

S. Govindaraju

Vs

Karnataka S. R. T. C. and Another

Civil Appeal No. 1339 (NI) of 1986

(K. N. Singh, O. Chinnappa Reddy JJ)

15.04.1986

JUDGMENT

SINGH, J. –

1. Special leave to appeal is granted.

2. This appeal is directed against the order of the High Court of Karnataka dismissing the appellant's writ petition under Article 226 of the Constitution challenging the order of termination of service on the ground that it was violative of Section 25-F of the Industrial Disputes Act, 1947.

3. Briefly the facts giving rise to this appeal are that the appellant was selected for appointment as conductor in the Karnataka State Road Transport Corporation constituted under the Transport Act, 1950, his name was placed on the select list prepared by the Selection Committee constituted under the Karnataka State Road Transport Corporation (Cadre and Recruitment) Regulations, 1982. He was not given a regular appointment but he was appointed to work as conductor in temporary vacancy. He continued to work for a period of more than 240 days. While he was working as conductor his services were terminated by the order dated May 2-4, 1985 on the ground of his being found unsuitable for the post. The termination order further directed that the appellant would forfeit his chance for appointment in terms of selection and his name shall stand deleted from the select list. The appellant challenged the validity of termination order before the High Court of Karnataka by means of a petition under Article 226 of the Constitution on the ground that the order of termination was void and illegal for the non-compliance of Section 25-F of the Industrial Disputes Act, 1947. A learned Single Judge of the High Court of Karnataka rejected the petition holding that the order of termination was made in terms under which employment was given to him and it did not amount to retrenchment in view of Section 2(oo)(bb) of the Act.

4. Section 25-F of the Industrial Disputes Act provides that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until he has been paid retrenchment compensation which shall be equivalent to 15 days average pay for completing a year of service or any part thereof in excess of 6 months. Section 25-F was designed by the Parliament to safeguard the interest of employees. The statutory requirement of payment of compensation is a condition precedent for the retrenchment of a workman and any termination without payment would make the retrenchment order invalid and inoperative, as has been held by this Court in *State Bank of India v. N. Sounder Money* (AIR 1976 SC 1111 : (1976) 1 SCC 822 : 1976 SCC (L&S) 132), *Santosh Gupta v. State Bank of Patiala* (AIR 1980 SC 1219 : (1980) 3 SCC 340 : 1980 SCC (L&S) 409), *Mohan Lal v. Bharat Electronics Ltd.* (AIR 1981 SC 1253 : (1981) 3 SCC 225 : 1981 SCC (L&S) 478) and *Karnataka S.R.T.C. v. M.*

Boraiah (AIR 1983 SC 1320 : (1984) 1 SCC 244 : 1984 SCC (L&S) 117).

5. Section 2(oo) defines retrenchment which means the termination by the employer of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include (a) voluntary retirement of workman; or (b) retirement of the workman on reaching the age of superannuation if the contract of an employment between the employer and the workman concerned contains a stipulation in that behalf; or (c) termination of the service of a workman on the ground of continued ill health. By the amending Act 49 of 1984 a new clause (bb) was added to Section 2(oo). The amended provision runs as under :

2(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include -

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

6. The High Court held that since the appellant's contract for employment contained a stipulation that this services could be terminated at any time, the termination did not amount to retrenchment in view of the newly added exception to Section 2(oo). The validity of Section 2(oo)(bb) was not challenged before us. The learned counsel for the appellant urged that if the view of the High Court is accepted it would enable unscrupulous employers to provide a stipulation in the contract of service for terminating the employment of the employees to escape the rigours of Section 25-F of the Act. This would further confer arbitrary powers on the employers which would be destructive of the protection granted by the Act to the employees. We do not consider it necessary to express any opinion on this question as in our opinion the appellant is entitled to succeed on another short question i.e. the termination order being violative of principles of natural justice.

7. The Karnataka State Road Transport Corporation is a statutory authority constituted under the Road Transport Corporation Act, 1950. The Corporation has framed regulations (Karnataka Road Transport Corporation (Cadre and Recruitment) Regulations, 1982) regulating the conditions of service of its employees. This regulations are statutory in nature having been framed under Section 45(2)(c) of the Road Transport Corporation Act. Admittedly the appellant was selected by Selection Committee constituted under the aforesaid regulations and his name was included in the select list prepared for the purpose of appointment as conductor as and when vacancy would arise. His name was also included in the badli list of workers and in pursuance thereof he was given employment. There is no dispute that the appellant was allowed to be in continuous service for a period of more than one year and while he was in continuous service the impugned order of termination was issued in accordance with Regulation 10(5). The relevant provision of Regulation 10(5) provides that during temporary/badli appointment a candidate if terminated/removed from service as unsuitable for the post he will forfeit his chance for the appointment in terms of his selection. There is no dispute that the appellant's services were terminated on the ground of his being found unsuitable for the appointment and as a result of which his name was deleted from the select list, and he forfeited his chance for appointment. Once a candidate is selected and his name is included in the select list for appointment in accordance with the Regulations he gets a right to be considered for appointment as and when vacancy arises. On the removal of his name from the select list serious consequences entail as he forfeits his right to employment in future. In such a situation even though the

Regulations do not stipulate for affording any opportunity to the employee, the principles of natural justice would be attracted and the employee would be entitled to an opportunity of explanation, though no elaborate enquiry would be necessary. Giving an opportunity of explanation would meet the bare minimal requirement of natural justice. Before the services of an employee are terminated, resulting in forfeiture of his right to be considered for employment, opportunity of explanation must be afforded to the employee concerned. The appellant was not afforded any opportunity of explanation before the issue of the impugned order; consequently the order is rendered null and void being inconsistent with the principles of natural justice. We accordingly allow the appeal and set aside the order of the High Court and also the order of termination and direct that the appellant shall be treated in service and be paid his back wages and other benefits. The appeal is allowed with costs.

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