

Venkataswamy Vs. State of Karnataka

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Court : Karnataka

Decided On : Apr-20-1994

Reported in : ILR1994KAR1559; 1995(4)KarLJ247

Judge : Mohan Kumar, J.

Acts : [Constitution of India](#) - Articles 226 and 398

Appeal No. : W.P. No. 36669 of 1993

Appellant : Venkataswamy

Respondent : State of Karnataka

Advocate for Def. : S. Shivaram, Govt. Adv. for R-1 and ;B.B. Mandappa, Adv. for R-2 and R-3

Advocate for Pet/Ap. : M.C. Pyati, Adv.

Judgement :

Mohan Kumar, J.

1. Issue Rule.

2. When this Petition came up for hearing, both sides agreed that the Writ Petition itself can be disposed of.

3. The facts of the case disclose a rather unfortunate situation the petitioner has been placed. No statement of objection has been filed and, therefore, the facts can be treated as admitted.

4. The petitioner was originally appointed as a temporary Conductor in 1971 by the 2nd respondent. He claims to have served as such for two years. Thereafter, he was discharged. It is alleged by the petitioner that in view of the various Decisions of the Supreme Court, referred to in para-2 of the Writ Petition, the authorities issued a Circular to reinstate the employees terminated from service without enquiry. Accordingly, Annexure-B Circular was issued. According to the petitioner, his case was considered and Annexure-C appointment order dated 27-1-1988 was issued. He is serial No.4 in the said order.

5. The perils of the petitioner started since then. He alleges that no duty was assigned to him in spite of his approaching the concerned authorities. Persons similarly placed, like the petitioner had approached this Court and this Court was pleased to direct the 2nd respondent to employ those petitioners. Annexures-D, E and F are orders issued by this Court. Annexure-D order makes a categorical direction as in the following manner:

'3. The petitioner was a Badli Conductor whose services had been terminated. In the meanwhile, his name had been included in the list of selected candidates, while terminating his services as Badli Conductor his name was also removed from the select list. Consequent on the judgment of the Supreme Court in GOVINDARAJU v. K.S.R.T.C : (1986)IILLJ351SC as also the subsequent decision of this Court striking down that part of Rule 10 which provided for removal of the names of Badli Conductors who are discharged from service from the select list, an order was made on 27th January, 1988 (Annexure-D) reinstating the petitioner into service.

4. The grievance of the petitioner is that though the petitioner reported for duty on 18-2-1988 in pursuance of the said order; he has not been taken to duty.

5. The learned counsel for the petitioner submitted that the petitioner is entitled to the relief of back wages on account of the delay in taking him on duty. That is a

matter which the petitioner can work out separately.

6. In the circumstances, I make the following order:

(i) The writ petition is allowed.

(ii) A direction shall issue to the respondents to take the petitioner on duty pursuant to the order dated 27th January, 1988 (Annexure-D)

(iii) Time for compliance one month.

(iv) Prepare a carbon copy of this order- and furnish to the learned counsel for the Board.'

This Judgment was rendered on 9-12-1988. In spite of this Judgment, some others who were also included in Annexure-C had to approach this Court for similar relief by filing Writ Petitions. They were disposed of on 13-6-1990 (vide Annexure-E and F). Therein (Annexure-E) this Court stated as under:

'....Learned counsel relied upon a decision of this Court in W.P.No. 10091 of 1988 decided on 9-12-1988 wherein in similar circumstances, this Court allowed the writ petition and issued direction to the respondents to take the petitioner on duty in pursuance of the Circular dated 27-1-1988. This writ petition was filed on 16-8-1989. The petitioner has not properly explained the delay. In the circumstances, the learned counsel for the petitioner stated that his client should not claim any arrears of salary if he is taken on duty and salary be paid only thereafter for the period after he joins duty. This statement is recorded. Subject to this statement, the writ petition is allowed. Respondents are directed to take back the petitioner on duty in terms of the Circular dated 27-1-1988. Rule is made absolute.'

Annexure-F also contained identical directions.

It is strange that a public sector undertaking like the 2nd respondent would be goaded to act only if the Court issues directions. The petitioner finding that he too may have to approach the Court, filed Writ Petition No. 15270/90. Apparently because of the delay, this Court made the following order (vide Annexure-G):

'The petitioner can certainly raise an Industrial Dispute and seek appropriate reliefs. In that view of the matter, I decline to entertain this petition. Petition is rejected.'

This Judgment was pronounced on 20-7-1990. Thereafter, the petitioner was directed by the 1st respondent to approach the concerned Labour Officer. He has by order dated 4-5-1991 submitted a failure-report to the 1st respondent. This Writ Petition was filed on 18-10-1993 seeking appropriate consequential relief calling upon the 1st respondent to refer the dispute of denial of employment to the petitioner to appropriate Industrial Tribunal Labour Court, as the case may be.

6. When the matter came up for hearing on 25-2-1994, I adjourned the case, requesting the Counsel for the 2nd respondent to direct the 2nd respondent to examine the grievance of the petitioner and whether some relief could be granted to him without driving him to another round of litigation. It was posted to 4-3-1994. It was again adjourned to 9-3-1994. It was further adjourned to 19-3-1994 and then to 28-3-1994 and again to 30-3-1994. Ultimately, this matter has been heard on 31-3-1994. The 2nd respondent has not responded in the matter and I am, therefore, disposing of this Writ Petition.

7. The fact that by Annexure-C order, the 2nd respondent had ordered reinstatement of the petitioner into service as early, as on 27-1-1988 is not in dispute. With respect to some of the persons included in Annexure-C, this Court had issued repeated directions as per Annexures-D, E and F directing their reinstatement into service. In such a background, it is unknown why the 2nd respondent is insisting that they will abide their own orders only in the event the Labour Court passes an award in that behalf.

8. These days when the cry is for quicker Justice, it is unfortunate that a public sector undertaking like the 2nd respondent is driving a poor citizen from pillar to post. When once this Court has declared that persons included in Annexure-C list are entitled to be appointed, the 2nd respondent should have extended similar relief to persons similarly situated and included in Annexure-C list. Then again, when this Court in Annexure-G Judgment alerted the 2nd respondent that the petitioner would be entitled to relief under the Industrial Disputes Act, this should

have alerted the 2nd respondent who should have acted without driving the concerned individual to approach this forum. Not only such an act would meet the ends of justice, but also it will save the litigation cost of a public sector undertaking. After all, the 2nd respondent is a trustee of public funds and it should uphold just claims and avoid unnecessary litigation which will result in spending public funds. The fact that it has managerial independence does not clothe with it power to allow its independence to run hay wire. One cannot wink at the fact that crores of rupees is invested in public sector undertakings and it is necessary to ensure that it is properly utilized and the objective of public sector undertakings is achieved to the best possible extent. Unfortunately these do not seem to be considerations that govern the 2nd respondent.

9. But still mysterious is the reason why the 1st respondent has not acted in spite of the failure-report submitted by the competent authority after conciliation. One fails to understand why in spite of all these developments, the 1st respondent has failed to act despite the receipt of Annexure-J report as early as on 4-5-1991.

10. It is rather unfortunate that despite this Court having issued beneficial directions with respect to persons similarly situate like the petitioner, the petitioner has been left to work out his remedy under the I.D.Act. The petitioner has to be blamed to a large extent, but all the same it is no justification for the 2nd respondent to act in this manner. The 2nd respondent has expert Law Officers and several Legal, Advisers to advice them and is also in possession of all details regarding the employment prospect of the persons like the petitioner. If the petitioner had approached the 2nd respondent and had sought for relief, the matter ought to have been dealt at that stage and it is rather unfair to drive him to Court of law to seek appropriate relief.

11. The 2nd respondent cannot take a stand that it will act only if the Court so directs. It is high time that the authorities take a serious note of a growing tendency of 'passing-on-the-responsibility' attitude now being adopted by decision making officers at every level. The prayer made in substantial number of Writ Petitions, one notices is relief in the nature of Writ of Mandamus. If this be any indicia of what is stated above then this can hardly be described as a healthy

attitude in the larger interest of the society. The direct result is the substantial erosion of the funds of the public sector undertaking in defending litigation which will immediately crop up and causing untold harassment and privation to a citizen. If Justice can be done to an individual in a given case without recourse to a Court of Law, it is cruel to drive/him to a Court of Law and make him wait to get lost in the docket explosion. These public sector undertakings derive their source of power for their existence to Article 398 of the [Constitution of India](#). If so, it is mandatory that they act fairly and not arbitrarily. Equally, it cannot spend its precious resources in prosecuting unnecessary litigations as well.

12. But, in the instant case, in the light of the Judgment of this Court in Annexure-G, this Court is left with no other course except to direct the 1st respondent to act on Annexure-J report and to refer the dispute between the petitioner and 2nd respondent to appropriate Tribunal as expeditiously as possible. It is hoped that in view of the age of the claim, the 1st respondent would take appropriate decision in the matter within two months from today.

13. Before parting with the case, I express the genuine hope that despite reference of the dispute to the Tribunal, the 2nd respondent will live upto its responsibility and take appropriate Decision with regard to the claim made by the petitioner in tune with the Decision of this Court in Annexure-D, E and F, and if found admissible, issue appropriate orders. The fact-that the dispute is referred to the Tribunal under the I.D.Act should not deter the 2nd respondent from taking appropriate decision in the matter.

14. The Writ Petition is disposed of as above.

Rule made absolute.