
(1987) 09 KAR CK 0025
In the Karnataka High Court
Case No : W.A. No's. 17 to 21 of 1982

Karnataka State Road Transport Corporation

APPELLANT

Vs

K.C. Mudalagiriappa

RESPONDENT

Date of Decision : 18-09-1987

Acts Referred:

Karnataka State Road Transport Corporation Cadre and Recruitment Regulations, 1968
— Regulation 5, 5 (1), 6

Citation : (1987) ILR (Kar) 3475

Hon'ble Judges : Prem Chand Jain, C.J.; Shivashankar Bhat, J

Bench : Division Bench

Advocate : Jayakumar S. Patil, for the Appellant; K. Subba Rao, for R-1 to 5 and J.V. Hulsoor, for R-6, for the Respondent

Final Decision : Allowed

Judgement

Shivashankar Bhat, J.—The dispute pertains to direct recruitment to the post of Assistant Traffic Inspectors, Class-III, under the appellant-Karnataka State Road Transport Corporation ("Corporation" for short).

2. The substance of the reliefs sought by the Writ petitioners (who are respondents in these appeals,) is to appoint them as Assistant Traffic Inspectors (Class-III) - (for short, "ATI") with effect from the date each of them ought to have been appointed, if appointments had been made in accordance with the Karnataka State Road Transport Corporation Cadre & Recruitment Regulation's, 1968 (referred, hereinafter as the "Regulations"). One of the petitioners sought a direction to the respondent (i.e. appellant in these appeals) to publish a list of the total number of vacancies that existed when the petitioner was selected for the post of ATI as also the number of vacancies that arose subsequently till date. A few have sought the quashing of the Resolution No. 4076 dated 9/10-3-1979 passed by the Corporation.

3. In the year 1975, the Corporation advertised inviting applications for appointment to 52 vacancies in the post of ATI. The Selection Authority, made

the selections and the lists were prepared on 1st June, 1977. The lists were notified in November, 1977. The Selection Authority had prepared two lists. The main list called the "Select List" contained 91 names. Another list called "Waiting List of Vacancies that are likely to arise during one year period" had 80 names (This list is referred hereinafter as the "Waiting List").

4. The petitioners were in the Waiting List at Sl. Nos. 23, 50, 56, 70 and 19. It is the common case that all the 91 in the select list were appointed, but 11 of them did not join. Another 4 left during the period of training. Thus, only 76 out of the select list, were finally appointed.

5. The contention of the petitioners, is that, they have a right to be appointed, as and when vacancies arose, and the Corporation cannot ignore the lists prepared by the Selection Authority and that the said Lists are to be kept alive by force of Regulation 6(4), till all of them are appointed. Petitioners also contended that until the Selection Authority quashes the list for reasons to be recorded in writing by it, the said List continues to operate, till all the selected candidates are appointed.

6. The ease of the Corporation is, that the Selection Authority could have prepared a list, strictly according to Regulation 6(4). Under Regulation 6(4), the List shall be prepared keeping in view, inter alia, the existing number of vacancies and vacancies that may be expected to arise in one year. If the list exceeds the number of likely vacancies during the period of one year from the date of selection, it has no legal sanctity and is inoperative. Since there was pressure on the Corporation to make appointments from the Waiting List, it had to clarify the position as per the impugned Resolution No. 4076, to restrict the said List to number of vacancies that arose during the period of one year from 1-6-1977.

7. The learned Single Judge, on a consideration of rival contentions held as follows :

(i) Prescribing the procedure for selection of candidates for direct recruitment must be read with Regulation 6(4) and therefore "all appointments by direct recruitment should be made by the Selection Authority in the manner provided for in Regulation 6" ;

(ii) The impugned resolution of the Corporation was made without the approval of the Government and therefore it cannot override the effect of the Statutory Regulations ; Consequently it was held that the "petitioners have a right to claim appointments to the future vacancies that have arisen in the Corporation after the last week of June, 1977".

A Writ of Mandamus was issued to the Corporation to prepare and publish a list of the total number of vacancies that existed when the petitioners were selected for those posts and also the number of vacancies that have arisen subsequently "upto date", and the manner in which those vacancies have been filled up so far.

Corporation was, further, directed to consider the case of the petitioners for appointment with effect from the date on which they should have been appointed, subject to any Regulation which deals with consequential monetary reliefs available to them. Question of seniority was left open.

8. The ratio of the order under appeal is that, (a) the appointment is to be made by the Selection Authority ; (b) those candidates whose names are found in the Lists prepared by the Selection Authority have a right to be appointed, as and when vacancies arose and (c) the List operates, till all the candidates are appointed, unless the Selection Authority quashes the List.

9. Sri Jayakumar S. Patil, Learned Counsel for the appellant, argued that the "Selection Authority" is different from the "Appointing Authority" and only the latter authority could make the appointments. Filling up of the vacancies is a matter of administrative convenience of the Corporation and a candidate whose name is found in the List cannot seek, as a matter of right, appointment, unless inter alia, some one below him is appointed. This Court under Article 226 of the Constitution of India cannot issue a Writ in the nature of Mandamus to appoint the petitioners, as none of them has a statutory right for the appointment. He relied upon the decisions in (i) Mani Subrat Jain and Others Vs. State of Haryana and Others, ; Miss Neelima Shangla, Ph. D. Candidate Vs. State of Haryana and Others, and State of Kerala Vs. Smt. A. Lakshmikutty and others,

10. Sri K. Subba Rao, the Learned Counsel for the Writ Petitioners, very emphatically tried to sustain the order under appeal.

11. The facts in Mani Subrat Jain's case¹ were thus :

The High Court had recommended two members of the Bar to fill up two vacancies in the post of District Judges to the Government (State Government), which is the appointing authority. The recommendations were not accepted by the Government. The candidates recommended by the High Court filed Writ Petitions in the High Court seeking a Mandamus to appoint them. These Writ Petitions were dismissed by the High Court. The Supreme Court also rejected the appeals of the candidates. It was held by the Supreme Court, that the power of appointment was vested in the Governor, to be exercised after consulting the High Court. The recommendations of the High Court did not create a legal right in the candidates. Hence Writ of Mandamus cannot be issued at all.

12. Miss. Neelima Shangla case² pertains to the appointment of Subordinate Judges. The relevant Rules were interpreted by the Supreme Court. It was held that the appointments were to be made strictly in the order in which the Service Commission prepared the list of eligible candidates. But it was also open to the Government not to fill up all the vacancies for any valid reason. The decision rested on the facts of the case.

13. Lakshmikutty's case³ is again a case of appointment to the post of District Judges. It was held that the High Court cannot issue a Writ of Mandamus to

appoint the candidates recommended by the High Court.

14. Mr. Subba Rao, pointed out that these decisions were based on the constitutional provisions regarding the appointments to the posts in Subordinate Judiciary and the interrelationship of the High Court and the Governor in making these appointments. According to him, under the Regulations of the Corporation, the role of the Selection Authority is not merely confined to make recommendations. The Learned Counsel states that the effect of Regulations 5 and 6 is to make the said authority, the Appointing Authority, in practice.

15. As observed by the Supreme Court in the aforesaid decisions, existence of a legal right is the foundation for seeking a Writ of Mandamus. Unless the petitioners establish a right for the appointments or a right in each of them to be considered for the appointment, the High Court cannot issue any such right. The Corporation cannot be compelled to make the appointments to the existing vacancies, without, a duty on its part to fill up the vacancies, as and when the vacancies arose.

16. The Corporation is constituted under the provisions of Road Transport Corporation Act, 19(sic)0 (referred as "the Act"), it is established, for the purposes stated in Section 3, which reads as follows :

"3. Establishment of Road Transport Corporations in the States - The State Government, having regard to :-

(a) the advantages offered to the public, trade and industry by the development of road transport ;

(b) the desirability of coordinating any form of road transport with any other form of transport ;

(c) the desirability of extending and improving the facilities for road transport in any area and of providing an efficient and economical system of road transport services therein,

may, by notification in the Official Gazette, establish a Road Transport Corporation for the whole or any part of the State under such name as may be specified in the notification."

17. The general duties of the Corporation is stated in Section 18 of the Act. The Corporation is to exercise its powers, as progressively to provide or secure or promote the provisions of, an efficient, adequate, economical and properly coordinated system of road services in the State. Section 19 enumerates its powers. Section 14(2) says that Corporation may appoint a Secretary and such other Officers and employees as it considers necessary for the efficient performance of its functions. Section 14(3) provides for the conditions of appointment and service and scales of pay of the Officers and employees. They are to be, determined by the Regulations made under the Act, and is subjected to Section 34. Section 34 empowers the State Government to issue directions

and instructions to be followed by the Corporation and such instructions may include directions relating to the recruitment, conditions of service of its employees, etc. Section 45 provides for the making of Regulations by the Corporation, for the administration of its affairs. Regulations may be made with regard to "conditions of appointment and service" etc. It is also relevant to note here Section 22, which says that, "it shall be the general principle of a Corporation that in carrying on its undertaking it shall act on business principles".

18. A power to make an appointment normally includes a power, not to make the appointment. Nowhere the Act, nor the Regulations compel the Corporation to fill up the vacancies as and when they arise. In all cases of appointments, in the absence of a mandate to the contrary, it is left to the appointing authority to fill up the vacancies or not at a particular point of time. Problems of administration are practical ones and require proper accommodations. A happened in this case, the Corporation advertised to fill up 52 posts, in the year 1975. 22,416 candidates filed applications. Ultimately 2153 candidates passed the written test. Interviews were held in early part of the year 1977 and the Selection Authority prepared the List in June, 1977.

19. Needs of the Corporation will not be constant. Problems recur. Unexpected situation may develop requiring fresh or modified policy to be formulated. In this case, petitioners aver that, on the taking over of the Contract Carriages, the Corporation had to provide employments to those employees of private operators whose carriages were taken over and in this process, chances of the petitioners were taken away. This was the inevitable consequence of nationalisation. Petitioners cannot make a grievance of it. Probably, with the increase of work load, vacancies also must have increased. The Corporation may have fresh ideas in the background of the newly cropped up situation.

20. Mr. Subba Rao is not right in contending that the Selection Authority is the Appointing Authority. He cannot also contend that appointing authority has no independent function, apart from mechanically appointing the candidates found in the List.

As per Regulation 2(2),--

"Appointing Authority" means the Authority specified by the Corporation by Resolution to make appointments to posts in the service of the Corporation in accordance with the methods of recruitment specified in these regulations";

And as per Regulation 2(3),--

"Approved Candidate" means a candidate whose name appears in a list of candidates approved for appointment to any service, class or category by the Selection Authority".

"Selection Authority" means the authority specified under these Regulations (10).

Regulation-5 provides the procedure for appointment which reads thus ;-

"5(1) : All appointments by direct recruitment shall be made by the Appointing Authority from the list of approved candidates in the descending order of the list. The inclusion of a candidate's name in the list of approved candidates for any post shall not confer on him any right to appointment to such post.

(2) to (8) xx (omitted as unnecessary)

(9) The appointing authority shall, inform the selected candidate of the fact of his selection by Registered Post Acknowledgment due at the address given in the application requiring him to report for duty within a specified time along with the physical fitness certificate. If the candidate fails to join duty by the due date he will forfeit his chance for appointment.

Provided that the Appointing Authority may in appropriate cases extend the time limit for a period not exceeding two months".

(underlining is ours)

Regulation-6 prescribes the procedure for selection. Regulation 6(4) reads thus :-

"The Selection Authority shall, after interviewing the candidates, select candidates found suitable for appointment and shall prepare an approved list of candidates selected in the order of merit. The list of selected candidates shall be prepared keeping in view the reservation required for Scheduled Castes, Scheduled Tribes and Backward Classes as may be fixed by Government from time to time regarding cycle of vacancies and also the existing number of vacancies, vacancies that may be expected to arise in one year.

The list so prepared shall be valid till all the candidates selected are provided with appointment unless the Selection Authority quashes the list for reasons to be recorded in writing".

(Underlining is ours)

21. It is clear that the inclusion of a candidate's name in the List will not confer on him any right of appointment. Of course, this cannot be widely construed to give a power to the appointing authority to pick and choose from the list. This sentence in Regulation 5(1) means, that, none has a right to demand the appointment; whenever appointments are to be made, same will have to be in the descending order of the List. If at a particular point of time, the appointing authority stops making the appointment, the unlucky candidates cannot compel, the making of appointments. Such a compulsion to make the appointment cannot be attributed to Regulation 5 at all.

22. Regulation 6(4) also does not bear the meaning attributed to it by Sri Subba Rao. It does not empower the Selection Authority to prepare a list of any number of candidates it thinks fit. The power of Selection Authority is circumscribed by the very language of the Regulation. The number of candidates to be included in the List cannot outweigh the number of immediately existing vacancies and the possible vacancies expected to arise in one year from the date of selection. If the

Selection Authority ignores the prescription as to this number, it will be acting beyond its powers. Such a List prepared by the Selection Authority cannot be sustained under Regulation 6(4).

23. It is impermissible for the Selection Authority to create a stagnation in the matter of candidates to be appointed for years together. It cannot tie down the Corporation to the choice of the candidates, from such a List indefinitely. Needs may vary. Qualifications required of a candidate may require change ; functions of the particular post for which selection was made, may get altered. These and several other matters are to be considered by the Corporation as and when the occasion demands. It is for this reason, the second para of Regulation 6(4) will have to be understood as being operative only within the main field of the said Regulation 6(4). The List prepared will be operative for a period of one year, because it is prepared with a view to fill up the expected vacancies that may arise during that one year. However, Selection Authority, for good reasons, may cancel the List during the said year.

24. The impugned Resolution of the Corporation truly reflects the intention of Regulation 6(4). The Resolution confines the operation of the List prepared by the Selection Authority, to number of vacancies that arose during the period of one year from 1-6-1977. It is clear that those vacancies will be filled up from the relevant List prepared on 1-6-1977.

25. It is not possible to uphold the power of the Selection Authority to by pass Regulation 6(4) and empower it to prepare a List which will extend to the vacancies that arose after one year from 1-6-1977.

26. It is open to the appointing authority to appoint, out of the selected candidates, such number of persons according to its requirement, provided, appointments are made in the descending order from the List. It is also open to the appointing authority not to make any appointment, if the exigencies of the Corporation do not require immediate filling up of vacancies. No legal duty is imposed on the Corporation by the Act or by the Regulations, to fill up the vacancies as and when they arise or within a particular period thereafter. Therefore, we hold that ;-

- (i) There is no legal right in the petitioners to the appointments sought by them;
- (ii) The Selection Authority is incompetent to prepare the List so as to contain more number of candidates than required to fill up the existing vacancies and the vacancies likely to arise in the course of one year thereafter. The excess number may be ignored by the Corporation ;
- (iii) The Corporation is not legally obliged to fill up the vacancies as and when they arise or near about the time thereafter ;
- (iv) The candidates included in the List prepared under Regulation 6(4) have no legal right to seek the appointment, if the Corporation chooses not to fill up the vacancies;

(v) The functions of Selection Authority cannot be equated to that of the appointing authority.

27. In view of the foregoing, these Writ Appeals are entitled to succeed.

Accordingly, these Writ Appeals are allowed and the Writ Petitions stand dismissed.