

The General Manager, Mysore State Road ... vs Devraj Urs And Anr. on 31 October, 1975

Equivalent citations: AIR1976SC1027, 1976LABLC634, (1976)IILLJ306SC, (1976)2SCC862, 1975(7)UJ929(SC), AIR 1976 SUPREME COURT 1027, (1976) 2 S C C 863, 1976 LAB. I. C. 634, 1975 UJ (SC) 929, 1976 SERVLJ 264, 1976 TAC 71, 1976 SCWR 407, 1976 2 LABLJ 306, 32 FACLR 16, 1976 2 SERVLR 233, ILR 1976 KANT 1044

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Bench: A.N. Ray, K.K. Mathew, N.L. Untwalia

JUDGMENT

N.L. Untwalia, J.

1. The common and the only question which falls for determination in all these appeals is whether the respondents, the employees of the Mysore State Road Transport Corporation, were validly discharged from service by the appellant. The cases have a chequered history. We shall briefly state the facts of Civil Appeal No. 317/71 arising out of Writ Petition No. 9A/1966.

2. Respondent No. 1 was recruited as a Conductor on 26-2-1962 by the Divisional Controller, Mysore State Road Transport Corporation, Mysore Division. A disciplinary proceeding was initiated against him for some alleged misconduct or misdemeanour resulting in his dismissal from service by order dated 29-10-1964 made by the Divisional Controller, Mysore Division. The appeal filed by respondent No. 1 before the General Manager at Bangalore was dismissed. He thereupon, filed a write petition in the Karnataka High Court which was allowed on 16-10-1968. The appellant came up in appeal to this Court. The appeal was allowed and the matter was remanded back to the High Court. After remand the High Court has reiterated its earlier view and has allowed the write application mainly on the ground that the order of dismissal was not made by the appropriate authority. Hence this appeal by special leave. The facts of the other appeals are similar.

3. The erstwhile State of Mysore was running on monopoly basis certain transport services on specified routes. The conduct and management of the same was being looked after by a Department of the State Government called the Mysore Government Road Transport Department (MCRTD). At that point of time within the city of Bangalore and the surrounding areas within a distance of about 10 miles from the city limits the transport business of running the buses was being carried on by a Company known as the Bangalore Transport Company. The business of the Company was nationalized on and from 1-10-1956. The management of the nationalized business was placed under

a separate unit known as Bangalore Transport Service (BTS). There was a set of Standing Orders (it is not clear how they were framed) made under the Industrial Employments Standing Orders Act of 1946, which was applicable to the transport system operated by MGRTTO. The Bangalore Transport Company had similar standing Orders applicable to its staff. The BTS continued to adopt those standing Orders after nationalization of the Company's business.

4. On the reorganization of the States on and from 1-11-1956, two other units of transport Service came over to new State of Mysore, One was the Transport undertaking of the State Government of the erstwhile State of Hyderabad operating in the three Districts of Hyderabad integrated in the State of Mysore. The other unit relating to the operation of transport in some areas of the erstwhile State of Bombay which were allotted to the State of Mysore. The respective service conditions governing the employees of the transferred areas of the two States for the time being continued to govern them.

5. Prior to the enlargement of the areas of transport operation either by nationalization or by the reorganization of States, there were a few departmental divisions to control the various spheres of activities. One such division was the Bangalore Division. There were separate Regional Workshop Divisions one at Hubli and other at Bangalore. At Bangalore, there was an Officer at the top of the administration called the General Manager. Subsequently a post next in rank to him being that the Deputy General Manager was created. The Deputy General Manager became the Head of the Bangalore Division and another Deputy General Manager became the Head of the Bangalore Transport Service (BTS). The entire transport business was taken over by the Mysore State Road Transport Corporation constituted under Section 3 of the Road Transport Corporations Act, 1950. The business of all the divisions was taken over from 1-8-1961 and that of BTS from 1-10-1961. It is not quite clear when the other divisions of the MGRTD were created, Some of them were created before the taking over of the business by the Road Transport Corporation and a few afterwards. The divisions so created were, apart from the Bangalore Division, the Mysore Division, the Bellary Division and Hassan Division. The areas transferred from Hyderabad were constituted into Gulbarga Division and those from Bombay formed the Belgaum Division. The respondents in these appeals are employees of the various divisions other than the Bangalore Division.

6. The Standing Orders framed in accordance with Act 20 of 1946 and adopted by the MGRTD in the year 1951 were made and adopted when only Bangalore Division was there. Clause XIII of the Standing Order reads as follows :

No order or fine, suspension, discharge or dismissal shall be executed unless so ordered by the Deputy General Manager, Bangalore Division. The Deputy General Manager may order such enquiry as he thinks fit before passing orders provided that in cases where punishment or dismissal is involved, the Deputy General Manager shall hold an independent enquiry and pass orders

7. It may be noted that in the above Standing Order No. XIII previously the authority mentioned was the General Manager and in its place Deputy General Manager was substituted in the year 1958 after the extended area of transport operation had come into existence. The Divisional Heads of the

other divisions who, as it appears were equal in rank to the Deputy General Manager of the Bangalore Division were known as Divisional ControllOrs. No other separate Standing Orders were framed for the other divisions.

8. In March, 1960 the Head of Divisional or Regional and workshop Units were declared as appointing authorities for all classes of posts the minimum of the pay scale of which was less than Rs. 100/- per month. In May, 1960 certain others powers were delegated to the Divisional, Regional or Unit Heads. But still the delegation remained confined to :

(1) the power to appoint or to terminate service;

(2) the power to make temporary departmental promotions: and (3) the power to grant additional allowance to employees holding one or more posts in addition to his own duties as per rules.

The power to take disciplinary action was not delegated to the different Divisional Heads. In that regard Standing Order No. XIII governing the employees of the Bangalore Division, it appears, remained operative and applicable for the employees of the other Divisions also. The Road Transport Corporation took over the entire transport business of the Government at a point of time when the conditions of service of the employees of the various divisions were those as narrated above.

9. On 1-8-1961 was issued a notification by the Government of Mysore after consultation with the Mysore State Road Transport Corporation in exercise of the powers conferred by Sub-section (1) of Section 34 of the Road Transport Corporations Act, 1950-hereinafter called the Act, giving directions to the said Corporation in relation to the recruitment, conditions of service and wages to be paid to the employees of the Mysore Government Road Transport Department who had opted to serve under the Corporation. Clause (2) of the said direction reads as follows :

In respect of all disciplinary proceedings or appeals arising therefrom pending immediately before 1st August 1961 the Corporation or such Officer or Officers as may be designated by it shall be the disciplinary authority competent to pass appropriate orders in accordance with the relevant rules applicable to them before the transfer.

10. The Corporation passed a resolution on 1-8-1961 to the following effect:

In view of the fact that considerable time and attention would be required to scrutinise the various rules, regulations, procedures, precedents and conventions, it is hereby RESOLVED that all rules, regulations, procedures, precedents and conventions-as in force as on 31-7-1961 in the Mysore Government Road Transport Department be continued by the Corporation until further orders.

In the preamble leading to the passing of the said resolution was stated :

The work of the Mysore Govt Road Transport Department was being carried on in accordance with rules regulations, procedure precedents & conventions as they were prevailing in the integrated areas which came within the fold of the Department as a result of the Reorganisation of States. Common Rules and Regulations have been evolved in several matters and it is necessary to continue the same rules and regulations as were in force as on 31-7-1961 for the working of the services of the Corporation also as from 1st August 1961 until such time that modifications as deemed necessary should be effected by the Corporation with the approval of the State Government from time to time.

11. It would thus be seen that the Standing Order No. XIII for the purpose of the action of dismissal of an employee was kept alive and applicable to the employment not only of Bangalore Division but of all Divisions where there was no separate Standing Order or Rule in regard to that matter. The respondent in Civil Appeal No. 317 was a person who was employed by the Corporation after its formation. Some of the respondents in the other appeals had been employed earlier and they came under the service of the Corporation on and from 1-8-1961. But some had been employed later. For the purpose of the application of the Standing Order No. XIII, however, no distinction was made by the Corporation as between the old and the new employees. Argument of the learned Solicitor General that Standing Order No. XIII, was applicable to the employees of the truncated Bangalore Division only against the finding of the High Court that it was applicable in all the divisions could not be substantiated before us.

12. Learned Solicitor General further submitted that adoption and the continuance of Standing Order No. XIII, even assuming it applied to the employees of the other divisions, had not the force of a law until regulations were framed under Section 45 of the Act. The application of the said Standing Order by passing a resolution of the Corporation did not take the matter out of the ordinary law of master and servant based upon the terms of contract of service between the employees and the Corporation. We are of the opinion that the argument does not stand scrutiny.

13. Section 14(3)(b) of the Act says :

14(3) The Conditions of appointment and service and the scales of pay of the officers and servants of a corporation shall.

(b) as respects the other officers and servants be such as may, subject to the provisions of Section 34, be determined by regulations made under this Act.

Section 34 provides:

34(1) The State Government may, after conclusion with a Corporation established by such Government, give to the Corporation general instructions to be followed by the Corporation, and such instructions may include directions relating to the recruitment, conditions of service and training of its employees, wages to be paid to the employees, reserves to be maintained by it and disposal of its profits or stocks.

(2) In the exercise of its powers and performance of its duties under this Act the Corporation shall not depart from any general instructions issued under Sub-section (1) except with the previous permission of the State Government.

14. It would thus be seen that the directions given by the State Govern are binding on the Corporation and it cannot depart from any general instructions issued under Sub-section (1) except with the previous permission of the State Government. Section 45(1) confers power on the Corporation to make regulations and under Sub-section (2) in particular such regulations may provide:

(c) the conditions of appointment and service and the scales of pay of officers and servants of the Corporation other than the Chief Executive Officer or General Manager and the Chief Accounts Officer.

15. It would thus be seen that until regulations are made with the previous sanction of the State Government the directions given under Section 34 in respect of the conditions of service has got the force of law. The Corporation by adopting the continuance of the old rules in its resolution dated 1.8.1961 did not, as it could not, depart from Clause (2) of the notification dated 1.8.1961 giving directions in the matter of disciplinary proceedings. The effect of the two was to continue Standing Order No XIII applicable to the employees of all the divisions where there was no other Standing Order or Rule to the contrary in the matter of dismissal or discharge from service. It may look a bit anomalous that in other divisions the appointing authority was the Divisional Controller yet the dismissing authority was the Deputy General Manager of the Bangalore Division. But the anomaly had to be removed at the appropriate time. It was not done at any time before. On the other hand, the authority of the Deputy General Manager of the Bangalore Division was continued in respect of the employees of other divisions also.

16. In *Mysore State Road Transport Corporation v. Gopinath Gundachar Char Bachwat, J* delivering the judgment on behalf of the a Constitution Bench of this Court has said at page 770:

If the State Government issues any directions under Section 34 relating to the recruitment and conditions of service of the employees, the Corporation must obey those directions. The conjoint effect of Section 14(3)(b), 34 and 45(2)(c) is that the appointment of officers" and servants and their conditions of service must conform to the directions, if any, given by the State Government under Section 34 and the regulations, if any, framed under Section 45(2)(c).

The majority decision of another Constitution Bench of this Court in the case of *Sukhdev Singh and Ors. etc. etc. v. Bhagatram Sardar Singh Raghvanshi and Another etc etc.* (2) has ruled that the Statutory Corporations are authorities within the meaning of Article 12 of the Constitution. Undoubtedly and indisputably the Road Transport Corporation is one such authority In the leading judgment delivered by one of us (hon'ble the Chief Justice) it has been pointed out in paragraph 33 at page 1341:

In the case of statutory bodies it has been said that the element of public employment or service of and the support of statute require observance of rules and regulations. Failure to observe requirements by statutory bodies is enforced by courts by declaring dismissal in violation of rules and regulations to be void. This Court has repeatedly observed that whenever a man's rights are affected by decision taken under statutory powers, the court would presume the existence of a duty to observe the rules of natural justice and compliance with rules and regulations imposed by status" Breach of Clause (2) of the directions given by State Government in the matter of disciplinary action against the respondents was a breach of the statutory duty and made the action of the Corporation amendable to the jurisdictions of the High Court under Article 226 of the Constitution.

17. For the reasons stated above we held that the judgment of the High Court is right. These appeals fail and are dismissed. But in the circumstances there shall be no order as to costs.