Raj Kumar

Vs

Union of India and Others

Civil Appeal No. 1730 of 1972

(A. Alagiriswami, N. L. Untawalia JJ)

19.03.1975

JUDGMENT

ALAGIRISWAMI, J. -

1. The appellant was appointed as Airport Ticket Clerk in the Civil Aviation Department of the Government of India on August 14, 1967. On June 15, 1971, his services were terminated 'forthwith' and it was directed that he shall be paid a sum equivalent to the amount of pay and allowances for a period of one month (in lieu of the period of notice) calculated at the same rate at which he was drawing them immediately before the date on which the order was served on or, as the case may be, tendered to him. But the pay and allowances were not paid to him at the same time as the service of the order of termination of his services. His appeal against the termination as well as representations having failed he filed a writ petition out of which this appeal arises. The High Court of Delhi dismissed the writ petition in limine and this appeal has been filed in pursuance of a certificate granted by the High Court because of the decision of this R.M.S. v. K. V. Gopinath ((1972) 3 SCR 530 : (1973) 3 SCC 867 : 1973 SCC (L. & S) 277.) of which that Court not aware when it dismissed the petitioner's petition.

2. It was not brought to the notice of the High Court that the proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporay Service) Rules, 1965 had been amended with retroactive effect from May 1, 1965. The rule as now amended reads :

> 5. Termination of temporary service-(1)(a) The services of temporary Government servant who is not in quasi-permanent service shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant;
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> (b) The period of such notice shall be one month :
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> Provided that the services of any such Government servant may be terminated forthwith and on such termination the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of the services or as the case may be for the period by which such notice falls short of one month.

The effect of this amendment is that on May 1, 1965, as also on June 15, 1971, the date on which the appellant's services were terminated forthwith it was not obligatory to pay to him a sum

equivalent to the amount of his pay and allowances for the period of the notice at the rate at which he was drawing them immediately before the termination of the services or as the case may be for the period by which such notice falls short. The government servant concerned is only entitled to claim the sums hereinbefore mentioned. Its effect is that the decision of this Court in Gopinath's case (supra) is no longer good law. There is no doubt that this rule is a valid rule because it is now well established that rules made under the proviso to Article 309 of the Constitution are legislative in character and therefore can be given effect to retrospectively. It follows that the decision of the Delhi High Court dismissing the appellant's writ petition is correct and this appeal will have to be dismissed.

3. But it was argued by Mr. Bhandare appearing on behalf of the appellant that there is no validating provision in the rule as now amended and therefore the intention of the Government in making the amendment cannot be validly given effect to. For this purpose he relied upon the decision of this Court in Prithvi Mills v. Broach Municipality ((1970) 1 SCR 388 : (1969) 2 SCC 283.) and in particular the following observations therein : [SCC p. 287, Para 4]

> Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law. Sometimes the Legislature gives its own meaning and interpretation of the law under which the tax was collected and by legislative fiat makes the new meaning binding upon courts. The Legislature may follow any one method or all of them and while it does so it may neutralise the effect of the earlier decision of the court which becomes inefiective after the change of the law.

Whichever method is adopted it must be within the competence of the Legislature and legal and adequate to attain the object of validation. If the Legislature has the power over the subject-matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions.

This argument proceeds upon a miscomprehension of the above observation and the effect of a validating statute. Once a law is given retrospective effect as from a particular date all actions taken under the Act even before the amendment was made would be deemed to have been taken under the Act as amended and there could be really no question of having to validate any action already taken provided it is subsequent to the date from which the amendment is given retrospective effect. The question of the particular form of the validation would always depend on the circumstances of a case and no general formula can be devised for all circumstances. It is enough to say that in the present case the action taken against the appellant was on a date subsequent to the date on which the amended rule takes effect and therefore that action being in accordance with the amended rule is legally a valid action and there is no need to have a validating provision in respect thereof.

4. It was then argued by Mr. Bhandare that the matter has been disposed of in limine by the High Court and there are certain other aspects which may have to be considered, and therefore the appeal should not be dismissed but that the writ petition should be directed to be disposed of afresh by the Delhi High Court after considering the other questions raised in the writ petition. There are only two question raised by the petitioner in his writ petition. One is that certain persons junior to him have been continued in service while his services have been terminated and that it offends Article 14. The termination of the appellant's services was not on the ground of retrenchment. The question of offending Article 14 does not therefore arise. When action is taken against him under the relevant rules which enable the authorities concerned to terminate his temporary service without assigning

any reason the Court would not go into the reasons which led to the appellant's services being terminated. The other point raised in the writ petition is that action terminating the appellant's services was mala fide. We see no substance in this contention. The action is said to be mala fide because after the appellant's services were terminated certain other persons have been appointed. It is not alleged that those persons exercised their influence and had the petitioner's services terminated in order to provide them with posts. Naturally when a vacancy arises by the termination of services of an employee other persons would have to be appointed to take his place. This would not show any mala fides.

5. The appeal is therefore dismissed but in the circumstances there will be no order as to costs.

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