

Basanagouda Vs. The Divisional Controller

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Court : Karnataka Dharwad

Decided On : Apr-25-2024

Judge : N.S.Sanjay Gowda

Appeal No. : WP 100878/2017

Appellant : Basanagouda

Respondent : The Divisional Controller

Judgement :

- 1 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters IN THE HIGH COURT OF KARNATAKA AT R DHARWAD BENCH DATED THIS THE25H DAY OF APRIL, 2024 BEFORE THE HONBLE MR JUSTICE N S SANJAY GOWDA WRIT PETITION No.100878 OF2017(L-KSRTC) C/W WRIT PETITION No.102971 OF2014(L-KSRTC), WRIT PETITION No.105459 OF2014(L-KSRTC), WRIT PETITION No.111983 OF2014(L-KSRTC), WRIT PETITION No.107906 OF2016(L-KSRTC), WRIT PETITION No.108973 OF2016(L-KSRTC), WRIT PETITION No.109310 OF2016(L-TER), WRIT PETITION No.107344 OF2017(L-KSRTC), WRIT PETITION No.112165 OF2017(L-KSRTC), WRIT PETITION No.100757 OF2019(L-KSRTC) IN W.P. No.100878/2017: BETWEEN: BASANAGOUDA, S/O SHANKARGOUDA PATIL, AGED ABOUT32YEARS, OCC:NOW NIL R/O KESARAKOPPA, TALUK RAMDURGA, DISTRICT

BELAGAVI. PETITIONER (BY SRI. ANANT.P.SAVADI, ADVOCATE) AND: THE DIVISIONAL CONTROLLER, NWKRTC, BELAGAVI DIVISION, BELAGAVI. RESPONDENT (BY SMT. VEENA HEGDE, ADVOCATE FOR RESPONDENT) - 2 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters THIS WRIT PETITION IS FILED UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE

ORDER

OF LABOUR COURT PASSED BY LABOUR COURT, BELAGAVI, AT BELAGAVI IN KID No.65/2013 DATED:08.11.2016 PRODUCED AT ANNEXURE-D. IN W.P. No.102971/2014 BETWEEN: MR.VITTHAL DASAR, S/O HANUMANTAPPA @ HANUMAPPA, AGED ABOUT42YEARS, R/O NARSAPUR, TALUK GADAG, DISTRICT GADAG. PETITIONER (BY SRI. RAVI HEGDE, ADVOCATE) AND: THE DIVISIONAL CONTROLLER, N.W.K.R.T.C HAVERI DIVISION, HAVERI. RESPONDENT (BY SRI.SHIVAKUMAR.S.BADAWADAGI, ADVOCATE) THIS WRIT PETITION IS FILED UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE AWARD PASSED BY THE DISTRICT AND SESSIONS JUDGE, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HUBLI IN KID No.127/2003 DATED2801.2005 VIDE ANNEXURE-D AND THE

ORDER

PASSED ON ISSE No.1/DOMESTIC ENQUIRY IN KID No.127/03 DATED3112.2013 VIDE ANEEXURE-C, ETC. IN W.P. No.105459/2014: BETWEEN: SRI.SAVALAPPA, S/O DAGADU TARASE, AGE32YEARS, OCC:NIL - 3 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters R/O AT POST BYABERE, TALUK AND DISTRICT BIJAPUR. PETITIONER (BY SRI. RAVI HEGDE, ADVOCATE) AND: THE MANAGEMENT OF NWKRTC CHIKKODI DIVISION, REPRESENTED BY ITS DIVISIONAL CONTROLLER, CHIKKODI DIVISION, CHIKKODI. RESPONDENT (BY SMT. P.R.BENTUR, ADVOCATE) THIS WRIT PETITION IS FILED UNDER ARTICLES226AND227OF THE

CONSTITUTION OF INDIA, PRAYING TO QUASH THE AWARD PASSED BY THE ADDITIONAL LABOUR COURT HUBLI DATED 31.12.2013 IN KID No.19/2013 WHICH IS PRODUCED AS ANNEXURE-D, ETC. IN W.P. No.111983/2014: BETWEEN: SRI.CHANDRAKANT, S/O HUSANAPPA MOOLIMANI, AGE 31 YEARS, OCC NIL, R/O AT POST VIBOOTHIHALLI, TALUK SINDGI, DISTI BIJAPUR. PETITIONER (BY SRI. RAVI HEGDE, ADVOCATE) AND: THE MANAGEMENT OF NWKRTC, CHIKKODI DIVISION, REPRESENTED BY ITS DIVISIONAL CONTROLLER, CHIKKODI DIVISION, CHIKKODI. RESPONDENT (BY SRI. PRAKASH.N.HOSAMANE, ADVOCATE) - 4 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE AWARD PASSED BY THE ADDITIONAL LABOUR COURT HUBLI DATED 08.11.2013 IN KID No.20/2013 WHICH IS PRODUCED AS ANNEXURE-D, ETC. IN W.P.No.107906/2016: BETWEEN: THE MANAGEMENT OF NWKRTC REPRESENTED BY DIVISIONAL CONTROLLER, BELAGAVI DIVISION, BELAGAVI, THE PETITIONER IS REPRESENTED BY ITS CHIEF LAW OFFICER NWKRTC CENTRAL OFFICE, HBBALLI. PETITIONER (BY SMT. SUNITHA P. KALASOOR, ADVOCATE) AND: MOHAMMED HUSSAIN S/O. HASANSAB MULLA AGED ABOUT 40 YEARS, OCC. NIL, R/O. MULLAGALLI, TQ.MUDDEBHIHAL, DISTRICT-VIJAYAPUR. RESPONDENT (BY SMT. KALPANA T.M., ADVOCATE) THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI THEREBY QUASHING THE AWARD DATED 23.09.2014 PASSED BY LEARNED PRESIDING OFFICER IN ADDITIONAL LABOUR COURT, HUBBALLI IN KID. NO.55/2013 VIDE ANNEXURE-C TO THE WRIT PETITION AND ETC.-. 5 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters IN W.P.No.108973/2016: BETWEEN: SRI.MARUTI KALLAPPA ADNUR AGE. 33 YEARS, OCC. NIL, R/O. HANUMAGIRI ONI, SAVADATTI, DISTRICT - BELAGAVI. PETITIONER (BY SMT. KALPANA T.M., ADVOCATE) AND: THE MANAGEMENT OF NWKRTC DHARWAD DIVISION REPRESENTED BY ITS DIVISIONAL CONTROLLER DHARWAD DIVISION, DHARWAD. RESPONDENT

(BY SMT. VEENA HEGDE, ADVOCATE) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT IN THE NATURE OF CERTIORARI BY QUASHING THE AWARD DATED 15.03.2016 PASSED BY LABOUR COURT, HUBBALLI IN K.I.D. NO.170/2013 VIDE ANNEXURE-E. IN W.P. No.109310/2016: BETWEEN: SRI.RAVI, AGED ABOUT 35 YEARS, S/O BASAPPA PADESUR, RESIDENT OF KALLAPUR POST, SHIROL, NARGUND TALUK, GADAG DISTRICT. PETITIONER (BY SRI. RAVI HEGDE, ADVOCATE) AND: THE DIVISIONAL CONTROLLER, - 6 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters NORTH WEST KARNATAKA ROAD, TRANSPORT CORPORATION, HUBBALLI DIVISION, HUBBALLI, DHARWAD DISTRICT. RESPONDENT (BY SMT.VEENA HEGDE, ADVOCATE) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED AWARD DATED 27.11.2015, PASSED BY LABOUR COURT AT HUBBALLI IN KID.No.194/2014 VIDE AT ANNEXURE-F UNDER THE FACTS AND CIRCUMSTANCES OF THIS CASE, ETC. IN W.P.No.107344/2017: BETWEEN: SRI. CHANNAPPA, S/O GANGARAM BALAGANUR, AGE 36 YEARS, CC NIL R/O BASTIBANA MYAGERI ONI, LAXMESHWAR, TALUK SHIRAHATTI, DISTRICT GADAG. PETITIONER (BY SRI. SHIRIHARSH.A.NEELOPANT, ADVOCATE) AND: THE MANAGEMENT OF NWKRTC, GADAG DIVISION, REPRESENTED BY ITS DIVISIONAL CONTROLLER, GADAG DIVISION, GADAG. RESPONDENT (BY SRI. PRAKASH.N.HOSAMANE, ADVOCATE) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED

ORDER

DATED:27.06.2016 PASSED BY - 7 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters THE PRESIDING OFFICER, LABOUR COURT HUBBALLI, IN KID No.102/2013 AS PER ANNEXURE-A AND ALLOW THE CLAIM PETITION FILED BY THE PETITIONER BEFORE THE PRESIDING OFFICER, LABOUR COURT,

HUBBALLI UNDER SECTION 10(4-A) OF INDUSTRIAL DISPUTES ACT, ETC. IN W.P. No.112165/2017: BETWEEN: MARUTIGOUDA, S/O HANUMANTAGOUDA PATIL, AGED ABOUT 35 YEARS, OCC NIL, R/O PO:KADLIKOPPA, MULLUR, TALUK RAMADURGA, DISTRICT BELAGAVI. PETITIONER (BY SRI. RAVI HEGDE, ADVOCATE) AND: THE DIVISIONAL CONTROLLER, N.W.K.R.T.C, GADAG DIVISION, DISTRICT GADAG. RESPONDENT (BY SRI. PRASHANT HOSMANI, ADVOCATE) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE AWARD PASSED IN K.I.D.No.9197/2014 DATED:27.04.2017 ON THE FILE OF PRESIDING OFFICER, LABOUR COURT, HUBBALLI VIDE ANNEXURE-F AND ALSO QUASH THE

ORDER

DATED:26.11.2012 PASSED BY THE RESPONDENT VIDE ANNEXURE-D, ETC. IN W.P.No.100757/2019: BETWEEN: SRI.PUNDAPPA S/O. AMOGHAPPA KARAGAR AGE. 28 YEARS, OCC.NIL, - 8 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters R/O. ARJUNAGI, B.K., TALUK INDI, DISTRICT VIJAYAPUR. PETITIONER (BY SRI. M.S. HARAVI, ADVOCATE) AND: THE NORTH WEST KARNATAKA ROAD TRANSPORT CORPORATION REPRESENTED BY ITS DIVISIONAL CONTROLLER, NWKRTC, HUBBALLI DIVISION, DISTRICT DHARWAD. RESPONDENT (BY SRI.PRASHANT S. HOMANI, ADVOCATE) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT,

ORDER

OR DIRECTION IN THE NATURE OF CERTIORARI TO QUASH THE

ORDER

DATED 28.04.2017 PASSED IN K.I.D. NO.68/2015 ON THE FILE OF DISTRICT JUDGE & PRESIDING OFFICER, LABOUR COURT, HUBBALLI, VIDE ANNEXURE-A AND FURTHER QUASH THE

ORDER

NO.VAKARASA/HUVI/SHIKRASHA/403 (15)/7133 DATED 29.09.2015 PASSED BY THE RESPONDENT AS PER ANNEXURE- B AND ETC. THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR

ORDER

ON 16.02.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING : - 9 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters

ORDER

1 This is the singular determinative question to be answered in this petition: Whether a person who is selected as a driver or as a driver-cum- conductor by the respondent - North West Karnataka Road Transport Corporation (the Corporation) and is asked to undergo training before being appointed on probation, is a workman as defined under the Industrial Disputes Act, 1947 (the ID Act) and can invoke the provisions of the ID Act for adjudication of his rights ?.

2. To answer this question, the provisions of the ID Act, the Road Transport Corporations Act and the relevant Regulations framed by the KSRTC under said Act would have to be examined.

3. For ease of reference, this judgment has been indexed as tabulated hereunder: - 10 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters SL. PARTICULARS PAGE NOS. I Relevant provisions of the Industrial Disputes Act, 1947 - 10-15 II Relevant provisions of the Road Transport Corporations Act, 1950 - 16-17 III Relevant Regulations framed under Section 45(2)(c) of the Road Transport Corporations Act, 1950 - 17-61 IV Orders passed in the respective writ petitions I. RELEVANT PROVISIONS OF THE ID ACT:

4. The ID Act was enacted, in 1947, to make provisions for the investigation and settlement of industrial disputes. Section 2(g)1 of the Act defines an employer in relation to an industry carried on or by or under the authority of any department of

the State Government. 1 2(g) employer means- (i) in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government the authority prescribed in this behalf, or where no authority is prescribed, the head of the department; (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that Authority; - 11 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters 5. This section states that for a Central or State government industry, the employer shall be the authority prescribed for that purpose and if no such authority is prescribed, the employer is deemed to be the head of the department. The section also states that if the industry is one that is carried on by a local authority, the employer shall be the chief executive officer of that local authority.

6. The term industrial dispute was defined to mean any dispute or difference between employers and employees, or between employers and workmen, or between workmen inter se, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any workman.

7. For the purpose of this case, an industrial dispute would thus mean any dispute between an employer and a workman connected with the employment or non-employment or the terms of employment or the conditions of labour.-. 12 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters 8. Industry has been defined to mean any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. Undisputed is the fact that the Corporation is an industry as defined under the Act.

9. A workman under the Act has been defined under Section 2(s)2 and it means any person, including an apprentice, who is employed in any industry to do any 2 2(s) workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express

or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or (ii) who is employed in the police service or as an officer or other employee of a prison, or (iii) who is employed mainly in a managerial or administrative capacity, or (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]. - 13 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters manual (skilled or unskilled), technical, sales promotion, operational, clerical or supervisory work or any work for the promotion of sales for hire or reward. The terms of employment could either be express or implied and would include - for the purposes of the Act - any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of a dispute.

10. Four categories of workmen are excluded: (a) persons subject to the Air Force Act, the Army Act or the Navy Act; (b) persons who are employed in the police service; (c) persons employed as officers or those employees who are in a managerial or administrative capacity; and (d) persons employed in a supervisory capacity if such an individual draws wages exceeding Rs.10,000/-per month (w.e.f. 2010).

11. Thus, in simple terms, a workman under the ID Act would mean any person who has been employed in any - 14 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters industry. The fact that the definition specifically includes even an apprentice would by itself indicate that every person employed in an industry would be a workman. This definition does not differentiate on the basis of the tenure of employment. The fundamental requirement to be satisfied, for a person to be considered a workman,

is that said person should be employed in an industry.

12. Section 10 of the ID Act provides for the appropriate government to refer any industrial dispute to the Board or to a Court for inquiry; or if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication or if it relates to any matter specified in the Second Schedule, to a Tribunal. Thus, for reference to a Labour Court or the Tribunal, the essential requirement is the existence of any industrial dispute in the opinion of the appropriate government.

13. It may also be pertinent to mention here that in the State of Karnataka, it is also permissible for an individual workman - who has been discharged, dismissed or - 15 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters retrenched or terminated - to apply within six months to the Labour Court for adjudication of the dispute. The Labour Court is then required to dispose of said application in the same manner as the dispute referred to it under sub-section (1) of Section 10 of the ID Act.

14. Thus, on a plain reading of Sections 2(g), 2(k), 2(s) and 10, it is clear that the ID Act was enacted with the objective of ensuring that any dispute between an employer and a workman is adjudicated by the Labour Court or the Tribunal, and the Labour Court or the Tribunal is required to conduct an enquiry and pass an award.

15. In cases of discharge or dismissal, if the Labour Court is satisfied that the orders of discharge or dismissal were not justified, it is empowered to set aside such orders and direct the re-instatement of the workman under the terms and conditions that it feels appropriate or to give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal.-. 16 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters II. RELEVANT PROVISIONS OF THE ROAD TRANSPORT CORPORATIONS ACT:

16. The Corporation was established as a consequence of Section 3 of the Road Transport Corporations Act, 1950 (the RTC Act) and, by virtue of Section 4, the Corporation is a Body Corporate and the general superintendence, direction and management of the affairs, and business of the Corporation stands vested in the Board of Directors by virtue of Section 5 of the said Act.

17. Section 14 of the said RTC Act stipulates that every Corporation should have a Managing Director, a Chief Accounts Officer and a Financial Adviser who will be appointed by the state government. The Corporation is empowered to appoint a Secretary and such other Officers and employees as it considers necessary for the efficient performance of its functions.

18. Section 45 of the RTC Act confers power on the Corporation with previous sanction of the state government and by notification in the Official Gazette, to - 17 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters make regulations for the administration of the affairs of the Corporation.

19. Section 45(2)(c) empowers the Board to frame regulations which provide for the conditions of appointment and service and the scales of pay of Officers and other employees of the Corporation.

20. Thus, the Corporation is a statutory Corporation and its Board is empowered to appoint employees and prescribe their conditions of appointment by framing appropriate regulations. III. RELEVANT REGULATIONS FRAMED UNDER SECTION 45(2)(c) OF THE RTC ACT:

21. The Corporation in exercise of the powers conferred under Section 45(2)(c) of the RTC Act has framed the Karnataka State Road Transport Corporation (Cadre & Recruitment) Regulations, 1982 (the C&R Regulations) and these Regulations have been made applicable to all classes of service under the Corporation except to the - 18 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters extent otherwise expressly provided for under the C&R Regulations.

22. Regulation 2(3) defines a selected candidate to mean a candidate whose name appears in a list of candidates selected for appointment to any service, class or category by the selection Authority.

23. Regulation 2(10)3 defines an employee to mean any person employed by the Corporation in accordance with the C&R Regulations and includes those employees who are temporarily or permanently in the employment of the Corporation on the date of introduction of the C&R Regulations. Thus, the statutory regulations clearly stipulate that any person employed by the Corporation, be it on a temporary basis or on a permanent basis, is an employee of the Corporation. 3

2. Definitions: In these Regulations, unless the context otherwise requires: (10) EMPLOYEE means any person employed by the Corporation in accordance with these Regulations and includes those employees temporary or permanent who are in the employment of the Corporation on the date of introduction of these Regulations.-. 19 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters 24. Regulation 2(18) defines selection as selection of a person for appointment to a post by the Selection Authority.

25. Regulations 2(13) and 2(21) define the terms permanent post and temporary post as a post created on a scale of pay without any limit of time and a post created temporarily in a time scale for a limited period.

26. Regulation 3 deals with the modes of recruitment and provides for 7 modes of recruitment while stating that the method of recruitment and qualifications prescribed shall be as per Schedule A. Regulations 4 and 5 prescribe the eligibility for appointment and disqualification from appointment, as well as the physical standards required for being appointed.

27. Regulation 6 prescribes the procedure for selection of candidates. It states that applications for appointment by direct recruitment for Class-III state-wide posts are required to be called for by publishing an advertisement in leading newspapers

and by publication in the notice board - 20 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters of all the unit offices of the Corporation for posts other than state-wise cadre on the basis of percentage of total marks secured in the qualifying exam.

28. In respect of division-wise vacancies of Class-III posts and for all Class-IV posts, they are required to be filled up by direct recruitment by notifying the concerned District Employment Exchanges as well as by notifying on the notice boards of the Unit Office.

29. Part B of Regulation 64 prescribes the procedure for selection for the post of driver (which would be relevant to the present case) and Class-III Security Guard.

4

6. Procedure for selection of candidates for Class - III and IV posts - (To be read with Regulation - 9 A.) B. Procedure for Selection for the post of Driver, Class -III and Security Guard, Class-IV (i) The candidates who satisfy the requirements for the post of Driver shall be called to appear before the Selection Authority or any other officer authorised by the Chairman of the Selection Authority for personal verification of physical standard prescribed under Regulation-5. The candidates who do not fulfill the prescribed Physical standards shall not be eligible for Trade Test. (ii) There shall be a Trade Test conducted twice through computerized system for assessing the candidate for a maximum of 50 marks. The tests shall be conducted by two officers independently each assessing the candidate for a maximum of 25 Marks. The Test shall be conducted separately by Class-I (Junior) Officer of any department to be nominated by - 21 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters the Chairman of the Selection Authority, from the list of examiners nominated by the Managing Director. The selection of the candidates shall be on the basis of merit as reflected by the marks secured in the Trade tests, provided that the candidates who secure less than 25 Marks out of the total of 50 marks, in the said Test are treated as failed in the Test and not eligible for selection. (iii) The Selection Authority shall prepare the list of candidates eligible for appointment as per the Government

orders issued in this behalf and are in force from time to time, and if more than one candidate secures equal marks, the order of merit in respect of such candidates shall be on the basis of their age, the person or persons older in age being placed Higher in the order of Merit. (iv) The candidates who satisfy the requirements for the posts of Security Guard shall be called to appear before the Selection Authority or any other officer authorised by the Chairman of the Selection Authority for personal verification of physical standards prescribed under Regulation-5. The candidates who do not fulfill the prescribed physical standards shall not be eligible for further tests. (v) The candidates who come out successful under Sub-Clause (IV) above, have to undergo the following physical efficiency tests :- I. For Male Candidates Qualifying Parameters Items (a) 400 meters running Within 80 Seconds. (b) Long Jump Not less than 3.50 meters (c) Shot put - 7.26 kgs of weight Not less than 5.00 meters II. For Female Candidates Qualifying Parameters Items (a) 200 meters running Within 42 (Forty two) seconds. (b) Long Jump Not less than 3.00 meters (c) Shot put - 4 kgs of weight Not less than 4.5 meters (vi) (a) Candidates who attain the minimum qualifying parameters of physical efficiency tests mentioned above will be considered to have been physically qualified for the post of Security Guard. (b) The select list will be prepared by the Selection Authority in the order of merit, from among the physically qualified candidates based on the marks obtained in the minimum education qualification prescribed for the post.-. 22 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters 30. The procedure essentially states that the persons who satisfy the requirements for the post of driver should be called to appear before the Selection Authority for personal verification of physical standards and, if they fulfil the prescribed physical test, they are required to undertake a Trade Test through a computer system and the selection of the candidates would be on the basis of merit as reflected by the marks secured in the Trade Test.

31. A candidate who secures less than 20 marks (aggregate) out of the total of 50 marks is ineligible for selection. These tests should be conducted by the two officers independently, each assessing the candidate for a maximum of 25 marks. The tests are required to be conducted separately and the selection of candidates

should be on the basis of merit, as reflected by the marks secured in the Trade Tests.

32. The Selection Authority is thereafter required to prepare the list of candidates eligible for appointment as - 23 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters per the government orders issued in this behalf and which are in force from time to time.

33. Part BB of Regulation 65 provides for the procedure for selection in respect of post of driver-cum-conductor. In respect of the post of driver-cum-conductor, the number 5 BB. Procedure for Selection for the post of Driver-cum- Conductor- (i) Number of posts to be filled under the category of Driver- cumConductor, shall be separately worked out in respect of candidates holding HTV Driving Licence and LMV Driving Licence and shall be notified to the Employment Exchanges and shall also be advertised in terms of Regulation-6(1) and separate selection lists shall be prepared, in respect of candidates holding HTV Driving Licence and LMV Driving Licence : (ii) The Selection Authority shall prepare, in the order of merit, a list of candidates holding HTV Driving Licence, on the basis of marks secured in the Trade test as per Regulation-6(B)(ii), for the post and the rural weightage marks, wherever admissible, as per the policy of the State Government adopted in the Corporation from time to time. (iii) The Selection Authority shall prepare, in the order of merit, a list of candidates holding LMV Driving Licence, on the basis of marks secured in the qualifying examination specified for the post and the rural weightage marks, wherever admissible, as per the policy of the state Government adopted in the Corporation from time to time. (iv) The candidates holding LMV Driving Licence and selected under Clause- (iii) above shall be on training for a period of one year and they shall get HTV Driving Licence, PSV Badge, Conductors Licence and Badge and shall also pass the Trade test conducted under Regulation - 6B(ii), before the completion of their one year training period, failing which they shall be ineligible for appointment and shall be liable to be discharged. (v) The selected candidates belonging to the category of HTV Driving Licence holders, as well as the category of LMV Driving Licence holders who fulfill the requirements specified in Clause (iv) above shall undergo the training specified

in Regulation-12.-. 24 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters of posts to be filled up are required to be separately worked out in respect of candidates holding Heavy Transport Vehicle (HTV) driving licence and Light Motor Vehicle (LMV) driving licence and they are required to be notified to the Employment Exchanges and the vacancies are also required to be advertised and separate selection lists are required to be prepared in respect of candidates holding HTV driving licence and LMV driving licence.

34. The Selection Authority is then required to prepare, in the order of merit, a list of candidates holding HTV driving licence on the basis of the marks secured in the Trade Test.

35. In respect of the LMV driving licence candidates as well, the Selection Authority is required to prepare, in the order of merit, a list of candidates on the basis of the marks secured in the qualifying examinations specified for the post. The selected candidates possessing an LMV driving licence are then required to be put to training for a - 25 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters period of one year and they are required to get an HTV driving licence, PSV Badge, conductors licence and Badge, and are also required to pass the Trade Test conducted under Regulation 6BB before the completion of their one year training period. If they fail to secure the above requirements, they are rendered ineligible for appointment and are liable to be discharged.

36. It is lastly stated that selected candidates belonging to the categories of HTV driving licence as well as LMV driving licence who fulfill the requirement of clause (iv) i.e., securing the requisite licences etc., are required to undergo the training specified in Regulation 12.

37. On a comparative consideration of Part B and Part BB of Regulation 6, one factor would have to be noticed, and that is, in respect of a person who is selected as a driver (under Part B of Regulation 6), the C&R Regulations do not require any

training to be undertaken by him and it is only in respect of a person who is selected as a driver-cum- conductor under Part BB of Regulation 6 (whether it is a
- 26 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters person who holds an LMV or an HTV licence) would the requirement of undergoing training as per Regulation 12 be applicable.

38. Regulation 9 provides for the mode of selection, which is obviously in respect of other posts, since Parts B and BB of Regulation 6 prescribe the specific procedure for appointing a driver and a driver-cum-conductor.

39. Regulation 10 prescribes the procedure for appointment and it contains the formal procedure to be followed after the selection is completed - this aspect may not be of importance to the issues involved in the present case, hence discussed briefly.

40. Regulation 11 prescribes the period of probation and the requirement of satisfactory work to be established before successful completion of the probationary period, which would then lead to confirmation.

41. Regulation 12, which would be relevant for this case, relates to training and reads as follows - - 27 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters 12. Training
(1) The candidate who is selected by the Selection Authority and whose name is placed in the select list of candidates is liable to be called upon to undergo such training on such terms and conditions for such categories of post as may be prescribed by the Corporation before his appointment on probation. (2) Any candidate who fails to report for the training prescribed in Sub-Regulation (1) or who fails to SATISFACTORILY COMPLETE such Trainee will forfeit his claim for appointment to the post for which he is placed on the select list. Provided that a candidate appointed from another post in the Corporation will be reverted to the post held by him prior to such selection and training.

42. Though an argument can be made that training as required under Regulation 12 is contemplated only for persons who are selected as driver-cum-conductors in part BB of Regulation 6 which specifically provides for training to be undertaken under Regulation 12 and not to persons selected as driver under part B of Regulation 6, having regard to the fact that Regulation 12 states that a candidate selected by the Selection Authority is placed in - 28 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters the list of selected candidates will have to undertake training, it will have to be assumed that Regulation 12 would apply to both driver and driver-cum-conductor, since both in the case of a driver and a driver-cum-conductor a candidate undergoes selection to be placed in the list of selected candidates.

43. Regulation 12 contemplates training for a candidate selected by the Selection Authority and whose name is placed in the list of selected candidates before his appointment, to be on probation. The language used in this Regulation, no doubt, gives an indication that the appointment on probation would be after the completion of the training period. But the fact that the candidates are made to undergo the process of satisfying the prescribed physical standards, undergo the Trade Test twice (conducted by 2 officers independently), and then be placed in a selection list, would undoubtedly lead to the inference that they have already been assured of appointment on the completion of their training.-. 29 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters 44. The fact that Regulation 12 does not provide any test which a selected candidate is required to pass, by itself, indicates that the candidates selected as a driver or as a driver-cum-conductor are entitled to be appointed on probation immediately on completion of their training.

45. The fact that there is neither a period of training prescribed, nor is there, as stated above, a test prescribed after completion of their training establishes that the process of training is only formal in nature and the appointment of the candidate has been virtually materialised, and the passing of an order for appointing the candidate on probation upon completion of training is a mere formality.

46. In my view, the moment a candidate is selected for appointment (after he is made to undergo training), he would have to be considered as an employee for the purposes of the C&R Regulations. The period of training would only be a course by which the selected candidate is made to undergo an orientation to the processes followed - 30 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters by the KSRTC and would not mean that the selected candidate is not an employee of the KSRTC.

47. The definition of an employee under the C&R Regulations is an inclusive definition. It includes any person employed by the Corporation in accordance with the Regulations as well as temporary and permanent employees. The key phrase to be noticed in the definition is employed by the Corporation in accordance with the Regulations. If a person is selected as provided under the C&R Regulations to undergo training during which he is paid wages, it is obvious that he has been employed by the Corporation.

48. It may also be noticed here that the moment a person is paid wages, he would be in the employment of the Corporation and it is thus clear that a person who selected as a driver or as a driver-cum-conductor is under the employment of the Corporation as contemplated under the C&R Regulations.-. 31 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters 49. In respect of the sums paid to the trainee as allowance, a brief look at the orders passed by the KSRTC that were furnished by the learned counsel for the KSRTC would be relevant.

50. By the order dated 11.09.1995, the KSRTC fixed the period of training as two years and during this period of training, a trainee was to get a stipend of Rs.1,490/- and said stipend allowance was enhanced by a sum of Rs.300/- after completion of 6 months, by a further sum of Rs.300/- after the completion of one year and by a sum of Rs.400/- after the completion of 1 years, apart from being given a set of uniform. This indicates that a trainee was to be paid a stipend during his tenure of 2 years as a trainee.

51. By order dated 19.03.2003, the training period was reduced from 2 years to 6 months and, more importantly, the training allowance was to be paid on the lowest scale of pay to the post to which the trainee was selected to be appointed. Thus, a trainee was to be given the minimum of scale pay of the post to which he was selected and this - 32 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters would thereby establish that, during his initial period of training, he was being paid wages on par with an employee, though the terminology used indicated only a training allowance.

52. By the Circular dated 09.09.2004, the period of training was enhanced from 6 months to 1 year and in respect of Class-II officers, the period of training was to be treated as a part of the period of probation. The relevant portion of the same reads as follows: (a) In respect of candidates appointed for the post of Officers (Class-II), the training period has been specified as one year. This training period shall be a part of the period of probation on which these candidates shall be appointed in terms of Regulation-11(1) of the KSRTC (C&R) Regulations, 1982.

53. This, by itself, indicates that an employee selected and directed to undergo training under Regulation 12, at least in so far as Class-II Officers are concerned, was, in fact, considered as an employee on probation. Since this principle is adopted in respect of Officers, it is obvious that - 33 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters said principle would also apply to every other class of employees who are directed to undergo training on being selected.

54. In respect of Class-III and Class-IV posts, the period of training was restored to 2 years and the training allowance for a driver was fixed at Rs.2,100/- for the 1st year and Rs.2,500/- for the 2nd year, while it was Rs.2,000/- for the 1st year and Rs.2,400/- for the 2nd year for a conductor/driver-cum-conductor. The trainees were also eligible for weekly off, uniforms, washing allowance and stitching charges. It may also be pertinent to state here that whenever the duties of a driver or a driver-cum- conductor were performed by a trainee, a special allowance was

to be paid as per the C&R Regulations. This also indicates that the trainees were asked to perform the duties assigned to a regular driver or driver-cum- conductor during their period of training and were also paid a special allowance, which also establishes that they were considered as employees of the Corporation and the - 34 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters work assigned to regular employees were also assigned to them.

55. By the order dated 18/19.03.2021, the training period was once again reduced from 2 years to 1 year for Class-III & Class-IV posts. This order also states that those trainees who had completed 1 year of training as on 01.07.2021 were to be considered as being appointed on probation from that period. This indicates that a trainee was automatically appointed on probation after completion of the training period.

56. In addition to the above, it is stated by the KSRTC in during the course of hearing that the petitioners were paid a training allowance in addition to allowances for uniform, stitching, raincoat, shoe-socks, overtime, laundry, transportation revenue incentives, and overnight stay, in addition to weekly holidays, casual leave for every 22 days of work, medical expense reimbursement, maternity leave, childcare facilities, and compassionate appointments for dependents in case of an employees death. This - 35 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters statement, coupled with the Board orders referred to above, would also establish that the trainees were considered as employees of the Corporation all along.

57. On a plain reading of Regulation 12 also, it is clear that a selected candidate is compelled to undergo training before he is appointed, and this process of training is obviously to make him eligible for appointment. In other words, the first step of regular employment is to undergo training, and if a candidate satisfactorily completes such training, he would be entitled to claim appointment to the post for which he is placed in the select list. Obviously, during this period of training - when he is being paid wages in the lowest pay scale attached to the post to which he

has been selected - his status as an employee of the Corporation can either be denied or attempted to be kept in suspended animation.

58. In the background of the above analysis of the Regulations framed under the RTC Act, which clearly enumerates the conditions of a person selected to be - 36 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters appointed, the status of a trainee would now have to be examined with reference to the definition of a workman as defined under the ID act.

59. As could be seen from the definition of a workman under Section 2(s) of the ID Act, the definition brings within its purview any person who is employed in an industry, including an apprentice, to be a workman.

60. An apprentice would mean a person who works for another in order to learn a trade. In essence, an apprentice is a learner who is yet to acquire the requisite and complete skills for being employed. If a person who is a learner and is still learning a trade in order to secure employment is considered to be a workman, then, a duly qualified person who has undergone the process of selection by virtue of him possessing the prescribed qualifications and is selected to be appointed, will also have to be necessarily considered as a workman.

61. To put it differently, even if a learner is required to be considered as a workman under the ID Act, it would be - 37 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters absurd to contend that a person selected through a selection process to find him to be suitable for being employed, would not be a workman.

62. The Apex Court in the case of Devinder Singh⁶ has stated as follows- 13. The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. It is apposite to observe that the definition of workman also does not make any distinction between full-time and

part-time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole-time job is a workman and the one employed on temporary, part-time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.

63. As could be seen from the above, the Honble Supreme Court has clearly held that it would be immaterial 6 Devinder Singh v. Municipal Council, Sanaur, (2011) 6 SCC584 - 38 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters if a person is employed on a regular basis or if he is employed on a temporary/contract basis for the purposes of Section 2(s) of the ID Act. The Apex Court has, in fact, stated that the source of employment, method of recruitment, the terms and conditions of employment, the quantum of wages and the mode of payment would not be a relevant factor to decide whether a person is a workman or not.

64. In light of this exposition of the definition by the Apex Court, a duly qualified person who is selected after undergoing tests would have to be considered as a workman under Section 2(s) of the ID Act. It also follows from this that even if a person is made to undergo a period of training during which he has not been paid the normal wages as payable to a regular employee, that would not lead to an inference that he is not a workman. Further, since the Apex Court has also held that the mode of recruitment or the conditions of employment would not be a relevant factor for the purpose of Section 2(s), all that is required is to be a workman, as defined under - 39 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters Section 2(s), is that such person should be employed by the employer of the industry.

65. It is thus clear that the argument of the Corporation that a trainee driver-cum-conductor/driver is not a workman cannot be accepted.

66. The matter may be viewed from a totally different angle. While the ID Act was enacted in the year 1947, the Apprentices Act was enacted only in the year 1961

(the 1961 Act or the Apprentices Act). It is thus obvious that when the word apprentice was used in Section 2(s) of the ID Act, it would only be with reference to the dictionary meaning and not the definition of apprentice under the 1961 Act.

67. As already stated above, an apprentice is considered to be a person who is yet to learn the trade, i.e., a learner/novice. However, the moment a person is employed (even to learn his work), he becomes a workman for the purposes of the ID Act. Since only a fully qualified person is eligible to be selected as a - 40 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters driver/driver-cum-conductor, it will have to necessarily follow that he will have to be considered as a workman for the purposes of the ID Act.

68. The following citations were also relied upon during the course of the arguments: (1) National Small Industries Corporation Ltd. v. V. Lakshminarayanan, (2007) 1 SCC214 the Honble Supreme Court analysed the terms workman under the ID Act and apprentice under the Apprentices Act, and observed the conditions under which a trainee could be considered as a workman. (2) Trambak Rubber Industries v. Nashik Works Union & Ors., (2003) 6 SCC416 The Apex Court considered the Industrial Courts observation that the trainees employed for performing regular work would not make them workmen. It was held that trainees therein would be considered as workmen, while - 41 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters observing that there were no permanent workmen in that organisation and all the persons employed were trainees without any trainers overseeing their training. (3) The Employees State Insurance Corporation and Another v. The Tata Engineering & Locomotive Co. Ltd. and Another, (1975) 2 SCC835 considered in Paras 69-71. (4) U. P. State Electricity Board v. Shiv Mohan Singh & Anr., (2004) 8 SCC402 considered in Para 73.

69. Reliance was placed by the learned counsel for the Corporation on the judgment rendered by a three-judge bench of the Honble Supreme Court in the case of the Employees State Insurance Corporation⁷ and ⁷ The Employees State Insurance Corporation and Another v. The Tata Engineering & Locomotive Co.

Ltd. and Another, (1975) 2 SCC835 - 42 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters reference was made to Para 6 of said decision which reads as follows - 6. The heart of the matter in apprenticeship is, therefore, the dominant object and intent to impart on the part of the employer and to accept on the part of the other person learning under certain agreed terms. That certain payment is made during the apprenticeship, by whatever name called, and that the apprentice has to be under certain rules of discipline do not convert the apprentice to a regular employee under the employer. Such a person remains a learner and is not an employee. An examination of the provisions of the entire agreement leads us to the conclusion that the principal object with which the parties enter into an agreement of apprenticeship was offering by the employer an opportunity to learn the trade or craft and the other person to acquire such theoretical or practical knowledge that may be obtained in the course of the training. This is the primary feature that is obvious in the agreement. (emphasis supplied) 70. By virtue of the above passage, it is argued that an apprentice could not be considered as a regular employee and, therefore, by necessary consequence, a trainee would - 43 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters not become a workman as defined under the ID Act. However, in the very same judgment, the Honble Supreme Court has stated as follows in Para 8: 8. Again we find that where the legislature intends to include apprentice in the definition of a worker it has expressly done so. For example, the Industrial Disputes Act, 1947, which is a piece of beneficial labour welfare legislation of considerable amplitude defines 'workman' under section 2(s) of that Act and includes apprentice in express terms. It is significant that although the legislature was aware of this definition under section 2(s) under the Industrial Disputes Act, 1947, the very following year while passing the Employees' State Insurance Act, 1948, it did not choose to include apprentice while defining the word 'employee' under section 2(9) of the Employees' State Insurance Act, 1948. Such a deliberate omission on the part of the Legislature can be only attributed to the well-known concept of apprenticeship which the Legislature assumed and took note of for the purpose of the Act. This is not to say that if the Legislature intended it could not have enlarged the definition

of the word 'employee' even to include the 'apprentice' but the Legislature did not choose to do so. - 44 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters 71. As could be seen from the above, the Honble Supreme Court categorically stated that the use of the word apprentice in Section 2(s) made the intent of the Legislature clear that, for the purposes of the ID Act, even an apprentice was a workman, but since the word apprentice was not used in the Employees State Insurance Act (for short, the ESI Act) enacted in the year 1948, it was clear that for the purpose of the ESI Act, an apprentice would not be a workman. This passage, by itself, emphasizes the fact that even a learner who is not a regular employee would have to be considered as a workman for purpose of the ID Act.

72. In light of the judgments rendered by the Apex Court in the cases of Devinder Singh and the Employees State Insurance Corporation (both cited supra), it is obvious that a person who is undergoing training would also be a workman, as contemplated under Section 2(s) of the ID Act.-. 45 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters 73. Further, in the case of U.P. State Electricity Board (supra), the Apex Court considered the Apprentices Act and equated the position of an apprentice to that of a trainee which would be governed by the conditions stipulated the training contract entered into with the employees. It was also observed that an apprentice could not be considered as a workman and that as per Section 7 of the Apprentices Act, the training would terminate on the expiry of the training period and that the employer was given the discretion to not extend an offer of employment to the trainee unless the terms of his contract indicated that the employer would offer him a job upon successful completion of his apprenticeship training. This case, however, did not consider the application of the ID Act as done in the present case.

74. In the instant case, sub-regulation (2) of Regulation 12 of the C&R Regulations stipulates that any candidate who fails to satisfactorily complete his training would forfeit his right to be considered for employment. Thus, it is clear that the employer was under the obligation to - 46 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters either discharge the trainees upon not satisfactorily completing their training period, or offer employment upon successful completion of the same.

75. However, the learned counsel for the Corporation sought to place reliance on division bench judgments rendered in W.A. No.100369/2014, W.A. No.100383/2014, W.A. No.100556/2015, W.A. No.200279/2017, W.A.3001/2018 and W.A. No.100591/2015 as well as the decisions rendered by co-ordinate benches in W.P. No.103452/2016, W.P. No.60022/2015, W.P. No.101853/2021, W.P. No.100782/2014 c/w W.P. No.103732/2014 and W.P. No.66889/2011 c/w W.P. No.102852/2018.

76. The first of the division bench judgments was rendered on 18.08.2014 and in this judgment, the division bench did not consider the definition of workman as defined under Section 2(s) of the ID Act. This Court was considering the definition of a corporation servant under the provisions of the KSRTC Servants (Conduct & - 47 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters Discipline) Regulations, 1971 (the C&D Regulations) and this Court was not considering the definition of a workman as defined under Section 2(s) of the ID Act or the definition of an employee under the C&R Regulations. Since the division bench was not considering the definition of workman as defined under Section 2(s) of the ID Act, and in light of the judgment of the Honble Supreme Court referred to above wherein even an apprentice is considered as a workman for the purposes of Section 2(s) of the ID Act, reliance placed on said judgment would be of no avail.

77. The remaining division bench judgments are essentially judgments which have relied upon the first judgment rendered in W.A. No.100369/2014, and in light of the distinction made above, said judgments cannot be held to be laying down a proposition of law that a trainee driver or a trainee conductor would not come within the definition of a workman as defined under Section 2(s) of the ID Act.-. 48 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters 78. The decisions of co-ordinate benches have also been rendered by following the aforementioned division bench rulings and they would also be of no assistance to the proposition that a trainee driver/driver-cum-conductor is not a workman for the purposes of the ID Act.

79. Another factor that has to be noticed in the present case is that even though the Corporation contends that a trainee driver/driver-cum-conductor is undergoing training, the Corporation nevertheless applies the C&D Regulations (applicable only to the Corporations employees) before imposing any punishment on them. If the Corporation were to apply the C&D Regulations in respect of a trainee driver/driver-cum-conductor and, thereafter, impose a punishment, that, by itself, would clearly and conclusively establish that the Corporation always considered a candidate undergoing training to be its employee.-. 49 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters 80. In fact, this has been taken note of by a co-ordinate bench of this Court in W.P. No.100782/2014 c/w W.P.103732/2014 wherein it is stated as follows- Certainly, a question would arise if the workman was not at all employed by the Corporation, how a disciplinary enquiry could be initiated against him and how he could be found guilty of charges of misconduct and under which provisions of the regulations framed by the Corporation he would be punished.

81. In light of above, it is clear that a person who is selected as driver and as a driver-cum-conductor to undergo training would necessarily be an employee of the Corporation and would also be a workman as defined under Section 2 (s) of the ID Act, which would entitle such trainee to invoke the provisions of the ID Act for resolution of his dispute with his employer i.e., the KSRTC.

82. In these cases, which relate to persons selected as trainee drivers and driver-cum-conductors, there is yet another factor which would have to be taken note of regarding the manner in which the trainees are treated by - 50 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters the Corporation and, as highlighted by the learned Counsel, appropriate

orders/directions are required to be issued.

83. As already observed above, the Regulations contemplate subjecting a candidate selected by the Selection Authority to undergo training on such terms and conditions as may be prescribed by the Corporation.

84. On a specific query as to whether any Regulations have been framed regarding the terms and conditions or the period of training, the learned counsel for the Corporation submitted that there are no statutory regulations framed in that regard and that there are only some administrative orders issued.

85. The learned counsel, however, furnished copies of the Handbook in relation to the drivers and conductors of the Corporation and this manual indicates the manner in which the driver or conductor should conduct themselves, but it does not indicate any process of training as such.-. 51 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters 86. In my view, this deficiency of prescribing the terms and conditions in respect of persons selected as a driver or as a driver-cum-conductor has resulted in grave anomalies resulting in a rather piquant situation in terms of their future in the Corporation being uncertain.

87. In light of these submissions, the Corporation is directed to prescribe the terms and conditions of training as contemplated under Regulation 12 so that every person selected as a trainee driver/driver-cum-conductor is made aware of the kind of training he would be subjected to, as well as the period of training that he would have to undergo before being appointed on probation.

88. It may be pertinent to state here that the KSRTC would be well advised to have a specified period of training, preferably for only a few months, since the selected candidate is appointed on probation at the earliest. This would ensure that the services of the appointed candidate are assessed correctly and a decision to either confirm his services or discharge him can be - 52 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters taken instead of giving room for selected candidates to indulge in any act of misconduct while

they are still in training.

89. It is to be noticed here that merely because the selected candidate is appointed on probation after completion of training, that, by itself, does not guarantee that his employment is permanent. Indisputably, a person appointed on probation is on trial and he is required to satisfy his employer that he is capable of discharging his duties effectively. If a person does not discharge his duties satisfactorily, he would run the risk of being discharged and this would ensure that neither the interest of the Corporation nor that of the employee is prejudiced in any manner.

90. The learned counsel also stated that the practice being followed by the Corporation was that a conductor or a driver would be subjected to training for two years, but the same has now been reduced to one year and, during the period of training, they would be paid training - 53 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters allowance. It was also admitted that the training allowance paid was not equivalent to the salary that was being paid to a regular driver or a conductor.

91. The learned counsel for the workmen collectively contended that it has been the practice of the Corporation to keep the candidates selected for the post of a driver or conductor under endless training, since the Corporation would be financially benefited as a result of payment of just a training allowance (which is the lowest scale of pay attached to a driver or a driver-cum-conductor) as against the regular salary, while still extracting the same work as was being discharged by the permanent employees.

92. It was also argued that no training as such is imparted to a candidate who has been selected as a driver or driver-cum-conductor and they are straightaway asked to discharge the regular duties of a driver or a driver-cum-conductor.

93. It was also contended by the workmen that the period of training in certain cases extended to several - 54 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters years and it was thus contended that the period of training was only a ruse to keep the persons selected on tenterhooks.

94. The learned counsel for the Corporation admitted that the petitioners were paid only training allowance, but it was stated that they were also paid allowances for uniform, stitching, rain coat, shoe-socks, over-time, washing, incentive on transportation revenue and over- night stay allowance. It was also stated that the candidates undergoing training were also granted weekly holidays, and for every 22 days of work rendered by them, they were given one day casual leave, along with a provision for reimbursement of medical expenses. In respect of female employees - maternity leave, child care facilities were also provided. In the event of death of an employee, appointment on compassionate grounds was offered to their dependent.

95. In light of these arguments, it is clear that though a candidate is selected as a driver or as a driver-cum- - 55 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters conductor, for all practical purposes, they are given allowances commensurate with those of a regular employee but are not paid the regular salary associated with the regular employees.

96. If a candidate has been selected and, during the period of training, is asked to discharge the same work as that of a regular employee, on the principle of equal pay for equal work, he would be entitled to the same wages as that of a regular employee.

97. It is also to be borne in mind that a candidate is subjected to training only after he is selected pursuant to a procedure prescribed for selection under the Regulations. In other words, only upon a person being found to be duly qualified by subjecting him to tests is he selected under the duly prescribed selection process and subjected to training.

98. It is to be borne in mind that a driver or driver-cum- conductor who is selected would have to necessarily possess all the requisite qualifications that are prescribed - 56 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters for that post and if the person possesses all the necessary qualifications and is asked to discharge the same work as that of a regular employee, notwithstanding the fact that they were supposed to undergo training, it is obvious that the Corporation is extracting work from persons who are undergoing training in the same manner that it is extracting work from its regular employees.

99. It is also to be borne in mind that the process or the period of training has not been prescribed under the Regulations and during the period of training, only a training allowance is paid. Since the C&R Regulations contemplate the selected persons to undergo training and, upon the completion of their training satisfactorily, they are required to be appointed on probation, it is manifestly clear that the period of training cannot be protracted, and the selected candidates cannot be kept in training endlessly.

100. The fact that submissions were made that the training period has been reduced to one year, would, by - 57 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters itself, indicate that after a period of one year, the candidates selected should be on probation as provided under the Regulations.

101. In light of the discussion made above, pending the framing of terms and conditions by the KSRTC, it is hereby declared that a selected candidate should not be made to undergo training for more than one year. It is made explicitly clear that under no circumstances should the training contemplated under Regulation 12 be extended beyond one year.

102. It is also made clear that in this period of one year, if the selected candidates are made to discharge the work of a regularly appointed driver or driver-cum-conductor, they shall be paid the same wages as are being paid to the regularly

appointed drivers and driver-cum-conductors and not merely a training allowance.

103. If, however, they are made to undergo training only for this period of one year, they shall be paid training - 58 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters allowance and such other allowances as are being paid presently.

104. The learned counsel appearing for the Corporation, however, submitted that during this period of training, there are several cases of selected candidates being unauthorisedly absent, commit acts of misconduct, etc., for which action has to be taken as provided under the regulations relating to misconduct, and until the proceedings are concluded, they cannot be appointed on probation.

105. In light of this submission, it is also hereby clarified that individuals on whom there are allegations of misconduct - such as unauthorised absence, pilferage, etc., - enquiry shall be concluded within a period of one year from the date of misconduct and if the enquiry is not concluded within a year, he would nevertheless be appointed on probation and be paid regular wages. The enquiry can, however, be continued even during his period of probation.-. 59 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters 106. Obviously, the Corporation, on the basis of guilt recorded in the enquiry or on the basis of such a candidates services being unsatisfactory, can definitely discharge his services within said period of two years as provided under Regulation 11(3) of the Regulations.

107. It has to be kept in mind that this situation has arisen because of the Corporations directions calling upon the selected candidates to discharge regular work in the guise of subjecting them to training.

108. As a result, the following directions are issued in respect of candidates who are selected as drivers or driver-cum-conductors and who are made to undergo training under Regulation 12: (1) The KSRTC is directed to prescribe the terms and conditions of training as contemplated under Regulation 12 so that every person selected as a driver or as a driver-cum- conductor is made aware of the

kind of training - 60 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters and the period of training that he would have to undergo before being appointed on probation; (2) Pending the framing of terms and conditions by the KSRTC, it is hereby declared that a selected candidate should not be made to undergo training for more than one year. It is made explicitly clear that under no circumstances should the training contemplated under Regulation 12 be extended beyond one year. (3) However, it is made clear that individuals on whom there are any allegations of misconduct - such as unauthorized absence, pilferage, etc., enquiry regarding the same shall be concluded within a period of one year from the date of misconduct and if enquiry is not concluded within a year, he would nevertheless be appointed on probation and be paid regular wages. The enquiry can, however, be continued even during his period of probation.-. 61 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters (4) The KSRTC can, on the basis of guilt recorded in the enquiry, discharge the services of a candidate as being unsatisfactory as provided under Regulation 11(3) of the Regulations. (5) The KSRTC would also be entitled to discharge a candidate on the ground that his services were unsatisfactory within said period of two years from the date of appointment as provided under Regulation 11(3) of the Regulations. IV.

ORDER

S IN RESPECTIVE WRIT PETITIONS:

109. In light of the directions issued above, the following orders are passed in each of the present petitions. (i) IN W.P. NO.102971 OF2016 110. The petitioner herein was selected as a driver in the year 1997 and was directed to undergo training. In the year 2001, i.e., nearly four years after he was directed to undergo training, he has been dismissed on the ground that he was responsible for an accident which had resulted in the death of two individuals and that this charge has - 62 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters been established during an enquiry and the disciplinary authority accepted the enquiry officers report and proceeded to impose the punishment of dismissal from service.

111. It may be pertinent to state here that the petitioner was acquitted in the criminal case of the charges of rash and negligent driving.

112. In my view, having regard to the fact that the petitioner was acquitted in the Criminal Case, the Labour Court, on consideration of the entire matter, has come to the conclusion that the order of dismissal was justified, and hence, the present writ petition has been preferred.

113. The Labour Court has come to the conclusion that the enquiry was fair and proper, and that the charges had been proved in this enquiry. The Labour Court has also taken the view that the petitioner did not deserve the invocation of the bar under Section 11A of the ID Act since he had caused an accident while he was working as a - 63 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters trainee driver, and has accordingly confirmed the order of punishment and rejected the reference.

114. The learned counsel for the petitioner is assailing this order on the ground that the Corporation contended before the Labour Court that where the dependents of the deceased had initiated the claim proceedings to the effect that there was no rash and negligent driving on the part of the petitioner, and he also highlighted the fact that the criminal case registered against the petitioner had ended in acquittal on 13.06.2005. He further stated that in light of the acquittal, the findings of the Labour Court that the charges were proved or that he had caused the accident while still undergoing training, cannot be accepted.

115. Since it is not in dispute that the criminal case registered against the petitioner for rash and negligent driving has ended in an acquittal, the entire basis of the Award of the Labour Court would be untenable.

116. The petitioner is aged about 52 years as on the date of filing this writ petition and at this point in time, he - 64 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters would find it impossible to secure any alternative employment.

117. I am, therefore, of the view that it would be appropriate to set aside the impugned order of dismissal from service and direct that the petitioner be reinstated. The petitioner shall not, however, be entitled to any backwages and would only be entitled to continuity of service. The petitioner shall be treated as having been appointed on probation on the completion of one year, but it is made clear that he would not be entitled to any financial benefits pursuant to this order.

118. This writ petition is accordingly allowed in part. (II) IN W.P. NO.105459 OF2014 119. In this case, the petitioner was selected in the year 2007 and the record indicates that the petitioner was charged with remaining unauthorisedly absent from duty for the period from 11.02.2010 until the date of issuance - 65 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters of the show-cause notice on 25.10.2010, which amounts to almost 07 months and 15 days.

120. The petitioner did not deny the unauthorized absence but contended that he was receiving treatment for Piles. The Labour Court has found that there were no medical records produced to show that he was suffering from ill- health for the period between 11.02.2010 and 12.08.2010 and the medical certificate produced on record indicates that he was suffering from viral Hepatitis from 13.08.2010 to 30.10.2010. The Labour Court also found that there were neither medical prescriptions nor bills produced to establish that he was suffering from viral Hepatitis.

121. The Labour Court has also found that the petitioner while undergoing training had admitted that there were six cases for remaining unauthorisedly absent and he had also been imposed with minor punishments. The Labour Court has recorded a finding that he was unauthorizedly absent for 106 days in 2008, 32

days in 2008 again, 23 days in 2009, 269 days in 2010 (subject matter of reference) and - 66 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters also for a period of 94 days in the year 2011, in addition to 40 days in the year 2012. This would indicate that the petitioner, during the period that he was undergoing training i.e., from 2007 to 2013, had remained unauthorisedly absent for nearly 564 days.

122. In my view, in light of the fact that the petitioner had remained unauthorisedly absent from duty for 564 days even though he was being subjected to training, it does not entitle him to any leniency and the Labour Court was thus justified in affirming the punishment imposed on him.

123. Consequently, while holding that the proceedings before the Labour Court was maintainable, the present petition is dismissed. (III) IN W.P. NO.111983 OF2014 124. In this case, the petitioner was charged with non- issuance of tickets to 11 passengers who were traveling from Kankanwawadi, Stage No.5 to Devapur Hutti Cross. The contention of the Corporation was that the Checking - 67 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters Inspector had collected penalty from the ticket-less passengers and, therefore, the petitioner herein was guilty of non-issuance of tickets.

125. The workman, however, contended that he had issued tickets to all the passengers and while he was in the process of issuing tickets to the passengers, the Checking Inspector had intervened for the purpose of checking, and despite the objections by the passengers, the Checking Inspector had booked a false case against the petitioner.

126. The Labour Court has observed that the petitioner had contended that he was still in the process of issuing tickets and the bus was checked in between i.e., in between stage No.5/4 and stage No.4, but it was observed that since Kankanwadi was much further away, his defence was untenable. It has also found that the reporter had deposed in his cross-examination that the passengers were

getting down from the bus at Stage No.4, but it was the admitted case that the bus was checked between - 68 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters Stage Nos.5/4 and 4. The Labour Court has concluded that since the passengers paid a penalty of Rs.770/-, which was admitted by the workman also, the allegations against the petitioner stood proved.

127. The Labour Court also found that the petitioner had admitted that there are four cases initiated against him earlier wherein penalties have also been imposed and having regard to the past conduct and the proved misconduct of the petitioner, it has come to the conclusion that there was no justification for interfering with the punishment imposed on the petitioner by the Corporation.

128. In my view, having regard to the fact that the petitioner, in a short span of two years while undergoing training, has been punished five times for non-issuance of tickets and having regard to the fact that the Labour Court has recorded a clear finding that the charge against him for not issuing tickets to 11 passengers had been proved, there is no justification to interfere with the award of the - 69 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters Labour Court under Article 227 of the Constitution of India.

129. The writ petition is therefore dismissed as per the above observations. (IV) IN W.P. NO.107906 OF2016 130. The Corporation has filed this writ petition challenging the order of the Labour Court, by which the Labour Court had allowed the claim petition in part and has set aside the order of removal of the workman from service and has directed the Corporation to reinstate the petitioner without backwages but with continuity of service.

131. The learned counsel for the Corporation contends that in light of the fact that the workman had caused a fatal accident which has resulted in the death of a pedestrian, the punishment of removal from service is justified and the Labour Court could not have come to the conclusion that the punishment imposed was improper.-. 70 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters 132. The Labour Court, on consideration of the evidence adduced before it, has come to the conclusion that the workman had been acquitted in Criminal Case No.305 of 2011 that had been initiated against him for the offences punishable under Sections 279 and 304-A of the Indian Penal Code, 1860. The Labour Court has also taken note of the fact that the reporter had made a statement that the accident had occurred due to the fault of the pedestrian. It has noticed that the reporter had not stated that the pedestrian had suddenly crossed the road, as a result of which the workman could not avoid the accident.

133. The Labour Court has also found that there is no past default history against the workman and having regard to the fact that the workman was only 37 years old and had not been employed elsewhere, it would be an appropriate case to hold that the order of removal from service is disproportionate to the proved misconduct and has granted reinstatement without backwages and without continuity of service.-. 71 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters 134. In my view, since the Labour Court has only directed reinstatement of the workman without any backwages and continuity of service, said award of the Labour Court does not warrant interference by this Court.

135. In the result, this writ petition is dismissed. (V) IN W.P. NO.108973/2016:

136. The facts as could be ascertained from the records indicate that the petitioner-workman was selected as a trainee driver-cum-conductor in 2008.

137. In the year 2010, the petitioner was issued with a show-cause notice stating that he was unauthorisedly absent from duty between 23.07.2010 and 30.07.2010 without taking permission. The defence of the workman was that he was suffering with a fever and could not report for duty during the aforementioned period.

138. It is stated that the Corporation contended in its reply that the workman was unauthorisedly absent for - 72 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters duty from 23.07.2010 and despite being issued with call notices on 07.12.2010 and 22.01.2011, he had neither reported for duty nor did he submit any reply, and an enquiry was thus conducted against the petitioner.

139. After the enquiry was conducted and the enquiry officer submitted a finding of guilt regarding unauthorized absence, which was accepted by the disciplinary authority and the punishment of removal was imposed against the petitioner, the Labour Court has recorded a finding that the workman was absent for duty from 23.07.2010 to 19.01.2011 and as a result of his absence, the Corporation had sustained a loss.

140. The Labour Court has noticed that the claimant had produced medical certificates which indicated that he was suffering from severe Anaemia, viral Hepatitis, Typhoid fever, viral fever/Chikungunya fever, among others, and the petitioner had not submitted any leave letter and had not obtained permission to remain absent for duty on medical grounds. The Labour Court, thereafter, came to
- 73 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters the conclusion that since the workman was not admitted in any hospital and had not reported for duty for about five to six months, the Corporation was justified in removing him from service.

141. It may also be pertinent to state here that the petitioner was selected in the year 2008 and was subjected to training for more than five years and during this period of five years, there is no past history of unauthorized absence and in this view of the matter, the imposition of extreme punishment of removal from service would not be justified.

142. In my view, having regard to the fact that the workman had produced medical certificates indicating that he was suffering from severe ailments, the Labour Court ought not to have affirmed the findings of unauthorized absence and ought not to have affirmed the order of dismissal, having regard to the age of the petitioner and taking
- 74 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters into consideration that he did produce the medical certificates indicating his ailments.

143. In my view, it would be appropriate to substitute the punishment of removal from service, to that of reinstatement without backwages. The petitioner would thus be entitled only to continuity of service. The petitioner shall be treated as having been appointed on probation on the completion of one year, but it is made clear that he would not be entitled to any financial benefits pursuant to this order.

144. The writ petition is accordingly allowed in part. (VI) IN W.P. NO.109310/2016:

145. The petitioner was selected as a trainee driver-cum- conductor in the year 2007 and in the year 2013, under the allegation that he had remained unauthorisedly absent for duty from 01.04.2013 to 30.07.2013 i.e., for about four months, an enquiry was ordered.-. 75 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters 146. In the enquiry, the enquiry officer has recorded a finding that the petitioner was unauthorisedly absent and his defence that he remained unauthorisedly absent due to his fathers ill-health was unacceptable, and the Corporation had accordingly dismissed the petitioner from service. This order has also been affirmed by the impugned award.

147. The Labour Court in this case has proceeded to dismiss the reference only on the ground that the petitioner was a trainee and, hence, the Labour Court had no jurisdiction. The Labour Court has recorded a finding that Ex.W-1/medical certificate issued by Dr. N. C. Kajagar indicated that the petitioners father was suffering from Typhoid fever and was under treatment from 01.04.2013 to 08.06.2013, and the Labour Court has also recorded the death extract relating to the petitioners father, but this has not been accepted on the ground that there was nothing produced to establish that the petitioners father was bedridden and was unable to move.-. 76 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters 148. The Labour Court has also come to the conclusion that there were two past cases of

unauthorized absence and even after the charge-sheet was issued against the petitioner, he had remained absent on two other occasions and hence, the petitioner was not entitled to reinstatement.

149. In my view, since the medical certificates produced indicated that the father of the workman was unwell from 01.04.2013 to 08.06.2013 and the petitioner herein had also produced the death extract of his father, the absence of about four months should not have led to the extreme punishment of dismissal from service.

150. I am therefore of the view that, owing to the fact that the petitioner had been subjected to undergo training for nearly six years i.e., from 2007 to 2013, the imposition of the punishment of removal from service is shockingly disproportionate for unauthorized absence of only about four months.-. 77 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters 151. In light of the above, it would be appropriate to set aside the order of removal of the petitioner from service and direct that the petitioner be reinstated without backwages, but he shall be entitled for continuity of service. The petitioner shall be treated as having been appointed on probation on the completion of one year, but it is made clear that he would not be entitled to any financial benefits pursuant to this order.

152. The writ petition is accordingly allowed in part. (VII) IN W.P. NO.100878 OF2017 153. The facts of the case, as could be ascertained from the records, are that the workman was appointed in the year 1998 and continued to be under training even up to the year 2013. The petitioner was alleged to have been unauthorisedly absent from duty from 27.09.2010 to 10.02.2011 i.e., for about four months. The defence of the workman was that he was suffering from malaria and jaundice due to which he was absent from duty.-. 78 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters 154. In the enquiry conducted by the Corporation, the enquiry officer has recorded a finding that the fact of the petitioner being unauthorisedly absent had been established and having regard to the length of unauthorized absence, the petitioner was liable to be dismissed.

155. The Labour Court in the instant case has rejected the reference mainly on the ground that the petitioner was undergoing training and was, hence, not entitled to invoke the provisions of the Act.

156. On the merits of the claim, the Labour Court has found that the medical certificates produced by him indicated that he had sustained a fracture to his left femur, whereas the contention of the petitioner was that he was suffering from malaria and jaundice. It is observed by the Labour Court that the petitioner had not stated that he had sustained fracture in a road traffic accident and, therefore, the version of the petitioner could not be accepted.-. 79 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters 157. In my view, having regard to the fact that the petitioner did produce his medical certificate indicating that he had sustained fracture of left femur, notwithstanding the fact that he had malaria and jaundice, it was obvious that a trainee driver-cum-conductor would not be obviously able to work that he had sustained fracture to his left femur.

158. In this view of the matter, I deem it appropriate to set aside the order of removal from service and direct the petitioner be reinstated. The petitioner shall, however, not be entitled for backwages and would only be entitled to continuity of service. The petitioner shall be treated as having been appointed on probation on the completion of one year, but it is made clear that he would not be entitled to any financial benefits pursuant to this order.

159. The writ petition is accordingly allowed in part.-. 80 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters (VIII) IN W.P. No.107344 of 2017:

160. The petitioner was charged with the offence of causing an accident when he was driving the bus bearing registration No.KA26F794 It was contended that the bus had been entrusted to one Sri. S. N. Yeli but the petitioner (who was only undergoing training) had undertaken the task of driving the bus and had collided with another goods vehicle, which had resulted in the death of two people and

injuries to seven people.

161. The enquiry officer submitted a report holding that the charges alleged against the petitioner had been proved and this enquiry report was accepted, resulting in the removal of the petitioner from service.

162. The authorities have recorded a finding during the course of enquiry that the petitioner was driving the bus unauthorisedly and the bus was entrusted to one S. N. Yeli, who was originally entrusted with the duty of driving the bus on that particular date. It is the case of the workman that he was accused of rash and negligent - 81 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters driving of the bus by the police in C.C. No.314 of 2012, and the Criminal Court, while acquitting him, has stated as follows: 19. Further CW11 who is the conductor of the alleged bus/material witness examined as PW10. He deposed that, he was the conductor of the bus bearing No.KA-26/F-794 and CW10 was the driver of the said bus. Further he deposed that, he doesnt know how and from whose negligent the alleged accident has occurred and further he deposed that, he was not giving any statement before the police with regard to the accident. Hence, learned APP treated him hostile and cross- examined at length but, nothing is elicited from the mouth of this witness to prove the rash and negligent act of the accused person.

22. Further CW14 who is the Manager of the Laxmeshwar Depot examined as PW13. He deposed that, CW10 was the driver of the said bus and CW11 was the conductor of the said bus and further he deposed that, he was not giving any statement before the police with regard to - 82 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters the accident. Hence, learned APP treated him hostile and cross-examined at length but, nothing is elicited from the mouth of this witness to prove the rash and negligent act of the accused person.

163. In light of this clear finding that the admission of not only the Conductor of the bus but also the Manager of the Depot that CW-10 was driving the bus, the

enquiry conducted while holding that the workman was guilty of causing the accident cannot be sustained.

164. As extracted above, the Criminal Court has categorically recorded a finding that CW-11/the Conductor of the bus was examined as PW-9/S.N.Yeli, who was actually driving the bus and not the workman, and it is also to be noticed that the Manager of the depot who was examined as PW-13 also deposed before the Criminal Court that Yeli/PW-9 was driving the bus.

165. On the basis of this evidence, the Criminal Court has come to the conclusion that the workman was not driving the bus and has acquitted him of the allegations.-. 83 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters 166. In my view, considering the clear finding recorded by the Criminal Court that the bus in question was driven by S.N.Yeli, the finding of guilt recorded that the workman was unauthorisedly driving the bus, cannot be accepted.

167. Consequently, the impugned order of removal from service is set aside and the petitioner is directed to be reinstated into service. However, he shall not be entitled to any backwages, but is entitled to continuity of service. The petitioner shall be treated as having been appointed on probation on the completion of one year, but it is made clear that he would not be entitled to any financial benefits pursuant to this order.

168. The writ petition is accordingly allowed in part. (XI) IN W.P. NO.112165 OF2017 169. The facts as could be ascertained from the records indicate that the petitioner was selected as a driver-cum- conductor in 2010 and was directed to undergo training. While the petitioner was undergoing training, on - 84 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters 12.11.2012, during a checking by the Inspector, it was found that the petitioner had not issued tickets to a group of 03 passengers out of 60, in the bus which was scheduled for journey from Gokak to Masaguppi.

170. In respect of this allegation, a charge-sheet was issued and after the enquiry, a report was submitted by the enquiry officer holding that the charges were proved. This enquiry report was accepted by the Disciplinary Authority and the punishment of dismissal was imposed against the petitioner on 15.02.2014.

171. Being aggrieved by this order, the petitioner approached the Labour Court. The Labour Court by the impugned award has rejected the reference on the ground that the Corporation was justified in removing the petitioner from the select list. The Labour Court has recorded a finding that the petitioner had not issued tickets to 03 passengers and it has refused to accept the defence of the workman that the alleged 03 ticketless - 85 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters passengers had boarded the bus at Stage No.3 and he was in the process of issuing tickets to them.

172. In my view, having regard to the fact that the petitioner had issued tickets to 57 passengers, it is clear that the petitioner had covered almost all the passengers traveling in the bus. In a bus which is designed to carry about 50 people, if there are 60 people traveling, it is obviously a crowded bus and the non-issuance of tickets to only three passengers cannot lead to an automatic inference that the tickets were deliberately not issued.

173. The mere payment of penalty by the three ticketless passengers would not amount to an inference that the petitioner had not issued the tickets to them deliberately.

174. Since there is no evidence recorded or adduced to indicate that the petitioner had collected the fare amount from the ticketless passengers and appropriated the same for himself, as already stated above, it is quite possible that in a crowded bus, certain passengers could be missed from issuing tickets and unless this omission is established - 86 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters as being deliberate, imposition of the extreme punishment of removal from service would

not be justified.

175. I am therefore of the view that the impugned orders are not sustainable and they are accordingly quashed.

176. As a consequence, the petitioner shall be reinstated into service. The petitioner shall, however, not be entitled to backwages, but shall only be entitled to continuity of service. The petitioner shall be treated as having been appointed on probation on the completion of one year, but it is made clear that he would not be entitled to any financial benefits pursuant to this order.

177. The writ petition is accordingly allowed in part. (X) IN W.P. NO.100757/2019:

178. The facts, as could be ascertained from the writ petition records, are that the petitioner was selected as a conductor in the year 2014 and was directed to undergo - 87 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters training. During the course of his training, on 09.01.2015, while he was working in the bus which was scheduled to travel from Hubballi to Chittapur, there was checking near Ramapur whereby it was found that out of 37 passengers in the bus, one passenger was not issued with the ticket and the petitioner was therefore charged with non- issuance of tickets to the passengers which has resulted in a loss to the Corporation.

179. The workman contended that he had issued tickets to all the passengers, but one of the passengers had lost the ticket, and at the time of checking, she could not produce the tickets purchased by her, as a consequence of which a case was lodged against her.

180. The authority as well as the Labour Court refused to accept the defence of the workman on the ground that the address of the passenger slapped with the penalty was mentioned in the receipt, but no steps were taken by the workman to summon her or to secure her presence and depose to the effect that she had lost her ticket.-. 88 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters 181. The authorities have then concluded that the petitioners misconduct had been proved and since it was a case of pilferage, he was liable to be imposed with the ultimate penalty of removal from service.

182. The Labour Court has accepted this finding and rejected the reference.

183. In my view, having regard to the fact that if only one passenger out of the total of 37 passengers was found to be without a ticket, that cannot lead to an inference that the petitioner was guilty of pilferage. The petitioner has stated that he had issued tickets to all the passengers but a passenger had lost the ticket when she was asked to produce the same.

184. This particular assertion has not been examined by the authorities by cross-checking as to whether the tickets have been issued as stated by the petitioner.

185. The observation that the petitioner ought to have secured the presence of the passenger who had lost the ticket would also apply to the Corporation, since the -
89 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters Corporation could also have secured the presence of the passenger to establish that the petitioner had not issued the ticket even after having paid said amount.

186. In my view, having regard to the totality of circumstances, the punishment of dismissal from service would be shockingly disproportionate. Consequently, the order of removal and its affirmation by the Labour Court are set aside and the petitioner is liable to be reinstated. The petitioner shall not be entitled to any backwages; however, he shall be entitled to continuity of service.

187. The petitioner shall be treated as having been appointed on probation on the completion of one year, but it is made clear that he would not be entitled to any financial benefits pursuant to this order.

188. This writ petition is allowed in part.-. 90 - NC:

2024. KHC-D:7636 WP No.100878 of 2017 and Connected matters 189. Accordingly, the present batch of writ petitions are disposed of in terms of the observations made above. Sd/- JUDGE Ct: SN Hnm/RK

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