

ALLAHABAD HIGH COURT

Hardwari Lal

Vs.

General Manager

Special Appeal No. 298 of 1957, against judgment and decree of V.G. Oak, J. in Civil Misc. Writ
No. 620 of 1957

(O.H. Mootham, C.J. and Raghubar Dayal, J.)

28.11.1957. 15.10.1958

JUDGMENT

Mootham, C.J.

1. This is an appeal from an order of Mr. Justice Oak dated 28-11-1957 dismissing a petition under Article 226 of the Constitution. The facts relevant for purposes of this appeal are these. On 25-9-1938, the appellant entered into the service of the Rohilkhand and Kumaun Railway as goods clerk and in February 1940 he was confirmed in his appointment in 1942, the Government of India decided to take over the management of the Rohilkhand Kumaun Railway (and also that of the B.N.W. Railway) with effect from 1-1-1943, and in October 1942 it made an offer of employment to the non-gazetted staff (which air eluded the appellant) of the two railways. The appellant accepted the offer, and on and from 1-1-1943, he accordingly became an employee of the Central Government.

2. In the beginning of 1952 the appellant was posted as goods clerk at Izatnagar, and on the 25th of January of that year he was served with a charge sheet alleging misconduct, inefficiency and neglect of duty. On 30-1-1952, the appellant submitted his reply to the charge sheet, and it appears that the railway administration was satisfied with that explanation as no further action was taken against the appellant. In April 1956 the appellant was transferred to Gorakhpur and on 8-5-1956, he received a communication from the General Manager dated 24/26-4-1956, terminating his services. This communication was in the following terms :

"Please take notice that the General Manager. N.E. Railway, Gorakhpur, in exercise of the special powers vested in him has ordered termination of your service in terms of the condition of your service, with immediate effect, with one month's pay in lieu of notice."

Against this order the appellant appealed without success to the Railway Board. Thereafter the appellant sent a number of applications to the General Manager for the reconsideration of his case and on 28-1-1957, he received a second communication from the General Manager informing him that "it is regretted that your services are not required by this administration". The appellant then filed a petition in this Court in which the principal relief sought was the issue of a writ of certiorari quashing the 'orders' of the General Manager dated respectively 24/26-4-1956, and 28-1-1957. That petition was dismissed and the appellant now appeals. The appeal has been very well argued before us but notwithstanding the numerous authorities which have been cited we do not think that it raises questions of any great difficulty.

3. The basic argument of Mr. S.N. Kacker for the appellant is that the appellant was a permanent servant of the railway administration in the sense that he was, subject to his good behavior, entitled to remain in service until the age of 55, and that in such circumstances the termination of his service before he had attained that age necessarily amounted to dismissal or removal and attracted the provisions of Article 311 of the Constitution, Mr. Lakshman Swarup for the respondent administration contends that although the appellant comes within the category of railway employees known as permanent non-gazetted staff, his employment with the railway administration is subject to the provisions of the Railway Establishment Code, and that his services have been lawfully terminated in accordance with the provisions of that Code. The first matter to be decided is, therefore, the terms of the appellant's employment. His learned counsel concedes that the appellant's right to continue in service until he attains the age of 55 is a right which could have been circumscribed by agreement between the appellant and the railway administration, or by a rule which is binding on the appellant. He contends, however, that the appellant entered into no formal agreement with the railway administration and that he is not subject to the rules to be found in the Railway Establishment Code.

4. Now the offer of employment which was made to the appellant by the Government of India in October 1952 is in the following terms :

"Under instructions contained in their letter No. E41 TR46(2), dated 18-9-1942, I. on behalf of the Government of India, Railway Department (Railway Board) offer you employment under the Government of India, with effect from 1-1-1943, on the terms and conditions specified on reverse. Will you please let me know in the sub-joined form within 30 days from the date of this letter whether you accept the offer. If you accept this offer, you will subsequently be required to execute a formal Service Agreement.

2. In this connection please note the following :

1. It must be understood that, as a State Railway servant, you will be required to retire at the age of 55 unless granted an extension of service.

3.....

4. Persons appointed on or after 1-1-1943 will be governed by the State Railway rules in all matters, and they will be entitled to any new scales of pay which may be fixed by

Government. If the revised scales of pay involve an improvement over existing ones, they will be extended to the staff now being taken over from the Company."

Then follow the terms offered to the non-gazetted staff of the two railways, the first of which, relating to pay and allowances, reads thus :

"(1) Pay and Allowance. - On the existing Company scales and under the existing rules and conditions of service of the Company subject to what is stated in para. 4 ante.-....."

None of the terms relates to the termination of the employee's services.

5. It is common ground that the appellant never executed a service agreement. But there is no doubt that he did accept the offer of employment to which we have referred. Paragraph 4 of this offer states specifically that persons appointed on or after 1-1-1943, will be governed in all matters by the State Railway Rules which, it is not in dispute, mean the rules to be found in the Indian Railway establishment Code. Learned counsel for the appellant contends, however, that Clause 4 of the offer refers only to persons who were not employees of either the Bengal and North Western Railway or the Rohilkhand and Kumaun Railway, and that this paragraph does not, therefore, apply to the appellant. We think there is no force in this argument. The offer of employment is addressed exclusively to the employees of the two railways, and we can entertain no doubt that paragraph 4 of the offer is a condition subject to which the offer is made. We are accordingly of opinion that in accepting the Government of India's offer of employment the appellant agreed to be bound by the provisions of the Railway Establishment Code. The terms specified on the reverse of the offer are obviously not exhaustive. They were, we consider, provisions intended to bridge over such differences as there were between the conditions of service of the two railway companies and the State Railway rules to which the former employees of those companies would now become subject.

6. Now R. 148 of the Railway Establishment Code provides that the services of a permanent non-gazetted employee shall be liable to termination on one month's notice on either side or by the Railway Administration paying the employee one month's pay; and it is under this rule that the railway administration acted in determining the appellant's services. It was suggested in argument that this rule is invalid as it abridged the appellant's, right to remain in the railway administration's service until he attained the age of superannuation. This argument in our opinion has no force. A civil servant does not hold office during good behavior; but during the pleasure of the President or of the Governor according as to whether he holds a civil post under the Union or under a State, and there is nothing to prevent the President or the Governor as the case may be regulating the conditions of service of persons appointed to such posts subject to the provisions of Article 311(2).

7. The form of service agreement which ought to have been executed by the appellant and the railway administration contains a provision for the termination of the employee's services in the same terms as are set out in R. 148, and had such agreement been executed there can be no doubt

that the determination of the appellant's services in accordance with its terms would have been valid: *Gopal Krishna Potnay v. Union of India*¹, The fact that no such agreement was executed is immaterial for as pointed out by the Supreme Court in *Hartwell Prescott Singh v. U.P. Government*², Althere is no clear distinction between the termination of the

¹ AIR 1954 SC 632

² R 1957 SC 886

services of a person under the terms of a contract governing him and the termination of his services in accordance with the terms of his conditions of service. The appellant's services were so determined and in our opinion the learned Judge rightly dismissed the petition.

8. This appeal fails and is dismissed with costs.

Appeal dismissed.