General Manager, North East Frontier Railway

Vs

Sachindra Noth Sen

Civil Appeal No. 1839 of 1967

(CJI J. C. Shah, V. Ramaswami-I, A.N. Grover JJ)

22.08.1969

JUDGMENT

GROVER, J. -

1. This is an appeal by special leave from a judgment of the Assam and Nagaland High Court by which a petition under Article 226 of the Constitution filed by the respondent challenging the termination of his service was allowed.

2. The respondent was serving the railways as an Assistant Traffic Superintendent prior to December 2, 1957. His services were terminated by serving on him one month's notice under Rule 148 contained in the Indian Railways Establishment Code. The respondent filed an appeal to the General Manager by he was informed by means of a letter dated February 3, 1959 that no appeal was competent. In June 1959 he was offered re-employment as a Statistical Inspector in the scale of Rs. 200 to Rs. 300 plus the usual allowances on terms and conditions applicable to temporary employees. It appears that the respondent accepted the offer and was appointed to that post. He was finally informed by means of a letter dated December 31, 1959 that his representation had been considered by the Railway Board relating to the termination of his services as Assistant Traffic Superintendent but the same had been rejected. On December 5, 1963 this court decided by majority in Moti Ram Deka etc. v. General Manager, N.E.F. Railways etc. ((1964) 5 SCR 683) that Rules 148(3) and 149(3) of the Indian Railways Establishment Code were invalid. The respondent made a representation thereafter in 1964 to the General Manager to reconsider the case of the termination of his services in the light of the law declared by this court. The General Manager sent a reply dated June 3, 1964 saying that the question of the respondent's reinstatement could not be considered as it was not covered "by limits of law, i.e., it does not fall within a period of six years from the date of your termination of service". This was followed by another letter dated December 7, 1964 in which it was stated :

> "It has now been clarified by the Railway Board that the claim for reinstatement of the Ex : Employees whose services were terminated in terms of Rules 148/149 within a period of six years prior to 5-12-63 (the date of the Supreme Court's judgment), and whose representation is still pending is only to be considered. Since your services were terminated on 2-12-57 which is more than six years counting backwards from 5-12-63, it is regretted that your request for reinstatement cannot be acceded to."

Thereupon the respondent filed a petition under Article 226 of the Constitution in the High Court. As stated before the petition was allowed principally on the ground that the railway authorities were not legally justified in making a distinction between officers whose services had been terminated

within six years prior to the judgment of this court in Moti Ram Deka's case ((1964) 5 SCR 683) and the cases of those whose services had been terminated earlier. As pointed out in the judgment of the High Court that as respondent's services were terminated on December 2, 1957, he was behind time by 3 days only. It was found that such an artificial demarcation between the two kinds of cases was hit by Article 14 of the constitution. The other point that the respondent had accepted re-employment and must be deemed to have waived his rights to reinstatement to his original office was also repelled.

3. In Moti Ram Deka's case (supra) this court held that the termination of the services of a permanent servant authorised by Rules 148(3) and 149(3) of the Railways Establishment Code was inconsistent with the provisions of Article 311(2) of the Constitution. The termination of the services of a permanent servant authorised by those Rules was no more and no less than removal from service and Article 311(2) was at once attracted. In view of the law laid down by this court the termination of the services of the respondent in December 1957 was wholly void and illegal. The Railway authorities recognised, as indeed they were bound to do, the implications and effect of the judgment of this court but created a wholly illegal and artificial distinction by saying that only those employees whose services were terminated in terms of Rule 148 within a period of six years prior to December 5, 1963 and whose representations were pending were to be considered for reinstatement, whereas the employees like the respondent whose services had been terminated on a date which was more than six years counting backward from December 5, 1963 would not be reinstated. The fixing of the period of six years was on the face of it arbitrary and no valid or reasonable explanation has been given as to why this limit was fixed. If the termination of service of an employee in terms of Rule 148 was wholly illegal and void and was violative of Article 311(2) of the Constitution his reinstatement should have followed as a matter of course. The submission of the learned counsel for the appellant that the railway authorities would have found lot of difficulty and inconvenience in reinstating employees without taking into consideration the period which had elapsed is devoid of any merit and cannot be accepted.

4. The appeal fails and it is dismissed with costs.

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