

(1996) 07 KAR CK 0038
In the Karnataka High Court
Case No : Writ Petition No. 24909 of 1993

S. Suresh

APPELLANT

Vs

Indian Airlines

RESPONDENT

Date of Decision : 12-07-1996

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (1997) 2 LLJ 458

Hon'ble Judges : K.S. Bakthavatsalam, J

Bench : Single Bench

Advocate : M.S. Bhagwat, for the Appellant; Subha Awanti, for the Respondent

Judgement

1. The petitioner has come up before this Court with the following prayers :-

a) Issue direction or mandamus or any other appropriate writ or orders directing the respondents not to dispense with the service of the petitioner till the disposal of case.

b) to issue any other directions to the respondents and to call for the relevant records of selection of juniors to absorb the service of the petitioner as a Loader, as the respondent considering his application No. 0414 and Roll No. 419 for the post of Loader.

2. The petitioner claims that he has been working as a Casual Labourer with the respondent since 1986 continuously without any break in Bangalore Airport. Subsequently, applications were called for in 1991 and an interview letter was issued to the petitioner. The application filed by the petitioner was shown as Annexure-B. It is stated in the affidavit that the petitioner has been continued as Casual Labourer but the respondent has appointed another 13 persons as Loader and denied the post to the petitioner without assigning any valid reasons. According to the petitioner 13 persons are junior to the petitioner and some of them have not served the organization as such, the selection was itself violative of Articles 14 and 16 of the Constitution. It is also stated diat, he has completed

more than 240 days of work every year and he is entitled for the permanent absorption as a Loader. The petitioner also states that, his services could be dispensed with very shortly in view of the fact that, he is going to be over aged for the permanent absorption. It is stated that the merit list has not been published after the interview and at this stage, the petitioner has come up before this Court.

3. A statement of objections has been filed by the respondents. The respondent denied the fact that the petitioner was employed since 1986 continuously in Bangalore Airport. It is stated that the petitioner was working as a Casual Helper in Catering section in the year 1986 for only 90 days during 1987-88. This fact the petitioner himself has admitted in his application dated July 9, 1991 when he applied for the post of Loader. Therefore, the respondent states that the allegation that he worked continuously every year since 1986 is not only true but also misleading. It is also stated that the petitioner has intermittently worked for 90 days during the period January 27, 1988 to May 31, 1988 and thereafter from August 1, 1992 to July 31, 1993. It is stated that the applications were called for and the petitioner was also interviewed along, with other eligible candidates by a duly constituted Selection Board and a merit list of select candidates was drawn and 53 general, 27 SC, 2 ST and 2 Ex-Servicemen candidates were selected. The select list was approved by the competent authority on January 17, 1992 and the panel valid for 2 years but was extended upto March 31, 1994. It is stated that the petitioner figures at S1. No. 31 in the said merit list. It is also stated that the selection was made for the anticipatory vacancy and no question of junior or senior arises in case of casuals and the petitioner was only engaged as a casual and no service record relating to his conduct, performance is maintained. It is stated that only a record of number of days worked by each casual labourer known and that it is not true that the petitioner worked 240 days every year. The respondent stated that the petitioner has not worked during the years 1989 to 1991. It is also stated that the petitioner has applied for the post and he was considered and no question of any discrimination arises. It is stated that, based on the predominance in the interview he was selected and placed at S1. No. 31 and as and when vacancies arise persons are drawn from the panel subject to the life of the panel.

4. When the petition came up for preliminary hearing the same has been taken up for final disposal by the consent of the parties.

5. Mr. Bhagawat, learned Counsel for the petitioner vehemently contended that the selection process itself is not correct and nobody knows what is the criteria of selection. According to the learned Counsel for the petitioner, the petitioner has been working continuously and he ought to have been selected, but the selection committee has selected some junior persons. As such, the selection process itself is not correct. According to the learned counsel, non-selection of the petitioner is violative of Articles 14 and 16 of the Constitution of India.

6. The Counsel for the respondent has produced before me the employment

notice issued, in which it is seen that for the post, three years experience is necessary for applying" for the post. According to the learned Counsel, though the petitioner is a casual labourer and that he does not have three years continuous experience he has been called for the interview to give him a chance of getting into the panel as he has been working as Casual. According to the learned Counsel for the respondent, no right accrues to the petitioner just because he was a casual labourer and it is not correct to state that the petitioner has been working continuously from 1986. It is stated by the learned Counsel for the respondent that the petitioner has not worked for 240 days and whether the petitioner has worked for 240 days or was working continuously is a question of fact which cannot be gone into by this Court under Article 226 of the Constitution. According to the learned Counsel for the respondent, the prayer asked for is wholly misconceived. So far, the petitioner has been considered for an appointment, the matter ends there and the petitioner has no right to question the selection list before this Court.

7. I have considered the arguments of the learned counsel for the petitioner and the respondents. First of all, I find that the fact whether the petitioner worked continuously from 1986 is itself questioned by the respondents. From the statement of objection it is seen that the petitioner has been working intermittently during 1986 and 1993. So, when fact whether the petitioner worked continuously from 1986 is questioned and that being a question of fact and there is no record to show that the petitioner has been continuously working from 1986. I do not think this Court can go into the question of fact under Article 226 of the Constitution of India. So the first claim of the petitioner that he has been working right from 1986 continuously cannot be decided.

8. Coming to the next point of the selection when the experience is three years, I do not see how the respondent called the petitioner for the interview. Obviously, to give a chance to the petitioner, he has been called for the interview. This concession showed by the respondents now seems to stand against them and the petitioner challenges the selection process itself. Admittedly, the petitioner has no experience of three years because he is a casual labourer. That apart, when applications are called for, it is incumbent on the authorities to call for from other persons also not from the persons who are working with the respondent as casuals. If it is done, it will affect the Article 14 of the Constitution. As such, rightly applications were called for and the petitioner also applied for the post, the selection committee interviewed the persons and the petitioner has been placed as No. 31 in the panel. If the person has applied for the post he will be considered and has been placed in a particular place the matter ends there. So far the argument on Art. 14 is concerned, I am not able to appreciate the same (sic.). I find from the facts of this case that Article 14 cannot be raised in case of selection especially when the petitioner is not even qualified to apply for the post. In fact, it is for the other persons to challenge that Article 14 has been violated, in so far as the petitioner has been called for the interview. The learned Counsel raised a contention that the persons appointed to do not have three

years experience. That does not mean that petitioner has to be appointed. It is for the appointing authority to decide whom to be appointed The Supreme Court in the case of Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others, , held that the Delhi Administration has considered the question of casuals and whether they can claim regularisation as of right. The Supreme has held as follows at p. 459 :

"(iv) One has to take note of the pernicious consequences to which the direction for regularisation of workmen on the only ground that they have put in work for 240 or more days, has been leading. Although there is the employment Exchange Act which requires recruitment on the basis of registration in the employment exchange, it has become a common practice to ignore the employment exchange and the persons registered in the employment exchanges, and to employ and get employed directly those who are either not registered with the employment exchange or who though registered are lower in the long waiting list in the employment register. The Courts can take judicial notice of the fact that such employment is sought and given directly for various illegal considerations including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules and is continued for 240 or more days with a view to give the benefit of regularisation knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularised. A good deal of illegal employment market has developed resulting in a new source of corruption and frustration of those who are waiting at the employment exchanges for years.

5. Another equally injurious effect of indiscriminate regularisation will be that many undertakings of casual or temporary works will be stopped, though they are urgent and essential, for fear that if those who are employed on such works and required to be continued for 240 or more days have to be absorbed as regular employees although the works are time bound and there is no need of the workmen beyond the completion of the works undertaken. Public interest will thus be jeopardised."

These principles apply to the facts of this case So, I do not think there is any merit in this writ petition and accordingly, dismissed.