

D.S. Prabhuswamy and others etc.

Vs

Karnataka State Road Transport Corporation and another

Civil Appeal No. 3200 of 1986 (with C.A. Nos. 3201 - 3346, 3346A - 3404 of 1986) and I. A No.1
(in C.A. No.3200 / 86)

26.04.1991

(K. N. Singh, P. B. Sawant JJ)

JUDGMENT

1. These appeals are directed against the common order of a Division Bench of the High Court dated 31-7-1986 allowing the appeal preferred by the respondents and setting aside the order of a single Judge quashing the order terminating the appellants' services, and offering them alternative employment at a lower scale. Since these appeals arise out of a common order, we are disposing these appeals by this order.

2. The State of Karnataka promulgated "Karnataka Contract Carriages Acquisition Ordinance" on January 30, 1976 providing for acquisition of contract carriage motor vehicles owned by private operators in the State of Karnataka. The Ordinance also made provisions for absorption of employees of the private operators whose vehicles were acquired under the Ordinance. The Ordinance was replaced by Karnataka Contract Carriages (Acquisition) Act 1976 on 12-3-1976 which also made provision for absorption of the employees of the erstwhile private operators of contract carriages. The Act was substantially in similar terms except for the difference that the ratio prescribed by the proviso to sub-clause (3) to Cl. 20 of the Ordinance, which laid down the categories of persons who could be absorbed in the service of the Corporation was substantially altered and a new ratio was inserted in the proviso to sub-sec. (3) of S. 19 of the Act, as a result of which the total strength of the employees of the erstwhile contract carriage operators entitled to absorption was reduced from 7.9 per vehicle to 4.45 per vehicle. Under the Ordinance conductors were entitled to be absorbed, but under the Act conductors were not included in the service of the Corporation, Likewise, there were some other variations in the scale provided for absorption of different class of employees. It is not necessary to enter into details, as admittedly, according to the scheme provided by the Act, the employees of the erstwhile private operators were screened for absorption in the service of the Corporation. After the screening the Corporation absorbed about 2645 employees in various categories but the Corporation issued notices terminating services of those employees who were not absorbed. Later in view of the judgment of this Court in *M.S. Shivananda v. Karnataka State Road Transport Corporation*, (1980) 1 SCR 684: (AIR 1980 SC 77), the Corporation reconsidered the matter as a result of which 391 employees who had earlier been absorbed were issued notices for termination of their services. The termination notice gave an option to the employees for accepting fresh 'employment in the initial stage of their respective categories. The affected employees approached the High Court of Karnataka by means of a writ petition under Art. 226 of the Constitution challenging the action of the Corporation. A learned single Judge allowed the petitions and quashed the notice of termination, on the ground that it was not permissible to the Corporation to terminate the services after lapse of so many years and also on the ground of equitable estoppel. A number of writ appeals were filed by the Corporation before the

Division Bench challenging the order of learned single Judge. The Division Bench allowed the appeals by the impugned order and set aside the order of the learned single Judge on the findings that the notices issued by the Corporation were valid in law and the employees were not entitled to absorption. These appeals are directed against the judgment and order of the Division Bench.

3. After hearing learned counsel for the parties, and having regard to the facts and circumstances of the case and the subsequent events which have taken place during the pendency of this litigation, we are of the opinion that the appellants are entitled to relief without entering into the legal question raised by the parties, which have been decided by the High Court.

4. The provisions contained in the Ordinance as well as the Act indicate the legislative intent that the erstwhile employees of the private operators of contract carriages should be employed by the Corporation with a view to avoid hardship to those employees. Since the Corporation was not in a position to absorb all the employees who had been working with the private operators, a scale was provided and a provision was made for the absorption and employment of only limited number of employees of the erstwhile operators. It is not possible to take exception to the principles laid down by the Legislature for the absorption of the erstwhile employees of private operators. But we do not think it necessary to discuss the legal questions in view of the changed circumstances. In 1976 the State Road Transport Corporation acquired a fleet of 600 contract carriages belonging to private operators. But now the Corporation has expanded the contract carriage transport business and at present it is having about 4000 contract carriage vehicles as a result of which a large number of employees are engaged in the transport business of the Corporation. There is further no dispute that there are various vacancies in different grades existing in the Corporation and recruitment for engaging additional hands is likely to be made. There is further no dispute that even though the appellants services were terminated in 1976-77 but till today they have been continuing in service of the Corporation, earlier under the interim orders issued by the High Court and subsequently by the interim orders issued by this Court. The appellants have not only been continuing in service for the last 14-15 years but some of them have also been promoted to higher posts. If the appeal is dismissed, the appellants' services will stand terminated or they will have to join service in the initial stage of their grade, even though they have now attained good experience of service under the Corporation. Having regard to these facts and circumstances especially the hardship the appellant will suffer on the dismissal of the appeal rendering the appellants unemployed, we are of the opinion that in the ends of justice the appellants should be allowed to continue in service.

5. We, accordingly, allow the appeals and direct the respondent State Road Transport Corporation to continue the appellants in service in their respective posts which they may have been holding at present. We would like to make it clear that the appellants will not be entitled to any promotion with retrospective effect though they will be entitled to seniority for future promotion along with others on the basis of their length of service including the period during which they have been working in the Corporation under the interim orders of the Courts.

6. Some of the employees who joined service of the Corporation after 1976 have filed intervention Application No. 1 (In C.A. No. 3200/1986) for their impleadment as respondents in the appeal. We allow the same and direct for the impleadment of the respondents. Their contention is that their interest should not be jeopardised by the appellants' continuance in service. After hearing parties, we are of the opinion that those employees who were recruited to the service of the Corporation after 1976 will not be affected by the appellants' continuance in service except in the matter of seniority. We would further like to make it clear that if some of the employees recruited in the service of the Corporation after 1976 have been promoted to higher posts, their continuance on those posts will

not be affected by this order. Similarly those appellants who have been promoted to higher posts will be entitled to continue to hold those posts. We, accordingly, allow the appeals as aforesaid. There will be no order as to costs.

Appeals allowed.

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