

(2002) 11 KAR CK 0044
In the Karnataka High Court
Case No : Writ Appeal No. 483 of 2001

North West Karnataka Road Transport Corporation	APPELLANT
Vs	
Mohammad Kamil Sindgikar	RESPONDENT

Date of Decision : 13-11-2002

Acts Referred:

Karnataka State Road Transport Corporation Servants (Conduct and Discipline), Regulations, 1971 — Regulation 23 (8)

Citation : (2003) 97 FLR 306 : (2003) 1 KarLJ 349 : (2003) 1 KCCR 237 : (2003) 2 LLJ 713

Hon'ble Judges : S.B. Majage, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : L. Govindraj, for the Appellant; Prabhuling K. Navadgi, for the Respondent

Final Decision : Dismissed

Judgement

G.C. Bharuka, J.—In this appeal preferred by the North West Karnataka Road Transport Corporation, the pure question of law that arises for consideration, is regarding the validity of Regulation 23(8) of the Karnataka State Road Transport Corporation (Conduct and Discipline) Regulations, 1971. This Regulation reads as under:

"A Corporation servant may take the assistance of another Corporation servant from the same division or unit where the accused Corporation servant is working, to present the case on his behalf, but he may not engage a legal practitioner for the purpose".

2. In the present case, the respondent who is working as Junior Assistant in the appellant-Corporation, is facing disciplinary enquiry. In the enquiry, he, invoking the provisions contained in Regulation 23(8) extracted above, sought permission of the enquiring officer to engage the services of a legal practitioner. But the same was rejected. According to the enquiring officer, keeping in view the provisions contained in Corporation's Circular No. 990, dated 20-12-1996,

employees facing departmental enquiry cannot seek the assistance of a legal practitioner or a qualified lawyer.

3. The respondent questioned the said order of the enquiring officer by filing the writ petition. The learned Single Judge, after examining the law on the subject, has remitted the matter to the disciplinary authority for reconsideration of the request of the petitioner to take the services of a legal practitioner before proceeding with the enquiry. Aggrieved by the said order, the present writ appeal is filed.

4. On hearing the learned Counsels appearing for the parties, we find that the view taken by the disciplinary authority in not permitting the workman to engage the services of a legal practitioner, finds support from the judgment of this Court in the case of G.R. Venkateshwara Reddy Vs. Karnataka State Road Transport Corporation, Bangalore and Others, 2. , wherein it has been held that:

"The words "may not" in Regulation 23(8) has to be read as "shall not"

But the said judgment of the learned Single Judge has been subsequently overruled by the Division Bench in the case of G.M. Cholaiah v. Karnataka State Road Transport Corporation, W.A. No. 2967 of 1992, DD: 18-6-1996 wherein it has been held that:

"On the language of the regulation, depending upon the history of the disciplinary proceedings, the seriousness of the charge, the nature of the complaint, the nature of the evidence to be led in support of the charges and other attendant circumstances surrounding the proceedings would indicate as to whether refusal to engage assistance of a legal practitioner would expose an employee to serious prejudice or not. Tested on that basis, in each case, the Authorities will have to decide the matter. In this case, the concerned Authority has not exercised that discretion at all. On the other hand, it has been stated that Regulation 23(8) bars engaging the services of a legal practitioner, therefore, such permission cannot be granted. Regulation cannot be understood as prohibiting an employee from engaging the services of an Advocate with the permission of the employer and if the circumstances to which we have adverted to earlier were available, it may become necessary to engage the services of an Advocate, as otherwise, the opportunity given before the Inquiring Authority will be only an empty formality".

A similar view has been taken by one of us (G.C. Bharuka, J.) in the case of Panchappa Siddaramappa Kalburgi v. Joint Registrar of Co-operative Societies, Belgaum Division, Belgaum and Ors. 1995 (5) KarLJ 268 : ILR 1995 Kar. 2841 though under the provisions of the Karnataka Co-operative Societies Act, 1959.

5. In the above view of the matter, we find no reason to interfere with the impugned order passed by the learned Single Judge. The appeal is accordingly dismissed.