

(2002) 12 KAR CK 0046

In the Karnataka High Court

Case No : Writ Appeal No. 6940 of 2001

The Divisional Controller, Karnataka State Road Transport Corporation, Mangalore Division

APPELLANT

Vs

C.A. Erappa

RESPONDENT

Date of Decision : 12-12-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 11 A, 25 B
Road Transport Corporations Act, 1950 — Section 3, 4, 45

Citation : (2003) 97 FLR 958 : (2003) 2 KarLJ 341 : (2003) 2 KCCR 887 : (2003) 2 LLJ 330

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

Bench : Division Bench

Advocate : P.R. Ramesh, for the Appellant; V.S. Naik, for the Respondent

Judgement

1. The Transport Corporation, being aggrieved by the order of the learned Single Judge refusing to interfere with the award passed by the Labour Court, has preferred this intra-Court appeal.

2. It is not in dispute that the Corporation under its letter dated 11-4-1995 (Ex. W. 1) had proposed to the respondent to engage him as conductor on daily wage basis for a sum of Rs. 46/- per day against short-term vacancy as a substitute in place of regular employee who may be placed under suspension pending enquiry or remaining absent to the duty unauthorisedly. The respondent agreed to the proposal. As such his name was included in the list of daily wagers. Subsequently, as and when occasion arose, his services were utilised by the Corporation as a substitute. Annexure-J to the interlocutory application filed on 3-9-2002 gives details of the days on which services of the respondent were utilised. Subsequently, on review of work performance of daily wagers including the respondent, the Appointing Authority found the same to be unsatisfactory. Therefore, he by order dated 2-9-1997 (Ex. M. 8) directed for removal of their names from the list of daily wagers.

2-A. It is a matter of record that at least from 23-11-1996, services of the respondent were not taken on by the Corporation as a substitute. After almost 4 years from the date of removal of his name from the list of daily wagers, the respondent approached and persuaded the Government to refer the purported dispute before the Labour Court. Accordingly, the Government under its order dated 22-3-2000 referred the following questions to the Labour Court for adjudication.--

"(i) Is the applicant a workman under the provisions of the Industrial Disputes Act, 1947?

(ii) Is the place where applicant was working/worked an Industrial Establishment or the Establishment/Industry?

(iii) Is the applicant entitled to the relief u/s 19 of the Administrative Tribunal Act or under Article 226 of the Constitution?

(iv) Whether the management Divisional Controller, Karnataka State Road Transport Corporation, Mangalore, was legally justified in terminating the services of C.A. Erappa with effect from 23-11-1996?

(v) If not, then to what relief the workman is entitled to?"

3. On the above reference having been made, the workman and the Corporation filed their respective claim statement and objection statement (Annexure-A and B to the writ petition). During the adjudicating proceedings before the Labour Court, all the relevant documents were marked as exhibits, being 10 in number. So far as oral evidence is concerned, only workman examined himself as W.W. 1. No oral evidence was lead on behalf of the Corporation. The following is the list of documents which had been exhibited by the Corporation before the Labour Court.--

Sl. No. Exhibit No. Description of the Exhibit

1. Ex. M. 1 Call Letter, dated 21-5-1994
2. Ex. M. 2 Letter written by 1st Party, dated 13-6-1994
3. Ex. M. 3 Original of Ex. W. 1
4. Ex. M. 4 Copy of Ex. W. 2
5. Ex. M. 5 Waybill
6. Ex. M. 6 Unpunched tickets
7. Ex. M. 7 Copy of the penalty receipts
8. Ex. M. 8 Letter written by 2nd Party to its assistant administrator, dated 2-7-1997
9. Ex. M. 9 Report.

4. At the very outset, it may be noticed here that no question pertaining to the legality of the order dated 2-7-1997 (Ex. M. 8) by which name of the respondent was removed from the list of daily wagers was referred to the Labour Court for adjudication. Therefore, there was absolutely no occasion on the part of the Labour Court to set aside the said order (see *Pottery Mazdoor Panchayat v Perfect Pottery Company Limited and Ors.* AIR 1979 SC 1856 : (1979) 8 SCC 762 : 1979 Lab. I.C. 827 (SC) . But, still the Labour Court has done so. Further, the Labour Court without there being any material on record to show that on 23-11-1996 or any date prior to 23-11-1996, the respondent was actually employed with the Corporation with a right to continue in service has declared that the termination of the respondent was illegal and has directed for his reinstatement with continuity of service plus 40% back wages from 23-11-1996.

4-A. The Corporation being aggrieved by the said order, moved this Court under writ jurisdiction. But, the learned Single Judge refused to interfere with the award of the Labour Court. Hence, this intra-Court appeal.

4-B. Before advertng to the question raised herein, it is appropriate to state that the appellant-Corporation has been established u/s 3 of the Road Transport Corporations Act, 1950 (in short, "the Act"). u/s 4 of the Act, it is a body corporate. Its officers and servants can act only within the framework of the Act and the statutory regulations framed thereunder.

5. Section 45 of the Act permits the Corporation to frame regulations with the previous sanction of the State Government. Clause (c) of Sub-section(2) of this section provides that such regulations can provide conditions of appointment and service and the scales of pay of officers and other employees of the Corporation. Pursuant to the said powers, the Corporation framed the Karnataka State Road Transport Corporation (Cadre and Recruitment) Regulations, 1982 (in short the "regulations"). Therefore, these regulations are statutory in nature.

6. Regulation 9 of the Regulations, provides for mode of selection of employees. Regulation 10 of the Regulations stipulates the procedure for appointment. Regulation 19 of the Regulations provides for temporary appointments. Under Regulation 9, after the selection process is completed, list of selected candidates is to be prepared by the Selection Authority which shall be equal to the number of existing vacancies plus vacancies that may arise over a period of one year from the date of publication as may be assessed by the Selection Authority. Under Regulation 9(6)(1) of the Regulations, it is mandated that any un-operated portion of the selection list, after expiry of one year from the date of publication of the list, shall cease to be valid.

7. Clause (5) of Regulation 10 of the Regulations is relevant for the present case. It reads as under.--

"Regulation 10. Procedure for Appointment.--(1)

XXX XXX XXX(5) A selected candidate waiting for being appointed regularly in

accordance with these regulations may be appointed as a temporary employee before such regular appointment against a short-term vacancy or as a substitute in place of regular employee under suspension pending enquiry or suspension as a measure of punishment or on leave for a period not less than one month but not exceeding 3 months.

A selected candidate is also liable to be engaged as a badli worker on a day-to-day basis in any vacancy caused by the absence of any employee and he will be paid for the number of days he works as such either daily or once in a month".

8. As per the above regulation, the waiting candidate can be appointed as a temporary employee against short-term vacancy or as a substitute in place of a regular employee under suspension pending enquiry or suspension as a measure of punishment or on leave for a period not less than one month but not exceeding three months. On the other hand, a candidate in waiting list can be engaged as badli worker on day-to-day basis in a vacancy caused by the absence of any employee and will be paid for the number of days he works.

9. Regulation 19 of the Regulations is relevant regulation for determining the rights of the respondent. It reads as under.--

"Regulation 19. 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 appoint a person otherwise than in accordance with these regulations until a person is appointed in accordance with these regulations or for a period of three months whichever is earlier and such a person shall be termed as a local candidate.

(2) No appointment under Clause (1) above, shall be made of a person who does not possess the qualifications prescribed for the said post".

(3) A person appointed under Clause (1) above, shall be replaced as soon as possible by a selected 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 posts or any other post or posts".

10. A person who is given temporary appointment under Regulation 19 has been termed as local candidate and appointment given under this regulation is materially different from the appointment given to a selected candidate on a temporary basis or as badli worker. A local candidate does not undergo selection process and can never claim regular appointment.

11. Coming to the facts of the present case, admittedly, name of the respondent was placed in the list of daily wagers whose services could have been availed in terms of Regulation 19 of the Regulations. He had no right to any post. He has nowhere pleaded or proved that he had worked continuously for 240 days within the meaning of Section 25-B of the Industrial Disputes Act, 1947. The only

document which has been placed by the respondent before the Labour Court only shows that he had failed to discharge his duties as a conductor inasmuch as he did not collect fare from some of the passengers. Therefore, no exception could have been found in the decision of the Appointing Authority in not keeping his name in the list of daily wagers.

12. It is a matter of record that the day on which the respondent was informed under Ex. M. 8 that his name had been removed from the list of daily wagers, he was not in service of the Corporation even on daily wage basis. Moreover, non-inclusion or removal of name of a person from list of daily wagers whose services could have been availed in future does not amount to termination of service u/s 11-A of the Industrial Disputes Act. As a matter of fact, on 23-11-1996, when the order at Ex. M. 8 was passed he was not at all under employment of the Corporation because after 27-7-1996 no work has been assigned to him as daily wager. Therefore, he was not a workman within the meaning of Clause (s) of Section 2 of the Act, which inter alia defines that "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person.

13. According to the respondent himself, after 22-11-1996 his services were not availed as a daily wager under Regulation 19 of the Regulations. Merely because service of the respondent was not utilised in terms of Regulation 19 of the Regulations as a substitute, it cannot be said that he was terminated. It was for the Corporation to engage a person as a substitute on daily basis only if some vacancy had arisen because of absence, suspension, etc., of regular employee. Further, even if any such vacancy had arisen it was for the Corporation to utilise the services of a person like the respondent as a substitute if at all the Corporation felt it necessary to do so. Admittedly, even going by the allegation of the respondent that he was not offered any work from 23-11-1996, he cannot claim the status of an employee in terms of Clause (10) of Regulation 2 of the Regulations. Therefore, there was no question of termination on any charge. The Labour Court has committed an error of record in holding that the, services of the respondent was terminated pursuant to the order dated 2-7-1997 (Ex. M. 8). By this order the name of the respondent was just removed from the list of daily wagers whose services could have been availed as and when required.

14. For the aforesaid reasons, in our considered opinion, the Labour Court was not right in directing reinstatement of the respondent. Accordingly, the award of the Labour Court is quashed and the order of the learned Single Judge (The Divisional Controller, Karnataka State Road Transport Corporation, Mangalore Division Vs. C.A. Erappa,) is set aside.

15. In the result, the writ appeal stands allowed.