

F. Abdul Khader Vs. Karnataka State Road Transport Corpn. and anr.

F. Abdul Khader Vs. Karnataka State Road Transport Corpn. and anr.

SooperKanoon Citation : sooperkanoon.com/376002

Court : Karnataka

Decided On : Nov-15-1994

Reported in : 1995(2)KarLJ371

Judge : M.F. Saldanha, J.

Appeal No. : W.P. No. 8470/1988

Appellant : F. Abdul Khader

Respondent : Karnataka State Road Transport Corpn. and anr.

Judgement :

ORDER

1. Heard learned counsel on both sides. The controversy in this petition can be considerably narrowed down insofar as it centres around the question as to whether the petitioner who has been granted his seniority by the Corporation with effect from April 1, 1973 should be awarded his deemed seniority with effect from October 25, 1961 which was his original date of employment or August 19, 1967 which is the date from which he was re-employed by the Corporation. The facts of this case are rather unusual insofar as the petitioner was removed from the services of the Corporation more than once and finally, on an order of dismissal that had been passed against him, the Deputy General Manager by order dated August 19, 1967 directed that he be given a fresh chance of appointment as it was obvious to the authority that even if the petitioner should lose the benefit for the

period of service already put in, that he should not be permanently punished. Accordingly, with effect from October 4, 1967, the petitioner was offered re-employment, but the Corporation's counsel points out to me that until he was regularised in the year 1973, he was working as a badli conductor and that it is for this reason that the Corporation has not computed this period for purposes of seniority.

2. The facts of this case are rather unusual. The petitioner's counsel submits that the petitioner has been in the continuous employment of the Corporation after the order for re-appointment was passed, since October 4, 1967, and that thereafter, in the seniority list published for the first time in the year 1987 he was wrongly relegated to a lower position as though he was appointed in the year 1973. With regard to the contention that the employment was of a casual nature, it is submitted that the petitioner was not a fresh employee and that in view of the order of reappointment, it must be construed that his reappointment was commenced with effect from that date.

3. This position is seriously contested by the learned counsel for the Corporation on the basis of the record which indicates that he did not occupy a regular post until the year 1973. As far as this argument is concerned, having regard to the order passed by the General Manager directing re-employment and the fact that the petitioner was a past employee of that very Corporation, to my mind, for purposes of computing length of tenure of service on which basis, the seniority is computed, the petitioner will have to be given the seniority with effect from October 4, 1967. This case is distinguishable from that of fresh employees and will have to be viewed in the light of the wordings of the past orders and not in the light of the wordings of any subsequent orders that may have been passed.

4. The Corporation's learned counsel submitted that there is gross delay in approaching this Court. As far as this aspect of the matter is concerned, a justification pleaded on behalf of the petitioner is that until the ad hoc seniority list was published in 1987 that the petitioner had no notice of the fact that his seniority was computed from 1973. It is difficult to accept this plea because even if the Corporation was acting wrongly, it was in the year 1974 that the petitioner was

informed that his services have been regularised with effect from April 1, 1973. Having regard to the fact that the petitioner has approached this Court at a highly belated stage, he has made amends by not seeking for past reliefs by way of this petition.

5. Learned counsel for the Corporation further submitted that the petitioner is estopped in law from challenging the terms and conditions on which he was re-employed in the year 1967 and that once having accepted the appointment letter, as a with conductor he is precluded from challenging the terms thereafter. As far as this argument is concerned, I need to record that the petitioner will be entitled to claim his legal entitlements having regard to the position in which he was placed and his status, the plea of estoppel cannot be pressed against him.

6. The petition accordingly succeeds. The petitioner would be entitled to claim his seniority with effect from August 19, 1967 which is the date on which he in fact commenced his re-employment with the Corporation. The limited relief that the petitioner would be entitled to is that the respondent-Corporation shall, within a period of two months from today restore the petitioner to his rightful place in the seniority list on the basis of his date of appointment being June 19, 1967. The relief's that the petitioner would be entitled shall only be prospective insofar as if on the basis of the petitioner's seniority with effect from June 19, 1967 he qualifies for the next higher post as is similar to other persons of that seniority, then the petitioner shall be entitled to the same and shall also be entitled to the higher emoluments. It is clarified, however, that for purposes of terminal benefits, the petitioner's seniority shall be treated as having commenced from June 19, 1967. Rule absolute to this extent. No order as to costs.