N.M. Siddique vs Union Of India (Uoi) on 8 December, 1977

Equivalent citations: AIR1978SC386, [1978(36)FLR106], (1978)ILLJ212SC, (1978)2SCC349, 1978(1)SLJ576(SC), 1978(10)UJ40(SC), AIR 1978 SUPREME COURT 386, 1978 2 SCC 349, 1978 LAB. I. C. 968, 1978 ALL. L. J. 29, 1978 (1) SERVLR 279, 1978 (1) SCWR 440, 1978 (10) LAWYER 137, 1978 SERVLJ 576, 1978 S C W R 34, 1978 (1) LABLN 305, 1978 U J (SC) 40, 36 FACLR 106, (1978) 36 FAC LR 106, 1978 (1) LABLJ 212

Author: Y.V. Chandrachud

Bench: V.R. Krishna Iyer, Y.V. Chandrachud

JUDGMENT

Y.V. Chandrachud, J.

1. On August 26, 1938 the appellant was appointed as a clerk by the Divisional Superintendent, East Indian Railway and was confirmed in that post on August 26, 1939. On May 13, 1948 while he was working in the grade of Senior Clerk in the Establishment (personnel) Branch, his name was put on a panel which was prepared for considering promotions to Selection Posts and Grade I Clerks for the Personnel Branch of the Divisional Superintendent's Lucknow. The appellant officiated twice in the Selection Posts of Grade I. On July 13, 1948, he was again put on a panel for being considered for promotion to the post of Grade I Clerk in the same 'group' of the service as controlled by the Headquarters Office.

2. During the course of the Selection proceedings in 1948 a complaint was made against the appellant that he had drawn ration on the ration cards of porters who had already been discharged from service. A preliminary enquiry was held by the Railway Authorities into that complaint as a result of which the appellant was suspended from service. Later, by an order dated October 20, 1948, the Divisional Superintendent removed the appellant from service.

3. On September 5, 1949, the appellant filed Regular Suit No. 748 of 1949 in the Court of the Munsif (South) Lucknow for a declaration that his dismissal from service was wrongful and for arrears of salary. That suit was dismissed on August 20, 1951. An appeal there from was also dismissed by the Civil Judge on May 31, 1952. The appellant then filed a Second Appeal in the High Court which met with the same fate. The learned Single Judge, however, granted leave to the appellant to file a Special Appeal to a Division Bench, in pursuance of which the appellant filed Special Appeal No. 14 of 1954 in the High Court. By judgment dated April 22, 1955, the Division Bench allowed the Special Appeal on the ground that the Divisional Superintendent was not competent to terminate the

appellant's service as that power was vested in the General Manager only. The Division Bench, therefore, remanded the matter to the learned Civil Judge for determination of the amount which was due to the appellant on the basis that he was wrongfully dismissed from service.

4. While the suit was pending in the Trial Court after the order of remand passed by the High Court, the General Manager passed an order on November 2, 1955 dismissing the appellant from service with effect from that date. On May 17, 1956, the learned Civil Judge recorded a finding in the remand proceedings that a sum of Rs. 22,196/8/-was due to the appellant by way of salary. While calculating this amount, the learned Judge held that the appellant would have earned promotions in the interregnum and was, therefore entitled to draw the emoluments attaching to the posts of promotion.

5. The Respondent, Union of India, filed an appeal against the findings of the Trial Court which was treated by the High Court as being in the nature of objections against the findings. By a Judgment dated February 19, 1957, the High Court reduced the decretal amount of Rs. 22,196/8/-to Rs. 15,052/10-rejecting the appellant's claim for Compensatory City Allowance House Rent Allowance and emoluments of the post of promotion.

6. On January 2, 1959, the appellant sent a registered notice to the respondent under Section 80 of the CPC in pursuance of which the present suit was filed on March 16, 1959 in the Court of Civil Judge, Lucknow. The Trial Court passed a decree in favour of the appellant in the sum of Rs. 33,547.50. The learned Judge, however, rejected the appellant's claim for a salary for two months and 13 days from November 3, 1955 to January 15, 1956 as being barred by limitation. The appellant's claim for seniority and promotions was rejected by the learned Judge on the ground that it was barred by res judicata. The claim for interest was also negatived.

7. On October 20, 1965, the appellant fifed first appeal No. 15 of 1965 in the High Court of Allahabad which on April 20, 1967 was remanded by the High Court to the Trial Court for recording its findings on Issues Nos. 11 and 12, By an order dated August 29, 1967, the Trial Court found in favour of the appellant on both the issues. It held on the assumption that the appellant's claim was not barred by res-judicata that he would have been necessarily promoted to the post of Chief Clerk and Superintendent, since his name was on the appropriate panels in Class III Service and that he would have been promoted later to the post of Assistant Personnel Officer in Class II according to the "Next Below Rule'. On receipt of these findings, the High Court by its judgment dated February 19, 1969 allowed the appellant's appeal partly and decreed a further sum of Rs. 8,325.34 in his favour. The High Court also decided the issue of res-judicata in his favour. This appeal is directed against the judgment of the High Court on a certificate granted by it, under Article 133(1)(a) and (h) of the Constitution.

8. Mr. Yogeshwar Prasad who appears on behalf of the appellant had raised several contentions in this appeal which may be set out before dealing specifically with the more important of them. It is contended by the learned Counsel (i) that the High Court is wrong in its assumption that a Committee appointed by the Divisional Superintendent had found the appellant guilty of any charges; (ii) that the appellant was not only put on the panel for promotion but was, in fact,

promoted to the higher grades as is clear from the findings dated May 17, 1956 recorded by the learned Civil Judge, Lucknow (iii) that the High Court committed a further error in basing its judgment on circular No. 975 dated May 16, 1946 which not in force at the relevant time and that another circular which was relied upon by the trial court was actually in force at that time; and (iv) that Rule 148 of the Railway Establishment Code under which the services of the appellant were terminated on both the occasions, first in 1948 again in 1955, having been struck down by this Court. It is not correct to hold that the appellant's termination was set aside for a technical reason.

9. Having given a close consideration to these submissions, we see no ground for interfering with the judgment of the High Court. In the first place, the mere circumstance that the appellant was put on a panel for promotion does not mean that he would have been automatically promoted to the higher post. Being empanelled for promotion confers upon the person concerned the limited right of being considered for promotion, which is another way of saying that persons who are put on the panel framed for promotion to a higher post are at the given moment considered eligible for promotion. Events subsequent to the formation of the panel may render any person, who is included in the panel, unfit for promotion, which is what has happened in the instant case.

10. The High Court was also right in relying upon the circular of May 16, 1946 which is at Ex. 63. It provides that an individual on the selected list who does not obtain Promotion during the year need not be interviewed by the selection Board again and his name would be carried forward to the next year's list, unless something happens during the course of the year which may render him unfit for promotion. It follows from this circular that it would have been open to the railway administration, even if the appellant had remained in service and was not to be dismissed, to report to the Selection Board reasons why the appellant was considered unfit for promotion to the selection post. The other circular on which the trial court relied and which, according to the appellant, is the only circular to apply is, in our opinion, not relevant on this point.

11. There is also no substance in the contention that the appellant was not found guilty of any charges at any time. It is manifest from the record that Committee appointed by the Divisional Superintendent bad found the appellant guilty of the charges leveled against him and that the Divisional Superintendent and, later on, the General Manger accepted the report of the Committee as sufficient for terminating the appellant's services. The technical reason for which the appellant's dismissal was set aside was that the order of dismissal was passed by the Divisional Superintendent and not by the General Manager who alone could pass that order.

12. A grievance was made on behalf of the appellant that the High Court was in error in refusing to award interest to the appellant for a period antecedent to the institution of the suit. As observed by the High Court, the appellant did not by his suit ask for interest for a period prior to the suit and even paragraph 11 of the plaint which bears on that question is at best doubtful on that point. Besides, though the trial Court did not decree interest prior to the suit, the appellant did not claim it in his memorandum of appeal.

13. Council for the appellant attempted to argue that the High Court was in error in holding that the salary between November 3, 1955 and January 15, 1956 was barred by time. It is indisputable that

the proper article of the Limitation Act, 1908 to apply is Article 102. It prescribes a period of three years from the date when the wages accrue due. The suit in the instant case was filed on March 15, 1959 and making allowance for the two months' period of notice under Section 80 of the CPC, only that part of the salary can be decreed which accrued due within three years preceding January 15, 1959. The High Court was, therefore, right that the salary which bad accrued due between November 3, 1955 and January 15, 1956 was barred by time.

14. There is thus so no merit in this appeal and according we dismiss it. There will be no order as to costs.