

K. Savanth

Vs

The Mysore State Road Transport Corporation and Another

Civil Appeal No. 1502 of 1971

(Jaswant Singh, V. R. Krishna Iyer JJ)

28.02.1978

JUDGMENT

JASWANT SINGH, J. -

1. This appeal by Special leave which is directed against the judgment and order dated December 14, 1970 of the High Court Mysore at Bangalore allowing the writ petition 1176 of 1967 filed before it by the first respondent herein under Articles 226 and 227 of the Constitution and quashing the orders dated September 30, 1966 and January 1, 1967 of the Labour Court, Bangalore made in the appellant's application 171 of 1965 raises an interesting question as to the scope and ambit of Clause 4 of the Industrial Truce Agreement arrived at on January 10, 1958 between the Management of the Mysore Government Road Transport Department and the representatives of the State Transport Employees' Federation.

2. It appears that the appellant entered the service of the Bangalore Transport Company Ltd. on September 1, 1950 as a Probationary Traffic Supervisor on a salary of Rs. 80 per mensem. On completion of his probationary period, he was confirmed in the said post on a salary of Rs. 100 in the pay scale of Rs. 100-10-150. By virtue of the powers vested in it under the Bangalore Road Transport Services Act No. 8 of 1956, the Government of Mysore acquired the Bangalore Transport Company Ltd. with effect from October 1, 1956 with the result that along with other employees of the Company, the appellant became a civil servant in the Transport Department of the Government of Mysore which catered to the transport requirements of the public. In course of time, the appellant was appointed as Assistant Traffic Superintendent and was given a higher pay scale of Rs. 150-10-200. On April 1, 1957 when he held that post, he was in the pay scale of Rs. 150-10-200 and was drawing a salary of Rs. 150 P.M. With the re-organisation of the States and the formation of the enlarged Mysore State as well as the expansion of the Mysore Government Road Transport Department (hereinafter referred to as 'Transport Department') comprising of the Hubli Region of the ex-Bombay State Road Transport Corporation, the Raichur Section of the ex-Hyderabad State Road Transport Department and the Bangalore Transport Service of the ex-Bangalore Transport Company Ltd. having their respective pay scales, service conditions etc., it was considered necessary by the members of the State Transport Employees' Federation as well as the Management of the Transport Department to have uniform pay scales, service conditions etc. for the entire organisation of the Transport Department. Accordingly, on January 10, 1958, an Industrial Truce Agreement was concluded between the Management of the Transport Department and the representatives of the State Transport Employees' Federation which was given a retroactive effect from April 1, 1957. Clause 4 of this Agreement which was intended to bring about uniformity of pay scales in all the divisions of the Transport Department provided as follows :-

4. Weightage in the revised pay scales will be admissible only to the regular employees of the Government Road Transport Department of ex-State of Mysore and the Bangalore Transport Service Unit.

(a) The pay of an employee shall be fixed in the new scale at a stage next above his pay in the existing scale on April 1, 1957, and, if, his present pay is less than the minimum of the revised scale, his pay shall be fixed at such minimum in the revised scale.

Note. - The pay in the existing scale on April 1, 1957 includes the increment, if any, accruing on that date.

(b) After fixing the pay as above i.e. 4(a) he shall be granted advance increments in the revised scale as under :

#(1) For 3 completed years of service ... 1 increment(2) For 4 completed years of service ... 2 increments(3) For 6 or more completed years of service ... 3 increments##

Note. - Service means, the entire service of the employee irrespective of the grade held by him.

(c) In cases where the minimum pay in the new scale has to be granted under sub-clause (a) of Clause 4, the benefit of advance increments according to sub-clause (b) above shall not accrue when the increase of the minimum pay in the new scale over the pay in the existing scale exceeds Rs. 25 plus one increment in the new scale. In other cases where the initial pay has to be fixed above the minimum, the total benefit under Sub-clauses (a) and (b) above shall be uniformly limited to Rs. 25 plus one increment in the revised scale subject to a minimum of Rs. 5.

(d) The above principles shall apply in fixing the initial pay both in substantive and officiating appointments.

(e) When the weightage under sub-clause (b) above takes the total pay beyond the scale, the difference is treated as personal pay.

(f) The future increments will accrue from April 1, 1958.

3. After the conclusion of the aforesaid Industrial Truce Agreement, the then Management of the Transport Department fixed the initial pay of the appellant in the new scale at Rs. 190. Dissatisfied with this fixation, the appellant made a representation to the Management urging that his initial pay in the revised scale ought to have been fixed at Rs. 220 and that it had been wrongly fixed at Rs. 190.

4. On August 1, 1961, a Corporation styled as the 'Mysore State Road Transport Corporation' (hereinafter referred to as 'the Corporation') was constituted under Section 3 of the Road Transport Corporation Act (Act 34 of 1951). By virtue of a notification issued by the Government of Mysore under Section 34 of the Act, the Corporation took over the business of the Transport Department together with all its liabilities as the sole successor of the Department. In view of the fact that said notification protected the service conditions of the employees of the erstwhile Transport

Department, the appellant opted for service under the Corporation and kept on pursuing the earlier representation made by him for fixation of his initial pay as on April 1, 1957 at Rs. 220 in terms of the first part of sub-clause (c) of Clause 4 of the Industrial Truce Agreement. The efforts made by him in this behalf having proved ineffective, the appellant made an application on December 20, 1965 before the Labour Court under Section 33(2) of the Industrial Disputes Act, 1947 claiming that his initial pay as on April 1, 1957 had been wrongly fixed by the Management of the Transport Department at Rs. 190, as against Rs. 220 to which he was entitled by virtue of Clause 4 of the Industrial Truce Agreement. The appellant also claimed increase in his dearness allowance in terms of the said Agreement. Holding that the appellant's pay had to be fixed at Rs. 220 p.m. in the pay scale of Rs. 175-15-325 with a dearness allowance of Rs. 50 p.m. as on April 1, 1957 the Labour Court by its order dated September 30, 1966 allowed the claim of the appellant and directed the Corporation to pay him a Sum of Rs. 3345.29 p. on account of the benefits claimed by him. This order was challenged by the Corporation before the High Court of Mysore by means of a writ petition under Articles 226 and 227 of the Constitution. By its aforesaid judgment and order dated December 14, 1970, the High Court allowed the petition and held that the erstwhile Management of the Transport Department was right in fixing the initial pay of the appellant at Rs. 190. It is against this judgment and order that the appellant has come up in appeal to this Court by special leave, as already stated.

5. In the absence of the appellant who has chosen not to appear despite service, the learned Attorney General has taken us through the material on the record and has urged that the High Court was right in reversing the order of the Labour Court and upholding the contention of the Corporation that the initial pay of the appellant could be fixed only at Rs. 190 and not at Rs. 220 as claimed by the appellant.

6. We have given our careful consideration to the submissions made by the learned Attorney General but are agree with him.

7. A plain reading of Clause 4 of the Industrial Truce Agreement reproduced above makes it crystal clear that the pay of the appellant as on April 1, 1957 in the then existing scale of Rs. 150-10-200 being admittedly Rs. 150 i.e. less than the minimum pay of the revised scale of Rs. 175-15-325, it had, according to Clause 4(a) of the Agreement, to be fixed at Rs. 175 which is the minimum of the aforementioned revised scale. Now the appellant having put in more than six years' service and his case being clearly outside the pale of the prohibition envisaged by the first part of sub-clause (c) of Clause 4 of the Agreement, he had to be granted the benefit of three advance increments in terms of the formula contained in sub-clause (b) of Clause 4 of the Agreement which would take his initial pay to Rs. 220. The second part of sub-clause (c) of Clause 4 of the Agreement which is heavily relied upon on behalf of the Corporation has no applicability to the present case as that part would operate only in those cases which fall within the prohibition contemplated by the first part of sub-clause (c) of Clause 4 i.e. where the increase in the minimum pay in the revised scale over the pay in the scale which existed on April 1, 1957 exceeds Rs. 25 plus one increment in the new scale i.e. if it exceeds Rs. 25 plus Rs. 15 totalling Rs. 40. As in the instant case the increase of the minimum pay in the new scale does not exceed Rs. 40, the second part of sub-clause (c) of Clause 4 which is residuary cannot be invoked by the Corporation. The High Court was, therefore, patently in error in holding that the case of the appellant was covered not by the first part of sub-clause (c) of Clause 4 but by the second part thereof. In so holding, it obviously overlooked the significance of the words "in other cases" occurring at the commencement of the second part of sub-clause (c) of Clause 4. The said words make it abundantly clear that it is only where a case does not fall within the purview of the first part of sub-clause (c) of Clause 4 that it would be governed by the second part of the

sub-clause. As the case of the appellant was not covered by the ban imposed by the first part of sub-clause (c) of Clause 4 of the Industrial Truce Agreement, he could not have been denied the benefit of the advance increments which accrued to him under sub-clause (b) thereof. Accordingly, the order of the High Court which suffers from a patent error cannot be sustained.

8. In the result, we allow the appeal, set aside the judgment and order of the High Court and restore that of the Labour Court. In view of the fact that the appellant has failed to appear, we make no order as to costs.

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