

(1993) 09 KAR CK 0011

In the Karnataka High Court

Case No : Writ Petition No's. 27870, 27904, 27949, 28268 and 28991 of 1993

Nanjappa

APPELLANT

Vs

Karnataka State Road Transport Corporation

RESPONDENT

Date of Decision : 24-09-1993

Acts Referred:

Karnataka State Road Transport Corporation Cadre and Recruitment Regulations, 1968
— Regulation 15

Citation : (1993) ILR (Kar) 3531

Hon'ble Judges : Hanumanthappa, J

Bench : Single Bench

Advocate : P.S. Manjunath, for the Appellant; K. Lakshminarayana Rao, for the Respondent

Final Decision : Dismissed

Judgement

Hanumanthappa, J.—Since the facts are similar and the points to be considered being common, all these Writ Petitions are disposed of by this Common Order.

2. The point for consideration in these Writ Petitions is, whether claim for seniority or certain monetary benefits will accrue to an employee from the date of actual regularisation or from the date of initial appointment when such appointment is a temporary one and later regularised?

3. A few facts of the case as stated by the learned Counsel for the parties, are adverted to hereunder:-

a) Petitioners are all employees of respondents Karnataka State Road Transport Corporation, which is a State Undertaking. They were all initially appointed on temporary basis as Clerks and later they were regularised. Their details are as under:-

Name of the petitioner & W.P. No

Date of appointment

Date of 180 days completion

Date of regularization.

K.K.Nanjappa W.P.28268/93

17/3/1976

16/9/1976

08/9/1978

Rahamathunnisa W.P.28991/93

14/7/1976

13/1/1977

11/3/1977

H.R.Shamala W.P.27949/93

04/3/1976

3/9/1976

27/3/1978

C.Shivanna W.P.27870/93

17/3/1976

16/9/1976

27/3/1978

K.S.Raju W.P.27904/93

01/4/1976

1/10/1976

27/3/1978

The posts were subsequently designated as Junior Assistants.

b) It is the case of the petitioners that their initial appointments were against existing vacancies and was in conformity with Regulation 15 of the Karnataka State Road Transport Corporation Cadre and Recruitment Regulations. The said Regulation reads:-

"15. Temporary Appointments.

1) Where it is necessary in administrative interests to fill immediately a vacancy in a post reserved for direct recruitment and borne on the Cadre and Service and it is likely that there might be delay in making an appointment in accordance with these Regulations, the Appointing Authority may, with the "previous

approval of the Chairman, appoint a person otherwise than in accordance with these regulations or for a period of 180 days whichever is earlier, and such a person shall be termed as a focal candidate. The restriction will, however, not apply to local appointments to be made to fill up short term vacancies.

2) xxxxx

3) A person appointed under Sub-regulation (1) above, shall be replaced as soon as possible by an approved candidate. The local candidate shall not be entitled by reason only of such appointment to continue in the post or to any preferential claim to any future appointment to such post or any other post or posts."

The further case of the petitioners is that their service conditions regarding regularisation are covered by the Truce Agreement (Settlement dated 16.2.1978 reached between the management and the Employees' Federations of K.S.R.T.C.). According to them, para 4 of the said agreement is applicable to them. The relevant portion of said clause reads thus:-

"4, Badli and part-time employees:

1(a) All the Badli and local candidates who have put in 180 days of uninterrupted continuous service and who are in the Badli list or in temporary appointment on the date of signing of this Truce Agreement will be absorbed in service subject to the availability of the permanent posts.

Note: The meaning of "continuous service" shall be as defined in Section 25B of the industrial Disputes Act, 1947.

(b) The Badli and temporary employees who have put in 180 days of uninterrupted continuous service on the date of signing of this agreement and who cannot be absorbed for want of permanent vacancies, shall be kept in the Waiting List for future absorption.

(c) xxxxx (d) Badli and local candidates, who are going to be regularised in service as per above rules will be put on probation for a period of 8 months from the date of regularisation. This regularisation will not affect in any way the pending default cases against them,"

c) On the representation of the petitioners that they are entitled to regularisation by virtue of their appointment under Regulation 15 and in terms of para 4 of the Truce Agreement, the then Deputy General Manager of respondent Corporation gave them deemed regularisation with retrospective effect on the ground that their confirmation dates back on their completion of 240 days from the dates of their appointment and thus conferred monetary benefits on them. As the petitioners had received salary less than what they were entitled to, the difference was calculated and paid in a lumpsum.

d) On review, it was found that the deemed regularisation given to the petitioners was wrong and their duties or regularisation were modified to a future date. Consequently, the monetary benefits given to the petitioners were ordered

to be recovered in equal instalments. As the said order was without notice to the petitioners, they were constrained to file W.P.No. 25814, 25780 to 25784 and 25785 to 25788/91 along with others, This Court allowed the said Writ Petitions on the ground that the order impugned therein was bad as the same was passed without notice to the concerned employees and reserved liberty to the Corporation to initiate fresh proceedings if so advised.

e) Pursuant to the order of this Court, show cause notices were issued to the petitioners calling upon them to show cause as to why the order passed after review should not be given effect to and the amounts paid should not be recovered. The petitioners sent replies denying the claim of the Corporation. It was contended that their services for purpose of seniority shall be counted from the date on which they became entitled for absorption. According to the petitioners, the date of issuing absorption order is not material to reckon but the date of their initial appointment against existing vacancies in accordance with Regulation 15 is material and on completion of 180 days they were entitled to regularisation, as such, no justification to fix the date of their appointment and date of regularisation as mentioned in the show cause notice.

f) The impugned orders were passed thereafter holding that petitioners enriched in an unjust manner and they are liable to repay the amounts received by them. Their pay was also refixed, which, according to the petitioners, has resulted in monetary loss. Aggrieved by the action of the Corporation in ordering recovery of amounts and revising the pay scale of the petitioners, petitioners have approached this Court.

4. Mr. Manjunath, learned Counsel for petitioners contended as follows:

The impugned orders are quite arbitrary. The said orders are unsustainable for the reason that inspite of giving a detailed reply to the show cause notices the impugned orders have been passed without assigning any reasons. The impugned orders are contrary to the earlier Decision of this Court rendered in the case of GOVINDE GOWDA v. THE KSRTC, W.P.No. 18852 of 1981 PD 28-11-1391 it is also contended that, though the petitioners were appointed initially on temporary basis, their appointments were against existing vacancies and were in conformity with Regulation 1.8 of the Regulations. According to the learned Counsel, in view of para 4 of the Truce Agreement, immediately after the completion of 180 days the petitioners' services deemed to have been confirmed and regularised with retrospective effect and by virtue of such deemed regularisation and confirmation the salary for the post was rightly paid to the petitioners for the period they served. There is no indication in the impugned orders as to why the Corporation has not acted upon the Truce Settlement arrived at earlier. From this it is clear that the Corporation has refused to respect its own promise made at the time of signing the Truce Settlement. By incorrect interpretation of the date of confirmation accrued to the petitioner, the Corporation cannot take steps to recover the amounts paid to the petitioners, which amounts are of high magnitude. Reference, to the incorrect interpretation

is to the following reasoning in the impugned order:-

After careful appraisal of notices and explanation offered in response to notices, it has been examined reviewed and concluded that the date of regularisation and confirmation granted to the Writ Petitioners and as found is that the dates of confirmation and regularisation granted vide DEO Nos.184/88 dated 20.7.88 and 296/88 dated 13.11.1986 are improper and unjust, whereas the date of regularisation granted vide DEO No. 262/79 dated 29.8.79 and DEO No. 604/78 dated 13.2.79 is perfectly valid."

According to the learned Counsel, in case of recovery in monthly salary every month, the Corporation is driving the petitioners and the other members of their families to starvation. Since the orders under challenge are as a result of misunderstanding the legal position and that too no reasons have been assigned as to why such a drastic step to recover the monies by holding that whatever amounts paid to the petitioners were incorrect payments, it is not proper to drive the petitioners to raise industrial disputes when the matters could be disposed of by this Court under Article 226 of the Constitution since there are no disputed questions of fact. The learned Counsel also read out to the Court the stand taken by the Corporation in its statement of objections and tried to explain that the Corporation has not specifically stated that the petitioners were not regularised or appointed on a particular date and the Corporation has not based its case that on completion of 180 days successfully one is not entitled to seek for confirmation or regularisation. Thus arguing, Mr. Manjunath submitted that the impugned orders, which are resultant of either failure to give effect to the Truce Settlement or improper understanding of the terms contained therein, have to be quashed and the reliefs sought for by the petitioners have to be granted.

5. As an answer to this, Sri K. Lakshminarayan Rao, learned Counsel for the respondents Corporation, argued as follows:-

There is no merit in any of the contentions raised by the learned Counsel for the petitioners. Reference made to the earlier order of this Court in Govinde Gowda's case has no application to the facts of these cases. The appointments of petitioners were not against existing vacancies in the division but those appointments were in respect of vacancies in some other divisions. The Truce Settlement will not confer any statutory right to assert that the same shall be respected and implemented. The date of confirmation will start only from the date of declaration of the probationary period as successful and not from the date of initial temporary appointment. Whether for purposes of seniority or conferring any monetary benefit or refixing the salary, the date to be taken into consideration is the date of actual regularisation. According to the learned Counsel, whatever benefits given to the petitioners earlier were on account of the bona fide mistake committed by the then. Deputy General Manager of the Corporation, which, on review it was found that such a mistake should not have been committed by the Corporation's officer as, by virtue of such mistake benefit had been conferred on the petitioners in an unjust way and if that is allowed to

continue, it would have caused a great loss to the Corporation on the one hand and resulting in following discriminatory policy on the other hand in not extending such benefit to the other employees similarly placed. As the benefit conferred on the petitioners earlier was an illegal and unauthorised one, after review the same was withdrawn. The learned Counsel fairly submitted that as there was some technical flaw, this Court was justified in quashing the earlier orders and directing the Corporation to issue fresh notices, consider the objections and then to take proper action in the matter. According to him, it was pursuant to the said Decision that the Corporation issued fresh notices to the petitioners and the petitioners replied in their own way. As the explanation given by the petitioners was not quite satisfactory, the Corporation by the impugned orders directed recovery of the amounts paid to the petitioners and refixed their pay. According to the learned Counsel, the action taken by the Corporation is not only lawful but is supported by the Decisions of this Court and the Supreme Court in matters of similar nature. He further submitted that the Corporation has not directed the petitioners to pay the entire amount in a lumpsum but has taken steps to recover the same in a phased manner.

6. For the proposition that the services rendered on temporary service will not count for seniority, the learned Counsel for the respondents relied upon the Decision of the Supreme Court in the case of Masood Akhtar Khan and Others Vs. State of Madhya Pradesh and Others, For the similar proposition the Counsel also relied upon a Decision of the Supreme Court in P.D. Aggarwal and Others Vs. State of U.P. and Others, of the Judgment it is held as follows;-

"25..... so far as purely ad hoc employees or employees on purely officiating basis or employees purely for a temporary period in the.... being not members of the service in accordance with the service rules are not entitled to have the benefit of their such adventitious, purely ad hoc and temporary service being not appointment substantively even to a temporary post will not be reckoned for determination of seniority unless and until they become members of the service in accordance with the provisions of service rules,"

For the proposition that seniority should be (sic)oned only from the date of regularisation of service, the Counsel placed reliance on a Decision of the Supreme Court in the case of VARADA RAO. B v. STATE OF KARNATAKA 1986 (2) KarLJ 449. For the similar proposition that seniority should be counted from the date of regularisation and not from the date of ad hoc appointment, reliance was also placed on a Decision of the Supreme Court in Excise Commissioner, Karnataka and another Vs. V. Sreekanta,

In support of his contention that excess payments made could be adjusted or recovered in a phased manner, learned Counsel for the respondents relied upon a Decision of the Supreme Court in State of Haryana and another Vs. O.P. Sharma and others, wherein it is held:-

"Excess payments made to employees can be recovered in phased manner and

cannot be termed as arbitrary, unreasonable, unfair or illegal."

Thus arguing, the learned Counsel for the respondents submitted that the action taken by the Corporation is a just one, no inconvenience or hardship would be caused to the petitioners in recovering the excess payments made by recovering the same in monthly instalments and sought for dismissal of all the Petitions.

7. Alternatively, learned Counsel for the respondents submitted that the questions raised by the petitioners are "disputes" in nature and unless evidence is led in, the same cannot be resolved properly by this Court under Article 226 of the Constitution and the only Forum for the petitioner is to approach the Industrial Tribunal or Labour Court by raising an industrial dispute.

8. From the averments made, the contentions raised and the arguments advanced, the Point to be answered now is whether the Point proposed supra for consideration goes in favour of the petitioners or in favour of the respondents Corporation. From the facts narrated, it is clear that the initial appointments of the petitioners were purely temporary. Their regularisation was only subsequent. In fact, the authorities found that the earlier endorsement given by the concerned Deputy General Manager holding that their confirmation was immediately after the completion of 180 days and granting the salary with retrospective effect was quite illegal and incorrect. The Corporation has not stated that the appointment of petitioners was in conformity with Regulation 15. All that is stated is the tests laid in para 4 of Truce Agreement will not confer any right on the petitioners to assert that once they were appointed on ad hoc basis, after completion of 180 days they will be confirmed automatically. If para 4 of the Truce Settlement is properly read, the only meaning that could be attached is that all those who have completed 180 days of service can seek for regularisation/confirmation. Absorption will qualify subject to availability of permanent posts. Para 4(d) of the Settlement envisages that such of the employees appointed either as badli or local candidates and who are going to be regularised will be put on probation for a period of 6 months from the date of regularisation. Even if it is accepted that para 4 of the Settlement confers right on the petitioners, if the said provision is properly understood, petitioners could claim confirmation only after six months from the date of their regularisation.

9. In the case on hand it is clear that the dates of regularisation and confirmation of petitioners were subsequent to the dates which were incorrectly given by the then Deputy General Manager. This information has been clearly spell out in the show cause notices relevant part of it is extracted at para 4, pages 8 and 9 of this Order. Extending monetary benefits to the petitioners prior to the date of their regularisation was clearly an illegal and unauthorised one. When they were not entitled to claim the benefits and if they had received the same, it amounts to an unjust enrichment.

10. Regarding the legal position as to whether the petitioners are entitled to seniority and monetary benefits from the date of their initial appointments or

from the dates of their regularisation, it is to be noted that from the principles laid down by the Supreme Court in, the cases referred to in para 6 of the Order and the arguments advanced by the learned Counsel for the respondents Corporation, it is clear that it is the date of regularisation which confers right to seek seniority and also monetary benefits and not the date of initial temporary ad hoc appointment. The Decisions rendered in the aforementioned cases is an answer to all the contentions raised by the learned Counsel for the petitioners. Hence, the Point posed for consideration in para 2 of this order is answered thus:

The entitlement to claim seniority and monetary benefits starts from the date of regularisation and not from the date of initial appointment on temporary basis.

11. Regarding the contention of the learned Counsel for the petitioners that the amount to be recovered from the petitioners is huge and if the same were to be allowed to recover in a phased manner, great hardship would be caused to the petitioners, the only "answer is in cases of such unjust enrichment, application of "equity" does not arise. Mr. Lakshminarayana Rao, learned Counsel for the Corporation submitted that the Corporation is not recovering Rs. 600/-every month from the salaries of the petitioners as submitted by the learned Counsel for the petitioners but is recovering only at the rate of Rs. 300/- per month as mentioned in the impugned order.

12. Another contention raised by the learned Counsel for the petitioners is that the action of the Corporation in picking-out only these 5 petitioners and making them liable to repay the amounts alleged to have been paid to them in lumpsum by way of arrears of salary by their own officer and allowing the other officials who are similarly placed, is quite incorrect and discriminatory in nature, as such there cannot be any recovery. But the said contention has no force for the simple reason that when once it is admitted that the earlier action of the Corporation was incorrect and that steps are taken to correct the same, this Court cannot compel the authority to allow to continue such incorrect action and to extend benefit of such wrong action to others or to continue the same illegality which is impermissible in law.

13. For the reasons given above, these Writ Petitions are liable to be dismissed. Before doing so, since the petitioners are all belong to lower category and the amounts received by them were not because of their misrepresentation or fraud committed by them but the same was paid on account of the illegal action of the officer of the Corporation, it is hoped that the Corporation would be helping the petitioners if it starts recovering 50% of the amount now proposed to be recovered.

14. With the above observation, these Writ Petitions are dismissed.