

Divisional Personnel Officer, Western Railway, Kota

Vs

Sunder Dass

Civil Appeal No. 1085 of 1981

(CJI Y.V. Chandrachud, A. Varadarajan, A.N. Sen JJ)

16.10.1981

JUDGMENT

VARADARAJAN, J.-

1. In this appeal by special leave the respondent Sunder Dass appears in person. The appeal by the Divisional Personnel Officer, Western Railway, Kota is against the Judgment of Dwarka Prasad, J. of the Rajasthan High Court at Jaipur in Civil Revisions Nos. 63 and 158 of 1973. The learned Judge allowed Civil Revision No. 63 of 1973 filed by Sunder Dass and dismissed Civil Revision No. 158 of 1973 filed by the Divisional Personnel Officer with costs in both.

2. The two revision petitions were filed against the Order dated September 18, 1972 passed by the learned District Judge, Kota under the Payment of Wages Act (hereinafter referred to as the Act). The respondent filed petitions under Section 15(2) of the Act before the authority under the Act, the Special Judicial (Railways) Magistrate, Kota who held by his Order dated October 30, 1967 that the respondent is entitled to get his salary for the period from February 17, 1949 to May 14, 1949 after adjustment of any amount which might have been paid to him for that period. Both parties filed appeals against that Order before the District Judge, Kota who by Order Dated September 18, 1972 held that the respondent should have been paid wages for the period of six months prior to March 25, 1963 the date of his application under the Act and also for a period of six months in respect of each one of his subsequent seven applications filed under the Act. The learned District Judge directed the authority under the Act to calculate the amount of salary and dourness allowance payable to the respondent as per his direction on the basis of the respondent's basic salary as on May 14, 1949, the date of his original dismissal from service, after deducting the usual provident fund deduction and other permissible deductions, if any. Both parties filed revision petitions in the High Court against the Order of the learned District Judge.

3. The respondent was employed as an Assistant Sub-Divisional Clerk at Sukkar in the Karachi Division of the North Western Railway. While he was working in that capacity at Nawabshah, he was discharged from service by Order dated April 12, 1944 issued by the Divisional Engineer. The respondent instituted a suit in the Court of the Judicial Commissioner, Karachi for declaration that the Order of discharge was invalid. During the tendency of that suit there was partition of India and he migrated to India and reported for duty to the transfer Officer (India) at Ambala Cantonment on January 8, 1948. On the basis of the respondent's declaration, he was taken as a Clerk in the former B.B. & C.I. Railway, which eventually became the Western Railway. But when the fact that the respondent had already been discharged from railway service on April 12, 1944 before the partition of India took place came to light, the respondent was suspended from service on February 17, 1949 and a charge-sheet was issued to him by the Chief Engineer of the Railway for the misconduct of

concealment of the Order of discharge from service and he was dismissed from service on May 14, 1949 in pursuance of the finding of guilt recorded in the inquiry. The respondent's appeal against the Order of discharge was dismissed by the General Manager of the Railway. The respondent thereafter filed suit on January 10, 1950 for declaration that the Order of discharge was void and obtained decree in the trial court, which was modified by the District Judge on appeal. Both parties filed second appeals in the High Court, which dismissed the same on March 6, 1963 by holding that the respondent is entitled to a declaration that the Order of his dismissal from service dated May 14, 1949 is illegal on the ground that there was breach of the principles of natural justice and that it was, however, open to the Railway Administration to take fresh disciplinary proceedings against him from the stage at which the illegality crept in.

4. Subsequently, the Chief Engineer, Western Railway started fresh disciplinary proceedings against the respondent and issued a fresh charge-sheet with a statement of allegations against him on November 4, 1963. No fresh Order of suspension was issued to the respondent on this occasion. The departmental inquiry was held and an inquiry report dated November 29, 1965 was made holding the respondent guilty of the charge. The Chief Engineer accepted the report of the Inquiry Officer and issued a notice to the respondent calling upon him to show cause against the punishment proposed to be awarded to him and eventually dismissed him from service by his Order dated December 23, 1966 with effect from May 14, 1949 the date of his original dismissal. This Order of dismissal was confirmed by the General Manager, Western Railway in the respondent's appeal which was dismissed on May 10, 1967. The respondent challenged the Order of dismissal by filing Writ Petition No. 558 of 1967 which was dismissed by the Rajasthan High Court on November 21, 1971 holding that the departmental inquiry was properly conducted and that the dismissal is valid but not retrospectively from May 14, 1949. The respondent's review petition was dismissed by the learned Judge of the High Court on March 7, 1972.

5. After the dismissal of the second appeals on March 6, 1963 the petitioner moved the Payment of Wages Authority on March 25, 1963 by a petition filed under Section 15(2) of the Act claiming wages for the period from February 17, 1949, the date of the original suspension, to February 28, 1963 less subsistence allowance, namely, Rs. 24,792.70 and thereafter filed seven more petitions once in every six months claiming in all wages of the Rs. 34,096.07 for the period from March 1, 1963 to August 31, 1966. As stated earlier, the authority under the Act held that the respondent is entitled to wages for the period from February 17, 1949 to May 14, 1949 and in the appeals filed before the learned District Judge it was held that the respondent is entitled to wages for a period of six months prior to June 25, 1963 and also for the period of six months in respect of each one of the seven petitions filed by him and the District Judge directed the authority under the Act to calculate the amount payable to the respondent after making the necessary deductions on the basis of the respondent's basic wages as on May 14, 1949. Both the parties filed revision petitions against the Order of the learned District Judge.

6. The plea of limitation which appears to have been raised in the revision petitions before the learned Single Judge of the Rajasthan High Court at Jaipur, has been held to be no longer available in view of the decisions of this Court referred to in the Judgment of the High Court in the civil revision cases under appeal in this case. The other objection raised under Order 2, Rule 2 of the Code of Civil Procedure in view of the fact that the claim for wages had not been put forward in the civil suit and connected appeal and second appeal has also been rejected by the High Court. The learned Single Judge held that if the Order of dismissal is set aside, it is not necessary to give a further declaration that the employee continues to remain in service in view of the fact that it follows as a consequence of that Order of dismissal having been set aside.

7. It was contended before the learned Single Judge of the High Court that since after the original Order of dismissal had been set aside by the High Court, the disciplinary authority had decided to hold a fresh inquiry and had dismissed the respondent pursuant to the finding of guilt recorded by the Inquiry Officer in the fresh inquiry and accepted to the disciplinary authority, in view of the provisions of Rule 1706(4) of the Indian Railway Establishment Code, the respondent must be deemed to have been placed under suspension from the date of the original Order of dismissal. The learned Single Judge did not allow that contention to be raised before him on the ground that it was not raised either before the authority under the Act or before the learned District Judge in the appeals. The learned Judge dismissed the Divisional Personnel Officer's revision petition and allowed the respondent's revision petition with costs and held that the respondent is entitled to receive arrears of wages from February 17, 1949 to August 31, 1966. The Divisional Personnel Officer had filed this civil appeal by special leave against those Orders of the learned Single Judge of the High Court.

8. The fact that the respondent had been dismissed from service pursuant to the finding of guilt recorded in the fresh inquiry has not been disputed before us by the respondent who has appeared in person though the appellant in this appeal had been directed by this Court while ordering show-cause notice in the special leave petition to deposit a sum of Rs. 1000 to enable the respondent to engage a counsel to appear for him in this Court and that amount had been deposited by the appellant and withdrawn by the respondent. We perused the record of the fresh inquiry and are satisfied that the respondent has admitted the fact of his discharge from service on April 12, 1944 while securing fresh employment under B.B. & C.I. Railway. Mr. Taluqdar, senior counsel, appearing for the appellant submitted that the respondent had been suspended from service on February 17, 1949 before he was originally dismissed from service on May 14, 1949 pursuant to a finding of guilt recorded in the departmental inquiry and that in the subsequent departmental inquiry also, he had been found guilty and was subsequently dismissed from service and therefore, by virtue of the provisions of Rule 1706(4) of the Indian Railway Establishment Code, he must be deemed to have been under suspension right through from February 17, 1949 and he would be entitled only to subsistence allowance and not to full wages for the period from February 17, 1949. Clause (1) of Rule 1706 provides for a railway servant being placed under suspension inter alia where a disciplinary proceeding against him is contemplated or pending. Clause (4) of that rule reads thus :

Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a railway servant is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the railway servant shall be deemed to have been placed under suspension by the competent authority, mentioned in Rule 1705, from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

We are of the opinion that this cause will be attracted in cases where there had been a suspension of a railway servant due to a contemplated or pending disciplinary proceeding and the Order of dismissal pursuant to the finding recorded in that disciplinary proceeding is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on a consideration of the circumstances of the case, as in the present case, decides to hold a fresh inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed. It is not the case of the respondent that he had resumed duty

after the original order of dismissal dated May 14, 1949 was set aside and that he continued to be in service until he was subsequently dismissed from service by the Order dated December 23, 1966. It is seen from the original Order of dismissal dated May 14, 1949 that the respondent had been informed by the instruction appended to that Order that he would be given subsistence allowance at the rate of 50 per cent of his pay for the period from February 17, 1949 to May 14, 1949, both days inclusive, when he remained under suspension. The respondent did not dispute before us the fact that he was placed under suspension from February 17, 1949 pending the inquiry resulting in his dismissal by the Order dated May 14, 1949. But what the respondent contended before us is that the original Order of dismissal dated May 14, 1949 is based on the finding of guilt recorded in respect of a single charge and that a second allegation has been made in the charge framed in the fresh inquiry and therefore, the provisions of Rule 1706(4) of the Indian Railway Establishment Code are not attracted. The respondent invited court attention to the fact that in the first suspension Order dated February 17, 1949, he has been described as a Clerk, Executive Engineer's Office, Kota Division and in the charge framed in the fresh inquiry on March 22, 1965 as ex-Clerk of the Office of the Executive Engineer's, Kota Division and also to the fact that he had been informed by the Chief Engineer's letter dated September 9, 1965 that he has not been placed under suspension by the Administration and only fresh proceedings have been taken against him in view of the Judgment of the Rajasthan High Court and therefore, the question of the administration granting him permission to leave his residence or Kota Railway Station does not arise - in support of his contention that he could not be deemed to have been under suspension after his original Order of dismissal had been set aside by the High Court. The respondent appears to have been conscious of the fact that the Order of suspension dated February 17, 1949 had not been revoked when he applied for permission to absent from his headquarters. The Chief Engineer appears to have stated in his letter dated September 9, 1965 that the respondent had not been placed under suspension and therefore, he did not require the permission of the Railway Administration to leave Kota only on the basis that there was no fresh Order of suspension after the original Order of dismissal dated May 14, 1949 had been set aside by the High Court. As stated earlier, the respondent has not disputed the fact that he had been placed under suspension by the Order dated February 17, 1949, and it is clear that he was under suspension thereafter throughout and he had attained the age of superannuation in 1963, his year of birth being 1908. The charge framed against the respondent in the first inquiry was this :

Obtaining employment by concealment of his antecedents which would have prevented his employment in railway service, had they been known before his appointment, to the authority appointing him.

The reasons for that charge given were that he obtained employment in the Western Railway by giving false intimation to the Transfer Officer (India), Ambala Cantonment to the effect that he was in service on the North Western Railway at the time of partition. In the fresh charge dated March 22, 1965 framed against the respondent, it is stated that :

Fresh proceedings are being taken against him in view of the judgment of the Rajasthan High Court that his dismissal from service was illegal and he has been informed that the charge is based on the declaration of January 8, 1948 made by respondent to the Assistant Transfer Officer, Ambala Cantt. that he was working on the ex-North Western Railway and was in receipt of substantive pay of Rs. 98 plus Rs. 4.50 and has been confirmed in that post on November 1, 1943 and (2) the declaration dated January 26, 1948 after he joined the Ex-B.B. & C.I. Railway.

On a perusal of the two charges, we are of the opinion that the fresh charge dated March 22, 1965 in

only a single charge and that the second allegation, namely, the declaration dated January 26, 1948 made by the respondent after he joined the Ex. B.B. & C.I. Railway, was only intended to be relied upon for proving that charge. We are, therefore, unable to accept the submission of the respondent that any different or additional charge was framed against him in the fresh inquiry. The subsequent inquiry was in respect of the same charge, namely, that the respondent had suppressed the fact that he had been discharged from railway service on April 12, 1944 while he secured employment in 1948 after the partition on India. Rule 1706(4) of the Indian Railway Establishment Code is squarely attracted to the case of the respondent. In these circumstances, we hold that the respondent who had been suspended on February 17, 1949 pending inquiry and had not reported for duty after the original Order of dismissal dated May 14, 1949 had been declared to be illegal by the High Court of Rajasthan in the second appeals filed by both the parties, must be deemed to have continued to be under suspension by virtue of the provisions of Rule 1706(4) in view of the fresh inquiry and would be entitled only to subsistence allowance being 50 per cent of his wages for the period of suspension until the final Order of dismissal and not to full wages. The appeal is accordingly allowed, but in the circumstances of the case without costs. The appellant had deposited in this Court a sum of Rs. 16,000 being subsistence allowance for the said period as directed by this Court on December 2, 1980 when notice to show cause was ordered in the special leave petition and it has been withdrawn by the respondent. We, therefore, add that nothing more remains to be paid to the respondent towards his subsistence allowance.

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