

PETITIONER:
MYSORE STATE ROAD TRANSPORT CORPORATION

Vs.

RESPONDENT:
BABAJAN CONDUCTOR & ANR.

DATE OF JUDGMENT 08/02/1977

BENCH:
BEG, M. HAMEEDULLAH (CJ)
BENCH:
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KAILASAM, P.S.

CITATION:
1977 AIR 1112 1977 SCR (2) 925
1977 SCC (2) 355

ACT:

Constitution of India Art. 226--Inherent powers of the High Court to grant relief in individual cases of hardship, when permissible--Road Transport Corporation Act, 1950--And Notification made by the Mysore Government u/s 34(1)--Scope of-- Winding up of a department operates as a discharge of its servants.

HEADNOTE:

Respondent 1, a conductor of the Mysore Government Road Transport Department was dismissed. for misconduct on 25-1-1961. The legality of the said dismissal order was questioned in the High Court under Art. 226 with a further prayer to declare that he had continued in service since the date of his suspension and commencement of disciplinary proceedings. The High Court allowed the writ petition on 11-9-1964 and quashed the dismissal order with an observation viz. "It is further ordered that this is without prejudice to the holding of fresh enquiry if they consider the same necessary". On 1-8-1961. the Road Transport Corporation was constituted and the Government Road Transport Department was abolished. Such of the employees who had exercised their option as per the notice dated 23-6-1961, were taken over by the appellant corporation. The respondent No. 1 was not given the option as he was dismissed by that date. On a complaint under the Contempt of Courts Act against respondent 2 and the appellant, that there was disobedience to the order of the High Court dated 12-9-1964, the respondent 1 was paid, he salary by the State Government for the period 25-1-1961 to 31-7-1971. Since he was not paid back salary and allowances and also the salary due from 1-8-1961, the respondent filed a writ petition No. 1579/66 which was again allowed. On a concession made by the counsel for the State Government that the State Government was willing to make available to the petitioner an option to become an employee of the appellant corporation, the High Court held: "Notice shall be in the same form in which it was served on other employees and with a month's time to exercise his option. If he exercises his option to become an employee of the corporation the petitioner will have all the benefits. such as continuity in service, seniority, the benefit of the old conditions of service

applicable in Mysore Government Road Transport Department. The petitioner will also be entitled to the salary for the period' between August 1, 1961 and the date of his appointment as an employee of the corporation". On appeal by special leave by the corporation, the Court,

HELD: (1) The order of the High Court dated 11-9-1964 could not possibly amount to a declaration that the first respondent had continued in the service of either the Mysore Government or had become the servant of the appellant corporation, a separate legal entity which came into existence by means of a Notification under s. 3 of the Road Transport Corporation Act, 1950. As a separate legal entity the corporation could not be said to have stepped automatically into the shoes of the Mysore Road Transport Department, there being no provision of the Act or Rules made thereunder to that effect.

[927 A-D]

(2) The declaratory relief asked for not having been granted, that relief would be deemed to have been refused. Failure to go in appeal against that decision operates as a bar for claiming such a relief in the subsequent writ petition. [931 B]

(3) The effect of the High Courts' order setting aside the dismissal was that the stigma of dismissal was removed from the record of the first respondent. The winding of the department on the facts of the case, operates as the discharge of the respondent. The respondent cannot be deemed to be the corporation's employee inasmuch as he has not exercised any option nor did he ask for a notice of option in the original writ petition filed by him. [931 D-E] 926

Mysore State Road Transport Corporation v. A. Krishna Rao & Anr., C.A. No. 1720 of 1967 S.C. decided on 6-8-1969, followed.

(4) Neither the Act nor the two notifications under s. 34(1) of the Act contain any provision which could entitle an employee of the Mysore Government Road Transport Department to get a notice automatically. The notifications could apply only to those persons who, on 1-8-1961 had already exercised an option to serve under the corporation in pursuance of notice issued to them. It makes no provision for persons to whom for any considerable reason, no notice has been issued. [928 D-F]

(5) When the first respondent applied in the High Court for another writ or direction under Art. 226 in 1966, the High Court over-stepped the limits of mere interpretation or application of the law and indulged in what is nothing short of legislation by directing the State Government to serve a notice calling upon the first respondent to exercise his option on the question whether he wanted to become an employee of the Mysore State Road Transport Corporation in the same way in which other employees of the Transport Department had been asked to exercise their option. [929 C-E]

(6) The State Government owed no duty to the first respondent to pay him after transport department was wound up in the absence of any contract to show what duty the Government could have to employ the first respondent after its transport department was wound up or to direct the corporation to do so. [929 G-H]

(7) In order to compel the corporation to do anything only a general direction u/s 34 of the Act could be given by the Government. There neither could be a special direction with regard to a particular case nor was any special direction given by the Government for any such case. The

High Court could not take upon itself the power to fill any gap in the provision of the Act, even if there be one, and compel the Government to perform a function which the Government was not under any kind of obligation to discharge. The High Court could not give a specific direction to make a provision to meet what it thought was required in a particular or individual case if such a case fell outside the provisions made by the Act and the rules. There is no justification at for such assumption of powers by the High Court. [929 H, 930 A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No.. 1919 of 1968.

Appeal by Special Leave from the Judgment and Order dated 15-12-1967 of the Mysore High Court in Writ Petition No. 1579 of 1966.

Shyamla (Mrs.) Pappu and E.K. Joseph for the Appellants

R.B. Datar for Respondent No. 1.

N. Nettar for Respondent No. 2.

The Judgment of the Court was delivered by

BEG. C.J. The Mysore State Road Transport Corporation is the appellant by special leave before us. The first respondent, a conductor in the Mysore Government Road Transport Department, had petitioned in the High Court under Article 226 against the appellant and the State of Mysore and asked it to quash an order of his dismissal, passed on 25-1-1961, in disciplinary proceedings taken against him at a time when he was a servant of the Mysore Government Road Transport Department. The Government Department was abolished on 1-8-1961. But, before this event happened, the Mysore Government had sent notices to its employees on 23-6-61 proposing to transfer all those persons who were actually in its service on the date of issue of

927 these notices and had accepted offers of appointment as employees of the Corporation. The first respondent, having been already dismissed for misconduct on 25-1-1961, was not the recipient of one of these notices to exercise an option.

In his writ petition, questioning the order of his dismissal, the first respondent had also asked for a declaration that he had continued in service since the date of his suspension and commencement of disciplinary proceedings. The High Court of Mysore merely quashed the dismissal order of 25-1-1961 and the order of suspension dated 23-7-1960. It did not grant the declaratory relief asked for. It observed: "It is further ordered that this is without prejudice to the holding of fresh enquiry if they consider the same necessary". This order could not possibly amount to a declaration that the first respondent had continued in the service of either the Mysore Government or had become the servant of the appellant Corporation, a separate legal entity which came into existence by means of a Notification under section 3 of the Road Transport Corporations Act, 1950 (hereinafter referred to as 'the Act'). As a separate legal entity, the Corporation could not be said to have stepped automatically into the shoes of the Mysore Road Transport Department. No provision of the Act or rules made thereunder has been shown to us which could have that effect.

The first respondent, however, relied upon a Notification under section 34 of the Act which contains, inter alia, clause 3 which preserves:

"(3). All rights and liabilities which have accrued or are incurred or which may accrue or may be incurred under any contract made by the State Government or by any Officer of the Road Transport Department, excepting the Bangalore Transport Service Division prior to the First August 1961, which would have been the rights and liabilities of the Corporation."

He also cites another Notification which reads as follows :--

"1. The employees of the Mysore Government Road Transport Department who have opted to serve under the Corporation in pursuance of the Notices issued to them by the Government shall be employed by the Corporation subject to such regulations as may be made by it under section 45(2)(c) of the Road Transport Corporations Act, 1950 and also subject to the following conditions, namely :--

(a) The transfer of the service of the employees of the Mysore Government Road Transport Department to the Corporation shall not amount to interruption of service and shall not entail any loss of seniority previously held by such employees.

(b) The terms and conditions of service applicable to such transferred employees including those relating to

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Provident Fund, Gratuity and other benefits shall not in any way be less favourable than those applicable to them immediately before the transfer.

(c) Benefits regarding leave and other conditions of service available to such transferred employees immediately before the transfer shall be continued.

(d) In the event of retrenchment of such transferred employees, in determining the retrenchment compensation, if any, length of service rendered by such transferred employees before the transfer shall also be considered.

(e) Changes in the conditions of service of the transferred employees shall not be effected to their disadvantage without the prior approval of the Government.

In respect of all disciplinary proceedings or appeals arising therefrom pending immediately before 1st August, 1961, the Corporation or such Officer or Officers as may be designated by it shall be the disciplinary authority competent to pass appropriate orders in accordance with the relevant rules applicable to them before the transfer."

It is clear that the last mentioned notification could apply only to those persons who, on 1-8-1961, had already exercised an option to serve under the Corporation in pursuance of notices issued to them. It makes no provision for persons to whom, for any conceivable reason, no notice had been issued. Neither the Act nor the two notifications u/s. 34(1) of the Act mentioned above contained any provisions which could entitle an employee of the Mysore Government Road Transport Department to get a notice automatically. It

appears that the notices were issued only in exercise of the executive power of the Government. Clause (7) of one of the two notifications of 1-8-1961 laid down:

"(7) The members of the staff of the Mysore Government Road Transport Department, excepting those who are serving in connection with the affairs of the Bangalore Transport Service Division, who have opted to serve under the Corporation with effect from 1st August, 1961, in response to the notice issued to them by Government shall be employed by the Corporation subject to such regulations as may be made by it under section 45(ii)(c) of the Road Transport Corporations Act and subject to such assurances as have been given to them by Government in their notice No. HD 8 TRC 60 dated 23rd June 1961."

This provision also relates to persons who had already exercised options under notices issued to them already. It may be that there was a lacuna in the rules or in the Act so that cases like those of the first respondent were not provided for at all in the Act or in the rules.

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Learned counsel for the first respondent relied strongly on s. 34 of the Act which lays down as follows :--

"34(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 section enables only general directions to be given.

When the first respondent applied in the High Court for another writ or direction under Art 226 in 1966, the High Court seems to us to have over-stepped the limits of mere interpretation of application of the law and to have indulged in what is nothing short of legislation. The High Court directed the State Government to serve a notice calling upon the first respondent to exercise his option on the question whether he wanted to become an employee of the Mysore State Road Transport Corporation in the same way in which other employees of the Transport Department of that State had been asked to exercise their options. The High Court observed :--

"It is clear that the State Government were under a duty to make available to him that option when the order by which he was illegally dismissed was set aside. Government are therefore, in our opinion, right in making available to the petitioner that option at least now. We, therefore, issue a direction that that option will be made available to the petitioner within fifteen days from this date".

We also find that, after proceedings under the

Contempt of Courts Act against the Government of Mysore, the petitioner had been paid his salary between 25-1-61, the date of a dismissal which was declared to be illegal by the High Court, and 1-8-61, when the Mysore Government Road Transport Department was abolished and its place taken by the State Road Transport Corporation.

The State Government owed no duty to the first respondent to pay him after its transport department was wound up. No term of any contract was placed before the Court to show what duty the Government could have to employ the first respondent after its transport department was wound up or to direct the Corporation to do so. We do not know what option the State Government has given to the first respondent after the writ petition was filed. If it had already given any option to him, there was no point in directing it to give another option. In order to compel the Corporation to do anything, as already indicated, only a general direction u/s. 34 of the Act, set out above, could be given by the Government. There neither could be a

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specific direction with regard to a particular case nor was any specific direction given by the Government for any such case. The High Court could not take upon itself the power to fill any gap in the provision of the Act, even if we were to assume that there was one here, and compel the Government to perform a function which the Government was under any kind of obligation to do. The High Court could not give a specific direction to make provision to meet what it thought was required in a particular or individual case if such a case fell outside the provisions made by the Act and the rules. We can find no justification at all for such assumption of powers by the High Court.

Mrs. Shyamla Pappu learned counsel for the appellant has sought support from a judgment of this Court in Mysore State Road Transport Corporation v. Krishna Rao & Anr.(1), where this Court held as follows :--

It is quite clear the employees of the Bangalore Road Transport Service of the Government did not either under a statutory provision, as in *Jestamani Gulabrai Dholakia v. The Scindia Steam Navigation Co.* [1961 (2) SCR 811], or automatically, become the employees of the Corporation. The Corporation was directed to take over only those of the employees who opted for its service and to give to them the same terms and conditions as were enjoyed by them while in the service of the Mysore Government. Thus, the condition precedent of an employee of the Road Transport Service of the Government of Mysore being transferred and regarded as the employee of the Corporation as from October 1, 1951, was the giving of the option to him and his exercise thereof.

There is no dispute that Respondent 1 was not given the notice of option, presumably because, rightly or wrongly, he was not regarded as having been in the service of the Government's Road Transport Service immediately before the Corporation came into being. It cannot also be disputed that he never asked for a notice of option on the ground that he continued to be in that service. That he did not in fact exercise the option is an accepted fact. That being so, it cannot be said that

under the said notification the Corporation was required to have him as its employee or that his service was transferred to the Corporation thereunder, the condition precedent to such employment or transfer not having been complied with."

This Court also held there:

In our view, the Labour Court could not, on the position stated above, treat him as the Corporation's employee and on that footing grant him the relief which it did. Once it is found that he did not become the Corporation's

(1) C.A. No. 1720 of 1967 given on 6-8-1969.

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employee, the Corporation could not be held liable to pay him the wages for the period from March 6, 1960, to April 19, 1962."

The case cited by Mrs. Pappu arose out of a claim under section 33(c)(2) of the Industrial Disputes Act, 1947, but the views expressed there accord with ours. We respectfully adopt the same reasoning.

Indeed, in the case now before us, the Corporation's legal position rests on a stronger footing than it did in the case cited above inasmuch as the declaratory relief asked for by the first respondent against the Corporation had not been granted. That relief would, therefore, be deemed to have been refused. The first respondent did not himself go up in appeal against that decision. He cannot claim such a relief in the subsequent writ petition now before us.

The facts set out above show that there were ample grounds for discriminating between a person against whom an order of dismissal had been passed, so that he was no longer serving in the transport department, and others who were not in the same position but were actually in the service of the transport department of the Government. It may be that the effect of the High Court's order, setting aside the dismissal, was that the stigma of dismissal was removed from the record of the first respondent. Nevertheless, as no order granting a declaratory relief he had asked for was given to the first respondent, he could not be deemed to be a servant even of the State Government after the department in which he was working was wound up. The most he could say was that he was not dismissed. The winding up of the department would, on the facts stated above, operate as the discharge of the respondent who could, if so advised, seek whatever other means of redress he may still have under the law.

Consequently, we allow this appeal, set aside the judgment and order of the High Court. The parties will bear their own costs.

S.R.

allowed.

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Appeal