

Union of India and Another

Vs

Vishwa Nath Pandey

Civil Appeal No. 10096 of 1983

(Sujata V. Manohar, M. Jagannatha Rao JJ)

20.08.1997

ORDER

1. The respondent who was employed as Ticket Collector in the North-Eastern Railway was confirmed on that post on 6-1-1958. He was promoted as a Senior Ticket Collector in 1966 and he was confirmed on that post on 9-9-1974. The respondent applied for being allowed to proceed on deputation as Lecturer in Law in Jai Narain Degree College, Lucknow for a period of two years. His application was accepted on the conditions as laid down in Railway Board's letter dated 11/18-12-1972. The letter also states that the respondent will deposit service contributions with the Railways regularly and that if he does not report for duty to the Railway Administration after the expiry of two years his lien will be suspended and he will have no claim for employment in the Railways.
2. These directions are pursuant to the Railway Board's circulars in this connection dated 4-12-1968 and 7-8-1972. The Board's circular of 4-12-1968 refers to its earlier letter of 21-1-1961. In para 2(A) of the circular of 21-1-1961, it has been laid down that railway servants should sever their connection with the Railways if selected for outside posts. The circular of 4-12-1968 sets out that the Board had under consideration, for some time past, the question of relaxing this condition in the case inter alia of permanent railway servants who are selected on the basis of their applications for posts in other Central Government departments/offices or public sector undertakings whether incorporated or not, which are wholly or substantially owned by the Government of India or the State Governments and in autonomous, semi-governmental organisations. As a result, under the circular of 4-12-1968, (i) the applications of railway servants for permanent or temporary posts in public sector undertakings whether incorporated or not, which are wholly or substantially owned by the Government of India or the State Governments and in autonomous semi-government organisations as well as for posts whether permanent or temporary, in Central Government departments/offices, may be forwarded in accordance with the instructions contained in the Board's letter dated 21-1-1961, (ii) in the case of permanent railway servants, their lien may be retained in the parent department/office for a period of two years. If the railway servant concerned is not permanently absorbed within a period of two years from the date of his appointment in the new post, he should immediately, on the expiry of the said period of two years, either resign from railway service or revert to his parent office. An undertaking to abide by these conditions may be taken from them at the time of forwarding their applications to other department/office. The circular letter stated that orders relating to incidence of leave, salary and pensionary liabilities in respect of such railway servants would follow.
3. The Railway Board's letter on 7-9-1972 is in continuation of the Railway Board's letters of 4-12-1968 and 19-5-1972. It is also necessary to refer to a Railway Board circular of 10-9-1971 which deals with absorption of permanent railway servants in public enterprises. It provides that on

absorption in a public enterprise, the optees are permitted to exercise an option within six months of their absorption for either of the following alternatives :

(a) Receiving the monthly pension and DCR gratuity already worked out under the usual government arrangements; or (b) Receiving the gratuity and a lump sum amount in lieu of pension worked out with reference to commutation tables obtaining on the date from which pension will be admissible and payable under option orders.

4. Clause 3 of this letter provides that

"whenever the deputationist railway servants exercise their option pursuant to the above orders for service in the public enterprise concerned, they should be deemed to have retired in public interest, with a view to permanent absorption in the undertaking concerned".

The same position is reiterated in the circular of the Railway Board dated 18-9-1971.

5. The respondent was initially allowed to retain his lien in the Railways for a period of two years as per these circulars and was thereafter allowed to resign from the Railways. In his letter of resignation, the respondent has made a clear reference to the fact that his resignation is for his permanent absorption in a public sector enterprise. He would prefer to exercise the option of taking gratuity and lump sum amount in lieu of monthly pension. It should be noted that this resignation was tendered by the respondent after he had completed 20 years of service in the Railways.

6. The appellants, however, denied to the respondent any pensionary benefits by their letter dated 4-1-1979 on the ground that his claim was not sustainable because his resignation cannot be treated as in public interest. This view has been correctly held to be erroneous by the High Court. His application for being allowed to go on deputation was clearly treated as being covered by the above circular letters of the Railway Board. That is the reason why he was allowed to retain his lien for a period of two years and conditions were imposed upon him in the letter of acceptance in accordance with the terms of these circulars. The deeming provision set out in clause 3 of the Railway Board's letter of 10-9-1971 is attracted in the present case and the respondent is deemed to have retired in public interest in these circumstances. He is, therefore, entitled to the pensionary benefits as per the said letter of 10-9-1971 in accordance with the option exercised by him within the stipulated period.

7. It has been strenuously urged before us by the appellants that accepting employment in Jai Narain Law College at Lucknow cannot be considered as an employment which is covered by the Board's circular of 4-12-1968. The High Court has examined at length the status of this college and has come to the conclusion that it is covered by the various categories of organisations enumerated in the Railway Board's circulars. What is more important, the North-Eastern Railway authorities have acted on the basis that these circulars apply in the present case. The respondent applied for permission and the appellants granted it, permitting the respondent to retain his lien for a period of two years under the same circulars. The respondent acted on the basis that his case was in fact covered by these circulars. Therefore, we do not see any reason to set aside this part of the High Court's judgment looking to the special facts and circumstances of the present case.

8. The appeal is, therefore, dismissed. There will, however, be no order as to cost.