

(1999) 07 KAR CK 0049

In the Karnataka High Court

Case No : Writ Appeal No. 5639 of 1998

Karnataka State Road Transport Corporation, Bangalore and
Another

APPELLANT

Vs

Ningegowda and Another

RESPONDENT

Date of Decision : 27-07-1999

Acts Referred:

Citation : (1999) ILR (Kar) 4032 : (1999) 6 KarLJ 587 : (2000) 1 LLJ 1264

Hon'ble Judges : Y. Bhaskar Rao, C.J.;A.V. Srinivasa Reddy, J

Bench : Division Bench

Advocate : Sri L. Govindaraj, for the Appellant; Sri V.S. Naik, for the Respondent

Judgement

Y. Bhaskar Rao, C.J.—This writ appeal is filed by the corporation assailing the order of the learned Single Judge partly allowing the writ petition.

2. The brief facts of the case are:

The first respondent-conductor filed writ petition seeking a direction to the appellants to treat the respondent as having been regularly appointed from the date he completed 180 days or at least on the completion of 240 days of service, and fix his regular pay with effect from that date by giving him the pay scales, allowances, increments and all benefits as if he was regularly appointed, and grant him the revised pay scales, fitment and all other consequential benefits as if his pay had been fixed w.e.f. the date on which it would have been regularly fixed with all allowances and benefits on the completion of 180 days service or at least 240 days of service; and to direct the appellants to pay the petitioner the costs of the proceedings. The respondent was appointed as conductor on 31-8-1967. The year-wise break-up of the number of days he worked is as follows:

279 days in 1967-68,

246 days in 1968-69,

315 days in 1969-70,

264 days in 1970-71,

310 days in 1971-72 and

326 days in 1972-73,

He came to be appointed on probation with effect from 1-8-1974 and his services have been regularised for the purpose of seniority from the said date. The case of the petitioner is that he is entitled to all the benefits after completion of 180 days from [1-8-1967] and also entitled to seniority from that date.

3. The learned Single Judge after referring to the settlement entered into by the management with the employees held that the petitioner was entitled to time-scale of pay but rejected the prayer of the petitioner for seniority. Assailing that the present appeal is filed by the corporation.

4. Learned Counsel for the corporation contended that respondent 1 was appointed only as badli conductor. At that time the Clause 22 of the 1962 settlement was not in force as it was superseded by the 1965 settlement which did not save the clauses of 1962 settlement nor did it have any independent clause. Therefore, the learned Judge erred in allowing the said writ petition partly.

5. On the other hand learned Counsel for the respondent submitted that though the 1965 settlement superseded the 1962 settlement the later agreement saved all the clauses in 1962 agreement by virtue of the saving Clause 23 of the 1970 settlement and, therefore, the respondent-conductor will get benefit of Clause 62 of settlement. Therefore, the learned Single Judge was right in holding that the conductor is entitled to get the time-scale of pay after expiry of 180 days from [31-6-1986].

6. The only point that arises for our consideration is:

Whether the respondent is entitled to time-scale of pay from [31-6-1967] after completion of 180 days or from 1-4-1969?

7. There is no dispute that the respondent-conductor was appointed as badli conductor on [31-8-1967]. Badli conductor means a conductor temporarily appointed to work whenever regular conductor would not attend office and he would be paid wages every month taking into account number of days in a month he worked. Clause 22 of the Industrial Truce entered on 17-2-1962 reads as follows:

"Any employee working for 180 days including weekly off and other holidays continuously will be brought on the time-scale of pay".

The word used is "any employee". Thus, even employees engaged on daily wages are employees as per the terms of employment and, therefore, he comes within the meaning of the expression "any employee". Therefore, as per sub-clause (2) of Clause 22 all the employees who worked for 180 days are entitled

to time-scale of pay. This settlement was superseded by 1965 settlement which came into force on 23-5-1965. There is no dispute about that. Clause 19 of the said settlement reads as follows:

"Other demands: All demands other than those settled in this Truce Agreement shall be deemed to have been withdrawn".

In this settlement, there is no other clause protecting the rights of the badli workers or pay-scales or any other benefit. It is after the coming into force of the [1967] settlement of 22nd March, 1965 the earlier settlement has ceased to have any affect. Thus, from 22-3-1965 the effect of Clause 22 of earlier settlement has ceased to have any force. Again in 1970 another settlement is brought into force which was given effect from [27th July, 1970]. In that settlement Clause 23 reads as follows:

"Benefits already granted under earlier agreement and in which a revised demand is not made, shall be deemed to have been continued".

This settlement specifically used the words "benefits granted under earlier agreement" i.e., in all previous agreement including the earlier agreement of 1962. Thus, the 1970 settlement revived all the benefits that were made available to the employees hitherto in all the previous settlements. Thus Clause 22(i) and (ii) of 1962 settlement came into force immediately from the date of the coming into force of 1970 settlement i.e., [1-4-1969]. Therefore, the first respondent is entitled to the benefits from 1-4-1969 onwards as by then he had completed 180 days. Therefore, he is entitled to the payment of time-scale of pay from 1-4-1969 instead of from the 181st day after 31-8-1967 as granted by the learned Single Judge.

8. The writ appeal is partly allowed and the order of Single Judge is modified accordingly.