORATION AND ANR AIR 1991 SC 178 in support of the contention that the appellants would be continued in service and their services should be regularised, having regard to the fact that they have worked with the Corporation for over several months. The Contract Carriages owned by private operators were acquired by promulgation of

Karnataka Contract Carriages Ordinance. Under the provisions of the said Ordinance, certain employees under the erstwhile private operators could be absorbed after following the procedure laid down thereunder. Having regard to the fact that the appellants therein have been continuing in service for over 14 to 15 years, the Supreme Court directed that they should be allowed to continue in service. The facts in these Cases are totally different and we fail to see as to how the said Decision applies to the present appellants who have worked only for a few weeks or months apart from the fact that there is no such statutory provision. The Decision in Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, relied on by the learned Counsel also has no relevance to the facts of the present case. In that case, the Supreme Court was concerned with the removal of en bloc of all District Government Counsel in the State of U.P. by the State Government. It was held that the said action was arbitrary. In the circumstances of that case, it was held that the Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the Preamble. In the case on hand, it is not shown by the appellants as to how the action of the Corporation is unfair or unreasonable.

15. The Decisions in K.I. Shephard and Others Vs. Union of India (UOI) and Others, and in Col. A.S. Sangwan Vs. Union of India (UOI) and Others, are also not applicable to the facts of the present case. The former related to employees of Banks which were amalgamated and the latter Decision related to an arbitrary policy made with ulterior motive. In the circumstances of both Cases, it was held that the petitioners therein were entitled to make their representations before they were thrown out. In the present case, the orders by which the appellants were appointed made it very clear that the appointments were purely temporary and were made on adhoc basis for the periods mentioned in the orders and it was also made clear that they have no right to hold the posts.

16. The learned Counsel further contended that the appellants had a legitimate expectation that they would be continued in service, as the applications were called for regular vacancies and they were interviewed and were appointed after selection. In support of the said contention the Decision in Union of India and others Vs. Hindustan Development Corpn. and others, was relied on by the learned Counsel. It was held by the Supreme Court as follows;-

"On examination of some of these important decisions it is generally agreed that legitimate expectation gives the applicant sufficient locus standi for judicial review and that the doctrine of legitimate expectation is to be confined mostly to right of a fair hearing before a decision which results in negating a promise or withdrawing an undertaking is taken. The doctrine does not give scope to claim relief straightaway from the administrative authorities as no crystallised right as such is involved".

It was further held that if a case of legitimate expectation is made out then the next question would be whether failure to give an opportunity of hearing before

the decision affecting such legitimate expectation is taken, has resulted in failure of Justice and whether on that ground the decision should be quashed.

17. Even though the appellants could be said to have legitimate expectation that they would be continued in service, they cannot claim relief straightaway as no crystallised right as such is involved. The question of giving an opportunity to the appellants for hearing did not arise as their appointments were made purely on temporary and adhoc basis. As held in Director, Institute of Management Development, U.P. Vs. Smt. Pushpa Srivastava, where the appointment is purely on ad hoc and on a contractual basis for a limited period, by expiry of the period of six months, the right to remain in the post comes to an end. In the cases on hand, the appointments were on ad hoc basis and came to an end with the efflux of the short periods mentioned in the appointment orders.

18. In Madhyamik Siksha Parishad, U.P. Vs. Anil Kumar Mishra and others etc., it was held that even if the employee completed 240 days of work no right is created to claim regularisation.

19. The learned Counsel next contended that none of the contentions put forth by the respondent are reflected in the appointment orders and that the respondent could not be permitted to rely on the additional affidavits or grounds to justify their action. In support of the said contention, he relies on a Decision in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, It was held therein that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. The principle laid down by the Supreme Court is well settled. By the dates of the disposal of the Writ Petitions out of which these Appeals arose, the select list was not finalised. It was only thereafter that the select list was finalised and it was necessary for the respondent to place the relevant factors connected with the final select list. The respondent was permitted to place all the relevant material on record. The appointment orders of the appellants make it clear that their appointments were on temporary basis up to the period mentioned in the respective orders. It was made clear that the employment was purely on temporary basis and that the appointee will be deemed to have been relieved on the expiry date mentioned in the order. It was also made clear that the temporary engagement does not confer any right to continue in service of the Corporation and the preferential claim to any future appointment. From a perusal of the merit list it is revealed that the merit list is prepared in conformity with the roster and none of the appellants excepting a few persons mentioned (supra) stood higher in merit to any one of the regular appointees and could not claim to be absorbed in the posts in which they were appointed.

20. The first direction of the learned Single Judge to the respondent-Corporation to announce the results of selections made pursuant to the advertisement has already been complied with by the respondent and the select list is produced

before us. The appointments were made in accordance with the select list and none of the appellants except the appellants mentioned (supra) ranked higher than the persons appointed. Some of the appellants who were appointed on temporary basis after being sponsored by the Employment Exchange were replaced by persons who were regularly appointed after selection in other Divisions by transfer. In that view of the matter, the second direction given by the learned Single Judge does not survive. The 3rd direction to give due weightage to the appellants who had been selected but not appointed for various reasons also will not survive, in view of the appellants not finding a place in the select list in accordance with merit. The learned Counsel for the appellants submitted that in view of the fact that the appellants have worked in the respondent-Corporation for some time and some of the appellants are still continued pursuant to the interim direction of this Court, the respondent should be directed to regularise their services. It is apposite to set out the observations of the Supreme Court in *State of Haryana and others Vs. Piara Singh and others* etc. etc., which reads as under:-

"23.....

the High Court acted rather hastily in directing wholesome regularisation of all such persons who have put in one year's service, and that too unconditionally. We may venture to point out the several problems that will arise if such directions become the norm:

(a) Take a case where certain vacancies are existing or expected and steps are taken for regular recruitment either through Public Service Commission or other such body, as the case may be. A large number of persons apply. Inevitably there is bound to be some delay in finalising the selections and making the appointments. Very often the process of selection is stayed or has to be re-done for one or the other reasons. Meanwhile the exigencies of administration may require appointment of temporary hands. It may happen that these temporary hands are continued for more than one year because the regular selection has not yet been finalised. Now according to the impugned direction the temporary hands completing one year's service will have to be regularised in those posts which means frustrating the regular selection. There would be no post left for regularly selected persons even if they are selected. Such cases have indeed come to this court from these very two States.

(b).....

(c).....

(d) Such directions have also the effect of disregarding and violating the rule relating to reservation in favour of backward class of citizens made under Article 16(4). What cannot be done directly cannot be allowed to be done in such indirect manner".

In view of the submission of the teamed Standing Counsel for the respondent

that there are no vacancies and that there is no need to fill up any further vacancies, the contention of the learned Counsel for the appellants cannot be acceded to. All that we will say is that temporary employees cannot be replaced by making temporary appointments. If such a situation arises, the respondent will consider the case of the appellants for appointment.

21. For the aforesaid reasons, Writ Appeal No, 1708/93 of Devendrappa (Petitioner in W.P. 32902 of 1992) is allowed and the respondent-Corporation is directed to consider his case based on merit, in the select list and appoint him on regular basis with effect from the date on which he was first appointed, within three months from the date of receipt of this order.

22. Writ Appeal No. 1720 of G. Srinivasa (Petitioner in W.P. No. 32914 of 1992) is disposed with a direction to respondent-Corporation to consider his case by verifying the claim made by him within 3 months from the date of receipt of this order. Rest of the Appeals are dismissed. No order as to costs.