

M. V. KURIAKOSE

v.

THE STATE OF KERALA AND OTHERS

March 25, 1977

[M. H. BEG, C.J., A. C. GUPTA AND P. S. KAILASAM, JJ.]

Constitution of India, Article 16(1), whether attracted by violation of rights claimed under agreement or award—Article 32, whether remedy extends to the violation of such rights.

The appellant was a mechanic in the service of the erstwhile Transport Department of the Kerala State. He thereafter became an employee of the Kerala State Transport Corporation when the same was set up in March, 1965. In 1968, there was a settlement between the Corporation and its employees providing that a 'trade test' would have to be passed for promotion to posts in the higher grade while "grade promotions" would take place upto the post of Assistant Chargeman. Subsequently, in a dispute referred to arbitration, the Award provided that category-wise seniority, together with trade-test should determine the promotions. The petitioner alleged that thereafter, the Corporation and the workmen agreed to promotions in his wing by seniority alone and consequently, the petitioner and some others were promoted. Their promotions were assailed as violative of the award, and were set aside by the High Court. The petitioner filed a writ petition under Art. 32 of the Constitution claiming that his fundamental right under Art. 16(1) had been violated.

Dismissing the writ petition the Court,

HELD : The rights of the petitioner under an agreement or an award, if he had any such right, could not be identified with rights under Article 16(1) of the Constitution. The result of the quashing of the promotion order relating to a whole category of employees in the position of the petitioner was that all similarly situated shared the same fate and all those in the petitioner's category and with his qualifications had been placed on an equal footing. The petitioner's remedy when he claims a benefit under an agreement or an award does not lie by means of a petition under Art. 32 of the Constitution. [391 G-H, 392 A-C]

ORIGINAL JURISDICTION : Writ Petition No. 90 of 1976.

(Under Article 32 of the Constitution of India).

M. K. Ramamurthi and J. Ramamurthi, for the appellant.

T. S. Krishnamoorthy Iyer and N. Sudhakaran, for respondent No. 2.

The Judgment of the Court was delivered by

BEG, C.J. The petitioner alleges in fringement of his rights under Articles 16(1) and 31(1) of the Constitution. He joined the service of the erstwhile Transport Department of the State of Kerala as a Cleaner in the Mechanical Wing in 1949. He was promoted to the post of Helper and then Assistant Mechanic, and, finally, to that of a Mechanic. On 15th March, 1965, the Kerala State Transport Corporation was set up under s. 3 of the Road Transport Corporations Act, 1950 (hereinafter referred to as "the Act") so that he became a servant of the Corporation. He alleges that, as the Kerala State is administering the Corporation and appoints its Chairman and Members under section 5 of the Act, he is entitled to the protection given

A by the State to its servants. According to him, the Corporation is really an arm or an agent of the State. We need not, however, consider the correctness of this proposition as the petitioner has not, in our opinion, succeeded in showing how any of his rights under Article 16(1) of the Constitution, and, even less, how any right of his under Article 31 of the Constitution could have been infringed, assuming that he is a servant of the State.

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It appears that on 10th July, 1968 there was a settlement in a dispute between the Corporation and its employees. Under this settlement, a trade test was to be conducted after inviting applications from lower grades of what are known as the "mechanical line", that is to say, Assistant Electricians, Assistant Tyre Inspectors, Stitchers, Solutioners etc. for filling up posts in the higher grades. It was mentioned there that "grade promotions" will take place up to the post of Assistant Chargeman, presumably without a "trade test" but, even under this settlement, appointment to the post of chargeman could only take place on the basis of results in "Trade Test" subject to seniority. Indeed, it was stated there that Assistant Chargeman of more than three years service will be entitled to take part in the trade test. The "Trade Test" was apparently a test of competence in technical knowledge for the work to be done in the mechanical line.

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According to the petitioner, the settlement was operative until an industrial dispute arose. That dispute was referred to arbitration under section 10A of the Industrial Disputes Act (14 of 1947) on 6th April 1971. The subject matter of the dispute was widely stated so as to embrace "all questions relating to" wage structure, the ratio between the higher and lower grades, the nature of duties and responsibilities attached to each category, and methods to be adopted for increasing productivity so as to contribute to the maximum efficiency and economic advantages from the working of the Corporation. Among the matters decided in the Award given was that categorywise seniority, together with Trade Test, should determine the promotions to higher grades. The Award dated 31st December 1972 was duly notified. It is true that conditions of service were not specifically mentioned among subjects referred to arbitration. But, promotions based on passing appropriate tests would certainly affect productivity. Moreover, nobody took steps to assail the Award on any ground whatsoever.

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The petitioner alleges that the Corporation and the Workmen subsequently agreed to promotions in the mechanical wing on the basis of seniority alone as had been done in the past under the settlement. To prove such an agreement, the following passage was relied upon from "the minutes of discussion" held in the presence of the Minister (Transport and Electricity) on 20th November, 1973, with the representatives of the Unions of the Mechanical Wing : "It has, therefore, been decided that all existing vacancies upto Assistant Chagemen in the Mechanical Wing will be filled up as was being done in the past. The Minister, however, pointed out that comprehensive schemes of test, with due importance on the practical side, will be

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introduced for all categories of employees soon. The Minister promised that the stages at which tests are to be introduced for the various categories of staff will be discussed with the Unions conveniently." This document, signed by the General Manager of the Corporation, contains only minutes of a discussion between the Minister for Transport and Electricity and the representatives of the Unions. It is difficult to see how it could modify the terms of the Award duly made which had become binding and enforceable under s. 17A of the Industrial Disputes Act. The Minutes relied upon as proof of an agreement did not even constitute an agreement or settlement which has to be signed by parties to the dispute under s. 19(1) of the Industrial Disputes Act.

The petitioner relies upon his promotion to the post of "Leading Hand" by the Corporation on 30th November, 1973, under the above-mentioned alleged agreement. But, on 4th December 1975 the High Court had set aside the promotion of the petitioner and all others similarly circumstance upon a writ petition filed by an Association of Technical Certificate Holders of the Corporation and one Krishna Kutty, a mechanic of the Corporation. It appears that, among the opposite parties was the Kerala State Transport Mechanical Workers Union represented by its General Secretary. Section 18(3) of the Industrial Disputes Act makes it clear that an Award of a Labour Court or Tribunal is binding on all parties to the industrial dispute. It is true that the petitioner was not individually a party to the proceedings in the High Court which resulted in the quashing of the order of promotion of the petitioner together with others on the ground that the Award had been violated by such promotions. Nevertheless, the petitioner would be deemed to be duly represented by his Union on such a question. He did not take any steps to assail or to get the judgment and order of the High Court set aside. The grounds upon which the petitioner attacks the enforcement of what was treated as an Award against him, so that he was reverted, are : firstly, that the so called Award did not relate to matters covered by the previous settlement and subsequent agreement, but contained some observations which had been misinterpreted by the High Court; secondly, that the High Court had misunderstood the Award inasmuch as it did not contain any direction that a "Trade Test" should be imposed upon those who belonged to the petitioner's category before their promotion; and, thirdly, that he was not a party to the proceedings in the High Court which resulted in the quashing of the document by which he was promoted so that the High Court's order is not binding upon him.

We are not able to agree with the interpretation put forward on behalf of the petitioner upon the Award. The High Court's order shows that not even a counter-affidavit was filed by an Opposite Party and no defence was offered by the Union which represented the petitioner. In any case, the rights of the petitioner under an agreement or an Award, if he had any such right, could not be identified with rights under Article 16(1) of the Constitution. The result of the quashing of the promotion order relating to a whole category of employees in the position of the petitioner was that all similarly situated shared the

- A same fate. All of them had to pass the Trade Test to become entitled to promotion. In this respect they were treated alike. It could not be shown what opportunity was denied to the petitioner which was given to anybody else in the same category or with the same qualifications as the petitioner had. It was immaterial that somebody else, in another category altogether, was not required to pass the trade test which was essential, on the view taken by the High Court, before those in the petitioner's category could claim promotion. All those in the petitioner's category and with his qualifications had been placed on an equal footing. Hence, whatever else might have been contravened, it was certainly not a fundamental right under Article 16(1) of the Constitution which could be held to have been violated. And, no attempt was even made to show how a right of the petitioner under Article 31(1) of the Constitution was affected.
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- D The petitioner's remedy when he claims a benefit under an agreement or an Award does not lie by means of a petition under Article 32 of the Constitution. This article is reserved exclusively for the enforcement of a fundamental right. As the petitioner has been unable to disclose how a fundamental right has been violated, this petition must be and is hereby dismissed. We make no order as to costs.

M. R.

Petition dismissed.