(2016) 02 KAR CK 0093

In the Karnataka High Court

Case No : Writ Petition No. 58196 of 2014 (L-KSRTC)

Karnataka State Road Transport Corporation APPELLANT

Vs

Deputy Labour Commissioner RESPONDENT

Date of Decision : 09-02-2016

Acts Referred:

Citation : (2016) 3 CLR 40 : (2016) 151 FLR 479

Hon'ble Judges : Mr. A.S. Bopanna, J.

Bench : Single Bench

Advocate : Smt. Renuka H.R, Advocate, for the Appellant; Sri L. Shekar, Advocate, Sri T.S. Mahantesh, AGA, for the Respondent

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J.—The petitioner is before this Court assailing the order dated 30.11.2013 impugned at Annexure-G and the order dated 31.7.2014 impugned at Annexure-H to the petition.

2. By the said orders, the Controlling Authority as well as the Appellate Authority have held that the period of service rendered by the third respondent for the purpose of payment of gratuity is to be reckoned at 33 years 11 months and 23 days and in that light, having calculated the gratuity amount and on deducting the amount already paid by the petitioner-Corporation has directed the payment of balance amount with interest at 10% p.a. The petitioner-Corporation claiming to be aggrieved by the same is before this Court.

3. Insofar as the last drawn pay of the third respondent taken at Rs. 7440/- for the purpose of calculation there is no dispute. The only question for consideration which arises in the instant petition is to take note of the actual period of service that had been rendered by the third respondent. While claiming a higher amount of gratuity, the third respondent had contended before the Controlling Authority that the appointment as Badli conductor for the first time was on 5.10.1976 and even though he had been removed on 28.3.1981 and was reinstated through the

order dated 4.11.1987, he is entitled for reckoning the entire service from 5.10.1976 till he attained the age of superannuation on 20.10.2010. It is in that light, the third respondent had contended that he had rendered the service of 33 years 11 months 23 days.

4. The Controlling Authority as well as the Appellate Court while accepting the said contention has taken note of the Circular which had been marked before the Authority as Ex.R9 The said Circular related to the case of Sri S. Govindaraj, an Ex-Badli employee who had assailed the action of the petitioner-Corporation for removing his name from the Badli list. The litigation ended in a proceedings before the Hon''ble Supreme Court in Civil Appeal No. 1339/1986 whereby he was directed to be reinstated.

5. It is in that light in order to avoid similarly placed persons also approaching the Court, the petitioner-Corporation had issued circular granting benefit as provided therein A perusal of the Circular dated 1.10.1986 would indicate that the petitioner-Corporation in fact with reference to the said proceedings in Civil Appeal No. 1339/1986 had indicated that by way of implementation of the order, the similarly placed persons would also be taken back to services. It is no doubt true that as pointed by the learned counsel for the third respondent, in the said Circular the purport of the consideration was in the nature of reinstating the Ex-badli conductors who had been removed in such terms. In fact some of the terms of the circular would also indicate that the petitioner-Corporation had also referred to the manner in which the petitioner-Corporation would have the discretion of treating the back wages for the said period. It is in fact the said Circular which has convinced the Controlling Authority as well as the Appellate Authority to come to their present conclusion.

6. As against the conclusion reached by the Controlling Authority and the Appellate Authority, the learned counsel for the petitioner while assailing that aspect of the matter would point out that the third respondent herein was thereafter appointed by the offer dated 4.11.1987 The same is produced at Annexure-D to the petition and it is in that regard contending that the terms therein would make it clear that the offer therein has been made subject to the same and since the third respondent has accepted and was brought in the Badli list thereafter to which he has acceded, his services could be reckoned only from the said date, though at the first instance the petitioner-Corporation for the purpose of payment of gratuity had taken into consideration the services from the year 1993 when he was brought on probation.

7. Therefore, in that circumstance what arises for consideration is as to whether the benefit of the entire service from the year 1976 would be available to the third respondent by considering the subsequent appointment on 4.11.1987 as a reinstatement with continuity in view of the benefit granted by the Hon''ble Supreme Court to one Sri Govindaraj and the same had been thereafter made applicable through the Circular at Ex.R9.

8. In a normal circumstance in the absence of the offer dated 4.11.1987 as at Annexure-D, certainly the Circular should have been considered in its literal terms to grant the benefit. However when inter se there are documents to indicate the nature of the offer that was made the terms of appointment that was indicated and pursuant to the same, if the person concerned has accepted the same, reported to work and also continued under the said understanding till the date of superannuation, whether at this stage the earlier benefit should be granted, is the issue.

9. Therefore, a perusal of the offer dated 4.11.1987 would in categorical terms indicate that he being engaged as Badli worker subject to the terms that has been indicated therein and the offer also states that he should report to work if the terms and conditions set out therein is acceptable to the third respondent. The third respondent did not question the order therein claiming better benefits than what has been indicated therein and on the other hand has reported to work and continued in that capacity. Hence, the length of the services for the period from 4.11.1987 upto the date of superannuation would have to be taken into consideration though the petitioner has committed an error in taking it from 1993.

10. In a circumstance if there were documents to indicate with regard to the nature of the services rendered from 5.10.1976 to 28.3.1981 as being continuous and if the dispute was raised immediately, the said period would have been available in such circumstance to be added to the period from 4.11.1987 onwards. However, in the instant case, when for the first time, the issue was raised for consideration only in the year 2012 when the proceedings was initiated before the Controlling Authority and the documents for the period from 5.10.1976 to 28.3.1981 were not available so a to indicate with regard to the actual manner of service that had been rendered by the third respondent, at this distant length in time the benefit would not be available.

11. Therefore, keeping in view all these aspects of the matter, the correct length of service to be taken into consideration would be from 4.11.1987 to 2.10.2010 when the third respondent obtained voluntary retirement from the service. If the said period is taken into consideration, the total length of service would be 22 years 11 months 27 days. The amount would have to be calculated for the said period and on deducting the amount already paid, the balance of the amount to be calculated shall be paid with interest at 10% p.a.

12. Hence, the orders impugned stand modified to the said extent of reckoning the period at 22 years 11 months 27 days instead of 33 years 11 months 23 days as done by the Controlling Authority. The Controlling Authority shall therefore calculate the amount on that basis and from the amount available in deposit, the amount payable to the third respondent be paid and the excess amount if any, be refunded to the petitioner-corporation The said process shall be completed by the Controlling Authority as expeditiously as possible, but at any rate within an outer limit of six weeks from the date on which a copy of this

order is furnished.

13. The petition stands disposed of accordingly.

