
(2011) 03 KL CK 0079
In the High Court Of Kerala
Case No : W.A. No. 1896 of 2010

K. Jabbar

APPELLANT

Vs

The Kerala State Road Transport

RESPONDENT

Date of Decision : 28-03-2011

Acts Referred:

Citation : (2011) 03 KL CK 0079

Hon'ble Judges : J. Chelameswar, C.J; Antony Dominic, J

Bench : Division Bench

Advocate : P.K. Ibrahim, for the Appellant; P. Benjamin Paul, SC, for the Respondent

Final Decision : Allowed

Judgement

Antony Dominic, J.—Appellant was working in the KSRTC on a provisional basis as Driver from 9.1.1981 to 3.6.1989. During the said period he got selected by the PSC and was included in the ranked list. He was advised for appointment and accordingly he was appointed on a regular basis in the KSRTC with effect from 8.6.1989. Subsequently, on attaining the age of superannuation, he retired from service.

2. While so, Ext. P2 memorandum of settlement was entered into between the management of the KSRTC and the workmen represented by their trade unions. Clause XVII of Ext. P2 settlement provided for reckoning of daily wages period in respect of the drivers and conductors as qualifying service for grade promotion. Clause XVII reads as follows;

The daily wages period in respect of Drivers and Conductors and period of pre-appointment training of Mechanical Staff will also be counted as qualifying service for grade promotion. This will apply to grade promotions due on or after 1.1991.

3. According to the Appellant benefit of the aforesaid provision in the settlement was denied to him. Thereupon he filed O.P. No. 29499/01 before this Court. The

Original Petition was dismissed. In W.A. No. 269/04 filed by the Appellant, the Division Bench of this Court rendered Ext. P3 judgment. In Ext. P3 judgment it was held that in view of the provisions contained in the Industrial Disputes Act, 1947, the Respondents are bound by the terms of the settlement. On that basis, this Court directed as follows;

Petitioners are entitled to the benefit of the settlement which the Corporation cannot avoid. In *Barauni Refineries Pragatisheel Shramik Parishad v. Indian Oil Corporation Ltd. and Ors.* (1991 (I) LLJ 46) the Apex Court reiterated the view that terms of settlement are binding on the workmen and union till it is terminated as provided under the Industrial Disputes Act and even the standing orders under the Standing orders Act cannot be amended contrary to the terms of settlement. Binding nature of settlement is again reiterated by the Apex Court in *I.T.C. Ltd. Workers Welfare Association and Another Vs. The Management of I.T.C. Ltd. and Others*, . In the above circumstances we direct the KSRTC to count the provisional service of the Petitioners also as qualifying service for calculating pension and weightage if it is not already calculated.

4. However, the benefit was not extended. The Appellant filed representations and again approached this Court by filing W.P.(C). No. 3162/2006 which was disposed of by Ext. P5 judgment. Pursuant to the directions in Ext. P5 judgment the claim of the Appellant was considered. However, the KSRTC took the stand that as per the existing rules daily wages period will not be counted for increment and grade promotion. Complaining of the above, the Appellant again filed W.P.(C). No. 18433/2008. By the judgment under appeal the learned single Judge held that in view of the provisions of the settlement and the judgments of the Apex Court and this Court, particularly that of the Full Bench in *District Transport Officer and District Transport Officer Vs. S. Kunchan (Retired Driver, K.S.R.T.C.)*, the Appellant is not entitled to the benefit claimed. It is against the said judgment the appeal has been filed. We have heard the counsel for the Appellant and also the standing counsel for the Respondent. From the submissions made and on going through the pleadings, we notice that the view taken by the learned Judge is that the daily wages service rendered by only those advised by the PSC against regular vacancies, but appointed on daily wages basis, are liable to be reckoned as qualifying service.

5. Ext. P2 is the settlement that is relied on by the Appellant. Clause 17 of which makes it clear that the daily wage period of Drivers is liable to be counted as qualifying services for grade promotion. This claim of the Appellant was upheld by this Court in Ext. P3 judgment, which has become final and binding on the parties. Therefore, the Respondent could not have denied the benefit. However, Standing Counsel for the Respondents contended that the said provision in the settlement will apply only in respect of the persons advised by the PSC but appointed on daily wage basis. We are not in a position to accept this argument. First of all the claim of the Appellant stands already upheld by this Court in Ext. P3 judgment. Further, if we accept this contention of the Respondent, that will

have the effect of modifying clause XVII of the settlement which is not a qualified one as now sought to be made by the Respondent. Further the Full Bench judgment in Kunchan's case (supra) cannot in any manner affect the rights of the Appellant since Ext. P3 judgment has become final between the parties. Therefore, in our view, the Appellant is entitled to succeed.

6. For these reasons we set aside the judgment of the learned single Judge and allow the appeal and direct that the Respondent shall reckon the period of daily wage service rendered by the Appellant for the period from 9.1.1981 to 3.6.1989 as qualifying service for grade promotion. On that basis benefits due to the Petitioner, including his pensionary benefits, shall be reworked and disbursed to the Appellant within 3 months from the date of production of a copy of the judgment.

Writ Appeal is allowed.