
(1976) 03 AHC CK 0058

In the Allahabad High Court

Case No : S.A. No. 2632 of 1971 in C.A. No. 114 of 1969

Abdul Hakeem

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 25-03-1976

Acts Referred:

Central Civil Services (Temporary Service) Rules, 1965 — Rule 5
Constitution of India, 1950 — Article 309
Railway Establishment Code — Rule 149

Citation : (1976) AWC 462

Hon'ble Judges : K.B. Asthana, C.J.; J.M.L. Sinha, J

Bench : Division Bench

Advocate : Pramod Dutt Kaushik and B.P. Srivastava, for the Appellant; Man Mohan Srivastava, for the Respondent

Final Decision : Allowed

Judgement

K.B. Asthana, C.J. and J.M.L. Sinha, J.—The Plaintiff Appellant was, at the relevant time, serving as a Booking Clerk in the North Eastern Railway in a temporary capacity. A notice dated 18th August 1965, signed by the District Commercial Superintendent, Izatnagar was served upon him terminating his service with effect from 21st of August 1965 as being no longer required. The notice intimated that the Plaintiff Appellant would be given 14 days pay in lieu of notice. A true copy of the notice is on record. For convenience of reference it may be reproduced:

North Eastern Railway Office Order

Services of Shri Abdul Hakim, Temporary Booking Clerk, PBE are terminated w.e.f. 21-8-1965 as they are no longer required. He will be given 14 days pay in lieu of notice.

Sd. Distt. Commercial Supdt, Izatnagar.

2. The Plaintiff Appellant, in accordance with the rules and procedures applicable

to his service, went up in appeal and made representation but to no effect. A suit was then filed by him in the court of Munsif Gorakhpur for declaration and recovery of arrears of pay. The cause of action pleaded, inter alia, was that the notice of his termination of service was bad and invalid as it did not conform with the provisions of Rule 149 of the Railway Establishment Code Volume I. It was pleaded that the Plaintiff's services even as a temporary servant could only be terminated by notice of one month or if the termination was to take effect with immediate effect or before the expiry of one month, then on payment of salary of one month. We need not for the purpose of deciding this appeal refer to other pleadings of the Plaintiff as nothing would turn upon them in this appeal.

3. The defence was that the Union of India through the North Eastern Railway Administration had absolute power to terminate the services of a temporary servant and the notice served upon the Plaintiff was valid and in accordance with the rules which did not lay down any condition precedent of payment of salary of one month before terminating the service. The other usual pleas were also raised in defence which again need not be referred to. Thus the main issue which arose on the pleadings of the parties in the court of first instance related to the validity of the notice of termination. The court of first instance accepted the defence plea and finding no invalidity in the notice of termination dismissed the suit. On appeal by the Plaintiff the lower appellate court affirmed the findings of the court of first instance, dismissed the appeal and confirmed the decree for dismissal of the suit. The Plaintiff then came up to this Court in second appeal.

4. When the appeal was heard by the learned Single Judge of this Court, reliance was placed on behalf of the Plaintiff Appellant on a decision of the Supreme Court in *Senior Superintendent, R.M.S., Cochin and Another Vs. K.V. Gopinath, Sorter*, and it was contended that Rule 149 of the Railway Establishment Code Vol. I, which was the appropriate rule applicable to the Plaintiff, was in pari materia to Rule 5 of Central Civil Services (Temporary Service) Rules, 1965, hence the declaration of law made by the Supreme Court in respect of the latter Rule, would equally apply to the facts and circumstances of the Plaintiff's case. This contention of the Plaintiff Appellant was strenuously contested by the Defendant Respondent. It was submitted on behalf of the Defendant Respondent that Rule 149 of the Railway Establishment Code Vol. I differed materially in its language from Rule 5 of the Central Civil Service (Temporary Service) Rules 1965, and the law declared by the Supreme Court in *Senior Superintendent R.M.S. Cochin v. K.V. Gopinath Sorter (supra)* was not attracted to the instant case. Reliance was placed on a Division Bench decision of this Court in *Director of Technical Education U.P. Kanpur v. John Mohammad* 1975 AWC 11. The learned Single Judge has referred the matter to the Division Bench observing that the declaration of law by the Supreme Court certainly helps the Plaintiff Appellant but the Division Bench decision of this Court militates against it which made it difficult for him to decide the appeal. This is how the second appeal has come before us.

5. We have heard learned Counsel for the parties. We find no difficulty in solving the question that arises before us. In the case of *Technical Education U.P. Kanpur v. John Mohd.* (supra), the Division Bench of this Court was concerned with the Rule applying to termination of services of temporary Government servants made by the State of Uttar Pradesh and published in the Notification dated 30th January, 1953. The material part of that rule is as follows:

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of U.P. is pleased to make the following general rule regulating the termination of services of temporary Government servants:

(1) Notwithstanding anything to the contrary in any existing rules and orders on the subject, the services of a Government servant in temporary service shall be liable to terminate at any time by notice in writing given either by the Government servant to the appointing authority, or by the appointing authority to the Government servant.

(2) The period of such notice shall be one month given either by the appointing authority to the Government servant or by the Government servant to the appointing authority; provided that in the case of notice of the appointing authority the latter may substitute for the whole or part of this period of notice pay in lieu thereof; provided further that it shall be open to the appointing authority to relieve a Government servant without any notice or accept notice for a shorter period without requiring the Government servant to pay any penalty in lieu of notice.

A cursory perusal of this Rule would show that in its intent and scope it does not lay down a rule which makes it a condition precedent for effecting termination to pay an amount equal to one month's salary of a temporary Government Servant. In fact this very rule, as it stood then, was noticed by the Supreme Court in *Senior Superintendent R M.S. Cochin v. K.V. Gopi Nath Sorter* (Supra) and distinguished from Rule 5 of the Central Civil Services (Temporary Service) Rules 1965. We do not think that the Division Bench of this Court in *Technical Education U.P. Kanpur and Anr. v. John Mohammad* (supra), lays down any law contrary to the law declared by the Supreme Court in *Senior Superintendent R.M.S. Cochin and Anr. v. K.V. Gopinath Sorter* (supra).

6. The next question that arises is whether Rule 149 of the Railway Establishment Code, in its wordings and language is in pari materia with Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965.

7. Learned Counsel at the Bar stated before us that they had not been able to find any case of the High Court or the Supreme Court in which the aspect of Rule 149 which is under consideration in the instant case, has been judicially considered or noticed. Rule 149 as it stood at the relevant time in 1965, reproduced in Ex. 26 on record, reads as follows:

The service of a temporary non-gazetted Railway servant who has completed three years" continuous service shall be liable to termination on notice of one month as in the case of permanent non-gazetted Railway servant instead of 14 days as at present. It shall, however, be permissible on the part of the Railway Administration to terminate the service of the Railway servant by paying him the pay for one month.

8. It is not disputed before us that the Plaintiff Appellant had completed three years continuous service. The rule envisages that his services either could be terminated by one month's clear notice or by paying him the pay for one month. In the instant case, as appears from the impugned notice quoted above, the appointing authority did not choose to give one month's notice as the termination was to take effect within three days of the date of the notice. The only option thus left was to give one month's pay. But the impugned notice offers him only 14 days pay. It is not necessary therefore to go into the question whether payment of one month's salary was condition precedent. The impugned notice in terms does not comply with the rule as there is no offer in that notice for one month's pay. The offer which has been given is 14 days pay. That itself is a fatal defect in the impugned notice in our judgment. However, examining the matter further, we find that in Rule 5 of the Central Services (Temporary Service) Rules 1965, the language is similar. The proviso to the said Rule 5 runs thus:

Provided that the service of any such Government servant may be terminated forthwith, by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or as the case may be for the period by which such notice falls short of one month.

Under the said Rule 5 the period of notice of termination of services was fixed at one month. The proviso permitted the appointing authority instead of serving one month's notice, if the intention was to terminate the services forthwith to pay an equivalent amount representing one month's salary or for the period which fell short of one month. The Supreme Court interpreted the payment of equivalent amount or the lesser amount as the case may be, as condition precedent for termination of services of a temporary Government servant. The scheme under Rule 149, in our judgment, is *pari materia* with the scheme of the said Rule 5 of the Central Services (Temporary Servants) Rules, 1965. We think that the declaration of law by the Supreme Court in *Senior Superintendent R.M.S. Cochin v. K.V. Gopinath Sorter* (supra) applies, with full force to the facts and circumstances of the instant case. The impugned notice dated 18th August 1965 stands vitiated as the amount representing one month's salary was not given to the Plaintiff Appellant.

9. The other issues which arose on the pleadings of the parties namely, whether the Plaintiff was a permanent Government servant or a temporary Railway servant and whether the order of termination was *mala fide*, have been decided against the Plaintiff Appellant by the two courts below. The validity of the

findings on those issues has not been challenged by the Plaintiff-Appellant in the second appeal. But our decision on the main issue that the impugned notice of termination was itself bad in law, and was invalid, is conclusive of the point raised in this appeal.

10. The only dispute that remains unresolved between the parties relates to the amount which the Plaintiff-Appellant would be entitled to recover as arrears of salary and allowances. The two courts below did not record any findings on issue No. 2 framed on the pleadings of the parties on this point. As the allegations made in the plaint in respect of the salary and allowances recoverable by the Plaintiff, were not admitted by the Defendant and issue No. 2 was framed on which there is no finding, the matter will have to go back to the court of first instance for recording a finding and then passing a decree in the suit.

11. As a result of the discussion above, we allow the appeal, set aside the judgment and decree of the courts below and declare that the order of termination dated 18th August 1965 is invalid and does not bring about the termination of service of the Plaintiff-Appellant and he is entitled to such amount of salary and allowances as may be determined by the court of first instance. The suit is remanded to the court below for decision on issue No. 2 in accordance with law and in the light of the directions given above. The Plaintiff Appellant shall be entitled to recover his costs throughout.