

(2011) 04 KAR CK 0109
In the Karnataka High Court
Case No : Writ Appeal No. 92 of 2006

Karnataka State Road Transport Corporation

APPELLANT

Vs

Manjegowda

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Karnataka State Road Transport Corporation (Conduct and Discipline) Regulations,
1971 — Regulation 23 (8)

Citation : (2011) 5 KarLJ 71 : (2011) 4 KCCR 2524

Hon'ble Judges : V.G. Sabhahit, J;B. Manohar, J

Bench : Division Bench

Advocate : H.R. Renuka, for the Appellant; S.B. Mukkannappa, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Sabhahit, J.—This appeal is filed by Respondent KSRTC in W.P. No. 25148/05, being aggrieved by the order passed by this Court dated 16.12.2005, wherein, the learned Single Judge of this Court permitted the writ Petitioner to avail the services of an Advocate to defend him in the enquiry initiated against him and the Petitioner assured effective and regular participation in the enquiry initiated and since both the parties agreed that they would co-operate in completing the enquiry and a time limit may be fixed, it was directed that the enquiry shall be completed within a period of six months from the date of receipt of a copy of the order and accordingly disposed of the writ petition. Being aggrieved by the said order dated 16.12.2005, this appeal is filed by the Respondents in the writ petition contending that the domestic enquiry has been initiated against the Petitioner who was working as conductor in the Appellant corporation and the management is represented by the law officer of the Corporation, who is a law graduate and therefore application was filed seeking permission to engage the services of a counsel by the writ Petitioner, which was rejected by the Appellant-KSRTC, having regard to the provisions of Regulation 23(8) of the Karnataka State Road Transport Corporation (Conduct and

Discipline) Regulations, 1971, wherein, being aggrieved by the same, writ petition was filed. The petition was resisted contending that in view of the provisions of Regulation 23(8), the writ Petitioner cannot be permitted to engage the services of legal practitioner and therefore in view of the said provision, application for engaging the services of counsel/ legal practitioner has been rightly rejected by the Appellant-KSRTC. The learned Single Judge after considering the contentions of the learned Counsel for the parties and also the provisions of Regulation 23(8) and following the judgment of the Hon''ble Supreme Court that when the Management is represented by a person with legal knowledge, the workmen should also be permitted to engage the services of a counsel, in order to enable the workman to have an effective defence, as the management is represented by the law officer, who is admittedly a law graduate and was practising law before recruitment, permitted the Petitioner to engage the service of an Advocate and it was submitted by both the parties i.e., the Petitioner and KSRTC that they would complete the enquiry within six months and therefore in view of the said joint submission, it was ordered that enquiry shall be completed within six months from the date of receipt of the said order. Being aggrieved by the said order, this appeal is filed by the Respondents.

We have heard the learned Counsel appearing for the Appellants and learned Counsel appearing for the Respondent.

2. Learned Counsel appearing for the Appellants vehemently submitted that when the matter was pending before the learned Single Judge, the order appointing law officer as the presenting officer was withdrawn and a person who had a law degree was appointed as presenting officer and in view of Regulation 23(8), there is bar on the workmen to engage the legal practitioner for defending him in the domestic enquiry. In support of her contention, learned Counsel has relied upon the decision of the Hon''ble Supreme Court in the case of D.G. Railway Protection Force and Others Vs. K. Raghuram Babu, wherein it is held that ordinarily in a domestic/departamental enquiry, the person accused of misconduct has to conduct his own case, Such an enquiry is not a suit or a criminal trial where a party has a right to be represented by a lawyer and even where the Regulation provides for engaging the services of a counsel, having regard to the facts and circumstances of each case, where, it is unnecessary to permit the workman to engage the service of an Advocate by the Management, engaging the services of an Advocate cannot be claimed as a matter of right. She has also relied upon the decision of the Hon''ble Supreme Court in the case of The Management of National Seeds Corporation Ltd. v. K.V. Rama Reddy reported in 2006 (7) 581, wherein the Hon''ble Supreme Court has held that a legal practitioner would not be in a position to assist the Respondent having regard to the facts of the said case and the documents that is sought to be relied and it has not been shown as to how a legal practitioner would be in a position to assess the documents in question are concerned and infact he would be in a better position to throw light on the question of acceptability or otherwise on the relevance of the documents in question and therefore rejected the prayer for

appointment of a counsel.

3. In response to the arguments of the learned Counsel appearing for the Appellants, learned Counsel appearing for the Respondent submitted that admittedly, the law officer of the Appellant corporation who is a law graduate and who was practising as an Advocate before selection and appointment, is appointed as presenting officer for the Appellants and therefore application was filed for engaging the services of an Advocate as Respondent herein would not be able to effectively represent his case and substantiate the same and hence he would require the services of an Advocate. The learned Single Judge having regard to the facts and circumstances of the case has permitted the Respondent to engage the services of an Advocate and further submitted that when the writ petition was posted for final hearing and was heard on 16.12.2005, no submission was made that representing officer has been changed and what was submitted has been quoted in the order passed by the learned Single Judge that the Respondent Corporation is ready to withdraw the Presenting officer, who is legally trained and appointing another person if the apprehension of the delinquent-workman is that, presence of a legally trained person would prejudice his interest and therefore it is not open to the Appellants to contend that the Presenting Officer had been changed even before the final order was passed by the learned Single Judge on 16.12.2005, Having regard to the decision laid down by this Court, wherein provisions of Regulation 23(8) has been considered and it has been held that having regard to the facts and circumstances of each case, the right of the workman to engage the services of a legal practitioner has to be considered and where the management is represented by a law graduate and workman is not permitted to engage the services of an Advocate, the same would amount to denial of opportunity before the enquiring authority and enquiry would be an empty formality.

We have carefully considered the contentions of the learned Counsel appearing for the parties and scrutinised the material on record.

4. The material on record would clearly show that admittedly when the order was passed by the learned Single Judge, the Appellants had appointed law officer who is a law graduate and was practising as Advocate before selection and appointment for presenting the case of the Appellants and therefore the same had necessitated the workman to file application seeking for services of a legal practitioner. The fact that law officer is a trained law graduate has been admitted in view of the submission made by learned Counsel appearing for KSRTC as observed in para 4 of the order passed by the learned Single Judge, wherein, it is stated that presenting officer who is legally trained would be changed if prejudice is caused to the workman. However, no such order changing the Presenting Officer was produced and what was contended by learned Counsel appearing for the Appellants, when the learned Single Judge disposed of the matter is as follows:

Learned Counsel for the Respondent on the other hand submits that the

Respondent-Corporation is ready to withdraw the Presenting Officer who is legally trained and appoint another person if the apprehension of the delinquent-workman is that, presence of a legally trained person would prejudice his interest

5. Accordingly, we hold that there is no merit in the contention of the learned Counsel appearing for the Appellants that law officer had been changed during the pendency of the writ petition.

6. There is also no merit in the contention of the learned Counsel appearing for the corporation that in view of provision of Regulation 23(8) of the Regulation, it was not permissible for the workman to engage the services of a legal practitioner. The Division Bench of this Court in the case of North West Karnataka Road Transport Corporation Central Offices v. Mohammad Kamil Sindgikar reported in ILR 2003 KAR 202 has considered the provisions of Regulation 23(8) which reads as follows:

On hearing the learned Counsel appearing for the parties, we find that the view taken by the disciplinary authority in not permitting the workman to engage the services of a legal practitioner, finds support from the judgment of this Court in the case of G.R. Venkateshwara Ready v. K.S.R.T.C. wherein it has been held that:

"The word "may not in Regulation 23(8) has to be read as "shall not".

But the said judgment of the learned Single Judge has been subsequently overruled by the Division Bench in W.A. 2967/1992 G.M. Cholaiah v. Karnataka State Road Transport Corporation (DD 18.6.1996) wherein it has been held that:

" On the language of the Regulation, depending upon the history of the disciplinary proceedings, the seriousness of the charge, the nature of the complaint, the nature of the evidence to be led in support of the charges and other attendant circumstances surrounding the proceedings would indicate as to whether refusal to engage assistance of a legal practitioner would expose an employee to serious prejudice or not. Tested on that basis, in each case, the Authorities will have to decide the matter. In this case, the concerned Authority has not exercised that discretion at all. On the other hand, it has been stated that Regulation 23(8) bars engaging the services of a legal practitioner, therefore, such permission cannot be granted. Regulation cannot be understood as prohibiting an employee from engaging the services of an Advocate with the permission of the employer and if the circumstances to which we have adverted to earlier were available, it may become necessary to engage the services of an Advocate, as otherwise, the opportunity given before the inquiring Authority will be only an empty formality".

A similar view has been taken by one of us (G.C. BHARUKA, J.) in the case of Panchappa Siddaramappa Kalburgi v. Joint Registrar of Co-Operative Societies, though under the provisions of the Karnataka Co-operative Societies Act 1959.

7. Following the earlier judgment of this Court and having regard to the fact that

word "may not" in Regulation 23(8) has to be read as "shall not", has been negated, the decision relied upon by the learned Counsel appearing for the Appellants is not helpful in the present case as in the said case, it is held that on the facts and circumstances of the said case, the learned Single Judge has permitted to engage the services of a legal practitioner. Services of a Legal practitioner cannot be permitted to the workmen as of right, as laid down by the Supreme Court in D.G. Railway Protection Force Case. The decision laid down in the case of The Management of National Seeds Corporation Ltd., is also not helpful to the Appellants in the present case, as it is laid down in the said case by the Hon'ble Supreme Court that having regard to the facts and circumstances of the said case, a legal practitioner would not be in a position to assist the Respondent and therefore permission was refused having regard to the facts of the case and in the present case, as the Appellants have appointed the presenting officer, who is a law officer/ graduate, who was practising before selection and appointment, which is not disputed, it is clear that permission granted by the learned Single Judge to engage the services of an Advocate to defend the case of the writ Petitioner-Respondent herein in the domestic enquiry is justified and does not suffer from error so as to call for interference in this intra Court appeal. Accordingly, appeal is devoid of merit and appeal is dismissed.

8. It is clear from the order passed by the learned Single Judge that both the parties i.e., the workman and KSRTC had submitted before the learned Single Judge that they would complete the enquiry within six months" time and in this regard a joint submission was made by the Corporation and writ Petitioner and order was passed to complete the enquiry within six months from the date of receipt of the said order and despite said submission, KSRTC has chosen to file this appeal and obtained stay order and as appeal was admitted, stay was granted and disciplinary proceedings has not made any progress till today and accordingly, we direct that disciplinary enquiry shall be completed within a period of three months from the date of receipt of this order or production of certified, copy, whichever is earlier.