

HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU

AS.No. 1934 of 1998

JUDGMENT:

This is an appeal filed against the order and judgment dated 09.10.1996 in O.S.No.67 of 1996 on the file of the District Judge, Vizianagaram.

For the sake of convenience, as this is a first appeal, the parties are referred to as plaintiff and defendant.

The brief facts of the case as per the plaint are that the 13 plaintiffs are employees of private buses bearing Nos. ADN 1584 and TMN 8694 owned by defendant Nos. 4 and 5. Consequent on the nationalization of the bus routes, the plaintiffs state that their buses were taken over by the first defendant. The defendant Nos.2 and 3 are the Regional Manager and the Divisional Manager of the first defendant-Corporation. The plaintiffs claim that they have a right to be absorbed into the services of the first defendant-Corporation.

They state that despite making an application, they were not considered for regularisation. They have also filed a writ petition in the High Court of Andhra Pradesh in WP.No.18704 of 1987 and the Hon'ble High Court by its order dated 10.12.1987 was pleased to direct the defendants to consider their case. Despite subsequent applications also, they were not considered for absorption. Hence, the suit is filed for a declaration that plaintiffs 1 to 13 are displaced employees

and are entitled to absorption into services of the defendant from 10.01.1987 and for mandatory injunction directing defendants 1 to 3 to take the plaintiffs into service.

The defendants filed a written statement denying all the plaint allegations. Defendant No.3 clearly pleaded that the conditions for absorption of displaced employees are not fulfilled in this case. They also plead that the documentary proof, which is necessary to show that the worker was employed on the date of nationalization like Register of Musters, Pay Rolls, Trip Sheets etc., are all to be maintained and filed besides eligibility test like medical fitness test etc. They also clearly pleaded that the bus ADN 1584 was only having a temporary permit and was not in operation on the date of the nationalization of the bus routes. The vehicle in question was stopped much prior to the nationalization. They also state that despite the orders of the Court, the plaintiffs did not submit a proper application for its consideration by them. Therefore, they plead that the suit should be dismissed.

Based on the above pleadings, the following issues were framed:

- (1) Whether the plaintiffs are displaced employees in the route buses which were nationalised?
- (2) Whether the plaintiffs have a right of absorption into the services of R.T.C?
- (3) Whether the plaintiffs are entitled to the mandatory injunction prayed for?

- (4) Whether the civil court has jurisdiction to entertain this suit?
- (5) Whether this Court has no territorial jurisdiction to entertain this suit?
- (6) Whether the value of the suit and court fee paid are not correct?

PWs.1 to 3 were examined for the plaintiffs and Exs.A.1 to A.3 were marked. For the defendants, one officer-DW.1 was examined and Exs.B.1 to B.5 were marked. After considering the pleadings, evidence etc., the lower Court dismissed the suit. It is this order of dismissal that is impugned in the present appeal.

Heard Sri K.V.Subrahmanya Narusu, learned counsel for the appellants and Sri S.V.Ramana, learned counsel for the respondents.

It is the contention of the learned counsel for the appellants that although the plaintiffs/appellants are entitled to be considered for employment, they were discriminated against and their case was not considered despite the orders by this Court also. The counsel for the appellants states that a lenient view should have been taken by the lower Court and it had failed to act as required under law.

In response thereto, the learned counsel for the respondents submitted that employment in a statutory Corporation is not a matter of right and that only if the eligibility criteria is strictly and scrupulously adhered to, the plaintiffs will get a right to be considered and even thereafter

they will have to fulfil the other eligibility tests like medical fitness test, driving test etc., in order to be employed. His contention is that the plaintiffs failed to prove their case and therefore, he supports the judgment of the lower Court.

Of all the documents that are marked in this case, Ex.B.5 is a copy of the circular dated 10.11.1983 dealing with absorption of employees of displaced private operators. The eligibility criteria for employees to be considered for absorption under the category of displaced private operators/employees, was specifically listed out in this circular. This exhibit makes it clear that (1) the worker should have been put in one year of service continuously as on the date of the cancellation of the permit. (2) the employees name should be available on the rolls of the private operator and should be corroborated through documentary evidence like Register of Pay Roll, Trip Sheet etc. These records are also subject to verification by the Road Transport Corporation management. It is also important to note that Exs.B.1 and B.2 are the letters addressed prior to the filing of the suit, wherein the issues of eligibility etc., were explained.

Ex.B.1 is a reply notice issued to the counsel for the plaintiffs, and Ex.B.2 is a document addressed to the fifth plaintiff-A.Jogarao. On behalf of the plaintiffs, only three documents were filed. These are marked as Exs.A.1 to A.3.

These documents do not show or prove in any manner that the plaintiffs were employed by defendants 4 and 5. Exs.A.2

and A.3 are receipts issued by the defendant. Ex.A.1 is a copy of the order passed by the Hon'ble High Court of Andhra Pradesh in WP.No.18704 of 1987. Nothing else is filed to discharge the burden which is squarely on them to secure a declaratory relief. It is settled law that the plaintiffs seeking a declaratory relief must prove their own case. The law on the subject does not require repetition. The documents do not help in discharging this heavy burden.

Coming to the oral evidence, PWs.1 to 3 were examined.

PW.1 is the first plaintiff. He along with other 12 applicants was under the private bus operators. In his cross-examination, he clearly admits that private buses were nationalized in the year 1987 and that the records like Trip Sheet, Pay Rolls, Muster Register, Provident Fund Recovery Register were maintained. He also admits that he did not file any document to show that he worked as a driver on bus Nos. ADN 1584 and APS 2353. Even on further cross-examination, he admits that the records were being maintained. PW.2 is the second witness, who is the ninth plaintiff in the suit. He also deposes that he is eligible for appointment as he worked on bus Nos. AND 1584 and TMN 8694. He also states that he is applied for absorption. No documents are filed by him to show his eligibility as required or nor did he asserted anything to the contrary. Plaintiff No.3 was examined as PW.3. He also states that he was working on a private bus and that consequent on the nationalization, he is entitled to

absorption. In his cross-examination, he clearly admits that Trip Sheets were maintained by the buses. He also admits that Motor Vehicles Inspectors were inspecting the buses and checking the Trip Sheets. He admits that Pay Rolls were being maintained and returns were being filed.

On behalf of the respondent-APSRTC, the Personnel Officer was examined as DW.1 and he deposed in line with his written statement and marked Exs.B1 to B.5. It is clear from his evidence that only one bus ADN 1584 was plying on the route mentioned in the plaint and that the second bus TMN 8614 was not plying on the route. He also clearly states that the vehicle ADN 1584 which was replaced by ADJ 873 had only a temporary permit, which ultimately expired on 14.07.1986, which is long prior to the date of nationalization. In proof of the same, he filed Ex.B.4 circular. The witness also deposes and states that the plaintiffs did not fulfil or comply with the eligibility criteria. He deposed to the effect that there is no proof that the plaintiffs were in fact employees on a bus, whose route was nationalized, and consequently they cannot be considered for employment at all.

It is clear from a reading of the entire evidence on record that the vehicle in question was not plying on the route as on the date of the nationalization, which is 12.11.1987. The vehicle ADN 1584 was only having a temporary permit, which

was valid up to 14.07.1986 only. It was not on operation as on the date of the nationalization. It is clear that the vehicle was stopped due to the expiry of the permit and not due to nationalization. Therefore, the plaintiffs have no right to be considered for employment. In addition, the plaintiffs have failed to prove that they were employees of the bus owner.

The Trip Sheets, Muster Rolls, Provident Fund Recovery Register etc., which would have proved their employment were neither summoned or nor they were produced. In the absence of any evidence to show that these 13 employees, are in fact, employees of a bus on a nationalized route, their case cannot be considered at all for employment. The plaintiffs did not take any steps whatsoever to cause production of the records. They did not take steps to either file or to summon the records from the Road Transport Department or other Departments, which would have established that they were in fact employed. Statutory registers like Muster Rolls, Route Permits, Provident Fund Recovery Registers could have been summoned and brought to the notice of the Court. This was not done. Therefore, it is clear that the plaintiffs have failed in establishing their case that they were employees of buses, which routes was nationalized. They could not also prove that the vehicle in question was running as on the date of nationalization. The burden of proof is on them as they are seeking a declaration. This was not discharged at all in this case.

For all these reasons, this Court holds that the order of the lower Court is correct on all the issues that were framed and concur with the opinion expressed by the lower Court and holds that the plaintiffs have failed to prove their case.

In the result, the appeal is dismissed. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this appeal shall stand closed.

Date: .12.2017
KLP

D.V.S.S. SOMAYAJULU, J

