

The General Manager, Southern Railway, Madras and Another

Vs

T. M. Paramasivam

Civil Appeal No. 571 of 1972

(CJI A.N. Ray, M.H. Beg, Jaswant Singh JJ)

08.04.1976

JUDGMENT

BEG, J. -

1. The General Manager, Southern Railway obtained special leave to appeal to this Court against a judgment of a Division Bench of the Madras High Court. The learned Judges, Veeraswami, C.J. and Raghavan, J. had held, in a very short judgment, a notification of the Railway Department, retiring the petitioner-respondent from service with effect from October 3, 1970, to be inoperative.

2. The petitioner-respondent had been appointed a temporary clerk on December 10, 1936, and had been confirmed in that post on September 1, 1938. He contended that he was entitled to continue in service until he had attained the age of 60 years. He alleged that the notification retiring him had been issued on the wrong assumption that he had to retire at the age of 58 years which is the normal age of retirement. He claimed the benefit of Rule 2046(b) of the Railway Establishment Code.

3. According to Rule 2046(b), a ministerial railway servant was entitled to the higher age of retirement provided : firstly, he had entered government service on or before March 31, 1938; and, secondly, he had held "on that date" (i.e. on March 31, 1938), either

(i) a lien or, a suspended lien on a permanent post;

or

(ii) a permanent post in a provisional substantive capacity under clause (d) of Rule 2008 and had continued to hold the same without interruption until he was confirmed in that post.

4. It is clear that the respondent petitioner fulfilled the first condition inasmuch as he had entered government service on December 10, 1936, which was obviously before March 31, 1938. The High Court, however, proceeded to hold that, since he was confirmed on September 1, 1938, he would be deemed to have been permanently appointed since December 10, 1936, so that he would get the benefit of the second condition which was also essential for him to satisfy before he could be held to be entitled to the higher age of retirement. It is very difficult to appreciate the reasoning of the High Court when Rule 2046(b) clearly lays down that not only the first but one of the two alternatives of the second set of conditions must also be fulfilled by the government servant "on that date", that is to say, on March 31, 1938. The specified requirements of the rule could not be overridden by some deemed retrospective benefit accruing from a confirmation subsequent to March 31, 1938.

5. The second of the two alternatives in the second set of conditions could not apply to the respondent petitioner as he was only a "temporary government servant" and not a "provisional government servant" as defined by Rule 2008(2). Rule 2008 may be reproduced here. It reads :

2008. Suspension of lien. - (a) A competent authority shall suspend the lien of a railway servant on a permanent post which he holds substantively if he is appointed in a substantive capacity :

(1) to a tenure post, or

(2) to a permanent post outside the cadre on which he is borne, or

(3) provisionally, to a post on which another railway servant would hold a lien had his lien not been suspended under this rule.

(b) A competent authority may, at its option, suspend the lien of a railway servant on a permanent post which he holds substantively if he is deputed out of India or transferred to foreign service, or in circumstances not covered by clause (a) of this Rule, is transferred whether in a substantive or officiating capacity, to a post in another cadre, and if in any of these cases there is a reason to believe that he will remain absent from the post on which he holds a lien for a period of not less than three years.

(c) Notwithstanding anything contained in clauses (a) and (b) of this Rule a railway servant's lien on a tenure post may, on circumstances, be suspended. If he is appointed substantively to another permanent post, his lien on the tenure must be terminated.

(d) If a railway servant's lien on a post is suspended under clause (a) or (b) of this Rule, the post may be filled substantively and the railway servant appointed to hold it substantively shall acquire a lien on it provided that the arrangements shall be reversed as soon as the suspended lien revises.

Note. - This clause applies if the post concerned is a post in a selection grade of a cadre.

6. The respondent petitioner having been confirmed on September 1, 1938, could be said to be appointed in substantive capacity only on that date. He could neither have a lien nor a suspended lien on a permanent post. He could also not be found to hold a permanent post in a provisional capacity under clause (d) of Rule 2008 before March 31, 1938. The respondent petitioner had not been shown to hold a permanent post on March 31, 1938. Learned Counsel for the appellant, therefore, relied on : State of Punjab v. Dharam Singh ((1968) 3 SCR 1 : AIR 1968 SC 1210 : 1968 Lab IC 1409); State of Nagaland v. G. Vasanthan (AIR 1970 SC 537); Director of Panchayat Raj v. Babu Singh Gaur ((1972) 2 SCR 400 : (1972) 1 SCC 227). Learned Counsel for the respondent petitioner found it impossible to justify the order of the Madras High Court.

7. Learned Counsel for the appellant stated that the railway administration does not propose to claim any refund of salary paid to the respondent petitioner, who had worked until he retired at the age of sixty, and that this appeal was filed only to get the question of law involved settled. The position was so clear, under the law, that it should not have been necessary at all for the parties to have had to come to this Court for a correct decision.

8. We allow this appeal and set aside the judgment and order of the High Court. The parties will bear their own costs.

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