

(2011) 11 KAR CK 0335
In the Karnataka High Court
Case No : Writ Petition No. 18673 of 2010

K. Santhosh Kumar

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 04-11-2011

Acts Referred:

Citation : (2011) 11 KAR CK 0335

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : V.N. Jagadeesh, for the Appellant; P.S. Dinesh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda

1. Respondents had engaged a service of gangmen. The employees union raised demands for absorption of gangmen as Probationary Mazdoors. A settlement as per Annexure-F was arrived at between the Management and the employees union, in terms of which, the respondents/Management agreed to absorb 7528 working gangmen as per the agreed terms and conditions.

2. Indisputedly, petitioner was engaged as a gangman on 30.01.1999. Concededly, petitioner was very much part of the settlement that was entered into between the employees union and the respondent-Management. The Management, as per Annexure-F/Memorandum of Settlement, agreed to convert the gangmen who were presently working continuously and completed 6 years of continuous service as on 01.04.2003 (except where the Management has effected break in service) as probationary mazdoors in a phased manner every year on 1st of April starting from 01.04.2003 subject to seniority and suitability as per the probationary mazdoors regulations as amended. The petitioner having not been absorbed, submitted representation to the respondents seeking absorption. The petitioner along with others, filed W.P. Nos. 2288-97/2010, which

was disposed on 11.02.2010 (Annexure-H), directing the respondents 3 to 5 therein to pass orders on the representations in accordance with law. The representation having been considered, the respondents have issued the endorsement dated 19.04.2010, as at Annexure-A. Seeking quashing of the said endorsement and to direct the respondents 3 to 5 to implement the memorandum of settlement dated 03.06.2004, as at Annexure-P and grant the benefit of continuity of service, this writ petition has been filed.

3. On behalf of respondents 3 to 5, statement of objections has been filed seeking dismissal of writ petition.

4. Sri V.N. Jagadeesh, learned counsel appearing for the petitioner contended that, the action of the 5th respondent is arbitrary, illegal and discriminatory. Learned counsel submitted that, the endorsements as at Annexures A & J are contrary to each other, since the case of one Ramesh was considered and sent for approval to the Government, which course of action was not adopted in the case of the petitioner. Learned counsel further contended that, the petitioner having rendered continuous service is entitled to the benefit of settlement between the Management and the employees union, as at Annexure-F and there being arbitrariness on the part of respondents 3 to 5, the prayers in the writ petition may be granted.

5. Sri P.S. Dinesh Kumar, learned counsel appearing for the respondents contended that, the direction issued in W.P. Nos. 2288-97/2010 dated 11.02.2010 (Annexure-H) has been complied with. The case of the petitioner was examined and the petitioner being not entitled to relief, the endorsement as at Annexure-A was issued. Learned counsel submitted that, there is no discriminatory treatment meted to the petitioner. Learned counsel pointed out that, one Ramesh having represented seeking absorption, he was informed that the case would be considered on receipt of the approval from the Government and an endorsement as at Annexure-J was issued. Learned counsel further submitted that, the KPTCL had written to the Government with regard to absorption of gangmen and the Government has sent reply dated 09.06.2010, in which it has been made clear that, the case of gangmen who are not covered under the settlement cannot be considered for absorption. Learned counsel pointed out that, the petitioner having been engaged as gangman on 30.01.1999, had not completed 6 years of continuous service as on 01.04.2003 and even according to the petitioner, he being part of settlement between the Management and employees union as at Annexure-F, is not entitled to the relief.

6. Perused the record of the writ petition.

7. Indisputedly, the petitioner was engaged as gangman on 30.01.1999. The petitioner in para 10 of the writ petition has in categorical terms stated that, himself and others are very much part of the settlement that was entered into between the employees union and the Management. The memorandum of settlement is at Annexure-F. The terms of the settlement, particularly at Sl. No.

1, reads as follows:

It is agreed by the managements to convert the gangmen who are presently working continuously and completed 6 years of continuous service as on 01.4.2003 (except where the Management has effected break in service) as probationary mazdoors in phased manner every year on 1st of April starting from 01.4.2003 subject to seniority and suitability as per the probationary mazdoors regulations as amended

8. The petitioner having not completed 6 years of continuous service as on 01.04.2003, the endorsement issued as at Annexure-A issued by the 5th respondent, cannot be termed as either arbitrary or illegal, muchless against the terms of memorandum of settlement between the Management of KPTCL and its employees union. KPTCL having made reference to the Government in the matter of extending permanency benefits to bill distribution boys as probationary mazdoors, the Government by a communication dated 09.06.2010, informed the KPTCL that, neither absorption nor regularization is permissible until and unless the case of the gangmen were to come within the framework of the guidelines issued and that, the terms of the settlement dated 30.06.2004 being prior to the decision in the case of Umadevi, the guidelines issued on 10.04.2006 shall prevail. In the circumstances, the plea of arbitrariness and discrimination made by the petitioner is without any basis.

9. The claim of the petitioner having been examined by respondents 3 to 5 in terms of the memorandum of settlement as at Annexure-F, the endorsement issued as at Annexure-A does not suffer from any infirmity.

In the result, the writ petition being devoid of merit shall stand dismissed, with no order as to costs.