
(1981) 07 KAR CK 0009
In the Karnataka High Court
Case No : WP 9682/80

Lakshmaiah

APPELLANT

Vs

K.S.R.T.C. and Another

RESPONDENT

Date of Decision : 03-07-1981

Acts Referred:

Karnataka State Road Transport Corporation (Cadres and Recruitment) Regulations, 1968 — Regulation 7(2)

Citation : (1982) 1 KarLJ 505

Hon'ble Judges : M. P. Chandrakantaraj Urs, J

Judgement

1. It is the case of a former employee of the Karnataka State Road Transport Corporation (hereinafter referred to as the Corporation) who has moved this Court under Art. 226 of the Constitution for an appropriate relief in respect of the termination of his services by an order dated 28-1-1980.

2. The facts leading to the petition may be briefly stated as follows:

3. The petitioner had joined the Bangalore Transport Service Division of the 1st respondent-Corporation in the year 1967. In 1970 his service came to be terminated on the ground of unauthorised absence. However, on his appeal against the said order, the General Manager of the Corporation issued an order of re-appointment on 28-12-1974. Thereafter, by another order dated 18-11-1978 he was placed on probation for a period of two years. The latter appointment fixed the probationary period as two years which lapsed on 18-11-1978. The petitioner was continued thereafter without the probation being extended in accordance with Clause (1) of Regulation 7 of the Karnataka State Road Transport Corporation Cadre, and Recruitment Regulations, 1968 (hereinafter referred to as the Regulations). As earlier stated by an order dated 28-1-1980 made by the Deputy General Manager, who is 2nd respondent herein, the petitioner's services were terminated on the ground that he was not found suitable for the job for which he was appointed on probation. The two grounds of attack made in this petition against the validity of the order passed at Ext.-A are:

(1) That on the failure of the Corporation or the 2nd respondent to extend the period of probation in accordance with Clause (1) of Regulation 7 of the Regulations, the petitioner must be deemed to have been confirmed and therefore his removal could only be after due enquiry in accordance with the provisions made in Regulation 23 of the Regulation;

(2) That the impugned order is invalid on the ground that by stating that he is unsuitable for the job, a punishment is inflicted and a stigma attached to his name without an enquiry being held.

4. It is no doubt true that the period of probation was not specifically extended: by the respondents in accordance with Clause (1) of Regulation 7 of the Regulations. It is not in dispute. But it has been urged for the Corporation that even in the absence of such extension a probationer cannot claim automatic confirmation by mere lapse of time, having regard to the language of Clause (2) of Regulation 7 of the Regulations which requires an order of confirmation to be made when the probationer is found suitable. In this behalf, my attention has been drawn to the decision of the Supreme Court in the case of *State of Maharashtra v. Veerappa R. Saboji*, AIR 1980 SC 42. In that case, the Supreme Court was concerned with the Rules concerning probation in Bombay Judicial Service Recruitment Rule, 1956, and specifically Rule 4(2)(iv) of the said Rules and after construing the Rules the Supreme Court held as follows:

"6. There are two parts of Cl. (iv)-(1) that it is imperative to put. every person appointed under sub-rule (2) on probation for a minimum period of two years "unless otherwise expressly directed" and (2) on the expiry of the said period of two years the person appointed may be confirmed if there is a vacancy and if his work is found to be satisfactory. The plain meaning of the rule is that there is no automatic confirmation on the expiry of the probationary period of two years in the first instance. On the expiry of the said period and on the fulfilment of the requirement of sub-clauses (a) and (b) a Government servant becomes eligible for being confirmed and normally he is likely to be confirmed. But it is a matter of common knowledge in many branches of Government service including the Judiciary that for administrative reasons or otherwise the confirmation is delayed and is made at a subsequent time. It may also be delayed for watching the work of the Government servant for a further period. The expression "unless otherwise expressly directed" governs only the first part of clause (iv) and not the second as was attempted to be argued by Mr. Nariman. In my opinion the rule in question, therefore, comes under the ordinary and normal rule that without an express order of confirmation the Government servant will not be taken to have been confirmed in the post to which he was appointed temporarily and/or on probation. It is not covered by the exceptional rule like the one which was the subject matter of consideration of this Court in *State of Punjab v. Dharma Singh*, (1968) 3 SCR 1."

5. The language of sub-clause (2) of Regulation 7 of the Regulations is somewhat similar in so far as it relates to matter of confirmation. It is clear from the above

decision, all that the probationer acquires after completion of the probationary period prescribed, is an eligibility for confirmation and not confirmation itself. Unless such eligibility is found to be satisfactory and an order in that behalf made confirming the probationer, he still remains a probationer, as observed by the Supreme Court in the aforementioned case of Saboji. There are a number of reasons why in a large organisation like K.S.R.T.C. orders either extending the probation or orders confirming the probationer may take sometime even beyond the prescribed period of probation. That in itself cannot be construed as a right accruing in favour of the, petitioner for confirmation as an automatic result of lapse of time prescribed in his appointment order as a probationer. Therefore, the first contention must fail. The petitioner must be held to have been a probationer even on the date when Ext-A was passed by the 2nd respondent.

6. The next contention that he has been punished also has no substance. I have perused the records pertaining to the case of the petitioner. It is seen that the Deputy General Manager has on going through the file of the petitioner opined as follows:

"I have gone through the records, of Shri Laxmaiah. Conductor, No. 2822. He was absorbed as a probationer from 18-11-1976. He involved himself in number of default cases and has been cautioned, finally cautioned to improve his performance. He has involved himself in 29 default cases including of pilferage nature. He was in all these cases fined, suspended, censured, cautioned and finally cautioned. Despite all these chances offered to him, he has not shown any indication of improvements in his performance. I have also gone through his record of attendance which is of prime importance for a probationer. His performance of attendance is as follows:

In view of the facts stated above, I feel it will not be worth-while to continue him in service) since he has not shown any improvement despite chances given. His services be therefore terminated as unsuitable."

7. When somewhat similar question came up for consideration before Rama Jois, J., in the case of Chandrasekharaiah, T.S. v. Deputy General Manager, K.S.R.T.C., ILR 1979(2) Kar. 1728, the learned Judge after discussing elaborately a number of decisions of the Supreme Court on the subject came to the conclusion that when a probationer was being discharged for want of satisfactory performance, the use of the word "unsuitable" would neither amount to termination without an enquiry, nor casting aspersion or stigma on the character of the probationer. In that view of the matter the 2nd contention also must fail. The facts and circumstances of the case of the petitioner are almost identical with the petitioner in the aforementioned case. In the result, there is no merit in this writ petition and the same is dismissed. But, in the circumstances of the case, there will be no order as to costs.

8. However, it must be noticed that this writ petition came up for preliminary hearing after notice to respondents and after having heard the Counsel for both parties,

the above order has been made.