

(1994) 10 KAR CK 0030

In the Karnataka High Court

Case No : Writ Petition No's. 24039 to 24105, 24546 to 24571 of 1990 and
1349 to 1352 and 17492 to 17494 of 1992

K.S.R.T.C. Staff and Workers Federation

APPELLANT

Vs

KSRTC

RESPONDENT

Date of Decision : 26-10-1994

Acts Referred:

Citation : (1994) ILR (Kar) 3764

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : M.C. Narasimhan and V. Lakshminarayana, for the Appellant; L. Govindaraj, for R-1 and R-3 and Sashidar Karmadi, H.C.G.P. for R-2, for the Respondent

Judgement

J.F. Saldanha, J

1. I have heard learned Counsel representing the various petitioners as also the learned Counsel representing the respondents. There is only one narrow point that has been vehemently canvassed by the Counsel representing the petitioners which I shall summarise as follows.-

Admittedly the petitioners along with several others had applied for the post of Helpers "B" with the respondent - Corporation. The selection process was completed and these petitioners received a letter from the Corporation to the effect that they had been selected but that they would be offered actual employment at a prospective date. In the meanwhile, since the Corporation required the services of some persons in that capacity on a purely short term or rather ad-hoc basis, the petitioners were offered what was known as a badli post pending their regular appointments. Though a contention is raised that this was a subterfuge and that it must be treated as the petitioners having joined their regular posts, I am not prepared to uphold that argument because the Corporation had very clearly specified that it was a "badli appointment" and there is provision in the Corporation's Rules itself for such ad-hoc assignments. It is a

recognised fact that sometimes due to shortage of hands or other reasons, an employer may, as a stop gap arrangement utilise the services of some employees and it is a well settled law that such an appointment cannot be treated on parity with a regular appointment.

2. Sometime after this happened, it came to the notice of the Corporation that the selection process had not been carried out in the manner as required and that in fact several improper practices had been followed particularly with regard to assessing and awarding of marks. Consequently it was evident to the Corporation that the selection process was not fair and proper and for this purpose, the matter was investigated into. The investigation did reveal that the aforesaid position was justified. Thereafter a disciplinary proceeding was initiated against the persons responsible and even though we are not much concerned with those proceedings, the petitioners learned Counsel point out that ultimately the misconduct could be established only in a few cases. It is therefore their basic submission that the selection process is vitiated only in respect of those cases where impropriety has been established and that a general attack against the entire selection process is not valid. To simplify the argument, what is submitted is that the action of the Corporation in setting aside the entire list and calling the employees for denovo selection is not an authority properly exercised in so far as the process had reached a stage of finality, and that the petitioners had received appointment letters and therefore that certain rights had accrued in their favour which had unjustifiably been taken away. It is argued on behalf of the petitioners by learned Counsel that the action of the Corporation in annulling the selection process may hold good in those of the cases where the record indicates that there was tampering, but that in the remaining cases, it cannot be sustained. Learned Counsel also drew my attention to the fact that the Corporation itself had initially decided on 24.10.91 to confine the action only to those cases where disciplinary action had been taken against the officers, but that subsequently on a reconsideration of the matter the Corporation took a decision to rescind the entire list. It is thereafter pointed out that in the subsequent selection the present petitioners have not been selected whereas significantly enough, those of the persons against whom some material had emerged in the enquiry did in fact qualify. That aspect of the matter however is not of much relevance. On the basis of this material the petitioners" learned Counsel submitted that this Court should quash the subsequent annulment of the entire list vis-a-vis the present petitioners and restore them to their original appointment.

3. These collective submissions are very stoutly resisted by the Corporation. It is submitted on behalf of the Corporation that the Corporation has acted very correctly and that the Court should not under any circumstances interfere. Learned Counsel who represents the Corporation points out to me that it is an unfortunate defect of many selection process that unfair, improper and corrupt practices prevail and that therefore, the moment this fact came to the notice of the Corporation that the matter was investigated into and that the Corporation

did find sufficient justification to institute disciplinary proceedings against the officers responsible. In one of such cases, the officer came to be dismissed from service. In this background the basic argument canvassed is that the whole of the selection process is vitiated. Learned Counsel submitted before me that one cannot dissect or separate one candidate or one group of candidates from the other but once it is demonstrated to the satisfaction of the Corporation that impropriety of a serious nature did exist in the selection process, that the only fair and correct process would be to set aside the entire selection and afford all the candidates a *denovo* opportunity through a free and fresh exercise. He submitted that such a course of action is beyond question and that therefore no interference is called for.

4. As regards the basic argument canvassed on behalf of the petitioners that the entire body of candidates should not be virtually punished if in isolated cases something has gone wrong, the reply of the Corporation's Counsel is that it is impossible to make any such distinction. His contention was that the selection process is one single exercise and if there is a lack of integrity in conducting this process in one or two or a few cases, the remaining selection done by the same persons even if proper, cannot inspire confidence in this regard. He submitted that the action is justified. In support of his submission, learned Counsel drew my attention to a Decision of the Supreme Court reported in Union Territory of Chandigarh Vs. Dilbagh Singh and others, where the Supreme Court dealing with a selection list prepared in an unfair and injudicious manner and which came to be cancelled upholding the action on the ground that the authority had acted within its rights. Learned Counsel points out to me that the Decision of the Supreme Court squarely covers the present case. He has taken me through the observations in that Decision wherein, the Supreme Court has in unequivocal terms upheld the revocation of the entire select list on the ground that the corrupt practices that were disclosed in that instance justified such revocation.

5. There cannot be any two opinions about the fact that the principles enunciated in the said Decision do hold good in such cases. I am also in complete agreement with the Corporation's Counsel that the matter did require investigation and that it also required corrective action. Normally particularly in the light of the law on the subject, I would not have interfered under any circumstances in the present Decision except for one narrow angle that distinguishes the present Case. Unlike in the proceedings before the Supreme Court, in the present Case a thorough investigation was done in the matter and it was therefore possible to identify as to which of the cases came within the tainted category and which did not come within that category. It is necessary to record that as far as the present petitioners are concerned, there was nothing specific that emerged against them individually, but the learned Counsel representing the Corporation has vehemently contended that this would not make any difference because the general conduct of the persons who conducted the selection was not only suspect but found to be improper. He therefore contended that where several hundred candidates were involved and where there was good ground atleast in certain

specific instances to set aside the selection, that the contention of the petitioners that the action ought to have been confined only to those cases is wholly untenable. Learned Counsel's argument is that it was the same persons who have selected the remaining candidates including the present petitioners and that therefore, it would ultimately boil down to a situation whereby the selection of the present petitioners is at the hands of persons whose integrity was suspect.

6. This is the main essence of the controversy before me. While I do find that the submission canvassed on behalf of the respondent-Corporation is perfectly logical, one needs to apply it with a degree of circumspection in the present case. The reason for it is that a subsequent enquiry was conducted and the definite cases of misconduct were in fact identified and the action was confined to those cases. This would make some difference and it would also lead to the conclusion that even if the members of the Selection Committee had misconducted themselves vis-a-vis some of the candidates, that there was nothing on record to indicate that they acted in the same manner as regards the rest of them. It is only on this very limited consideration which to my mind is virtually thrown up because of the rather unusual facts of the present case, that interference would be justified by this Court.

7. That brings me to the last question namely the type of reliefs that the petitioners may be entitled to. Their Counsel have ultimately submitted that other persons who had applied along with them and who have been recruited have been in employment for quite some time and that if effect is to be given to the original appointment orders which the petitioners received, it must be legitimately held that they would have been appointed at the same time as their colleagues and, therefore, that the petitioners are entitled to a direction that they be employed to those posts with retrospective effect. This is strongly opposed by the Corporation's learned Counsel who very rightly points out to me that the appointment letters originally issued did not guarantee actual appointments to the post from any prescribed point of time. Further more, learned Counsel points out that the petitioners were offered immediately thereafter a second opportunity for selection and that they did not make the grade. Under these circumstances, he submits that they are totally disqualified for reliefs with any retrospective effect. These submissions do appeal to me and to my mind are correct and the petitioners would, inspite of their succeeding in these Petitions, be entitled to a direction to the Corporation that the original appointment orders be respected to the extent that the present group of petitioners shall be appointed to the posts in question on the first available opportunities when vacancies to those posts arise. One has to take cognizance of the unemployment situation in this Country and of the fact that any long term delay would work to the prejudice of the petitioner. It is therefore essential that a time limit be prescribed; the respondent-Corporation shall therefore give effect to this order as expeditiously as possible but in any event within an outer limit of four months from the date of communication of this Order. The learned Counsel appearing on both sides shall communicate the Order to the concerned authority.

Having regard to the facts of this case, the Petitioners succeed and Rule is made Absolute. There shall be no order as to costs.

8. It is clarified, that out of the group of Petitions before me in only some of them the candidates themselves are petitioners, but this order shall take effect in respect of those persons who are represented also by the Union.