

Union Of India vs Sayed Muzaffar Mir on 20 September, 1994

Equivalent citations: 1995 AIR 176, 1995 SCC SUPL. (1) 76, AIR 1995 SUPREME COURT 176, 1994 AIR SCW 4228, (1995) 1 LAB LN 1, (1995) 1 IJR 158 (SC), (1994) 5 SERVLR 567, 1995 SCC (SUPP) 1 76, (1995) 1 LABLJ 157, 1995 SCC (L&S) 256, (1995) 1 SERVLJ 121, (1994) 28 ATC 754, (1995) 1 CURLR 118, (1994) 69 FACLR 1090, (1995) 1 SCT 497, (1995) SC CR R 430, (1994) 6 JT 288 (SC)

Author: B.L Hansaria

Bench: B.L Hansaria, Kuldeep Singh

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
SAYED MUZAFFAR MIR

DATE OF JUDGMENT 20/09/1994

BENCH:
HANSARIA B.L. (J)
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HANSARIA B.L. (J)
KULDIP SINGH (J)

CITATION:
1995 AIR 176 1995 SCC Supl. (1) 76
JT 1994 (6) 288 1994 SCALE (4) 258

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by B.L. HANSARIA, J.- The Central Administrative Tribunal, New Bombay Bench, was approached by the respondent seeking two declarations in the main that he voluntarily retired from service with effect from 22-10-1985 and that all proceedings

against him pending as on that date were of no consequence. The Tribunal after having applied mind to the charges, which on inquiry were found established, came to the conclusion that the respondent had been rightly found guilty of the charges, but it set aside the order of removal passed by the appellate authority, who on appeal being preferred by the respondent had awarded this punishment instead of dismissal, which was the punishment inflicted by the disciplinary authority. This order of the Tribunal has been assailed in this appeal.

2. The Tribunal had taken the aforesaid view because the respondent had by a letter dated 22-7-1985 given a three months' notice to the Railways to retire from service as visualised by Rule 1802(b) of Indian Railways Establishment Code. The period of three months had expired on 21-10-1985 and the order of removal was first passed on 4-11-1985. It was held by the Tribunal that the respondent was entitled under the law to seek premature retirement; and, therefore, the order of removal has to be treated as non est in the eye of law.

3. The learned Additional Solicitor General, Shri Ahmed appearing for the appellants, has contended that the right of premature retirement conferred by the aforesaid provision could be denied to a railway servant in case he be under suspension, as was the respondent at the relevant time. This is what finds place in the proviso to the aforesaid provision. The Additional Solicitor General also + From the Judgment and Order dated 22-8-1991 of the Central Administrative Tribunal, Bombay in O.A. No. 106 of 1987 seeks to place reliance on what has been stated in Rule 1801(d) which starts with non-obstante clause and states that the competent authority may require a railway servant under suspension to continue his service beyond the date of his retirement in which case he shall not be permitted by that authority to retire from service and shall be retained in service till such time as required by that authority. Relying on these provisions the contention advanced is that though the respondent had sought premature retirement by his letter dated 22-7-1985 and though the three months' period had expired on 21-10-1985, the Railways were within the rights not to permit the premature retirement because of the suspension of the respondent at the relevant time, which had come to be ordered in the course of a disciplinary proceeding which was then pending against the respondent.

4. There are two answers to this submission. The first is that both the provisions relied upon by the learned counsel would require, according to us, passing of appropriate order, when the government servant is under suspension (as was the respondent), either of withholding permission to retire or retaining of the incumbent in service. It is an admitted fact that no such order had been passed in the present case. So, despite the right given to the appropriate/competent authority in this regard, the same is of no avail in the present case as the right had not come to be exercised. We do not know the reason(s) thereof. May be, for some reason the authority concerned thought that it would be better to see off the respondent by allowing him to retire.

5. The second aspect of the matter is that it has been held by a three-Judge Bench of this Court in *Dinesh Chandra Sangma v. State of Assam* 1, which has dealt with a pari materia provision finding place in Rule 56(c) of the Fundamental Rules, that where the government servant seeks premature retirement the same does not require any acceptance and comes into effect on the completion of the notice period. This decision was followed by another three- Judge Bench in *B.J. Shelat v. State of*

Gujarat².

6.The period of notice in the present case having expired on 21-10-1985, and the first order of removal having been passed on 4-11-1985, we hold that the Tribunal had rightly come to the conclusion that the order of removal was non est in the eye of law.

7.For the reasons aforesaid, the appeal is dismissed. We, however, make no order as to costs.

1 (1977) 4 SCC 441 : 1978 SCC (L&S) 7 2 (1978) 2 SCC 202: 1978 SCC (L&S) 208