M.M. Siddique vs Union Of India (Uoi) (Railway Dept.) ... on 22 April, 1955

Equivalent citations: AIR1955ALL568, AIR 1955 ALLAHABAD 568, 1956 1 LABLJ 7

JUDGMENT

Mootham, C.J.

1. This is an appeal from a judgment and decree of a learned Judge of this Court dated 6-12-1954.

2. The appellant was a clerk in the East Indian Railway employed in the office of the Divisional Superintendent, Lucknow. In March 1948 complaint was made against him that he had committed certain rationing offences; an enquiry was held by the railway authorities as a result of which the appellant was suspended and charges were framed against him. That was in September 1948. The appellant submitted an explanation, but the Divisional Superintendent found the charges to be proved and by an order dated 20-10-1948, he directed that the appellant be removed from service.

3-4. On 22-10-1948, the appellant was accordingly served with a notice in the following term:

> "REMOVAL NOTICE As your services are no longer required by the the Administration, you are hereby removed from service by my order in terms of your agreement and condition of service, and you are hereby given one month's pay in lieu of notice with effect from 25-10-1948 AN as provided for therein. Your services will accordingly terminate on 25-10-1948 A. N....."

This notice was signed by the Divisional Superintendent, Lucknow. The appellant appealed against this order to the Chief Operating Superintendent, but without success. On 5-9-1949, he filed a suit for a declaration that the order was void and that he was still in the service of the railway administration; he also sought a decree for Rs. 1,395-7- as salary due to him. On 20-S-1951, the suit was dismissed and on 31-5-1952, an appeal therefrom was dismissed by the learned Civil Judge at Malihabad. A second appeal to this Court was no more successful but the learned Judge granted special leave to appeal to a Bench.

5. The appellant's principal contention is that the notice of 22-10-1948, purporting to terminate his contract of service, was not signed by a competent authority and was therefore of no effect in law. He further contends that even if the notice terminating his services was duly signed the provisions of Section 243, Government of India Act, 1935, were not complied with, and that therefore in either case his contract of service still subsists.

6. The appellant entered into the service of the East Indian Railway on 14-8-1940, upon which date he executed an agreement with the Governor-General in Council (acting by and through the East Indian Railway Administration), paras 1 and 3 of which read as follows:

> "1. In this Agreement and for the purposes of every clause, part and provision thereof, the expression--
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> (a) "Railway servant" means the said Mohd. Mukhtar Siddique,
>
> (b) "Administration" means the Governor-General-in-Council, acting by and through the General Manager or other proper officer of the East Indian Railway.
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> (3) The railway Servant shall be subject to the following conditions of service, namely, (a) that such service is terminable at any time by either party on one month's notice in writing or by the Administration on one month's pay in lieu of notice, (b) that in no circumstances shall the railway servant be entitled to gratuity or pension, though he will be eligible for a gratuity for good, efficient, faithful and continuous service at the discretion of the Administration and (c) that the Administration has full power and authority at any time, for any reason that it may consider sufficient, to suspend or dismiss or remove him from the service without previous notice or otherwise punish the railway servant according to the rules of the service in which he is for the time being employed."

This agreement was signed for and on behalf of the Governor-General in Council by the then Divisional Superintendent, East Indian Railway, Lucknow.

7. It is important to observe that it is the respondent's case that the appellant's contract of service was terminated under Sub-clause (a) of Clause 3 of the service agreement; it is no part of the respondent's case that the appellant was removed from service under Sub-clause (c) of that clause or pursuant to any provision of the disciplinary rules of the State Railway Establishment Code. The first question which therefore, falls for decision is whether the Divisional Superintendent had authority to terminate the plaintiff's contract on behalf of the Governor-General in Council.

8. It is common ground that the Divisional Superintendent had authority to execute the service agreement on behalf of the Governor-General in Council, but it does not follow from that fact alone that he also had power to terminate it. Learned counsel has not referred us to any rule or other authority which specifically conferred power upon the Divisional Superintendent to terminate that agreement under Sub-clause (a) of Clause 3, but it is argued that that power is to be inferred from an entry in a "Schedule of powers" in a pamphlet issued by the railway administration entitled" "Regulations regarding disciplinary action against non-gazetted staff including removal from service, dismissal and rights of appeal". The notice of 22-10-1948, is headed "Removal Notice"; it uses the phrase "removed from service"; and the argument for the respondent is that this is a phrase which is used by the railway administration to describe the action which it takes when it terminates a contract under Sub-clause (a) of Clause 3, and that because "removal from service" is also a

penalty under Rule 1708, State Railway Establishment Code the power to terminate a contract under that sub-clause can be exercised on behalf of the Governor General by the officer who is empowered to impose the penalty of removal from service under Rule 1708.

It is common ground that under the 'Schedule of powers' a Divisional Superintendent has power to remove the petitioner from service; but it is in our opinion quite clear from this 'Schedule' that the power of removal which is there referred to is a punishment for an offence, and has nothing whatever to do with that form of removal from service which consists in the termination of an employee's contract of service under Sub-clause (a) of Clause 3.

9. "Removal from service" is in fact a phrase used by the Railway Administration in two senses ---as a penalty, and as descriptive of the termination of a railway servant's contract by notice or by one month's pay in lieu of notice. The two uses of the phrase are quite different and it does not follow that because a particular officer has authority to impose the penalty that he can terminate the contract. Power to impose the penalty denends on the rules contained in the Railway Establishment Code; power to terminate the contract depends upon the possession of authority to act in that respect on behalf of the Governor-General in Council.

10. We think that a perusal of the relevant rules of the Railway Establishment Code shows clearly that the phrase 'removal from service' as therein used means, and means only, removal from service as a punishment. Rule 1702 enumerates the penalties which may be imposed on a railway servant; of these penalties No. (8) is removal from service. Rule 1706 then specifies the circumstances in which a railway servant may be dismissed and Rule 1707 the procedure which has to be followed when a railway servant is charged with an offence the maximum penalty for which is dismissal, Rule 1708 enumerates the offences for which a railway servant may be removed from service, and Rule 1709 then lays down the procedure which must be followed when a railway servant is charged with an offence meriting removal from service under Rule 1708. .In the case of a railway servant such as the appellant who has completed seven years' continuous service, the procedure outlined in Rule 1707 has to be followed, provided that the officer competent to pass the order of discharge may dispense with the departmental enquiry and make an enquiry in any manner which he deems proper, recording his considered opinion before passing an order of discharge.

11. Rule 1708 contains a proviso; it is in these terms: "Provided that nothing in these rules shall abrogate the right of a General Manager, in exceptional circumstances, to remove a non-pensionable non-gazetted railway servant from service in terms of his agreement without application of the procedure described in the rules in this section and without assigning any reasons if he considers it desirable to do so. This power shall not be delegated to an authority lower than a Head of a Department."

The removal of a railway servant from service, in terms of his agreement presumably means the termination of his contract of service under Sub-clause (a) of Clause (3) thereof, and it would appear therefore from this proviso that that power can be exercised only by a General Manager or by an authority not lower than the head of a department to whom he has delegated his power. It is not in dispute that a Divisional Superintendent is not the Head of a Department.

12. In the circumstances the respondent has failed to satisfy us that the appellant's contract of service was terminated by a valid notice. We are accordingly obliged to hold that the contract of service remains in force and that the appellant is entitled to a declaration that he is still in the service of the railway administration.

13. The case must now be remanded to the court of the learned Civil Judge for determination of the question of the amount of salary to which the appellant is entitled. The appellant is entitled to his costs in all courts, of appeal; the costs in the trial court will depend on the result of the issue now remanded.