

S. GOVINDARAJU
v.
K.S.R.T.C. & ANR.

APRIL 15, 1986

[K.N. SINGH AND O. CHINNAPPA REDDY, JJ.]

Karnataka Road Transport Corporation (Cadre & Recruitment) Regulations, 1982 - Regulation 10(5) - State Road Transport Corporation - Conductor - Services terminated without enquiry - Legality of - Whether principles of natural justice violated - Opportunity of explanation - Entitlement and necessity of.

Regulation 10(5) of the Regulations (Karnataka Road Transport Corporation (Cadre and Recruitment) Regulations 1982 provides that during temporary/Badli employment 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.

The appellant was selected for appointment as Conductor in the Karnataka State Road Transport Corporation - a statutory authority constituted under the Road Transport Corporation 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) Regulation 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 under Regulation 10(5) of the Regulations on the ground of his being found unsuitable for the post without giving any opportunity of explanation. The termination order further stated 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 in a Writ Petition. The High Court dismissed the Writ Petition holding that the order of termination was made in terms under which employment was given

A to him and it did not amount to retrenchment in view of s. 2(00)(bb) of the Industrial Disputes Act 1947.

Allowing the appeal,

B **HELD** 1. 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. Therefore the order of the High Court as also the order of termination are set aside and the appellant shall be treated in service and be paid his back wages and other benefits. [514 C-D]

C 2. The Karnataka Road Transport Corporation (Cadre and Recruitment) Regulations 1982 which regulate the conditions of service of its employees, are statutory in nature having been framed under s. 45(2)(c) of the Road Transport Corporation Act. Once a candidate is selected and his name is included in the select list 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 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 principle of natural justice would be attracted and the employee would be entitled to an opportunity of explanation, though no elaborate inquiry 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 into forfeiture of his right to be considered for employment, opportunity of explanation must be afforded to the employee concerned. [513 D-E; 513H; 514 A-C]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1339(NL) of 1986.

G From the Judgment and Order dated 19.6.85 in the High Court of Karnataka at Bangalore in W.P. No. 9171 of 1985.

R.K. Garg, V. Laxminarayana and D.K. Garg for the Appellant.

H G.B. Pai, N.D.B. Raju, Miss Deepa and Vineet Kumar for the Respondent.

The Judgment of the Court was delivered by

SINGH, J. Special Leave to appeal is granted.

This appeal is directed against the order of the High Court of Karnataka dismissing the respondents' writ petition under Art. 226 of the Constitution challenging the order of termination of service on the ground that it was violative of Sec. 25F of the Industrial Disputes Act, 1947.

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) Regulation 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 dt. 2-4/5 of 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 Art. 226 of the Constitution on the ground that the order of termination was void and illegal for the non-compliance of Sec. 25F 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 Sec. 2(o)(bb) of the Act.

Section 25F 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 25F was designed by the Parliament to safeguard the interest of employees. The statutory requirement of payment of compensation is a condi-

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 tion 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. Shri. N. Sundra Money**, A.I.R. 1976 S.C. 1111; **Santosh Gupta v. State Bank of Patiala**, A.I.R. 1980 S.C. 1219; **Mohan Lal v. Management B.E.**, A.I.R. 1981 S.C. 1253 and **Management K.S.R.T.C. v. Baraiah**, A.I.R. 1983 S.C. 1320.

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 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 Sec. 2(oo). The amended provision runs as under :

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 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 -

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 (a) x x x x .x x x

(b) x x x x x x x

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

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 The High Court held that since the appellant's contract for employment contained a stipulation that his services could be terminated at any time, the termination did not amount to retrenchment in view of the newly added exception to Sec. 2(oo). The validity of Section 2(oo)(bb) was not challenged before us. The learned counsel for the appellant urged that if
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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 rigorous of Sec. 25F 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.

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 & Recruitment Regulations) 1982 regulating the conditions of service of its employees. These regulations are statutory in nature having been framed under sec. 45(2)(c) of the Road Transport Corporation Act. Admittedly the appellant was selected by the 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 consequence entail as he forfeits his right to employment in future. In such a

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natural justice. Before the services of an employee are
terminated, resulting into 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
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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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M.L.A.

Appeal allowed.