

(1958) 05 MAD CK 0012
In the Madras High Court
Case No : Writ Appeal No. 114 of 1957

A. Sambandhan

APPELLANT

Vs

Regional Traffic Superintendent Southern Rly. Tiruchirapalli
and Others

RESPONDENT

Date of Decision : 02-05-1958

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)

Citation : AIR 1959 Mad 68 : (1959) 2 LLJ 613 : (1958) 71 LW 750

Hon'ble Judges : P.V. Rajamannar, C.J.; Ramachandra Iyer, J

Bench : Division Bench

Advocate : M.K. Nambiar and K.K. Venugopal, for the Appellant; K. Rajah Aiyar, for C. Govindaraja Aiyangar and K. Bhashyam, for T. Ramalingan, for the Respondent

Final Decision : Dismissed

Judgement

P.V. Rajamannar, C.J.—This is an appeal against the judgment of Rajagopalan J., in W. P. No. 255 of 1956 filed under Article 226 of the

Constitution by the appellant before us. The facts which led up to the filing of the writ petition are as follows: The appellant is an Assistant Station

Master employed in the Southern Railways and after nationalisation of the railways, all the railway servants must be deemed to have become civil

servants of the Government of India. Upto 1947 almost all the railway employees were working for 12 hours a day without a weekly holiday. In

that year an award was passed by the adjudicator which laid down that there should be work only for eight hours and that there should be a

weekly day of rest.

As a result of this award about 1000 new hands in the Station masters' cadre had to be employed. To meet this immediate demand 316 persons

were directly recruited as probationary station masters. The appellant was one of them and he was appointed as probationary, station master and

signaller trainee on 2-11-1948. He was to undergo training for six months and to be posted to a working post after passing an examination; the

post was to be temporary for two years and the first year of this was to be on probation. After he received the training the appellant was posted on

25-8-1949 as Relieving Station master. Erode, on the grade of Rs. 64-4-170.

He was confirmed as Assistant Station master with effect from 2-11-1949. On 25-4-1952 the Regional Traffic Superintendent (Personnel)

Tiruchirapalli issued an order directing that all directly recruited stationmasters should be placed junior to the clerical staff who had passed their

station-masters" examination prior to 31-3-1951. As a result of this order he was reverted from the post of Relieving station-master to that of a

clerk in charge on 9-5-1952. Consequent on this his scale of pay was reduced from Rs. 64-4-170 to Rs. 60-4-150. Before reversion the

appellant drew a salary of Rs. 72 a month and after reversion he could draw only Rs. 68.

There were appeals by the appellant and others similarly situated against the above order of April 1952. The appeals did not give the appellant and

others any relief. Subsequently, however, an order was passed by the Chief Operating Superintendent, H. P. B/O. P. /1/2 on 12-2-1953 directing

that the designation of the reverted persons including the appellant should be retained as Assistant Station-masters and that their pay should be

fixed in the scale of Rs. 64-4-170 but it was made clear that the seniority granted to the promoted clerks overriding the ranks of directly recruited

Assistant station-masters would continue.

As a result of the impugned order of 25th April 1952 it was alleged by the appellant that about 800 clerks who were till then junior to the appellant

and others but who had passed the station-masters" examination before 31-3-1951 were placed above the appellant and others like him in the

seniority list. There were attempts by the appellant and others to obtain redress from the Government but their attempts were not successful. The

appellant attacked the above order of the Government dated 25-4-1952 as being a contravention of the relevant rules which resulted in the

reduction of the rank which could be meted out only by way of punishment and

that the statutory rules did not authorise any reduction in rank

except as and by way of punishment. The appellant, therefore, prayed for a writ of certiorari or an appropriate order quashing the said order of the

Government in so far as it involved the reduction in rank of the appellant and others in the same position.

2. Before Rajagopalan J., who heard the petition it was contended on behalf of the appellant that the order above mentioned dated 25-4-1953

was in contravention of the rules governing fixation of seniority and was, therefore, invalid. The conditions of service of the railway employees like

the appellant are admittedly contained in the Indian Railway Establishment Code, which consists in the main of all the rules made in exercise of the

power of the Governor General in Council under Sub-section (2) of Section 241 of the Government of India Act, 1935. It is common ground that

these statutory rules continue to be in force even after the commencement of the Constitution by virtue of Article 313 of the Constitution.

Rule 156 of these rules provides that the railway board have full powers to make rules of general application to non-gazetted railway servants

under their control. Similar rule-making power is conferred on the General Manager of Indian Railways under Rule 157 which runs thus:

The General Managers of Indian Railway have full powers to make rules with regard to non-gazetted railway servants under their control

provided they are not inconsistent with any rules made by the President or the Railway Board.

Appendix II-A contains rules governing the promotion of the subordinate staff. Rule 10 specially deals with seniority. It is as follows:

(1) The seniority of subordinate staff shall be determined in accordance with the rules prescribed by the General Manager or the Chief Mining

Engineer.

(2) Seniority lists of the staff shall be made in accordance with the instructions issued under (1) above;

(3) Staff may be permitted to see these seniority lists in which their names are placed, or if this cannot conveniently be arranged, they may be in

formed on request of their place in the seniority list.

3. It is evidently in exercise of these powers that the General Manager, Southern Railways issued the circular No. 343 dated 11-8-1949. The

circular dealt with promotion of Class III staff. Rule 2 (a) (i) provides that seniority shall be based on the date of confirmation in grade. We are not

concerned with the other rules. Rule 9 says that these instructions contained in the circular supersede a prior circular issued by the General

Manager.

4. Rule 10 (a) says that the new procedure will come into force with effect from 10-8-1949 but promotions made or ordered prior to 16-8-1949

in accordance with the approved procedure in force from time to time shall not be reopened. The appellant relied on these rules or instructions and

contended that his seniority should be based on the date of his confirmation as Assistant Stationmaster, namely, 2-11-1949. This contention found

favour with the learned Judge. He held that the regulation of seniority by the impugned order dated 25-4-1952 contravened Rule 2 embodied in

the circular, 343 dated 11-8-1949 and that was the only rule which regulated seniority of non-gazetted railway servants.

It was pressed upon him by the learned counsel for the third respondent who represented the Clerk Promoted Station Masters' Association,

Southern Railway, that the instructions contained in the order dated 25-4-1952 should be regarded as rules issued by the General Manager,

Southern Railways in exercise of the rule making power conferred on him by Rule 157 of the Railway Establishment Code read with Rule 10 of the

rules in Appendix II-A but the learned Judge did not agree with him on the ground that the General Manager never purported to issue that order as

containing a fresh set of rules applicable only to the class of Assistant Station masters among the non-gazetted staff of the railways. The objection

raised to the order, namely, that it was not issued by the General Manager but by the Commercial Operating Superintendent did not appeal to him

as it was obvious that the order was one authorised by the General Manager. But the learned Judge was of the opinion that the rule-making power

vested in the General Manager had not been invoked or exercised.

5. The learned Judge, however, held that he relief could be given to the appellant because the appellant had no justiciable right which could be

enforced by this court under Article 226 of the Constitution. He followed the decision of Rajagopala Aiyangar J., in W. P. No. 487 of 1956 which

was the subject-matter of N. Devasahayam Vs. The State of Madras and

Others, , and in which we have delivered judgment today. The learned Judge was, therefore, compelled to dismiss the writ petition. Hence this appeal.

6. Mr. M.K. Nambiar, learned counsel for the appellant, relying on the finding in his favour that the impugned order of 25-4-1952 contravened

Rule 2 of the Circular 343 issued by the General Manager, Southern Railways, on 11-8-1949, contended that under the Constitution he had a

legal right to a particular seniority under the Rules which it was the duty of the court to protect that the rules framed deemed to be made under

Article 309 have statutory force and are legally binding on the Government and any order of the Government made in contravention of any such

rules can be set aside by this court under Article 226.

In any event he contended that this court would have ample jurisdiction to issue an appropriate writ against the public authority which has actually

violated the rule. Mr. K. Bhashyam Aiyangar for the contesting respondents maintained the correctness of the view taken by Rajagopalan J., on

the point of law but attacked the finding of the learned Judge on the facts. He contended that the subsequent instructions contained in the order of

26-4-1952 superseded the circular issued in 1949 in so far as fixation of seniority as between station masters promoted from the ranks of clerks

and those directly recruited as Probationary Station masters was concerned.

7. On the facts we are inclined to agree with Mr. Bhashyam Aiyangar. We think that Rajagopalan J., took a very restricted view of the matter in

completely ignoring the instructions contained in the impugned order of 25-4-1952. We do not think that a substantial distinction can be made

between rules and instructions. Rule 10 of Appendix 11-A consists of 3 clauses. In the first clause the expression used is ""rules prescribed by the

General Manager.

In the second clause these very rules are referred to as ""instructions issued under (1) above."" It is obvious from this that no distinction was made

between the two words ""rules"" and ""instructions"". In the very circular 343 dated 11-8-1949 which contains rules governing promotion of class III

staff paragraph 9 refers to the ""rules"" as instructions. This is not surprising having regard to the way in which both the terms are used

indiscriminately, even in Rule 10 of Appendix II-A.

The covering letter sent along with the impugned order refers to it as ""copy of instructions."" It is clear from the correspondence which passed

between the authorities and the promoted station masters that the question of seniority as between station masters promoted from the lower ranks

and the direct recruits had not been finally settled. It was only settled when instructions contained in the order of 25-4-1952 were issued. It was

brought to our notice that since the order now under appeal, a formal rule has been made by the General Manager purporting to be in the exercise

of the powers vested in him under Rule 157 and Rule 10 of Appendix II-A of the Railway Establishment Code in the following terms:

Notwithstanding the provisions of para 2 (a) of Circular No. 343 where confirmations or promotions of any employee or groups of or categories

of employees in the recognised channels of promotions have been delayed or put off due to administrative reasons, thereby affecting their seniority,

the inter-seniority of such employees or groups of or categories of employees so affected vis-a-vis others may be fixed in accordance with such

instructions as may be issued from time to time.

We are not relying upon this new rule made since the filing of the writ petition but we have alluded to it to show that the objection raised on behalf

of the appellant is insubstantial.

8. We are, however, in complete agreement with the learned Judge on the question of law. Mr. M.K. Nambiar confessed that the only provision in

the Constitution on which he could rely in support of his contention that the right to a particular seniority is a legally protected right is Article 311(2)

because that provision refers to ""reduction in rank."" We are unable to follow his argument, still less to accept it. Article 311(2) provides that before

punishments are inflicted on a Government servant certain procedure should be followed. One of such punishments is no doubt, "reduction in

rank". But we fail to see how a mere mention of a particular punishment in Article 311(2) can vest a legal right in a civil servant to a particular rank.

He relied on the following passages from the judgment of His Lordship the Chief Justice in Parshotam Lal Dhingra Vs. Union of India (UOI), .

The position may, therefore, be summarised as follows : In the absence of any special contract the substantive appointment to a permanent post

gives the servant so appointed a right to hold the post until under the rules he

attains the age of superannuation or is compulsorily retired after having put in the prescribed number of years of service or the post is abolished and his service cannot be terminated except by way of punishment for misconduct, negligence, inefficiency or any other disqualification found against him on proper inquiry after due notice to him.

It has already been said that where a person is appointed substantially to a permanent post in Government service he normally acquires a right to hold the post until under the rules he attains the age of superannuation or is compulsorily retired and in the absence of a contract, express or implied, or a service rule, he cannot be turned out of his post unless the post itself is abolished or unless he is guilty of misconduct, negligence, inefficiency or other disqualifications and appropriate proceedings are taken under the service rules read with Article 311(2).

9. We do not understand the learned Chief Justice to say that the right which a civil servant has is a justiciable right. We need only refer to the following observations in the dissenting judgment of Bose J. in the very case and it must not be overlooked that Bose J, did not differ from the learned Chief Justice on the main point but was willing to go further than the learned Chief Justice in favour of the Government servant.

I have used the word "right" but must hasten to explain that I use it in a special sense. The "right" need not necessarily be justiciable nor need it necessarily amount to a contract but broadly speaking it must be the sort of "right" which even when not enforceable in the courts would form a good foundation for a "petition of right" in England.

It is as difficult to speak of rights (except those expressly conferred by the Constitution) when one holds at "pleasure" as to speak of contracts. But they are convenient expressions to convey a particular thought provided the limitations imposed by the context are not forgotten." Now these "conditions of service" (and of course special contracts" as well) confer "rights" and though the conditions can be varied unilaterally because of the "pleasure" they cannot be ignored so long as they are in force; and if a dismissal or removal or reduction in rank infringes one of these "rights", then in my judgment Article 311 is attracted.

10. So far as we are aware the Supreme Court at no time has dissented from the ratio decidendi in the two well-known cases decided by the Privy

Council in AIR 1937 31 (Privy Council) and AIR 1937 27 (Privy Council) .

11. Mr. M.K. Nambiar evidently relying on Dhingra's case raised before us a contention which admittedly was not raised before Rajagopalan J.

that there was a contravention of Article 311(2) of the Constitution because there had been a reduction in rank of the appellant. Even, if there was

a reduction it is obvious that it was not as and by way of punishment. Indeed there is no order expressly reducing the rank of the appellant

personally. We have discussed this point at length in our judgment in N. Devasahayam Vs. The State of Madras and Others, . We see no

substance in this contention.

Mr. Bhashyam Aiyangar contended that the Appellant was estopped from putting forward any claim to seniority on the basis of his date of

confirmation. The estoppel is sought to be spelt out from a letter from the appellant and others similarly placed dated 13-5-1952 where they

expressed their readiness to forgo if necessary, their seniority. This statement by itself cannot sustain a plea of estoppel as it is not alleged that on

the faith of this statement anyone suffered any change to his detriment.

12. Mr. Bhashyam Aiyangar also urged that the order of 1952 need not be quashed by us in the exercise of our discretion under Article 226 of the

Constitution because under that order justice has been done. We think that if is a very slippery ground to rest our decision on. Rules of seniority,

no doubt, are based on certain equitable principles but they also depend upon certain principles of administrative practice which may in certain

cases lead to hardship. We do not think that we can decide the case against the appellant on this ground.

13. As we have held, even assuming that the seniority of the appellant has been adversely affected by an order of the General Manager passed in

contravention of a rule made by him, the appellant has no justiciable right which can be enforced by this Court by the issue of a writ or other

appropriate order, this appeal fails and is dismissed.