SUPREME COURT OF INDIA

Gopal Krishna Potnay

Vs.

Union of India

C.A.No.184 of 1953

(Mehr Chand Mahajan, C.J.I., B. K. Mukherjea, S. R. Das, Vivian Bose and Ghulam Hasan, JJ.)

25.01.1954

JUDGEMENT

S. R. DAS J. :

1. This is an appeal in a suit for a declaration that the order of the plaintiff's removal from service passed by the Chief Administrative Officer of the East Punjab Railway, Delhi, on the 30th June 1949 and communicated to him on the 4th July 1949 was wrong, illegal, 'ultra vires; and void in law and that he was still an employee of the Railway and entitled to work as such. The trial Court passed a decree in favour of the plaintiff. On appeal, the East Punjab High Court reversed the decision and dismissed the plaintiff's suit. The present appeal has been filed in this Court with a certificate granted by the East Punjab High Court under Article 133 of the Constitution.

2. The plaintiff joined the Railway service in 1918. In March 1945 he was selected as Railway Sectional Officer of the Delhi Special Police Establishment. In June 1948 the Inspector-General of Special Police Establishment decided to revert the plaintiff to the East Punjab Railway service. The plaintiff accordingly assumed charge in the office of the Divisional Superintendent, East Punjab Railway, at Ferozepore Cantonment on the 30th June 1948 but was immediately thereafter put under suspension and remained under suspension till the 19th August 1948. On the 20th August1948 the plaintiff was reinstated, the period of suspension being treated as leave. On the 30th June 1949 the chief Administrative officer, East Punjab, Railway, in exercise of his special powers made an order (Ex. D/8) removing the plaintiff from service in terms of his agreement. That order was communicated to the plaintiff by a letter (Ex. D/14) dated the 1st July 1949, reading as follows:

"You are hereby informed that in accordance with the order passed by C.A.O.R., Delhi, in exercise of his special powers vested in him under Para. 1708 RI you are given one month's pay in lieu of notice of discharge from service with effect from the 4th July 1949 A. N."

On the 30h July 1949 the plaintiff appealed from the order passed by the chief administrative Officer and contended that the said order was illegal, being in contravention of section 240 of the Government of India Act, 1935. No point was taken that the plaintiff had not in fact executed any service agreement in terms of which he could be removed from service on one month's notice. That appeal was dismissed by Railway Board in November 1949. The plaintiff thereupon, on the 3rd October 1950, filed the suit out of which the present appeal arises.

3. The trial Court found that the defendant had not proved that the plaintiff had executed any service

agreement and that being so there was no question of his discharge from service on a month's notice and without formulating a charge-sheet and giving him an opportunity to answer the same. Accordingly a decree was passed in terms of the prayer. On appeal by the defendant, the High Court came to the conclusion that the defendant had amply proved the service agreement and reversing the decree of the trial Court, dismissed the suit.

4. It is not disputed that the plaintiff joined the Railway service at Lahore and that he was at the date of his discharge in June 1949 a non-pensionable and non-gazetted Railway servant. After the partition of India most of the papers relating to the plaintiff were left in Lahore and had not been received from the Pakistan authorities. The defendant sought, in the circumstances, to adduce secondary evidence to establish the fact of execution of such agreement and the terms thereof.

It is quite true that none of the defence witnesses had any personal knowledge of the fact of the execution of such a service agreement by the plaintiff but their evidence shows that according to the rules it was incumbent on a Railway servant to enter into such agreement. Indeed, this is also admitted by J. N. Khanna (P. W. 1). It is further in evidence that such agreements were to be in the form set out in the rules and invariably contained a clause that the service would be terminable on a month's notice on either side. In view, however, of the evidence of some of the defence witnesses that in many cases the rules had not been complied with and occasionally some employees did not execute such documents through oversight the trial Court held that the evidence was not sufficient to establish that such an agreement must have been executed by the plaintiff.

If the matter stood there, there might have been some force in the observation of the trial Court. There are, however, certain other materials on record which clearly indicate that the plaintiff must have executed a service agreement in the usual form. It will be recalled that the order of discharge was made under Para. 1708 XI. The proviso to that paragraph saves the right of the authorities to remove a non-pensionable non-gazetted Railway servant from service in terms of agreement without the application of the procedure described in the rules. The plaintiff, in his evidence, admits that as a Head Clerk he was fully acquainted with the rules and regulations. He preferred an appeal to the Railway Board but in that application he confined himself to legal grounds and did not assert that he had not entered into any service agreement which he certainly would have done had that been a fact. In the next place, the plaintiff made an application for payment of gratuity. In that application (Ex. D/9) the reason for termination of his service is stated to be 'discharged in terms of agreement" and he was basing his claim for gratuity on that fact.

During the hearing before us learned counsel appearing for the plaintiff contends that there is no evidence that Ex. D/9 had been filed in by the plaintiff himself. We do not think there is any substance in this plea. While the plaintiff was under examination he called for certain documents from the defendant and tendered some of them. One of the documents called for by him and produced by the defendant and exhibited as exhibit D/9 was "plaintiff's gratuity application regarding full gratuity being paid to him". In the circumstances, the plaintiff cannot be heard to say that the document called for and exhibited by him was not his gratuity application. The plaintiff has taken no steps to put on record his application calling for this document in support of his plea.

Further, Rules 1504 and 1505 clearly indicate that no gratuity was payable to a Railway servant dismissed or removed from service by reason of any misconduct except with the sanction of the controlling officer. Therefore, his application for gratuity was founded on the allegation that he was discharged in terms of the agreement. The plaintiff has actually received gratuity amounting to Rs. 3,150/- on the basis that he was discharged from service in terms of his service agreement. He also

received one month's pay in lieu of notice as provided in clause 3 (a) of the service agreement. In view of the facts referred to above and the other facts mentioned in the judgment of the High Court there remains no doubt in our mind that the High Court was perfectly justified in coming to the conclusion that the defendant had amply proved that the plaintiff had executed a service agreement. On the hypothesis that the plaintiff had in fact executed a service agreement there is no suggestion that that agreement was in terms different from the usual form of such service agreement as to be found in the rules. In this view of the matter the plaintiff cannot be heard to complain that no charge-sheet had been formulated against him and proceedings had not been taken thereunder. In the view we have taken, the other points raised on the pleadings need not be considered. In our view the judgment of the High Court was right and this appeal must stand dismissed with costs.

Appeal dismissed.

</html