

(2014) 02 KL CK 0205

In the High Court Of Kerala

Case No : WA. No. 101 of 2014 in WP(C). 27566/2013

Kerala State Road Transport Corporation

APPELLANT

Vs

P. Mohamed Rafeek

RESPONDENT

Date of Decision : 12-02-2014

Acts Referred:

Citation : (2014) 02 KL CK 0205

Hon'ble Judges : T.B. Radhakrishnan, J;A. Muhamed Mustaque, J

Bench : Division Bench

Advocate : Babu Joseph Kuruvathazha, SC for KSRTC, Advocate for the Appellant; K.P. Rajeevan, Advocate for R1 and Sri Noble Mathew, Senior Government Pleader for R2, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Thottathil B. Radhakrishnan, J.—We have heard the learned standing counsel for the KSRTC and the learned counsel appearing for the contesting respondents.

2. We have gone through the affidavits filed in support of different C.M. Applications seeking condonation of delay. We are satisfied that delay has been sufficiently explained. Delay condoned. All applications for condonation of delay are allowed.

3. Issues arose about regularization of empanelled conductors and drivers in KSRTC and also those who were working from the unadvised list of PSC. Going by the materials available in W.A. No. 101 of 2014, we see that different Government Orders were issued from time to time in relation to such issue and ultimately, a list was prepared in 2008. From the list so prepared, certain persons were not reporting for work on account of being under treatment, owing to ailments, injuries etc. Requests were made that such persons may also be permitted to be regularized. A list was so prepared. Thereupon, Government issued instructions contained in Letter No. 11144/A3/2012/Transport dated 05.10.2012 requiring KSRTC to send up the materials regarding each of such

persons to the Government with certificates evidencing the nature of ailment, the treatment availed and the time taken for such treatment. Such certificates were required to be countersigned or attested by a Civil Surgeon, who is a Medical Officer in Government. Pursuant to that, materials were collected through different depots of KSRTC and those materials were forwarded to the Government along with the memorandum dated 22.11.2012. Going by the common course of official business and human conduct, one would necessarily expect that the Government would scrutinize those documents, and, if any person is found ineligible on the basis of the materials so furnished, they would be avoided since a policy decision was already taken regarding regularization of empanelled persons, including those who could not demonstrate that they were working on the relevant date, because of illness which could be evidenced by documents. But, what appears to have happened is that Government issued a letter on 07.11.2013 to KSRTC (Annexure C, along with W.A. No. 101 of 2014). That communication says that if 77 persons are regularized, that will open a floodgate of litigations and that would not be in the interest of the financial condition of the KSRTC. It is also stated that giving such concessions will not be a healthy practice in the administration of KSRTC. There is not a syllable in that communication criticizing the materials forwarded by KSRTC to the Government regarding each of the persons about whom medical certificates and other relevant particulars and documents were sent in terms of the earlier Government decisions. This approach of the Government amounts to an omnibus toppling of the earlier policy decisions under which even other persons have been regularized in the service of KSRTC.

4. Policy decisions arrived at by Government and the procedure adopted to give effect to such policy decisions cannot be rolled back through a letter of the Secretary to Government, running contrary to the earlier policy decisions, which were operated upon, as is evidenced by the materials on record.

5. Though these writ appeals are filed by the KSRTC, the only hitch for KSRTC is that the Government has not permitted the regularization. As already noted, the refusal to grant permission to regularize each of the employees in relation to whom materials were gathered by KSRTC as instructed by the Government and forwarded to the Government for consideration, is for no valid reason. This stand of the Government is clearly arbitrary and irrational, not eligible to be countenanced on the basis of the Constitution and the laws.

6. The effect of clause 5 of G.O.(Ms) No. 78/2011/Tran dated 22.12.2011 was considered by the Division Bench in W.A. No. 52 of 2014. It is profitable to quote from that judgment.

...The thrust of the appellant's appeal is based on clause 5 of that Government Order which reads as follows:

Those employees who are continuing in Kerala State Road Transport Corporation as on the date of this Order and those who have not attained the age of

superannuation alone will be considered for regularization as per this Order.

2. Those who get excluded are those persons who cannot be treated as continuing with the KSRTC as on the date of the aforementioned Government Order. A complete jural relationship of master and servant as a temporary employee or a regular employee is not necessary for continuance in KSRTC for the purpose and objects sought to be achieved by that Government Order...

For the aforesaid reasons, these writ appeals are dismissed directing that the Government, not having found against the materials of any person who was included in the list and whose relevant materials and documents were forwarded shall take that the approval of the Government is to be taken as granted and KSRTC will be at liberty to regularize all such persons. This affirms the directions issued by the learned single Judge in the different writ petitions from which these writ appeals arise.