
(2013) 04 KL CK 0031

In the High Court Of Kerala

Case No : Writ Petition (C) No. 8301 of 2013 and connected cases

Suresh Kumar

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 03-04-2013

Acts Referred:

Road Transport Corporations Act, 1950 — Section 34

Citation : (2013) 2 ILR (Ker) 404 : (2013) 2 KHC 220 : (2013) 2 KLJ 386 :
(2013) 2 KLT 258 : (2013) LabIC 2334

Hon'ble Judges : V. Chitambaresh, J

Bench : Single Bench

Advocate : K.P. Rajeevan, for the Appellant; Babu Joseph Kuruvathazha and V.K. Rafeek, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

V. Chitambaresh, J.—Can the Kerala State Road Transport Corporation ("K.S.R.T.C. for short) depart from the general instructions issued by the State Government relating to the recruitment, conditions of service or training of its employees? The common order declining regularisation in service of empanelled employees is impugned in all the Writ Petitions and I shall refer to the parties and exhibits in W.P.(C) No. 8301/2013 for the sake of convenience. The petitioners who have been working for long as empanelled drivers in the K.S.R.T.C. seek regularisation in service on the basis of Ext.P1 order issued by the Transport (A) Department of the State Government. It is discernible therefrom that the K.S.R.T.C. submitted a proposal to the State Government for regularising empanelled employees in its service which however was not accepted in toto. The proposal was that all provisional employees who were in the panel of the K.S.R.T.C. as on 1.9.2008 and have put in eight years of service with a minimum of 120 duties an year should be regularised. But the State Government by Ext.P1 order held that those provisional employees who were in the panel of the K.S.R.T.C. as on 21.12.2011 and have put in ten years of service

should be regularised. There is nothing to indicate in Ext.P1 order of the State Government that an empanelled employee should have performed a minimum of 120 duties an year for all the ten years in order to claim regularisation in service.

2. The sole ground on which the claim of the petitioners for regularisation in service has been turned down by Ext.P3 order of the K.S.R.T.C. is that they have not performed 120 duties an year for all the ten years. Such an insistence is uncalled for since the proposal of 120 duties an year by an empanelled employee made by the K.S.R.T.C. has not been accepted in Ext.P1 order of the State Government. Is the K.S.R.T.C. bound by the order of the State Government as regards regularisation in service and can it discard such instructions are the pertinent questions to be answered. I should bear in mind that the legality of Ext. P1 order of the State Government enabling empanelled employees of the K.S.R.T.C. to be regularised in service has not been questioned and hence does not fall for consideration.

3. I heard Mr. K.P. Rajeevan, Advocate on behalf of the petitioners, Mr. Rafeek V.K., Advocate on behalf of the State Government and Mr. Babu Joseph Kuruvathazha, Advocate on behalf of the K.S.R.T.C. in this batch of Writ Petitions.

4. A quick reference to S. 34 of the Road Transport Corporation Act, 1950 ("the Act" for short) would be profitable and the same is extracted hereunder:

34. Direction by the State Government

1) The State Government may, after consultation with a corporation established by such Government, give to the Corporation general instructions to be followed by the Corporation and such instructions may include directions relating to the recruitment, conditions of service and training of its employees, wages to be paid to the employees, reserve to be maintained by it and disposal of its profits or stocks.

2) In the exercise of its powers and performance of its duties under this Act, the Corporation shall not depart from any general instructions issued under subsection (1) except with the previous permission of the State Government.

(emphasis supplied)

5. It needs no elaboration to find that the K.S.R.T.C. is a Corporation established by the State Government and that there was a consultation evident by the fact that the proposal by the former was accepted with modification by the latter. The statutory provision aforequoted casts a duty on the K.S.R.T.C. to strictly follow the instructions of the State Government and that a departure is permissible only after obtaining previous permission of the State Government, The general instructions of the State Government under the Act in regard to the regularisation of empanelled employees of the K.S.R.T.C. are therefore bound to be followed and not flouted.

6. Previous agreements if any between the K.S.R.T.C. and the Unions of its

employees should be deemed to have been superseded by Ext.P1 order of the State Government which only will govern the field as regards regularisation. There is no case that the K.S.R.T.C. had obtained previous permission of the State Government to depart from Ext.P1 Order and decline regularisation notwithstanding the fulfillment of the conditions stipulated therein. There is also no case that anyone of the petitioners deliberately did not perform 120 duties an year even though the same was offered to them by the K.S.R.T.C. at any point of time. The stand of the K.S.R.T.C. that the services of the petitioners are not liable to be regularised for not performing 120 duties an year cannot be appreciated and Ext.P3 order passed in that regard is therefore quashed. I direct the K.S.R.T.C. to reconsider the case of the petitioners for regularisation in service in the wake of Ext.P1 order of the State Government and in the light of the observations above within a period of two months.

The Writ Petitions are allowed. No costs.