

CASE NO.:
Appeal (civil) 2916 of 2007

PETITIONER:
CHAIRMAN & M.D., K.S.R.T.C.

RESPONDENT:
K.O. VARGHESE & ORS.

DATE OF JUDGMENT: 09/07/2007

BENCH:
H.K. SEMA & P.K. BALASUBRAMANYAN

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO(s). 2916 OF 2007
[@ Special Leave Petition (Civil) No. 19383-19390 of 2004]

P.K. BALASUBRAMANYAN, J.

Leave granted.

Heard learned counsel on all sides.

1. This appeal by the Kerala State Road Transport Corporation, hereinafter referred to as KSRTC, challenges the decision of the High Court of Kerala in a series of Writ Appeals rendered on 24.3.2004 pursuant to an order of remand made by this Court in Civil Appeal Nos. 6651-6654 of 2000 and the connected cases. The decision remanding, was rendered on 17.4.2003 and the same is reported as Kerala State Road Transport Corporation Vs. K.O. Varghese & Ors. [(2003) 12 SCC 293].

2. KSRTC is a Corporation established under the Road Transport Corporation Act, 1950, hereinafter called, "the Act". The Corporation was formed on 15.3.1965. On 22.3.1965, the employees of the Transport Department of the Government of Kerala were absorbed in KSRTC. KSRTC became functional with effect from 1.4.1965. In the general instructions issued on 22.3.1965 in exercise of power under Section 34(1) of the Act, the Government while transferring the existing transport undertakings and their assets and liabilities to KSRTC, also made applicable to it, all orders and notifications thereunto issued by the Government, which were not inconsistent with the provisions of the Act, until their alteration or repeal. Part II thereof dealt with the staff. It would be profitable to set down paragraphs 10 to 12 of that Order at this stage:

"10. All persons employed by Government in the State Transport Department and appointed substantively to a permanent post in that Department who would have continued in the service of Government but for the transfer of the management of the State Undertaking to the Corporation, shall be treated as permanently transferred to the Corporation for appointment under Section 14(2) of the Road Transport Corporation Act, 1950 (Central Act, LXIV of 1950) and on such transfer they will be deemed to have vacated office under Government and to have been offered and to have accepted employment under the Corporation.

Provided that the provision shall not apply to persons, if any, appointed in the State Transport Department to the posts of Director of Transport and Chief Mechanical Engineer, and such persons shall continue as supernumeraries under Government service until further orders.

11. The Corporation shall guarantee continued employment to all such personnel as are transferred for service under the Corporation, under the same terms and conditions of service as were applicable to them under Government immediately before such transfer.

12. The Corporation shall pay to the employees so transferred their pension, gratuity and provident fund according to the relevant rules, notifications and orders of Government in force and applicable to them immediately before such transfer as and when such benefits accrue."

In paragraph 15, it was provided that the past services of the transferred employees with the Government, would count for the purposes of promotion, leave, pension and such other benefits. Thus the transferred employees who retired from KSRTC were eligible for pension in terms of their conditions of absorption. But in terms of clause 10 they ceased to be employees of the Government.

3. On 27.3.1984, the Government of Kerala authorized KSRTC to pay pension to its employees as per Kerala Service Rules, hereinafter referred to as "KSR". The said communication is on the following terms.

"In continuation of the letter cited above, I am directed to convey the Government decision authorizing the KSRTC to pay pension to its employees as per KSR and introduce GPF instead of contributory provident fund with effect from 1.4.1984.

The KSRTC will obtain written undertaking from each employee to refund the management share of contribution to GPF as well as family pension fund hitherto made in consultation with the Regional Provident Fund Commissioner."

On 5.5.1984, an order was issued by the Managing Director of KSRTC that all Corporation employees who retire after 1.4.1984 would be paid pension subject to the employees fulfilling the stipulations therein.

4. Then came the recommendations of the IV Pay Commission and its acceptance by the State Government. But due to its precarious financial position, the Board of Directors of KSRTC took a decision on 19.3.1986 to implement only some of the recommendations with effect from 1.11.1986 and an order in that regard was also issued. On 2.2.1990, a Memorandum of Settlement was drawn up, based on the understanding arrived at between the management and the

recognized Labour Unions. As per that memorandum, the benefits of the settlement were postponed till September 1991. The benefits were thereafter made available.

5. This was followed by the report of the Fifth Pay Commission and the acceptance by the Government of its recommendations. The benefits relating to pension and allied matters were made applicable to persons who retired from service prior to 1988 and the wage revision was given effect to from 2.2.1990. The financial condition of KSRTC was precarious. On 17.5.1991, KSRTC wrote to the Government seeking its approval for implementation of the recommendations of the Fifth Pay Commission in the Corporation. This was followed by letters detailing the financial crisis faced by the Corporation. Ultimately, by letter dated 24.9.1992, the State Government advised KSRTC that it may defer for better times, the implementation. We quote the letter hereunder:

"Sir,
Sub: KSRTC \026 Recommendations of
the 5th Kerala Pay Commission
relating to pension and allied
matters \026 reg.

Ref.: Your Lr. No. PLA 10/32886/90
dated 17.5.1991.

Referring to the above, I am directed to inform you that since the financial position of KSRTC is not sound this may be deferred for better times."

Thus, the reliefs regarding revision of pensionary benefits as recommended was not immediately implemented.

6. Some of the employees of KSRTC filed a writ petition in the High Court challenging this non-implementation. The High Court allowed the writ petition, O.P. 7176 of 1993 and directed KSRTC to pay the arrears of the enhanced Dearness Allowance from 1.7.1991 till 31.10.1991. KSRTC appealed to the Division Bench in W.A. 890 of 1993. An interim order of stay of the directions issued by the single judge was also obtained. Meanwhile, in another writ petition, O.P. No. 13233 of 1992, another single judge directed the Government to take a policy decision on whether, the benefits of the Fifth Pay Commission should be extended to the pensioners of KSRTC.

7. Pursuant to the above direction and in compliance with it, the State Government by letter dated 16.5.1995 informed KSRTC as follows:

"The matter has been examined by the Government in detail and as the financial position of KSRTC is not sound, it has been decided that grant of benefits of the Fifth Pay Commission to the pensioners of KSRTC may be deferred for better times."

Thus, the policy decision taken by the State Government was to direct KSRTC not to give the benefit of the Fifth Pay Commission until better times. Meanwhile, the writ appeals filed by KSRTC were dismissed by the Division Bench which also allowed appeals filed by some of the writ petitioners. KSRTC challenged those decisions before this Court by way of Special Leave to Appeal. This Court entertained the appeals

and by the judgment dated 17.4.2003, set aside the judgment of the High Court and directed the High Court to reexamine the question. This Court noticed that the High Court has not considered what exactly was the effect of Part III of KSR being made applicable to KSRTC and whether the letter dated 16.5.1995 was in fact a direction in terms of Section 34 of the Act. This Court therefore directed the High Court to reconsider those aspects and also consider the question whether KSRTC as a statutory Corporation, did not have the power to fix a date different from the date fixed for the government employees for implementation of the recommendations of the Fifth Pay Commission regarding pensionary benefits and wage revision.

8. Back in the High Court, the Division Bench held that the adoption of Part III of KSR by KSRTC, was an exercise of legislation by reference and if and when the government adopted the recommendation of the Fifth Pay Commission in respect of its employees governed by Part III of KSR, KSRTC was also obliged to implement the recommendation in respect of its employees with effect from the same date. The Division Bench further held that the letter of the Government dated 24.9.1992, was not a direction in terms of Section 34 of the Act. The High Court also held that KSRTC did not have the competence to fix a different cut-off date in respect of its employees. It ultimately held that in the absence of any specific regulation being framed by KSRTC and in the absence of a direction under Section 34 of the Act by the State Government to KSRTC to fix a different cut-off date, KSRTC was bound to implement the recommendation of the Fifth Pay Commission and to grant revised pensionary benefits and dearness relief to all its employees whether originally transferred from the government department or subsequently employed by KSRTC itself, on a par with the government employees. Thus, the appeals filed by the employees were allowed and those filed by KSRTC were dismissed. It is this decision rendered after remand, that is challenged again in these appeals.

9. Learned counsel for the KSRTC, the appellant, submitted that the High Court was in error in holding that KSRTC, an autonomous corporation, was not entitled to fix a date of its own for implementation of revised pensionary benefits as per the recommendation of the Fifth Pay Commission. He further submitted that the financial position of KSRTC was precarious and in the face of that fact, the High Court was in error in compelling KSRTC to implement the recommendation of the Fifth Pay Commission regarding pension and dearness allowance and a direction that would lead to the winding up of the corporation itself, should not have been issued in such a casual manner. Learned counsel further submitted that the High Court had earlier, on 6.3.1995, directed the government to take a policy decision which would obviously be only one in terms of Section 34 of the Act and pursuant to that direction, the government had taken a decision and conveyed it to the corporation by its communication, letter No.11969/L3/95/PW&T dated 16.5.1995 and this communication, in the context, can only be understood as a direction under Section 34 of the Act. The High Court has not properly adverted to or considered the effect of this communication. Learned counsel submitted that Part III of KSR had only been adopted for KSRTC or by KSRTC and it was neither a case of legislation by incorporation nor a case of legislation by reference. For either of that to occur, there must be two legislations or enactments, one of which

must adopt the other. Thus, the High Court was wrong in holding that the adoption of Part III of KSR in KSRTC was a legislation by reference. Learned counsel submitted that there was no provision in Part III fixing any date for revising pension or for the grant of it.

10. In answer, learned counsel for the employees of KSRTC submitted that as per the earlier direction of the State Government, Part III of KSR had been made applicable to employees of KSRTC and once Part III of KSR was made applicable, the employees were entitled to pensionary benefits as provided therein and that would include the right to enhanced pension as and when they are enhanced. Right to pension included the right to it from a given date. Here, the date was the one adopted by the State Government. He submitted that the direction issued by the Government dated 27.3.1984 authorizing KSRTC to pay pension clearly justified this position. He also submitted that the High Court was correct in holding that the communication dated 24.9.1992, was not a direction under Section 34 of the Act. He pointed out that no formalities were complied with and the direction was not even notified. It was merely a reply to a letter sent by KSRTC. The communication dated 27.3.1984 would be a direction in terms of Section 34 of the Act and KSRTC was bound to pay any enhancement as and when it is given by the State Government to its employees. Counsel representing those employees who were originally employees of the Government added that those employees could not be prejudiced by not giving them the same benefits as employees of the Government in view of the order of their absorption in KSRTC dated 22.3.1965.

11. Before going into the other questions, we think it proper to consider whether in the circumstances of the case there has been a direction by the State Government in terms of Section 34 of the Act. Section 34 reads:

"34. Direction by the State Government. \026

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

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

This Court has earlier indicated that a direction issued under Section 34 by the Government is a general direction and the Government ought not to issue a specific direction with regard to any particular case. (See Mysore State Road Transport Corporation Vs. Babajan Conductor & another [(1977) 2 S.C.R. 925]. This Court has also held that until regulations are made with the previous sanction of the State Government, the directions given under Section 34 in respect of conditions of service have got the force of law (See General Manager, Mysore State Road Transport Corporation Vs. Devraj Urs & another [(1976) 2 S.C.C. 862]. It is in this context that the

communication issued by the State Government to KSRTC in respect of implementation of the recommendations of the Fifth Pay Commission regarding pensionary benefits has to be considered.

12. It is clear from the communication dated 24.9.1992 that KSRTC had written a letter to the Government dated 17.5.1991 regarding the payment of additional benefits based on the recommendations of the Fifth Pay Commission. The Government by that letter dated 24.9.1992, informed KSRTC that since the financial position of KSRTC was not sound, the proposal may be deferred for better times. It was in that context that writ petitions were filed in the High Court by certain employees of the Corporation. The High Court by judgment dated 6.3.1995 noticed the stand of KSRTC in its counter affidavit that it was not in a position financially to meet the requirements, on accepting the recommendations of the Fifth Pay Commission and KSRTC was facing great financial difficulty. The Court also noticed the submission of learned counsel for KSRTC that since the matter related to a policy decision, the advice of the State Government had to be given due weightage and in the face of the earlier letter, the matter had been referred to the Government and KSRTC will take a decision as and when the Government approved the policy of giving the benefits of Fifth Pay Commission to the pensioners of KSRTC. The court noticed that the pensioners were senior citizens and therefore an expeditious decision by the State Government was warranted. The court directed: "It is for the State Government to take a decision in the matter having due regard to all the relevant circumstances including the financial stability of the Corporation. Therefore, I direct the Government to take a decision in the matter within a reasonable time and the Corporation shall take further action pursuant to the decision to be taken by the Government. A decision in this regard shall be taken within a period of six months of the date of receipt of a copy of this judgment."

13. Pursuant to this direction of the High Court obtained by employees or pensioners of KSRTC, the Government considered the matter and with particular reference to the order in the writ petitions, informed KSRTC by letter dated 16.5.1995 that having examined the matter in detail and since the financial position of KSRTC was not sound, it was decided that grant of benefits of the Fifth Pay Commission to the pensioners of KSRTC may be deferred for better times.

14. As we understand this communication in the context in which it was issued, we are of the view that this amounts to a direction in terms of Section 34 of the Act. It must be remembered that this communication was issued when the Government was directed by the High Court to take a policy decision on the question of implementing the recommendations of the Fifth Pay Commission in respect of the employees of KSRTC. Such a policy decision in the absence of a regulation, could obviously be only in terms of Section 34 of the Act. Therefore, when in compliance with the direction of the High Court, the Government took a policy decision and communicated the same to KSRTC to defer the implementation of the recommendations of the Fifth Pay Commission, it could be understood only as a direction in

terms of Section 34 of the Act. The context in which the communication dated 16.5.1995 was issued, according to us, clearly shows that it was intended to be a direction in terms of Section 34 of the Act and the argument that formalities had not been complied with or that the same had not been notified, does not enable the court to hold that the communication dated 16.5.1995 must be understood only as a mere letter in reply and nothing more. The power to issue such a direction is clearly traceable to Section 34 of the Act and the High Court had obviously directed the Government to take that decision having in mind Section 34 of the Act. It is therefore clear that the direction dated 16.5.1995 is a direction in terms of Section 34 of the Act. The High Court, in our opinion, has not considered the effect of the direction issued in O.P. No. 13233 of 1992-A and connected cases, and the decision taken by the Government pursuant to that direction and the status of the communication dated 16.5.1995.

15. The High Court has rested its decision on the direction of the Government dated 27.3.1984 authorizing KSRTC to pay pension to its employees as per KSR and the acceptance of the same by KSRTC by issue of the order dated 5.9.1984, obeying the direction and providing for payment of pension in terms of KSR as an incorporation of KSR by reference. Proceeding from this, the High Court has held that pension is payable to all the employees of KSRTC in terms of Part III of KSR and this led to the position even as regards the date of payment as fixed by the Government for its employees. The High Court, though it noticed the decision in Union of India Vs. P.N. Menon & ors. [AIR 1994 SC 2221] regarding the entitlement of KSRTC to look into various aspects like its financial ability to pay, has proceeded to reason that in view of the adoption of Part III of KSR, the Corporation had lost its right to fix a cut-off date in the absence of any direction under Section 34 of the Act. The court has also held that communication of the Government dated 24.9.1992 had only directed deferring of payment of pension as recommended by Fifth Pay Commission and this meant that the Corporation had no right to fix a cut-off date especially in the absence of any regulation framed by it. We are not in a position to endorse this reasoning or conclusion of the High Court. KSRTC is an autonomous Corporation established under the Road Transport Corporation Act, 1950. It can regulate the service of its employees by making appropriate regulations in that behalf. Until such regulations are framed, it is entitled to take note of its financial health in considering whether a particular recommendation for enhanced pay or pension in respect of Government employees should be adopted by it and if it is to adopted by it, from what point of time. This, of course, would be subject to any direction that may be issued by the State Government in terms of Section 34 of the Act. In the letter dated 24.9.1992 referred to by the High Court, the Government had indicated that since the financial position of KSRTC was not sound, the question of accepting the recommendations of the Fifth Pay Commission relating to pension and allied matters may be deferred for better times. When the High Court intervened and directed the Government to take a policy decision and not leave the matter pending in view of the fact that the pensioners were generally senior citizens, the Government reconsidered the question and after examining the position in detail in the context of the financial position of KSRTC, took a decision that the grant of benefits of the Fifth Pay Commission to the pensioners of KSRTC may be deferred for better times. We have already held that this was a direction to KSRTC in terms of Section 34 of the Act. KSRTC

was therefore bound to implement this direction in the absence of a regulation in that behalf.

16. The High Court, in our view, is not correct in thinking that there is any compulsion on KSRTC on the mere adoption of Part III of KSR, to automatically give all enhancements in pension and other benefits given by the State Government to its employees. There is no provision in Part III of KSR containing such a stipulation. It only provides for payment of pension. The question of revision or enhancement of pension to its employees is left to KSRTC, an autonomous Corporation, subject of course to any direction that may be issued by the State Government under Section 34 of the Act. The mere adopting of Part III of KSR does not therefore shackle or control the power of KSRTC to take a decision in the absence of any regulation already framed, that the enhanced pensionary benefits as recommended by the Fifth Pay Commission need not be paid commencing on the same date as the State Government employees but the question of enhancing pension could be considered at a later point of time. There is nothing in Part III of KSR to control the power of KSRTC to decide that the recommendations of the Fifth Pay Commission may be implemented with effect from a particular date or that it need not be implemented at all in view of the precarious financial condition of KSRTC. The reasoning therefore that the direction to adopt Part III of KSR and the order adopting it by KSRTC would denude KSRTC of its power to fix a cut-off date for adopting and implementing the recommendations of the Fifth Pay Commission is found to be not sustainable.

17. Learned counsel for the respondents argued that what the Government has directed is only to defer the payment of pension and that meant that pension as recommended by the Fifth Pay Commission had become payable but only the actual payment stood deferred to a future point of time. In the context of what has happened here, this argument cannot be accepted. Obviously, the issue was whether the recommendations of the Fifth Pay Commission regarding enhanced payment of pension and other allowances to retired employees should be implemented by KSRTC in the situation in which it was placed and the direction of the Government was that since the financial position was not sound, the question had to be deferred. The letter dated 16.5.1995 uses the expression:

"It has been decided that grant of benefits of the Fifth Pay Commission to the pensioners of KSRTC may be deferred for better times."

As we understand it, this communication means that the very question of adopting the recommendations of the Fifth Pay Commission stood postponed for better times and it is not possible to read and understand it as directing that pension had to be paid in terms of the recommendations of the Fifth Pay Commission but its actual payment may be postponed. The grant itself was put off to a later point of time by the said communication. We, therefore, overrule this submission on behalf of the respondents.

18. Even before us, also, it has been clearly pleaded by KSRTC that its financial position is unsound. In fact, the High Court has also noticed it. This Court has held that the financial position of a Corporation like KSRTC is certainly relevant when the Corporation takes a decision as to whether it should implement a recommendation for enhanced emoluments and pension. Since we find from the relevant

aspects brought out that the financial position of KSRTC is not sound, we are of the view that the decision taken by the State Government not to implement, here and now, the recommendations of the Fifth Pay Commission for KSRTC and the decision based on it by KSRTC are fully justified. Certainly, the decision cannot be said to be vitiated by any extraneous consideration or perverse appreciation of the circumstances obtaining.

19. The result of this discussion is to hold that the High Court was in error in its decision and in directing that pension had to be paid in terms of the recommendations of the Fifth Pay Commission. We therefore allow these appeals and setting aside the decisions of the High Court dismiss the writ petitions filed by the writ petitioners. We make no order as to costs.