

The Railway Board And Ors. vs P.R. Subramaniam And Ors. on 29 November, 1977

Equivalent citations: AIR1978SC284, [1978(36)FLR159], 1978LABLC169, (1978)ILLJ208SC, (1978)1SCC158, 1977(9)UJ802(SC), AIR 1978 SUPREME COURT 284, 1978 (1) SCC 158, 1978 LAB. I. C. 169, 1978 (1) SERVLR 276, 1978 (1) LABLN 308, 1978 KER LT 23, 1975 (1) LABLJ 208, 36 FACLR 159, 1977 U J (SC) 802

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Bench: N.L. Untwalia, P.S. Kailasam

JUDGMENT

N.L. Untwalia, J.

1. This is an appeal by special leave. The appellants are the Railway Board and some officers of the Southern Railway concerned with the passing of the impugned orders. Respondents 1 to 9 were clerks in the Southern Railway in Grade II. They were all promoted eventually to Accounts Clerks, Grade I. In the seniority list, however, respondents 3 to 9 were shown as senior to respondents 1 and 2. Hence the letter challenged the order Ext. P 4 dated the 6th of March, 1972 by filing a writ petition in the Kerala High Court. The petition was dismissed by a learned single Judge, but their appeal was allowed by the Division Bench. Hence the Railway administration has filed the present appeal. Mr. U.R. Lalit appeared for the appellants and Mr. S. Bala Krishnan contested the appeal on behalf of respondent No. 1. No other respondent appeared.

2. For getting promotion from Grade II to Grade I, the respondents had to pass a departmental examination known as Appendix II A Examination. In Grade II, respondent No. 1 having been appointed earlier was senior to respondents 2 to 9 and respondents 2 was junior to respondent 3, but senior to respondents 4 to 9. Respondents 3 to 5 had passed Appendix II-A examination before the 1st April 1956. Respondent 6 passed it in April 1956. Respondents 2 and 7 to 9 passed the said examination in November, 1956 and respondent 1 passed it lastly in May, 1957.

3. In the Indian Railway Establishment Code, Volume I are the Rules framed by the President of India under Article 309 of the Constitution. Contained in the said Code is the well known Rule 157 which authorises the Railway Board, as permissible under Article 309, to have "full powers to make rules of general application to non gazetted railway servants under their control". The Railway Board have been framing rules in exercise of this power from time to time. No special procedure or method is prescribed for the making of such rules by the Railway Board. But they have been treated

as rules having the force of rules framed under Article 309 pursuant to the delegated power to the Railway Board if they are of general application to non-gazetted railways servants or to a class of them.

4. Eventually all the respondents were confirmed in Grade I with effect from 1st April, 1956 but the difference in their inter-se-seniority was brought about because respondents 3 to 9 were confirmed in permanent post while respondents 1 and 2 were confirmed in supernumerary posts. Respondents 1 & 2 claimed on the basis of Rule 20(b) contained in the Indian Railway Establishment Manual, Volume I that irrespective of the dates of their passing the departmental examination their seniority in Grade II had to be reflected in Grade I when they were confirmed in that Grade from a date with effect from which respondents 3 to 9 had also been confirmed. On the other hand the case of the appellants also some of the containing respondents in the High Court has been that the aforesaid Rule 20(b) contained in the Railway Establishment Manual is of no universal application and was subject to the rules and orders which were issued by the Railway Board from time to time. According to such rules and orders, those who were confirmed in supernumerary posts and later in permanent posts had to rank junior to those who were confirmed earlier in permanent posts. The learned single Judge accepted the stand taken on behalf of the appellants but the Division Bench rejected it.

5. It is not necessary for us to repeat all that has been said in the judgments of the High Court but a brief resume of facts would show that the view taken by the learned single Judge was correct and the Division Bench was not right in taking a contrary view.

6. Ext. Rule 2 was a circular letter of the Railway Board dated the 7th March, 1957 issued to the General Managers of all Indian Railways and other authorities. The subject in this letter was "upgrading of posts" After reviewing their earlier decisions the Railway Board decided to make certain changes in the distribution of posts in the higher grades. As a provisional measure, since the final implementation of the orders was to take time, it was decided as mentioned in paragraph 13 of this circular to upgrade certain posts of clerks of the Accounts Department. Certain temporary posts were, upgraded and thus clerks of Grade II could succeed in getting promotion Grade I. A few days later another circular letter Ext. Rule 3 dated the 13th March 1957 was issued by the Railway Board to the General Managers mentioning therein that the orders contained in the earlier letter had the approval of the President and clarifying certain other matters in relation to the upgrading of the posts. We may now refer to the other circular letter dated 18th March, 1959, Ext. Rule 5 in which it is stated that the senior clerks in Grade II who had qualified to be promoted to Grade I by passing Appendix II A examination later than 1st April, 1956, should be confirmed in Grade I after creating for them supernumerary posts from the said date. The meaning of supernumerary posts as mentioned in the judgments of the High Court is to create shadow posts for giving benefits of pay etc., to the promoted clerks although as a matter of fact permanent posts were not available from that date for confirmation of such senior persons.

7. Then came the office order Ext. P-3 dated the 4th May, 1959 which prima facie showed that the respondents were deemed to have been promoted to officiate as Clerks, Grade I against the upgraded posts, permanent or temporary, as per the decision communicated in the circular dated

the 7th March, 1957. Respondents 1 and 2 were included in the list of such promoted clerks. But a difficulty arose as to their confirmation in permanent posts as no such posts were available for them from 1st April 1956. The decision of the Railway Board was communicated in their letter Ext. Rule 6 dated the 25th November, 1959 according to which they were to be confirmed after creation of supernumerary posts in lieu of the then existing temporary posts which were to be set off against permanent vacancies arising subsequently. The fact that the respondents 1 and 2 were confirmed against such supernumerary posts is not in dispute. This is also clear from the office order dated the 5th May, 1960 Ext. Rule 8. Then came the decision of the Railway Board contained in Ext. Rule 9, their letter dated the 2nd March, 1962 This letter embodies rules of general application to a particular class of non gazetted railway servants. It has been rightly contended on behalf of the appellants that they had the force of a rule made under Rule 157. After tracing the past history it was stated in this letter:

The aforesaid concessions given to senior staff who had qualified in later examination did not, however, mean that the relevant seniority, in the list of Clerks Gr. II, would regulate the seniority as clerks Gr. I of all those confirmed as Clerks Gr. I (including those confirmed against supernumerary posts) namely, those who qualified for promotion to that grade by passing the App. II-A Examination prior to 1 4 56 and who were available for such promotion on 1 4 56, and those who qualified subsequently by passing the examination between April 56 and Dec. 57. Thus though some staff who were not eligible for promotion and confirmation were "deemed" to have been promoted as Clerks Gr. I w.e.f. 1 4 56 and confirmed even by creating supernumerary posts, seniority as Clerks Gr. I is to be fixed according to the principle that the persons who qualified prior to 1 4 56 and were available on 1 4 56 were to be considered first and other senior clerks qualifying upto 31 12 57 were to be considered as and when they qualified. This is in accordance with THE FUNDAMENTAL PRINCIPLE THAT A VACANCY, OFFICIATING OR PERMANENT CAN ONLY BE FILLED BY THE SENIOR MOST PERSON ACTUALLY QUALIFIED AT THE TIME THE VACANCY OCCURS.

8. The competition is between Rule 20(b) referred to above and the rule contained in Ext. Rule 9, which of the two will prevail ? Rule 20(b) reads as follows:

The seniority of Accounts Clerk, Grade I and Stock Verifiers is to be determined with reference to their substantive or basic seniority in Grade II irrespective of the date they qualify for promotion as Clerks Grade I by passing the examination prescribed for the purpose.

9. The Prefatory Note of the Indian Railway Establishment Manual which contains the above rule says : "It must be noted that the provisions of this Manual do not supersede the rules contained in any of the Indian Railway Codes and in case of conflict the latter should prevail. This Manual may not be referred to as the final authority and a reference should always be made to the original orders on the subject." It would thus be seen that those who were confirmed in Grade I against permanent posts in accordance with the decision contained in Ext. Rule 9 must rank senior to those who were

absorbed against permanent posts later although they were confirmed in Grade I w. e. f. the 1st April, 1956. There was nothing wrong in it. It is undisputed that respondents 3 to 9 had been confirmed due to one reason or the other against permanent posts earlier than respondents 1 and 2. In our judgment, the decision contained in Ext. Rule 9 which had the force of a rule made under Rule 157 did override Rule 20(b) contained in the Manual Respondents 1 and 2, therefore, were not entitled to get any relief for the quashing of the impugned order Ext. P-4 dated the 6th March, 1972. Their writ petition was rightly dismissed by the single Judge and wrongly allowed by the Division Bench.

10. For the reasons stated above, we allow the this appeal, set aside the order of the Division Bench and restore that of the single Judge. We shall make no order as to costs.