

PUNJAB AND HARYANA HIGH COURT

Mohan Singh Chaudhari

Vs

Divisional Personnel Officer Northern Railway

(Bishan Narain, J.)

17.05.1957

JUDGEMENT

Bishan Narain, J.

(1.) MOHAN Singh was a temporary clerk in the employment of the Northern Railway, and by order dated 30-5-1956 of the Divisional Personnel Officer, Northern railway, Ferozepore Cantonment, he has been dismissed. His appeal has also been dismissed by the Divisional Superintendent, Ferozepore Cantonment. He has filed the present petition under Article 226 of the Constitution challenging the validity of the order of dismissal passed against him.

(2.) THE facts leading to the dismissal of the petitioner may be briefly stated. Mohan Singh was appointed on 3-6-1944 as a temporary clerk. After partition he joined the office of the Divisional Superintendent (Eastern Punjab Railway) Ferozepore on 1-9-1947. On 17-3-1949 a charge-sheet was served on him and after enquiry he was dismissed by the Divisional Personnel Officer, Northern Railway, Ferozepore cantonment on 4-5-1949. This led Mohan Singh to file a suit on 3-7-1952 for a declaration that his dismissal from service was illegal and inoperative and that he continued to be a clerk in Commercial Section, Divisional Superintendent's office, ferozepore, despite this order. One of the grounds taken in the suit against the validity of his dismissal was that he had been appointed by the General Manager and could not be dismissed by the Divisional Personnel Officer who is lower in rank than the General Manager. This ground was contested by the Railway authorities. The trial Court, however, found on the evidence produced before it that the plaintiff was appointed by the general Manager. Other objections were also dealt with by the trial Court and the suit was ultimately decreed on 27-2-1953. The Railway authorities filed an appeal, but that appeal was dismissed by the Senior Sub-Judge on 12-10-1953. The senior Sub-Judge also, after going into the evidence, affirmed the finding of the trial Court that Mohan Singh was appointed by the General Manager and it was also pointed out in his judgment that there was no evidence that the General manager had delegated his powers to appoint a clerk under rule 135 (d) of the Indian Railway Establishment Code, Volume J, to any other person. The Railway authorities then reinstated Mohan Singh on 8-7-1954, and about a month later an order was made

for a fresh enquiry against the petitioner's conduct and the petitioner was suspended on 24-2-1956. The Divisional Personnel Officer held an enquiry ex parte into the conduct of Mohan Singli on 3-4-1956 and served a show-cause notice against the proposed dismissal on the petitioner on 4-4-1956. Thereafter on 30-5-1956 the Divisional Personnel Officer removed the petitioner from service. Mohan Singh appealed to the Divisional Superintendent, Ferozepore, mainly on the ground that in view of the finding of the civil Courts he could not be dismissed by the Divisional Personnel Officer. This plea, however, did not prevail and his appeal was dismissed on 19-9-1956. The present petition was filed on 9-11-1957. It appears to me that this petition must be accepted. In the civil suit both the courts came to the conclusion that Mohan Singh had been appointed by the general Manager. If this decision is binding on the parties which obviously is, then admittedly he could not be dismissed by the Divisional Personnel Officer who is lower in rank than the General Manager. Shri Kundan Lal Cosain has strenuously urged before me that the decision of the Civil Courts does not bind this Court when it is exercising jurisdiction under Article 228 of the Constitution. The learned counsel has argued that at the time when the civil suit was pending the Railway records were not available and on account of the absence of the Railway records the civil Courts came to the conclusion that the General Manager had appointed Mohan Singh. According to the learned counsel, now that the record is available should decide this matter on merits after considering the documents produced in these proceedings. I cannot see my way to accede to the request of the learned counsel. It is well recognized and, well established that a decision once rendered by a competent authority on a matter in issue between the parties after a full enquiry should not be permitted to be reargued. This principle is founded on sound public policy and is of universal application: vide *Burn and Co. v. Their Employees, (S)*¹ There is no reason whatsoever for departing from this salutary principle of law the rule of res judicata is intended not only to prevent a new and possibly conflicting decision but also to prevent a new investigation so that a person may not be harassed over and over again to establish the same fact or right. This is exactly what the Railway authorities have done in the present case by ignoring the decision of the Civil Courts and by allowing the Divisional Personnel Officer to hold an enquiry and order the petitioner's dismissal. This attitude towards the decision of the civil Courts by a public authority is improper and must be deprecated. As long as the decision of the civil Courts stands it is binding on the parties till it is set aside in accordance with law. A decision of the civil Courts can be got set aside by processes known to law, but in the present case admittedly no such efforts have been made by the Railway authorities. The excuse taken for this extraordinary attitude is that the Railway authorities have received some documents from Pakistan which were not available to them at that time and that from these documents the contention raised is that it is clear that the petitioner was not appointed by the General Manager but by the Assistant secretary to the General Manager, and therefore the dismissal by the Divisional personnel Officer was correct. Even if this contention be considered to be correct, the Railway authorities should have moved to get the order of the civil Court set aside in accordance with law and should not have taken proceedings on the assumption that the decision of the civil Court is not binding on them. The attitude taken savours almost affront to civil Courts. I have no hesitation in holding that it is not open to the Railway

authorities, in the face of the decision of the civil Courts that the petitioner was appointed by the general Manager, to argue in these proceedings that the appointing authority was not the General Manager. In this connection it must be remembered that the petitioner has a right to file a suit for a declaration that his dismissal by the divisional Personnel Officer is invalid and that suit must be decreed by the civil court in view of its previous decision even if this petition under Article 226 of the constitution is dismissed. There is, however, no reason why this plea should not be allowed to prevail in these proceedings and the petitioner should be compelled to file a suit. In any opinion the petitioner is within his rights to avail of the remedy which is cheaper and much more expeditious than the remedy of filing a suit in a civil Court. Moreover, rule 135 (d) of the Indian Railway Establishment Code lays down that the appointment to non-gazetted post in the Indian Railways is to be made by the general Manager or lower authority to whom he may delegate the power. In the civil suit the Railway authorities did not produce any evidence showing delegation of power to the Divisional Personnel Officer to appoint clerks. No attempt has been made in these proceedings also to produce any such evidence or even to allege that such a delegation had taken place. It cannot therefore be assumed that the divisional Personnel Officer acted in the exercise of delegated powers in appointing Mohan Singh as a temporary clerk. Shri Kundan Lal Gasain then prayed that the case may be adjourned for producing this evidence. I, however, see no ground for adjourning this case at this late stage: Even on the merits I would not be inclined to accept the letter produced by the railway authorities in proof of the fact that Mohan Singh was appointed by the divisional Personnel Officer. That is a letter dated 31-5-1944 which had been issued by the Assistant Secretary to the General Manager, N. W. R. Lahore, to Mohan Singh. It says that the addressee was offered employment as a temporary clerk and he was called upon to attend the office on or before the 30th of June 1944 if the offer is acceptable to him. The letter further goes on to say that on appointment he will be required to sign an agreement of temporary service. This letter therefore cannot be said to be a letter of appointment. In any case this is not a letter by the Divisional Personnel Officer as such but by the Assistant Secretary to the General Manager. If the letter of appointment had been produced and if that had been signed by the Divisional Personnel Officer, then some argument may have been built up on the basis of that letter of appointment that it was not an appointment by the General Manager. There is no such evidence on this record. For all these reasons I hold that Mohan Singh, the petitioner, was appointed by the General Manager N. W. R. , as temporary clerk. He has been dismissed by the divisional Personnel Officer who is admittedly subordinate to the General Manager. Article 311 (1) of the Constitution lays down that no person who is employed in civil Service of the Union shall be dismissed or removed by an authority subordinate to that by which he was appointed. That being so, the dismissal of Mohan Singh by the Divisional Personnel Officer contravenes the provisions of article 311 (1) of the Constitution and is therefore invalid.

(3.) THE result is that this petition succeeds. Accordingly I hold that the dismissal of Mohan Singh on 30-5-1936 was illegal and of no effect and he shall be deemed to continue in service. The petitioner is entitled to have his costs from the respondents. Counsel's fee Rs. 100. ;

Cases Referred.

1AIR 1957 SC 38 (A)