

Karankumar Vs. The Divisional Controller

Karankumar Vs. The Divisional Controller

SooperKanoon Citation : sooperkanoon.com/1233071

Court : Karnataka Kalaburagi

Decided On : Jul-13-2023

Judge : Suraj Govindaraj

Appeal No. : WP 203333/2019

Appellant : Karankumar

Respondent : The Divisional Controller

Advocate for Def. : Sri. Deepak Barad

Judgement :

- 1 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters IN THE HIGH COURT OF KARNATAKA, R KALABURAGI BENCH DATED THIS THE13H DAY OF JULY, 2023 BEFORE THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ WRIT PETITION No.207355 OF2017(S-KSRTC) C/W WRIT PETITION No.200010 OF2014(L-KSRTC) WRIT PETITION No.203006 OF2014(L-KSRTC) WRIT PETITION No.203007 OF2014(L-KSRTC) WRIT PETITION No.207009 OF2014(L-KSRTC) WRIT PETITION No.202055 OF2017(S-KSRTC) WRIT PETITION No.207246 OF2017(S-KSRTC) WRIT PETITION No.207502 OF2017(S-KSRTC) WRIT PETITION No.202834 OF2019(S-KSRTC) WRIT PETITION No.203333 OF2019(L-KSRTC) WRIT PETITION No.204111 OF2019(L-KSRTC) IN W.P.NO.207355/2017 BETWEEN: GIRISH S/O SHIVAPPA

AGE35YEARS, OCC: TRAFFIC INSPECTOR, DEPOT NO.2, NEKRTC KALABURAGI, NOW POSTED TO YADGIR DIVISION, R/O H.NO.11-421/4B, KHANI AREA, NEW RAGHAVENDRA COLONY, KALABURAGI-585103 PETITIONER (BY SRI. P. VILASKUMAR., SR. ADVOCATE FOR SRI. NITESH PADIYAL,ADVOCATE) AND: - 2 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters 1. THE KARNATAKA STATE ROAD TRANSPORT CORPORATION, THROUGH ITS MANAGING DIRECTOR, TRANSPORT HOUSE, K.H. ROAD, SHANTINAGAR, BENGALURU-560027 2. THE NORTH EAST KARNATAKA ROAD TRANSPORT CORPORATION, THROUGH ITS MANAGING DIRECTOR, SARIGE SADAN, MAIN ROAD, KALABURAGI-585102 3. THE DIVISIONAL CONTROLLER NORTH EAST KARNATAKA ROAD TRANSPORT CORPORATION KALABURAGI DIVISION NO.2, KALABURAGI-585102 4. THE DIVISIONAL CONTROLLER NORTH EAST KARNATAKA ROAD TRANSPORT CORPORATION, YADGIRI DIVISION, YADGIR-585201 5. SRI. A.C. BORADDI ADVOCATE & RETIRED PUBLIC PROSECUTOR, R/O BASAVESHWAR NAGAR, LINGASUGUR ROAD, RAICHUR-584101 RESPONDENTS (BY SMT. RATNA N SHIVAYOGIMATH., ADVOCATE FOR R1 TO R5) THIS WRIT PETITION IS FILED UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI FOR QUASHING THE DEPARTMENTAL CHARGE SHEET ISSUED BY RESPONDENT NO.3 DATED-11.07.2017 VIDE No.E.K.RA.SA/K.V2/SESA/834/17/2943/2017 DATED-11.07.2017 WHICH IS AT ANNEXURE-A IN THE INTEREST OF JUSTICE AND ETC. IN W.P.NO.200010/2014 BETWEEN: DURGAPPA S/O DURGAPPA - 3 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters AGED:

50. YEARS OCC: NIL (EX.CONDUCTOR No.2383 GURUMITKAL DEPOT) R/O BHICHGATTI GERI ONI NEAR OLD BUS STAND SHORAPUR, DIST. YADGIR PETITIONER (BY SRI. P. VILASKUMAR., SR. ADVOCATE FOR SRI. NITESH PADIYAL,ADVOCATE) AND: THE DIVISIONAL CONTROLLER NEKRTC, YADGIR DIVISION YADGIR. RESPONDENT (BY SRI. DEEPAK V. BARAD., ADVOCATE) THIS WRIT PETITION IS FILED UNDER ARTICLES226AND227OF

THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI FOR SETTING ASIDE THE AWARD OF LABOUR COURT GULBARGA PASSED IN KID NO.145/2005 DATED 23.5.2009 WHICH IS AT ANNEXURE-A AND

ORDER

FOR THE REINSTATEMENT OF THE PETITIONER INTO SERVICE WITH FULL BACK WAGES, CONTINUITY OF SERVICES AND ALL OTHER CONSEQUENTIAL BENEFITS IN THE INTEREST OF JUSTICE AND ETC. IN W.P.NO.203006/2014 BETWEEN: AMBADAS S/O VASANT RATHOD Aged :

48. YEARS OCC:EX-ACCOUNT SUPERVISOR R/O PLOT NO.8 GURURAJ NILAYA UDAYA NAGAR COLONY, JEWARGI ROAD, GULBARGA PETITIONER (BY SRI. P. VILASKUMAR., SR. ADVOCATE FOR SRI. NITESH PADIYAL,ADVOCATE) - 4 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters AND: THE MANAGING DIRECTOR NEKRTC, CENTRAL OFFICE, OPP: KBN HOSPITAL, GULBARGA-585101. RESPONDENT (BY SRI. DEEPAK V. BARAD., ADVOCATE) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI FOR SETTING ASIDE THE AWARD OF LABOUR COURT GULBARGA PASSED IN REF NO.4/2012 DATED 10.08.2012 WHICH IS AT ANNEXURE-A AND

ORDER

FOR THE REINSTATEMENT OF THE PETITIONER INTO SERVICE WITH FULL BACK WAGES, CONTINUITY OF SERVICES AND ALL OTHER CONSEQUENTIAL BENEFITS IN THE INTEREST OF JUSTICE AND ETC. IN W.P.NO.203007/2014 BETWEEN: OMKAR S/O GURUSIDDAPPA OCC NIL, (EX-DRIVER B.NO.1261), NEKRTC, RAICHUR DIVISION, R/O C/O N.J.MULGE, HAGARGI, PLOT NO.5 OM NAGAR, SEDAM ROAD, GULBARGA PETITIONER (BY SRI. P. VILASKUMAR., SR. ADVOCATE FOR SRI. NITESH PADIYAL,ADVOCATE) AND: THE DIVISIONAL CONTROLLER NEKRTC, RAICHUR DIVISION, RAICHUR. RESPONDENT (BY SRI. DEEPAK V. BARAD., ADVOCATE) - 5 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI FOR SETTING ASIDE THE

ORDER

OF LABOUR COURT GULBARGA PASSED IN ISSUE NO.1 DATED 08.08.2010 IN KID NO.91/2009 WHICH IS AT ANNEXURE-A AND ETC. IN W.P.NO.207009/2014 BETWEEN: MOHAN S/O BASAWANAPPA DHOLE AGED:

58. YEARS OCC CONDUCTOR B.NO.2250, DEPOT NO.3 R/O PLOT NO.13 REVANSIDDHESHWAR COLONY HUMANABAD GULBARGA PETITIONER (BY SRI. P. VILASKUMAR., SR. ADVOCATE FOR SRI. NITESH PADIYAL, ADVOCATE) AND:

1. THE NORTH EAST KARNATAKA ROAD TRANSPORT CORPORATION, THROUGH ITS MANAGING DIRECTOR, SARIGE SADAN, MAIN ROAD, GULBARGA. 2 . THE DIVISIONAL CONTROLLER, DIVISION NO.II, NEKRTC, GULBARGA DIVISION, GULBARGA-585102 3 . THE GOVT. OF KARNATAKA DEPT.S OF LAW & JUSTICE, VIKAS SOUDHA, BANGALORE-560001. RESPONDENTS (BY SRI. DEEPAK V. BARAD., ADVOCATE FOR R1 & R2; SMT. MAYA T.R., HCGP FOR R3) - 6 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI FOR SETTING ASIDE THE CHARGE SHEET IS ISSUED BY THE RESPONDENT NO.2 DATED 01.10.2014 NO- AND 30.10.2014 WHICH ARE AT ANNEXURES- A & B RESPECTIVELY IN THE INTEREST OF JUSTICE. AND ETC. IN W.P.NO.202055/2017 BETWEEN: SYED SHABBIR HUSSAIN S/O SYED AHMED AGE 65 YEARS OCC. CONTROLLER (RETD) BASAVA KALYAN DEPOT R/O H.NO.13-46, BIBI GALLI HUMANABAD, DIST. BIDAR-585401. PETITIONER (BY SRI. P. VILASKUMAR., SR. ADVOCATE FOR SRI. NITESH PADIYAL, ADVOCATE) AND:

1. THE GOVERNMENT OF KARNATAKA THROUGH ITS PRL. SECRETARY DEPARTMENT OF LABOUR "KARMIKA BHAVAN" BANNMERUGHATTA ROAD BANGALORE-560 029 2 . THE NORTH EAST KARNATAKA ROAD TRANSPORT CORPORATION THROUGH ITS MANAGING DIRECTOR SARIGE SADANA, MAIN ROAD KALABURAGI-585 102 3 . THE NORTH EAST KARNATAKA ROAD TRANSPORT CORPORATION THROUGH ITS DIVISIONAL CONTROLLER, - 7 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters BIDAR DIVISION, BIDAR-585401. RESPONDENTS (BY SRI. DEEPAK V. BARAD., ADVOCATE FOR R2 & R3; SMT. MAYA T.R., HCGP FOR R1) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI FOR SETTING ASIDE THE IMPUGNED PUNISHMENT

ORDER

VIDE No.EKRSF/BEEV/SISA/1315/2012/3055/13-14 DATED 23.07.2013 PASSED BY THE 2D RESPONDENT WHICH IS AT ANNEXURE-B AND CONSEQUENTLY SET ASIDE THE

ORDER

OF THE APPELLATE AUTHORITY DATED 25.1.2014 VIDE

ORDER

NO.NEKT/CO/DS/APPL/BDR/183/117/2013 WHICH IS AT ANNEXURE- C AND CONSEQUENTLY DIRECT THE RESPONDENTS TO PAY ALL THE CONSEQUENTIAL BENEFITS ACCRUING THEREON AS IF NO

ORDER

OF PUNISHMENT HAS BEEN PASSED AGAINST THE PETITIONER IN THE INTEREST OF JUSTICE AND ETC. IN W.P.NO.207246/2017 BETWEEN: SIDRAMAPPA S/O GURANNA AGE 59 YEARS 9 MONTHS OCC TRAFFIC CONTROLLER NO TC 2294 DEPOT NO3NEKRTC KALABURAGI NOW POSTED TO YADGIR DIVISION R/O BODHAN TQ ALAND DIST KALABURAGI PETITIONER (BY SRI. P. VILASKUMAR., SR. ADVOCATE FOR SRI. NITESH

PADIYAL,ADVOCATE) AND:

1. THE NORTH EAST KARNATAKA ROAD TRANSPORT CORPORATION, THROUGH ITS MANAGING DIRECTOR, SARIGE SADAN, MAIN ROAD, KALABURAGI - 8 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters 2 . THE DIVISIONAL CONTROLLER, NORTH EAST KARNATAKA ROAD TRANSPORT CORPORATION KALABURAGI DIVISION, KALABURAGI3. THE DIVISIONAL CONTROLLER, NORTH EAST KARNATAKA ROAD TRANSPORT CORPORATION, YADGIR DIVISION, YADAGIR4. SRI A.C. BORADDI ADVOCATE & RETIRED PUBLIC PROSECUTOR, R/O BASAVESHWAR NAGAR, LINGASUGUR ROAD, RAICHUR RESPONDENTS (BY SMT. RATNA SHIVAYOGIMATH ADVOCATE FOR R1-3; R4-D/W) THIS WRIT PETITION IS FILED UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI FOR QUASHING THE DEPARTMENTAL CHARGE SHEET ISSUED BY RESPONDENT NO.2 DATED-11.07.2017 VIDE No.DATED-11.07.2017 WHICH IS AT ANNEXURE-A, AND ETC. IN W.P.NO.207502/2017 BETWEEN: CHANDRAKANTH S/O GUNDAPPA AGE49YEARS, OCC: CONTROLLER, HUMANABAD UNIT DIST. BIDAR R/O CHINAKERA-585353 TQ. HUMANABAD, DIST: BIDAR PETITIONER (BY SRI. P. VILASKUMAR., SR. ADVOCATE FOR SRI. NITESH PADIYAL,ADVOCATE) AND: - 9 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters 1. THE NORTH EAST KARNATAKA ROAD TRANSPORT CORPORATION, THROUGH ITS MANAGING DIRECTOR, SARIGE SADAN, MAIN ROAD, KALABURAGI2. THE DIVISIONAL CONTROLLER, NORTH EAST KARNATAKA ROAD TRANSPORT CORPORATION BIDAR DIVISION, BIDAR-585401 3 . SRI S.N. PATIL, ADVOCATE & RETIRED PUBLIC PROSECUTOR, R/O NEAR KEB ROAD, BIDAR-585401. RESPONDENTS (BY SMT. RATNA SHIVAYOGIMATH ADVOCATE FOR R1-2; R3-D/W) THIS WRIT PETITION IS FILED UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI FOR QUASHING THE DEPARTMENTAL CHARGE

SHEET ISSUED BY RESPONDENT NO.2 VIDE

ORDER

No.E.K.R.SA./B.V./SIBANDI/GAI.HAA/121/2017/331-17-18 DATED 06.05.2017 WHICH IS AT ANNEXURE-A IN THE INTEREST OF JUSTICE AND ETC. IN W.P.NO.202834/2019 BETWEEN: SHANKRAPPA.V AGE-38 YEARS, OCC-LABOUR WELFARE OFFICER, IN GURUMITAKAL DEPOT, NEKRTC YADGIR DIVISION, YADGIR PETITIONER (BY SRI. P. VILASKUMAR., SR. ADVOCATE FOR SRI. NITESH PADIYAL,ADVOCATE) - 10 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters AND:

1. KARNATAKA STATE ROAD TRANSPORT CORPORATION, THROUGH ITS MANAGING DIRECTOR, CENTRAL OFFICE, BENGALURU 2. THE NORTH-EAST KARNATAKA STATE ROAD TRANSPORT CORPORATION, SARIGE SADAN, MAIN ROAD, KALABURAGI-585102. THROUGH ITS MANAGING DIRECTOR RESPONDENTS (BY SRI. DEEPAK V. BARAD., ADVOCATE FOR R1 & R2) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI FOR QUASHING THE IMPUGNED PUNISHMENT

ORDER

PASSED BY THE RESPONDENT NO.1 VIDE

ORDER

No.DATED-01.12.2016/02.12.2016 WHICH IS AT ANNEXURE-A WITH ALL CONSEQUENTIAL BENEFITS INCLUDING ARRERS OF WAGES IN THE INTEREST OF JUSTICE AND ETC. IN W.P.NO.203333/2019 BETWEEN: KARANKUMAR S/O HULEPPA, AGED ABOUT:

38. YEARS OCC: NIL (EX.DRIVER-CUM-CONDUCTOR NO.LC-342 DEPOT NO.II) R/O BASVAKALYAN DIST: BIDAR-585401. PETITIONER (BY SRI. P. VILASKUMAR., SR. ADVOCATE FOR SRI. NITESH PADIYAL,ADVOCATE) - 11 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters AND: THE DIVISIONAL CONTROLLER, NORTH EAST KARNATAKA, ROAD TRANSPORT CORPORATION KALABURAGI DIVISION, KALABURAGI58510 RESPONDENT (BY SRI. DEEPAK V. BARAD., ADVOCATE) THIS WRIT PETITION IS FILED UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI FOR SETTING ASIDE THE AWARD OF LABOUR COURT KALABURAGI PASSED IN KID NO.618/2010 DATED0607.2011 WHICH IS AT ANNEXURE-A AND CONSEQUENTLY SET ASIDE THE

ORDER

ON ISSUE NO.1 PASSED BY OF LABOUR COURT KALABURAGI IN KID NO.168/2010 DATED3103.2011 WHICH IS AT ANNEXURE-B AND CONSEQUENTLY SET ASIDE THE AND

ORDER

FOR REINSTATEMENT OF THE PETITIONER INTO SERVICE WITH FULL BACK WAGES, CONTINUITY OF SERVICE AND ALL OTHER CONSEQUENTIAL BENEFITS IN THE INTEREST OF JUSTICE AND ETC. IN W.P.NO.204111/2019 BETWEEN: SRI. CHANDASHEKHAR S/O SATYAPPA VALYAPUR AGE:50 YEARS, OCC:DRIVER-CUM-CONDUCTOR, R/O VIJAYAPUR1T DEPOT, BDA PLOT NO.133/2 VIVEK NAGAR, VIJAYAPUR. PETITIONER (BY SRI. P. VILASKUMAR., SR. ADVOCATE FOR SRI. NITESH PADIYAL,ADVOCATE) AND: THE DIVISIONAL CONTROLLER NEKRTC, VIJAYAPUR DIVISION,VIJAYAPUR. RESPONDENT (BY SRI. DEEPAK V. BARAD., ADVOCATE FOR R1 & R2) - 12 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters THIS WRIT PETITION IS FILED UNDER ARTICLES226AND227OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI FOR SETTING ASIDE THE AWARD OF INDUSTRIAL TRIBUNAL HUBBALLI PASSED IN ID.NO.259/2014 DATED0503.2019 WHICH IS AT ANNEXURE-A AND CONSEQUENTLY SET ASIDE THE

ORDER

OF PUNISHMENT DATED 19.11.2011 WHICH IS AT ANNEXURE-B IN THE INTEREST OF JUSTICE AND ETC. THESE WRIT PETITIONS, COMING ON FOR PRELIMINARY HEARING IN B GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1 In all the above matters, the petitioners - workmen are aggrieved by the disciplinary proceedings taken up by the respondent - Road Transport Corporation, by virtue of which, the workmen have either been dismissed from service or punishment lesser than dismissal have been awarded. The reliefs which have been sought for in each of the matters are as under.

2. In W.P.No.207355/2017, the petitioner is before this Court seeking for the following reliefs: a. Issue a writ of certiorari for quashing the departmental charge sheet issued by respondent no.3 dated 11.7.2017 vide No.E.K.RA.SA/K.V2/SESA/834/ 17/2943/2017 dated 11.7.2017 which is at Annexure- A in the interest of justice. b. Issue a writ of certiorari for quashing the engagement of Sri.A.C.Boreddy Advocate (Retired Public - 13 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters Prosecutor) from going ahead with the enquiry proceedings in respect of departmental charge sheet dated 11.7.2017 vide order No.E.K.RA.SA/U.V/SISTU/606/17/2787/17 dated 21.8.2017 issued by Respondent No.4 which is at Annexure-B in the interest of justice. c. Issue any other writ or order as deemed fit by the Honble Court in the interest of justice.

3. In W.P.No.200010/2014, the petitioner is before this Court seeking for the following reliefs:

1. Issue a writ of certiorari for setting aside the award of Labour Court Gulbarga passed in KID No.145/2005 dated 23.5.2009 which is at Annexure-A, and order for the reinstatement of the petitioner into service with full back wages, continuity of services and all other consequential benefits in the interest of justice.

2) Issue any other Writ or order as deemed fit by the Honble Court in the interest of justice.

4. In W.P.No.203006/2014, the petitioner is before this Court seeking for the following reliefs:

1. Issue a Writ of Certiorari for setting aside the Award of labour Court Gulbarga passed in Ref No.4/2012 dated 10.08.2012 which is at Annexure- A and order for reinstatement of the petitioner into service with full back wages, continuity of service and all other consequential benefits in the interest of justice and equity.

2) Issue any other Writ or order as deemed fit by the Honble Court in the interest of justice.-. 14 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters 5. In W.P.No.203007/2014, the petitioner is before this Court seeking for the following reliefs:

1. Issue a writ of certiorari for setting aside the order of Labour Court, Gulbarga passed on issue No.1 dated 6.8.2010 in KID No.91/2009 which is at Annexure-A.

2) Issue a Writ of Certiorari for setting aside the award of labour Court Gulbarga passed in KID No.91/2009 dated 23.9.2010 which is at Annexure- B and order for reinstatement of the petitioner with full back wages, continuity of service and all other consequential benefits in the interest of justice and equity.

3) Issue any other writ or order as deemed fit by the Honble Court in the interest of justice.

6. In W.P.No.207009/2014, the petitioner is before this Court seeking for the following reliefs:

1. Issue a writ of certiorari for setting aside the charge sheets issued by the respondent No.2 dated 1.10.2014 and 30.10.2014 which are at Annexures-A & B respectively in the interest of justice and equity.

2) Issue any other writ or order as deemed fit by the Honble Court in the interest of justice.

7. In W.P.No.202055/2017, the petitioner is before this Court seeking for the following reliefs:

1. Issue a writ of certiorari for setting aside the impugned punishment order vide No.EKRSF/BEEV/SISA/1315/2012/3055/13-14 dated 23.07.201 passed by 2nd respondent which is at Annexure-B and consequently set aside the order - 15 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters of the Appellate Authority dated 25.1.2014 vide order No.NEKT/CO/DS/APPL/BDR/183/117/2013 which is at Annexure-C and consequently direct the respondents to pay all the consequential benefits occurring thereon as if no order of punishment has been passed against the petitioner in the interest of justice.

2) Issue any other Writ or order as deemed fit by the Honble Court in the interest of justice.

8. In W.P.No.207246/2017, the petitioner is before this Court seeking for the following reliefs:

1. Issue a writ of certiorari for quashing the departmental charge sheet by respondent no.2 dated 11.7.2017 vide No.dated 11.7.2017 which is at Annexure-A in the interest of justice.

2) Issue a writ of Certiorari for quashing the engagement of Sri. A.C.Boreddy Advocate (Retired Public Prosecutor) from going ahead with the enquiry proceedings in respect of departmental charge sheet dated 11.7.2017 vide order No.dated 21.8.2017 which is at Annexure-B in the interest of justice.

3) Issue any order or writ or direction deemed fit by the Honble Court in the interest of justice.

9. In W.P.No.207502/2017, the petitioner is before this Court seeking for the following reliefs:

1. Issue a writ of certiorari for quashing the departmental charge sheet issued by respondent No.2 vide order No.E.K.R.SA./B.V./SIBANDI/GAI. HAA/121/2017/331-17-18 dated 06.05.2017 which is at Annexure-A in the interest of justice.

2) Issue a Writ of Certiorari for quashing the engagement of Sri. S.N.Patil Advocate (Retired - 16 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters Public Prosecutor) from going ahead with the enquiry proceedings in respect of departmental charge sheet dated 06.05.2017 vide order No.E.K.R.SA./B.V./SIBANDI/GAI.HAA/1589-17/18 dated 5.9.2017 which is at Annexure-B in the interest of justice.

3) Issue any other writ or order as deemed fit by the Honble Court in the interest of justice.

10. In W.P.No.202834/2019, the petitioner is before this Court seeking for the following reliefs:

1. Issue a writ of certiorari for quashing the impugned punishment order passed by the respondent No.1 vide order No.Ka.Ra.Sa/Kaek/Sistu/D1495/1515/ 2016-17 dated 01.12.2016/02.12.2016 which is at Annexure-A with all consequential benefits including arrears of wages in the interest of justice.

2) Issue any other writ or direction order as deemed fit by the Honble Court.

11. In W.P.No.203333/2019, the petitioner is before this Court seeking for the following reliefs:

1. Issue a writ of certiorari for setting aside the award of Labour Court Kalaburagi passed in KID No.168/2010 dated 06.07.2011 which is at Annexure-A and consequently set aside the order on issue No.1 passed by of Labour Court Kalaburagi in KID No.168/2010 dated 31.3.2011 which is at Annexure-B and consequently set aside the and order for reinstatement of the petitioner into service with full back wages, continuity of service and all other consequential benefits in the interest of justice.

2) Issue any other writ or order as deemed fit by the Honble Court in the interest of justice.-. 17 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters 12. In W.P.No.204111/2019, the petitioner is before this Court seeking for the following reliefs:

1. Issue a writ of certiorari for setting aside the Award of Industrial Tribunal Hubballi passed in ID No.259/2014 dated 05.03.2019 which is at Annexure-A, and consequently set aside the order of punishment dated 19.11.2011 which is at Annexure-B in the interest of justice.

2) Issue any other writ or order as deemed fit by the Honble Court in the interest of justice.

13. Insofar as WP No.200010/2014 and WP No.203006/2014, the workmen have been dismissed from service and in other matters, lesser punishment has been awarded.

14. The facts in all the above matters are not required to be dealt with in detail since the only issues that has been raised by Sri.P.Vilas Kumar, learned Senior Counsel appearing for the petitioners are points of law. The three issues which have been raised are as under:

14. 1. Subsequent to the decision of Full Bench of this Court in the case of Pandavapura Sahakara - 18 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters Sakkare Kharkhane Limited vs. Presiding Officer Additional Industrial Tribunal1, unless there is a specific notification under Section 13-B of the Industrial Employment (Standing Orders) Act 1946 (for short, Standing Orders Act), the Standing Orders Act would be applicable to all the industries and insofar as Karnataka is concerned, as provided under sub-section (3) of Section 1 of Standing Orders Act, the said Standing Orders Act would apply to every industrial establishment wherein one hundred or more workmen are employed or were employed on any day of the preceding twelve months. Sri.Vilaskumar, learned Senior Counsel refers

to Paragraphs 15 and 19 of Pandavapuram judgment, which reads as under:

15. From the above decision, following principles emerge: (1) The Act is Special Legislation dealing with the subject of 1 ILR 1996 KAR2069- 19 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters conditions of service enumerated in the schedule to the Act, of workmen in industrial establishments; (2) Being a Special Act, its provisions over-ride other law on the subject, covered by it, even if the industrial establishment in question is constituted or governed by such other law. (3) To exclude the operation of the Act to any extent, in respect of matters covered by some other rule or regulation, a specific notification under Section 13-B of the Act has to be issued and the appropriate Government should have applied its mind to the question of excluding the provisions of the Act to the particular industrial establishment. (4) A publication of a rule or a regulation in the gazette for a purpose other than Section 13-B of the Act by itself, cannot be treated as a Notification for the purpose of Section 13-B also. These principles flowing out of the decision of Supreme Court were not properly appreciated by the Court while deciding K.V.R. Shetty's case.

19. We are of the view that the decision in K.V.R. Shetty's Case [1979 (2) Kar. L.J. 429.]. does not reflect the correct law as laid down by the Supreme Court in U.P.S.E. Board's case and accordingly we over-rule the decision in K.V.R. Shetty's case. Since Rule 18 of the Co- operative Societies Rules was not specifically notified with reference to Section 13-B of the Standing Orders Act, said rules would not exclude the operation of the Standing Orders Act in respect of the matters covered by the said Rule 18. Therefore, we answer the question referred to us in the negative. 14.2. Relying on the above, he submits that since there is no specific notification issued by the Government of Karnataka in respect of the - 20 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters Road Transport Corporation, whether it is the Karnataka State Road Transport Corporation (KSRTC), North-East Karnataka Road Transport Corporation (NEKRTC) or North-West Karnataka Road Transport Corporation (NWKRTC), it is the Standing Orders

Act which would apply to all the workmen of the Road Transport Corporations. 14.3. NEKRTC and NWKRTC having been formed subsequent to the decision in Pandavapur case, it was but required that necessary notifications were to be issued under Section 13-B of the Standing Orders Act. No such notifications having been issued, it is the Standing Orders Act which would apply. By necessary implication, he submits that, Standing Orders Act being applicable, the Karnataka State Road Transport Corporation Servants (Conduct and Discipline) Regulations, - 21 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters 1971 (for short, C & D Regulation 1971) cannot be brought into service in respect of any disciplinary activity in respect of any workman of the Road Transport Corporation. 14.4. Thus, he submits that there being no exception created in respect of the C & D Regulations, 1971 by issuing a specific notification under Section 13-B of the Standing Orders Act, the C & D Regulation 1971 cannot be pressed into service. 14.5. He submits that some of the workmen have been dismissed from service without following the procedure under proviso (b) of Section 2 of section 33 of the ID Act, there being a larger dispute which was pending consideration before the Industrial Tribunal at Bangalore in I.D.No.148/2005 relating to service conditions of the workmen of the RTC including KSRTC, NEKRTC and NWKRTC. No punishment could - 22 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters have been imposed on any of the workmen without prior sanction from the Court seized of ID No.148/2005. In the present case, the punishment being imposed on all the workmen, without such permission, the said punishment is required to be set aside. 14.6. Lastly, in the alternative, he submits that assuming but not conceding that the C & D Regulations, 1971 were to be applicable to the workmen of the RTCs, then in terms of sub- regulation (2) of Regulation 23 of C & D Regulations, a person who is appointed to conduct an enquiry is required to be an authority, thereby implying that, that person has to be an employee of the RTC and a person other than an employee cannot be appointed as an Enquiry Officer. In this regard, he relies upon the decision of the Honble Orissa High Court in Original Jurisdiction Case - 23 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters No.1192/1992, decided on 28. 04.1992 (Siba Kishore Patnaik vs. Chief Engineer, Paradip Port Trust and Ors.), more particularly Para 4 thereof, which is reproduced here under for easy reference. 4. The word "authority" has not been defined in the regulations, it is, however, relevant that the "appointing authority," "disciplinary authority are defined in regulations 2(b) and 2(d) of the regulations respectively. "Authority," in our view, means a person deriving power from office or character or prestige. It means a person or body exercising a power or having a legal right to command and be obeyed. The meaning ascribed to the word in Webster's Universal Dictionary is "person or body of persons possessing authority, having right to govern, direct, control affairs, make laws, etc."

Authority is the power, the legal right to command and to enforce obedience. A person who is relied upon, by reasons of his special knowledge, experience, study, to give trustworthy testimony or a weighty and credible opinion on particular facts and events is an "authority."

Authority is the power conferred by law to do something backed by an implied threat of some legal sanction, if the exercise of the power is impeded, If the interpretation given to the word by the Port authorities is accepted, the use of the expression "person" would have been sufficient. The use of the expression "authority" cannot be said to be purposeless. It is not in dispute and is accepted that the disciplinary authority cannot be any person other than an official of the Paradip Port Trust. Therefore, in our - 24 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters considered opinion, it is not open to the Paradip Port authorities to appoint any person other than any of its functionaries as the inquiry officer. In view of the analysis made by us, the guidelines indicated by the Ministry of Personnel, Public. Grievances and Pensions are of no consequence.

14.7. By relying on the above, he submits that an authority is to be a person in power conferred by law to do something backed by an implied threat or some legal action. A person who is not an employee of the RTC cannot be said to be a person in power with authority and therefore, he submits that in all the above cases, the

judicial officers and/or retired judicial officers and/or former public prosecutors having been appointed as an Enquiry Officer will not come within the purview of the word authority under sub-Regulation (2) of Regulation 23 of C & D Regulations. The said sub-Regulation (2) of Regulation 23 of C & D Regulations is reproduced hereunder for easy reference:

23. Procedure for imposing major penalties:- - 25 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters (1) No order imposing any of the penalties specified in clauses (ix) and (x) of Regulation-18 shall be made except after an inquiry, held, as far as may be in the manner provided in this Regulation. (2) Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against a Corporation servant it may itself inquiry into or appoint under this Regulation an Authority to inquire into the truth thereof. Explanation: Where the Disciplinary Authority itself holds the inquiry; any reference in Sub-Regulation (7) to (20) and in Sub-Regulation (22) to the Inquiring Authority shall be construed as a reference to the Disciplinary Authority. 14.8. He also relies upon the decision of the Honble Apex Court in Ravi Malik vs. National Film Development Corporation Ltd. and Others², more particularly Paras 2 and 3 thereof which are reproduced here under for easy reference. 2. The respondent National Film Development Corporation Ltd. is a Government of India enterprise. Regulations were framed known as the Service Rules and Regulations, 1982 (hereinafter 2 (2004) 13 SCC427- 26 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters referred to as the Regulations) in respect of the employees of Respondent 1. The Regulations, inter alia, contain conduct, discipline and appeal rules under which disciplinary action can be taken against an employee for misconduct by imposition of either a minor or a major penalty. As far as the procedure for imposing a major penalty is concerned, Rule 23 lays down the procedure. The subject-matter of debate before us is the construction of Rule 23(b) which reads as follows: 23. (b) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an employee, it may

itself enquire into, or appoint any public servant, hereinafter called the inquiring authority to inquire the truth thereof.

3. A retired Judge of the City Civil Court was appointed as the inquiry officer for the purpose of inquiring into the truth of the imputations against the appellant. The appellant challenged this appointment by way of a petition under Article 226 of the Constitution. It was the appellant's submission that a retired judge was not a public servant within the meaning of Regulation 23(b). In addition the appellant challenged the refusal of the inquiry officer to make available certain documents to him.

14.9. Relying on the above, he submits that a judge of a City Civil Court could not be appointed as an Enquiry Officer.-. 27 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters 14.10. On all the above grounds he submits that the above petitions are required to be allowed and the reliefs sought for granted.

15. Sri.Deepak V.Barad, learned counsel for respondent - RTC submits in reply to the aforesaid submissions that:

15. 1. Subsequent to the decision in Pandavpura's case, the Division Bench of this Court in Muniswamy Gowda H vs. Management of KSRTC and others³ dealt with the effect and impact of Pandavpuras case in respect of C & D Regulations of the RTC and after considering all the aspects has declared that the said Regulation would govern the service condition of all the employees of the RTC and as such, he submits that the decision in Pandavpuras case having been dealt with by a Division Bench of this Court in Muniswamy's case and a 3 ILR 1997 KAR509- 28 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters declaration having been issued, there was no requirement for issuance of a specific notification under Section 13-B of the Standing Orders Act. On this ground, he submits that the first contention of the petitioner is not sustainable. 15.2. As regards the compliance with proviso to sub- section (2) of Section 33 of the

Industrial Disputes Act, (for short, I.D.Act), he submits that such compliance is required to be made only when there is discharge or dismissal of the workman and permission of the Industrial Tribunal is not required to be obtained if punishment lesser than discharge or dismissal were to be awarded. In the present case, most of the petitioners have been awarded punishment lesser than discharge or dismissal. Insofar as discharge and dismissal, he further submits that the said discharge and dismissal of - 29 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters certain of the workmen in the above set of petitions have no relation to the proceedings, which are pending in ID No.148/2005 inasmuch as that is a general proceedings which were pending and as such, merely because a general proceedings are pending, permission is not required to be obtained for dismissal and in this regard, he relies upon the decision of the Honble Apex Court in Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. vs. Ram Gopal Sharma and another⁴. 15.3. As regards the last submission of Sri.P.Vilas Kumar, learned Senior Counsel for the petitioner, Sri Deepak V.Barad, learned counsel submits that the argument as regards sub regulation (2) of Regulation 23 of C & D Regulations has been raised for the first time before this Court. It was not raised before the 4 (1994) 6 SCC522- 30 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters Industrial Tribunal or in the pleadings filed even in the present petitions. He submits that the RTCs have been appointing retired Civil Judges, District Judges, former Public Prosecutors as Enquiry Officer since they are knowledgeable about law and they would follow the applicable procedures so that the interest of everyone can be protected. On all the above grounds, he submits that the above petitions are required to be dismissed.

16. Smt.Sangita Bharatshetty, learned counsel and Smt.Ratna Shivayogimath, learned counsel who appear for the RTC in other matters, adopt the submission of Sri Deepak Barad, learned counsel for respondent - RTC.

17. Heard Sri.P.Vilas Kumar, learned Senior Counsel appearing for Sri.Nitish Padiyal, learned counsel for the petitioner, Sri.Deepak V.Barad, Smt.Sangita - 31 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters Bharatshetty, learned counsel and Smt.Ratna Shivayogimath, learned counsel for respondents and perused the papers.

18. The points that would arise for consideration are:

1. Whether, in view of the decision in Pandavapura Sahakara Sakkare Kharkhane Limited vs. Presiding Officer Additional Industrial Tribunal⁵, there is a requirement for the State to have issued a specific notification under Section 13B of the Industrial Employment (Standing Orders) Act, 1946 in respect of conduct and discipline of the workmen of the Road Transport Corporations so as to exempt the applicability of the Industrial Employment (Standing Orders) Act, 1946 to them and make the Karnataka State Road Transport Corporation Servants (Conduct and Discipline) Regulations, 1971 applicable?.

2) Whether compliance with proviso to Clause (b) of sub-section (2) of Section 33 of Industrial Disputes Act was required to be made for imposition of punishment, including dismissal in respect of some of the petitioners in the above matters?.

3) Whether the word authority occurring in sub-regulation (2) of regulation 23 of the Karnataka State Road Transport Corporation Servants (Conduct & Discipline) Regulations, 5 ILR 1996 KAR2069- 32 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters 1971 would require a person who is in the employment of the RTC to be appointed as an Enquiry Officer or could third parties be appointed as Enquiry Officers?.

4) What order?.

19. I answer the above points as under:

20. Answer to Point No.1: Whether, in view of the decision in Pandavapura Sahakara Sakkare Kharkhane Limited vs. Presiding Officer Additional Industrial Tribunal⁶, there is a requirement for the State to have issued a specific notification under Section 13B of the Industrial Employment (Standing Orders) Act, 1946 in respect of conduct and discipline of the workmen of the Road Transport

Corporations so as to exempt the applicability of the Industrial Employment (Standing Orders) Act, 1946 to them and make the Karnataka State Road Transport Corporation Servants (Conduct and Discipline) Regulations, 1971 applicable?. 20.1. The submission of Sri.Vilaskumar learned Senior Counsel appearing for the petitioner is that post the decision of the Full Bench of this Court in Pandavapura's case, unless there is a 6 ILR 1996 KAR2069- 33 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters notification issued under Section 13-B of Standing Orders Act, the C & D Regulations of the RTC cannot be pressed into service. There cannot be any dispute with regard to the general proposition that post the decision in Pandavapura's case for any industrial establishment to be exempted from the applicability of Standing Orders Act, a specific notification has to be issued under Section 13-B of Standing Orders Act. However, insofar as the RTCs are concerned, when this issue came up before a Division Bench of this Court in Muniswamy's case supra, the Division Bench of this Court dealt with all the contentions which have been advanced by Shri.P.Vilas Kumar in the present matter and many others and came to a conclusion that there being a practice at the KSRTC from the year 1971 to follow the C & D Regulation 1971 de hors the - 34 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters Standing Orders Act. The said practice has to be accepted and despite the Full Bench having overruled the decision in KVR Shettys case declared that the KSRTC Servants (Conduct and Discipline) Regulations, 1971, would govern the service conditions of all the employees of the Corporation, including the appellants therein. 20.2. A declaration having been made by a Division Bench of this Court that the C & D Regulations would apply to all the employees of the Corporation, I am of the considered opinion that there is no further requirement of a specific notification to be issued under Section 13-B of the Standing Orders Act to exempt the applicability of Standing Orders Act to the KSRTC. 20.3. A judicial declaration having been made and the same not having been challenged and having attained finality, the said declaration would be - 35 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters binding on this Court. In fact, for the very same reason another Co-ordinate Bench of this Court in the case of Chandrakanth vs. NEKRTC and others⁷ has referred to such a declaration and rejected the contention of the petitioner therein that the Standing Orders Act would be applicable. 20.4. A further submission in this regard made by Sri.Vilaskumar, learned Senior Counsel is that the decision in Muniswamy's case could at the most apply to KSRTC and not to NEKRTC or NWKRTC since they have come into being subsequent to the decision in Muniswamy's case. I am afraid that distinction which is sought to be made out though innovative cannot be accepted inasmuch as what Muniswamy's case held is that the C & D regulation would apply to the employees of 7 (2015) 4 Kar L.J.

349 - 36 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters KSRTC. The NEKRTC and NWKRTC having been formed out of KSRTC and the employees of KSRTC having been transferred to NEKRTC and NWKRTC and they having adopted the KSRTC (C & D) Regulations 1971, those Regulations being one and the same for KSRTC, NEKRTC and NWKRTC, the decision on Muniswamy's case would be equally applicable to NEKRTC and NWKRTC, and the declaration made therein would also apply to them. Thus, the main submission and the sub submission made in this regard are liable to be rejected. 20.5. Therefore, I answer Point No.1 by holding that despite the decision of the Full Bench of this Court in Pandavapura's case, in view of a declaration made by a Division Bench of this Court in Muniswamy Gowda's case, it would be the KSRTC Servants (Conduct and Discipline) Regulations 1971, which will apply to - 37 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters all the employees of the RTCs (including KSRTC, NEKRTC and NWKRTC) and the Standing Orders Act would not be applicable despite there being no specific notification under Section 13-B of the Standing Orders Act.

21. Answer to Point No.2: Whether compliance with proviso to Clause (b) of sub-section (2) of Section 33 of Industrial Disputes Act was required to be made for imposition of punishment, including dismissal in respect of some of the petitioners

in the above matters?. 21.1. The submission of Sri.P.Vilas Kumar, learned senior counsel appearing for the petitioner is that without complying with the proviso to Clause-B of sub-section (2) of Section 33 of I.D.Act, no punishment could be imposed on the workman of KSRTC on account of an Industrial Dispute in I.D.No.148/2005 being pending as on the date of imposition of punishment.-. 38 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters 21.2. Sub-section (2) of Section 33 of I.D.Act is reproduced hereunder for easy reference. (2) During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman concerned in such dispute 3 [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman].,- (a) alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or (b) for any misconduct not connected with the dispute, or discharge or punish, whether by dismissal or otherwise, that workman: Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer. 21.3. A perusal of the above would indicate that in terms of the proviso, it is only in the event of there being a discharge or dismissal of a workman that permission is required to be - 39 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters obtained from the Court seized of the industrial dispute. Apart from discharge or dismissal, if any other punishment is levied/imposed, then no such permission is required to be obtained. In the present batch of matters, it is not in all of them that the workman has been dismissed from service. The workmen have been dismissed from service only in WP No.200010/2014 and WP No.203006/2014. Thus, it is only in those cases that such permission was required to be obtained and compliance with the proviso to Clause-B of sub- section (2) of Section 33 of I.D.Act is required to be made. Thus, as held by the Honble Apex Court in Jaipur Zila Sahakari Bhoomi

Vikas Bank Ltds case, the sanction not having been obtained, dismissal would be non-est and is required to be set aside.-. 40 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters 21.4. I answer Point No.2 by holding that the compliance with proviso to Clause (b) of sub-section (2) of Section 33 of Industrial Disputes Act would be required to be made only if punishment of discharge or dismissal is made and not in respect of other punishments.

22. Answer to Point No.3: Whether the word authority occurring in sub-regulation (2) of regulation 23 of the Karnataka State Road Transport Corporation Servants (Conduct & Discipline) Regulations, 1971 would require a person who is in the employment of the RTC to be appointed as an Enquiry Officer or could third parties be appointed as Enquiry Officers?. 22.1. By relying on sub-regulation (2) of Regulation 23 of C & D Regulations, the contention is that an Enquiry Officer ought to be an employee of the RTC and a person other than an employee cannot be so appointed. The basis of this argument of Sri P. Vilas Kumar is on the usage - 41 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters of the word authority in the aforesaid sub- regulation which has been reproduced hereinabove. 22.2. Regulation 23 of C & D Regulations deals with the procedure for imposing major penalties. It requires that no major penalty can be imposed without holding an enquiry and in terms of sub- regulation (2) of Regulation 23 of C & D Regulations, the disciplinary authority may by itself enquire into or appoint any authority to enquire into the truth thereof. A perusal of sub-regulation (5) of Regulation 23 of C & D Regulations would indicate the usage of the words Disciplinary Authority and Enquiring Authority. Thus, the Enquiry Officer is also referred to as the Enquiring Authority under said regulations.-. 42 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters 22.3. Merely because the word authority is used in sub-regulation (2) of Regulation 23 of C & D Regulations, that would not mean an authority by an officer in the RTC but a person who is appointed to inquire into the truth of the matter in respect of any allegation of misconduct of the workmen appointed by the Disciplinary Authority

would be the authority. 22.4. Disciplinary Authority has been defined in the Regulations. Authority has not been so defined. The reason for it cannot be far but to leave it to the discretionary of Disciplinary Authority to appoint such person as an Enquiry Authority as the Disciplinary Authority deems fit. The decision of the Honble Orissa High Court in Paradip Port Trusts case relied upon by Sri.P.Vilas Kumar, learned Senior Counsel though indicates that the usage of the word authority is with regard to an officer of - 43 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters the employer, I am unable to subscribe to such view since the same would be a restrictive one. As submitted by Sri.Deepak V.Barad, learned counsel for RTC, the RTC has been appointing retired Civil Judges, retired District Judges and former Public Prosecutors to inquire into matters and such persons are being appointed because they have sufficient knowledge of law and the procedure relating thereto. There cannot be any disagreement with the submission made by Sri.Deepak V.Barad, learned counsel inasmuch as an enquiry proceeding requiring the applicability of Rules and Procedure including that of the principles of natural justice there can be no better person than retired judges or legal practitioners who could interpret and apply the law, thereby they would also be an authority they being an authority in law, which to my mind what is - 44 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters more important for conducting an enquiry proceedings than to hold authority by office. 22.5. Reliance is also placed on the decision of the Honble Apex Court in Ravi Maliks case to contend that a retired Judge of a City Civil Court could not be appointed as Enquiry Officer. Paras 2 and 3 of the said judgment have been reproduced hereinabove. The said judgment was rendered in the background of the contents of Rule 23-B which was in dispute in the said matter. The said Rule required an Enquiry Officer to be a public servant and it is in that background that the Honble Apex Court came to a conclusion that a retired Judge of the City Civil Court could not be appointed since on his retirement, he ceased to be a public servant. There cannot be any dispute with the said proposition and it is only because the requirement was the enquiry was to be held by - 45 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters a public servant and a retired Civil Judge no longer being a public servant it was that a retired Civil Judge could not be appointed as an Enquiry Officer. Such a restriction is not available in the present fact situation. The sub- regulation (2) of Regulation 23 of C & D Regulations does not require a public servant to be appointed as an Enquiry Officer. Thus, the decision in Ravi Maliks case would also not be applicable to the present case. 22.6. In that view of the matter, I answer Point No.3 by holding that the Road Transport Corporation can appoint retired Judges including Civil Judges, retired District Judges or former Public Prosecutors as Enquiry Officers and the same would not fall foul of sub-regulation (2) of Regulation 23 of C & D Regulations, 1971.-. 46 - NC:

2023. KHC-K:5402 WP No.207355 of 2017 & Connected Matters 23. Answer to Point No.4: What order?. 23.1. In view of my above finding, I pass the following:

ORDER

i. W.P.No.203007/2014 and W.P.No.203333/2019 are allowed for the reason that prior permission was not obtained by the Disciplinary Authority before imposing the punishment of dismissal on the petitioners therein. The RTC is directed to reinstate the workmen in these matters with 40% back wages and all consequential benefits within a period of 60 days from today. ii. W.P.No.207355/2017, W.P.No.200010/2014, W.P.No.203006/2014, W.P.No.207009/2014, W.P.No.202055/2017, W.P.No.207246/2017, W.P.No.207502/2017, W.P.No.202834/2019 and W.P.No.204111/2019 are dismissed. Sd/- JUDGE PRS List No.:

1. SI No.:

6.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com