

(1992) 08 KAR CK 0045
In the Karnataka High Court
Case No : W.A. No. 2960 of 1991

Pushpaiatha

APPELLANT

Vs

Vice-Chairman and Managing Director, KSRTC

RESPONDENT

Date of Decision : 06-08-1992

Acts Referred:

Karnataka Contract Carriages (Acquisition) Act, 1976 — Section 19

Citation : (1992) ILR (Kar) 2685

Hon'ble Judges : K.A. Swami, Acting C.J.; A.B. Murgod, J

Bench : Division Bench

Advocate : A.S. Menasinkai, for the Appellant; Thomas Peter, for L. Govindaraj, for the Respondent

Final Decision : Allowed

Judgement

K.A. Swami, Ag. C.J.

1. This Writ Appeal is preferred against the order dated 23-8-1991 passed by the learned Single Judge in WP. No. 25581 of 1990. Learned Single Judge has rejected the Writ Petition holding that the petitioner does not fall within the ratio prescribed u/s 19 of the Karnataka Contract Carriages (Acquisition) Act, 1976 (hereinafter referred to as the "Act") for the post of Supervisor.

2. Seven vehicles belonging to the ex-employer of the appellant were acquired under the Act. Sub-section (3) of Section 19 of the Act prescribed a ratio of 0.1 for each vehicle acquired under the Act in respect of the post of Supervisor. According to the case of the appellant she was working under her ex-employer M/s. V.T. Raibagi Motor Service, Gajendragad, as Supervisor-cum-clerk. The ratio prescribed for the post of Supervisory staff and Managers and also for Ministerial and Secretarial staff was 0.1 per vehicle. Section 19(3) of the Act came up for consideration before a Division Bench of this Court in W.P.No. 10203 of 1977. Learned Advocate General appearing for the K.S.R.T.C. made a submission that even though Sub-section (3) of Section 19 of the Act prescribed a ratio of 0.1 for

each vehicle, in respect of the post of Supervisory staff and Managers and also Ministerial and Secretarial Staff, one post of Supervisor was provided if 5 vehicles were acquired. On the basis of this submission, the Division Bench held thus:

"There cannot be any complaint so far as first and fourth categories under the proviso to Sub-section (3) of Section 19 of the Act. So far as second the third categories are concerned, the scale prescribed for each category is 0.1 per vehicle. So far as these categories are concerned, it was explained by the learned Advocate General that if five vehicles of the contract carriage operator were acquired, though by the application of the scale prescribed, only 0.5 can be absorbed in the service of the Corporation, one employee falling under each category is being absorbed in the service of the Corporation."

Therefore, it is clear that the Corporation was providing employment to one Supervisor of the ex-employer in the event five contract carriages of ex-employer were acquired. In the instant case, seven contract carriages of the ex-employer of the appellant were acquired. No other person belonging to either second or third category, senior to the appellant had come forward seeking the benefit u/s 19 of the Act. As such there was no justification whatsoever for the Corporation to refuse to absorb the appellant in the service of the Corporation on the same terms and conditions applicable to the employees holding corresponding posts in the Corporation.

3. Learned Single Judge has viewed the aforesaid Decision of Division Bench as incorporating the concession made by the learned Advocate General. But it is not so. Learned Advocate General had made a submission that if five vehicles of the ex- employer were acquired, one employee falling under each category i.e., category Nos. 2 and 3 from the staff of the ex-employer was absorbed in the service of the Corporation. There was an appeal preferred before the Supreme Court against the aforesaid Decision of this Court by the Writ petitioner - M.S. SHIVANANDA - and the Decision of the Supreme Court is reported M.S. Shivananda Vs. Karnataka State Road Transport Corporation and Others, . Regarding Section 19(3) of the Act, the Supreme Court in the aforesaid Decision, has stated thus:

"17. Employees in excess of the scale prescribed for the categories specified under proviso to Sub-section (3) of Section 19 of the Act are clearly not entitled for absorption. Though Sub-clause (3) to Clause 20 of the Ordinance provided for absorption of certain classes of employees in a particular ratio with effect from January 30, 1976, it does not follow that there was an automatic absorption as from that date. Every such person eligible for absorption had to fulfill three conditions viz., (1) he had to be a workman within the meaning of the industrial Disputes Act, 1947 (2) he should have been immediately before the commencement of the Ordinance, exclusively employed in connection with the acquired property, and (3) he had to come within the ratio provided in the proviso to Sub-clause (3) to Clause 20. The whole object of inserting Sub-clause (3) to Clause 20 of the Ordinance was to obviate the unemployment of the

persons suitable for employment. For this purpose, the Corporation had necessarily to screen the applicants.

18. xx xx xx

19. As Sub-clause (3) to Clause 20 itself provides that a person who is not willing to become an employee of the Corporation is entitled to retrenchment compensation as provided for in the Industrial Disputes Act, the authorities were also required to ascertain as to whether the employee who was entitled to be absorbed in service, was willing to become an employee of the Corporation or not. It was only if the employee was willing to be absorbed in the service of the Corporation that the Corporation could absorb him in service, provided the other conditions specified in Sub-clause (3) to Clause 20 were satisfied. Thus it is clear that several steps had to be taken by the authorities before identifying and determining the persons who could be absorbed in the service of the Corporation in accordance with Sub-clause (3) to Clause 20 of the Ordinance."

Thus before the Supreme Court, the submission made by the learned Advocate General as referred to in the judgment of this Court regarding the manner in which the ratio of absorption of the employees of the ex-operators in categories 2 and 3 was applied or operated, was not challenged by the KSRTC. It is not disputed by the KSRTC that the appellant fulfilled Conditions 1 and 2 as stated in the aforesaid judgment of the Supreme Court. Regarding Condition No. 3, the submission made by the learned Advocate General before this Court, as referred to above, still holds good inasmuch as, it is not the case of the KSRTC that the absorption of employees of ex-operator whose contract carriages were acquired, belonging to category Nos. 2 and 3 has not been done in the scale as submitted by the learned Advocate General in the case referred to above. Therefore, non-application of the scale in the manner submitted by the learned Advocate General, to the case of the appellant would result in discrimination as it would result in subjecting the appellant to hostile discrimination inasmuch as the ratio of absorption as submitted by the learned Advocate General is applied to others. Therefore, we are of the view that the appellant is entitled to the relief sought for in the Writ Petition,

4. Accordingly, the Writ Appeal is allowed. The orders dated 23-8-1991 and 30-8-1991 passed in W.P.No. 25581 of 1990 are set aside. The Writ Petition is allowed. Respondents are directed to absorb the appellant as Supervisor in terms of Section 19(3) of the Act, and grant all the consequential benefits as per the provisions of the Act, Regulations and in accordance with law.

5. Compliance in two months from today.