
(2007) 08 KL CK 0001
In the High Court Of Kerala
Case No : W.A. No. 1918 of 2007 (B)

The Kerala State Warehousing Corporation and Others	APPELLANT
Vs	
K.S. Devadasan and Others	RESPONDENT

Date of Decision : 17-08-2007

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 226
Kerala State Warehousing Corporation Staff Regulations, 1963 — Regulation 7(1)
Warehousing Corporations Act, 1962 — Section 42(1)

Citation : (2007) 4 ILR (Ker) 727 : (2007) 3 KLJ 598

Hon'ble Judges : K.S. Radhakrishnan, J;A.K. Basheer, J

Bench : Division Bench

Advocate : T.M. Mohammed Youseff and Majnu Komath, SC, for the Appellant;
C.S. Ajith Prakash and K. Ramakumar, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—Writ petition was preferred by the respondents herein challenging Ext. P8 order dt. 3-2-2007 issued by the Managing Director of Kerala State Warehousing Corporation terminating their service as drivers based on a resolution passed by the Board of Directors in exercise of the powers conferred under Clause 12(2) of the Kerala State Warehousing Corporation Staff Regulation 1963 and also for other consequential reliefs.

2. Corporation had invited applications for the post of driver on 25-7-2005 in the scale of pay of Rs. 3350-5275. Petitioners had also applied along with several other persons. Petitioners were ultimately appointed as drivers in the service of the corporation and their probations were also declared early. Noticing that the appointments were effected by the previous Managing Director of the corporation without following the rules or regulations and with the mala fide intention to appoint the petitioners, the Board of Directors of the Corporation, in its 242nd meeting held on 13-11-2006 took the following decision:

The Board of Directors discussed the matter of irregular appointment of divers.

The Board of Directors noted that at the time of advertising (1) there is no Board of Director's decision authorizing the Managing Director to fill up vacancies. (2) only one vacancy is existed on that date. (3) three persons appointed were over aged and Managing Director was directed to take necessary action to terminate all irregular appointments and also resolved to employ drivers required on daily wage, till regular appointments are made. Board also authorized Managing Director to take action to recruit as per rules after getting Government approval for increased number of drivers.

As resolved by the board Board of Directors, the present Managing Director issued order dated 3-2-2007 terminating the service of the petitioners.

3. Learned Counsel appearing for the petitioners submitted that the order of termination was issued with mala fide intention and the reason stated for termination of the service are unsustainable in law. Further it is also pointed out that petitioners were duly selected and appointed in accordance with rules and the action of the Managing Director was later ratified by the Executive Committee. Further it was also pointed out that petitioner's probation was declared and there is no justification in terminating their services. Learned single Judge accepted the contention raised by the petitioners and allowed the writ petition and quashed the order of termination. Aggrieved by the same this appeal has been preferred by the Corporation.

4. Sri. T.M. Mohammed Youseff, senior counsel appearing for the Corporation submitted that the learned single Judge was not justified in interfering with the order of termination issued by the Managing Director as ordered by the Board of Directors in exercise of powers conferred under Clause 12(2) of the Staff Regulation. Learned senior counsel submitted that the learned single Judge was not justified in examining the correctness or otherwise of the reasons mentioned in the termination order. Counsel also submitted that the power of the Board of Directors to terminate the service of an employee under Clause 12(2) of the Staff Regulation cannot be doubted and that power has not been questioned by the petitioners as well. Counsel also submitted Clause 12(2) does not cast any obligation on the authority to state reasons for terminating the service of an employee. Learned Counsel submitted that the notification was issued by the previous Managing Director with mala fide intention to somehow or other accommodate the petitioners in regular service who were working in the corporation on daily wages. Further it was also pointed out that the practice followed by the Corporation was to appoint drivers who fall under category III by direct recruitment stipulating the age limit. For general category the age limit followed was 18-35 years, 38 years for OBC and 40 years for SC/ST candidates. Age limit was not specified in the notification since the appointees were over aged. Further it was also stated that there was only one vacancy of driver in the service of the corporation. Number of vacancy was not mentioned in the notification. Further, out of the four sanctioned posts three were already filled up and there was only one vacancy which was notified, but four candidates were

illegally appointed. Learned Counsel also submitted that a post must be created and/or sanctioned before filling it up. Managing Director had appointed the petitioners without any sanctioned posts. In support of this contention learned Counsel placed reliance of the decision of the apex court in *State of Madhya Pradesh and Others Vs. Yogesh Chandra Dubey and Others*, . Reference was also made to the decision of the apex court in *Punjab Water Supply and Sewerage Board, Hoshiarpur Vs. Ranjodh Singh and Others*, . Learned Counsel also made reference to a later decision of the apex court in *State of M.P. and Others Vs. Lalit Kumar Verma*, .

5. The Kerala State Warehousing Corporation Regulation, 1963 has been framed by the Govt. in exercise of the powers conferred by Section 42(1) of the Warehousing Corporation Act 1962 Clause 12 of the regulation deals with termination of service. Clause 12(2) of the State Regulation enables the Board of Directors to terminate the service of an employee after the expiry of the period of probation by giving him three months' notice pay in lieu thereof. Order of termination was issued in exercise of the power conferred by Clause 12(2) of the Regulation and the provision was never under challenge. Board of Directors therefore in our view have got the power to terminate the service of the petitioners. No reasons need be disclosed, while terminating service of an employee. The only condition is that three months' pay in lieu of notice be given to the employee. In any view, so far as this case is concerned there were sufficient reasons for terminating the service of the petitioners. Counter affidavit filed by the corporation showed that due to various financial irregularities committed by the then Managing Director of the Corporation the Government had conducted a detailed enquiry. Enquiry revealed that the Managing Director had made various appointments without obtaining approval of the Board of Directors and those appointments were made without following the regulations. Further it was also noticed that at the time of the notification, i.e., 25-7-2005 inviting applications for the post of drivers, the petitioners were over aged. First petitioner belongs to OBC category and crossed 41 years of age. Second petitioner belongs to general category had crossed 36 years of age and third petitioner belongs to OBC category had crossed 40 years of age. Age is an important criterion in the matter of appointment of drivers. Further it is also pointed out that in all notifications inviting applications the Corporation used to specify age for the posts. Failure to mention the age limit was suspicious and a serious flaw. Further regulation 7(1) of Staff Regulation says that due publicity be given before selecting candidates and in respect of class HI posts (which includes drivers) advertisement be given in leading news papers which according to the Corporation was not properly done, by the previous Managing Director, so as to minimise publicity. The creation of posts is a matter to be done in public interest, after job assessment, volume of work, etc. and not to regularise the illegal appointment already made. If the appointment is illegal, the same cannot be validated by the process of regularisation or confirmation or creating posts. Ratification or regularisation is possible only if one has acted within his authority,

an illegal act cannot be ratified. The apex court in *R.N. Nanjundappa Vs. T. Thimmiah and Another*, held that regularisation cannot be a mode of recruitment.

6. The Board of Directors noticed that confirmation was hurriedly granted to the petitioners. Probations of the petitioners were declared even before completing one year period stipulated in the regulation. Reasons which weighed with the authority for declaration of probation early were not disclosed and there is nothing to show that they had satisfactorily completed their probation. We are not prepared to say the infirmities pointed by the Board of Directors lack substance.

7. Notification inviting applications should not have been for non-existing posts. Executive Committee, it is stated, had later ratified their appointment on 11-11-2005 which in our view would not cure the legal infirmity. Further it is noticed that Executive Committee has no power to create posts, a power which is vested only on the Board of Directors vide Clause 5 of the regulation. In *Yogesh Chandra Dubey's case* (supra) the apex court deprecated the practice of effecting appointment to non-existing posts. Court held that a post must be created and or sanctioned before filling it up and regularisation is not a mode of appointment. Therefore alleged ratification given by the Executive Committee in this case is of no consequence. Respondents were appointed not in terms of statutory rules. It was also noticed that no post was sanctioned and no vacancy was notified. No materials have been produced in this case to show that four posts of drivers were sanctioned prior to the issuance of the notification. Since posts were not sanctioned in our view the Managing Director was not justified in effecting appointment of petitioners in the non-existing posts.

8. Statutory body like the corporation is bound to apply the rules of recruitment laid down under the statutory rules. They being "State" within the meaning of Article 12 of the Constitution of India are bound to implement the constitutional scheme of equality. Neither can the statutory bodies refuse to fulfil such constitutional duty, nor can the State issue any direction contrary to or inconsistent with the constitutional principles adumbrated under Articles 14 and 16 of the Constitution of India. Earlier Managing Director made appointment in total disregard of the constitutional scheme as also the recruitment rules and therefore those appointments are illegal. We find no error in the decision taken by the Board of Directors to terminate the service of the petitioners which in our view is in the best interest of the Corporation.

9. Under such circumstances, in our view, learned single Judge was not justified in exercising this Court's extra ordinary jurisdiction under Article 226 of the Constitution in sitting over judgment of the decision taken by the Board of Directors of the Corporation. Board of Directors, in our view, have got power under Clause 12(2) of the Kerala State Warehousing Corporation Staff Regulations, 1963 to terminate the service of the petitioners which they have rightly exercised in the facts and circumstances of the use.

10. Under such circumstances we are inclined to allow the writ appeal and dismissed the writ petition refusing to exercise our discretion under Article 226 of the Constitution of India.