
(2006) 02 KAR CK 0030
In the Karnataka High Court
Case No : Writ Petition No. 3249 of 2001

Karnataka State Road Transport Corporation	APPELLANT
Vs	
S.D. Bandi	RESPONDENT

Date of Decision : 15-02-2006

Acts Referred:

Industrial Disputes Act, 1947 — Section 33, 33 (2) (b), 33 (3), 33 A
Karnataka Industrial Disputes Rules, 1957 — Rule 61

Citation : (2006) 110 FLR 333 : (2006) ILR (Kar) 2269 : (2006) 2 KarLJ 511

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : L. Govindraj, for the Appellant; M.C. Narasimhan, Senior Advocate and K.B. Narayana Swamy, for the Respondent

Final Decision : Allowed

Judgement

Anand Byrareddy, J.—The facts giving rise to this petition are as follows.?

The respondent is a driver with the petitioner, the Karnataka Road Transport Corporation, Central Offices, Bangalore (hereinafter referred to as "the Corporation" for short). He was issued with Articles of Charge, dated 28-2-1993. The charge levelled against him was that he was found participating in a gate meeting held on 10-12-1993 on the premises of the petitioner. It was further alleged that he attempted to assault the Depot Security Officer. On this basis, an enquiry was initiated and he was found guilty of the charges. By a final order dated 19-5-1994, the Disciplinary Authority reduced the pay of the respondent by one incremental stage permanently. The respondent having raised a dispute, the same was referred in Reference No. 21 of 1997 by an order dated 18-12-1996. The Industrial Tribunal, Mysore (hereinafter referred to as "the Tribunal" for brevity), by an order dated 23-12-1998, accepted the reference and the order of punishment was set aside and the petitioner was directed to pay arrears. Be that as it may, it was the respondent's allegation that even during the pendency of the reference in No. 21 of 1997, the petitioner had passed an

order of transfer dated 31-5-1997, which was in violation of Clause 14(c) of a Memorandum of Settlement of the year 1981 and that he was a "protected workman" within the meaning of Section 33(3) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act" for brevity) and therefore, the order of transfer amounted to alteration of conditions of service. Hence, the respondent filed a complaint u/s 33-A read with Section 33 of the Act. The Labour Court on an enquiry in respect of the said complaint, held that the respondent being a member of the recognised staff and workers union of the petitioner and being an office-bearer, was a "protected workman" within the meaning of Section 33(3) of the Act, and that the order of transfer dated 3-5-1997 passed against the respondent was in violation of Clause 14(c) of the Memorandum of Settlement and that the order of transfer would amount to an alteration of the conditions of service and set aside the order of transfer. It is this which is in challenge in the present petition.

2. Shri L. Govindaraju, appearing for the petitioner, would submit that the Labour Court was not justified in setting aside the order of transfer on the ground of violation of Section 33(3) of the Act. He contends that the section was applicable in the event of alteration of condition of service or in the case of infliction of punishment. That being not the case, the Labour Court could not have interfered with a purely administrative order of transfer. He further contends that there was no violation u/s 33 of the Act and this ought to have been examined as a preliminary issue before recording any finding against the petitioner. The Labour Court did not have jurisdiction to entertain the complaint since the impugned order seeks to interfere with the administration of the Corporation. Transfer being an incident of service and more often, a corrective measure, interference with such administrative matters would tantamount to administrative interference. Reliance placed by the Labour Court on Clause 14 of the settlement, is inconsistent with the law and such reasoning would override the law which provides for transfer in the exigencies of service. He would draw my attention to Section 33 of the Act. Sub-section (3) of Section 33 of reads as follows.?

(3) Notwithstanding anything contained in Sub-section (2), no employer shall during the pendency of any such proceeding in respect of an industrial dispute, take any action against any protected workman concerned in such dispute.?

(a) by altering, to the prejudice of such protected workman, the conditions of service applicable to him immediately before the commencement of such proceedings; or

(b) by discharging or punishing, whether by dismissal or otherwise, such protected workman,

save with the express permission in writing of the authority before which the proceeding is pending.

Explanation. For the purposes of this sub-section, a "protected workman", in relation to an establishment, means a workman who, being a member of the

executive or other office-bearer of a registered trade union connected with the establishment, is recognised as such in accordance with rules made in this behalf.

3. He would place reliance on the case of *B. Varadha Rao Vs. Commissioner for Transport*, . He would draw particular reference to paragraphs 6 and 7, which reads as follows.?

6. Transfer is always construed and understood as an incident of service. Any alteration in the conditions of service must result in prejudice to the Government servant and some disadvantage touching his pay, allowance, pension, seniority, promotion, leave etc. As soon as a person enters the service of the State, he is entitled to seek enforcement of the conditions of service against the State if they are sought to be interfered with or interpreted to his disadvantage. Correspondingly, the Government is under an obligation to apply and implement all conditions of service in accordance with the law. In the absence of statutory provisions, administrative-instructions issued in exercise of executive powers govern both the State and the Government servant. Transfer of a Government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service and therefore does not result in any alteration of any of the conditions of service to his disadvantage. Transfer of a Government servant is made in the exigencies of administrative necessity and in the interest of public service. That a Government servant is liable to be transferred to a similar post in the same cadre is a feature and incident of Government service. No Government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified, non-transferable post.

7. The expression "conditions of service" means, all those conditions which regulate the holding of a post by a person from the time of his appointment till his retirement and even beyond it, in matters like salary, promotion, leave, seniority, etc., [vide *I.N. Subba Reddy Vs. Andhra University and Others*,]. But the transfer of a Government servant in a transferable post does not pertain to any condition of service and an order of transfer is therefore one which may be made within the exclusive administrative domain of the Government. It does not involve any condition of service as such. The Supreme Court has reiterated this position in *Shanti Kumari v. Regional Deputy Director, Health Service, Patna Division* AIR 1981 SC 1577, that Courts should not interfere with transfer of a Government servant which is ordered in the exigencies of service or due to administrative reasons.

This judgment was challenged and carried to the Supreme Court and the Supreme Court in *B. Varadha Rao Vs. State of Karnataka and Others*, , while reiterating the law laid down as above, has held as follows.?

...the view expressed by the learned Judges that transfer is always understood and construed as an incident of service. The words "or other conditions of service" in juxtaposition to the preceding words "denies or varies to his

disadvantage his pay, allowances, pension" in Rule 19(1)(a) must be construed ejusdem generis. Any alteration in the conditions of service must result in prejudice to the Government servant and some disadvantage touching his pay, allowances, pension, seniority, promotion, leave, etc. It is well-understood that transfer of a Government servant who is appointed to a particular cadre of transferable posts from one place to another is an ordinary incident of service and therefore does not result in any alteration of any of the conditions of service to his disadvantage. That a Government servant is liable to be transferred to a similar post in the same cadre is a normal feature and incident of Government service and no Government servant can claim to remain in a particular place, or in a particular post unless, of course, his appointment itself is to a specified, non-transferable post. As the learned Judges rightly observe:

The norms enunciated by Government for the guidance of its officers in the matter of regulating transfers are more in the nature of guidelines to the officers who order transfers in the exigencies of administration than vesting of any immunity from transfer in the Government servants".

He would also rely on the judgment in the case of P.H. Kalyani Vs. Air France Calcutta, . He submits that the impugned order be set aside, having due regard to the settled position of the law.

4. On the other hand, Shri M.C. Narasimhan, Senior Advocate appearing for Shri Narayanaswamy, for the respondent, contends that it is not denied that the respondent was an office-bearer of a recognised union of the petitioner. That in terms of a Memorandum of Settlement executed on 27-9-1981, Clause 14(c) lays down that the office-bearers of the recognised unions shall not be transferred from the place of work during the term of their office. Therefore, the respondent being a "protected workman" and being recognised as such, could not be transferred during the pendency of the reference before the Labour Court without express permission of the Tribunal. The order of transfer, as it alters the conditions of service of the workman, is not only a violation of law, but also violates the settlement referred to hereinabove, which is binding on the petitioner. Even if it could be held that transfer is an incident of service, the employer could issue such an order of transfer at its discretion, if the order of appointment provided for such a transfer and it cannot be at the whim of the employee. In this regard, he relies on a judgment in the case of Management of Nippani Urban Co-operative Bank Ltd. Vs. Workmen, , wherein in an industrial dispute raised before the Labour Court by the workmen of the bank who were before the Court, on their transfer from its office, to the newly opened branch, contending that the employer had no power to transfer in the absence of any agreement, the Labour Court had rejected the contention. The workmen, having approached the High Court by way of a writ petition challenging the order of the Labour Court, the same was quashed and it was held that the employer had no right to transfer the workmen. In appeal, it was held that the right of transfer was implicit in every contract of service, was an argument which was too wide off

the mark as the rights of the employer and an employee are governed by the terms of the contract. When the workmen were taken on employment, the appellant-bank had only one office and no branch. It would be implied that the workmen were not told that there was a possibility of the appellant setting up other branches and their transfer to such branches was a contingency. Therefore, there was no contract of service containing an express power of transfer. The appellant therein would not be said to have an inherent power of transfer, unless the employer was an establishment where transfer was a normal feature and incident of service, and where an order of transfer can be interfered with only if it was made mala fide or for some ulterior purpose. He also relies on a judgment in the case of Kundan Sugar Mills Vs. Ziyaaddin and Others, , to contend that in the absence of an express term of the contract of service, it cannot be implied as a condition of service of employment. He would further submit that the memorandum of settlement is an agreement between the parties binding both of them. The basic purpose was to maintain status quo of the workman. The fact that the proceedings had been initiated against the respondent on account of his union activities for the welfare of the workmen and the petitioner having miserably failed in bringing charges of misconduct on that account, has chosen to victimise the respondent by the order of transfer and therefore, when the order is mala fide, the Industrial Tribunal has rightly held that the order of transfer, ought to be set aside. He would also rely upon a judgment in the case of Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. Vs. Ram Gopal Sharma and Others, and Indian Telephone Industries Ltd. and Another Vs. Prabhakar H. Manjare and Another, , wherein the Court has held that the order of dismissal was not valid, for non-compliance of Section 33(2)(b). Therefore, he would submit that there is no ground for interference and prays that the petition be dismissed.

5. In reply, Shri Govindaraju would submit, that since there was no alteration of a condition of service, the order of the Labour Court was without jurisdiction. Secondly, the contention that the respondent was a "protected workman" is incorrect. Rule 61 of the Industrial Disputes (Karnataka) Rules, 1957 reads as follows.?

61. Application u/s 33.(1) An employer intending to obtain the express permission in writing of the Conciliation Officer, Board, Labour Court or Tribunal, as the case may be, under Sub-section (1) or Sub-section (3) of Section 33 shall present an application in Form "J" in triplicate to such Conciliation Officer, Board, Labour Court or Tribunal and shall file along with the application as many copies thereof as there are opposite parties.

(2) An employer seeking the approval of the Conciliation Officer, Board, Labour Court or Tribunal as the case may be, of any action taken by him under Clause (a) or Clause (b) of Sub-section (2) of Section 33 shall present an application in Form "K" in triplicate to such Conciliation Officer, Board, Labour Court or Tribunal and shall file along with the application as many copies thereof as there are opposite parties.

(3) Every application under Sub-rule (1) or Sub-rule (2) shall be verified at the foot by the employer making it or by some other person proved to the satisfaction of the Conciliation Officer, Board, Labour Court or Tribunal to be acquainted with the facts of the case.

(4) The person verifying shall specify by reference to the numbered paragraphs of the application, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

(5) The verification shall be signed by the person making it and shall state the date on which and the place at which it was verified.

And, it is not the respondent's case that he is recognised as a "protected workman" in terms of the said rule. There is no material on record to indicate that he was recognised as such. Therefore, it is not possible to accept the contentions on behalf of the respondent. The judgments relied upon by the Counsel for the respondent were in relation to orders of dismissal, whereas, the impugned order pertains to an order of transfer and therefore, the said judgments would not be applicable.

6. Insofar as the other judgments cited to contend that the contract of service should provide for a right of the employer to transfer is concerned, it would not apply to establishments such as the petitioner as held by the very judgments and therefore, it would not be said that an order of transfer would interfere with conditions of service or that it should be provided for in the order of appointment, especially when the petitioner establishment has Divisions all over the State of Karnataka. This was so even at the time of the appointment of the respondent. The incident of transfer is implied and it is not a contingency.

7. On these rival contentions, in my opinion the Labour Court has erred in holding that an order of transfer would be an order interfering with the conditions of service. As laid down by the Supreme Court, it is purely an incident of service. On the second ground whether the respondent was a "protected workman" and therefore, the order of transfer was bad for want of permission u/s 33 of the Act. It is not possible to accept that the respondent was a "protected workman" for purposes of Section 33 of the Act read with Rule 61 of the Industrial Disputes (Karnataka) Rules, 1957. Therefore, the Labour Court was clearly acting without jurisdiction and has proceeded on an erroneous basis in the face of material on record.

8. In the circumstances, the petition is allowed. The impugned order of the Labour Court is set aside.