
(1977) 09 KL CK 0002
In the High Court Of Kerala

Asst. Personnel Officer, Southern Railway	APPELLANT
Vs	
K.T. Antony	RESPONDENT

Date of Decision : 26-09-1977

Acts Referred:

Constitution of India, 1950 — Article 226, 311
Industrial Disputes Act, 1947 — Section 10, 2, 25F

Citation : (1978) 1 ILR (Ker) 216 : (1978) 2 LLJ 254

Hon'ble Judges : V.P. Gopalan Nambiar, C.J.;G. Balagangadharan Nair, J

Bench : Division Bench

Judgement

V.P. Gopalan Nambiar, C.J.—The learned Judge, against whose judgment this Writ Appeal is preferred, quashed Ext. P3 order terminating the services of the Writ Petitioner (respondent in this Writ Appeal) who was a casual labourer in the service of the Southern Railway. The termination was sought to be justified with respect to Rule 149 of the Indian Railway Establishment Code, Vol. 1, which is as follows :

149. Termination of service and periods of notice.—(1) Temporary railway servants - When a person without a lien on a permanent post under Government is appointed to hold a temporary post or to officiate in a permanent post, he is entitled to no notice of the termination of his service if such termination is due to the expiry of the sanction to the post which he holds or the expiry of the officiating vacancy, or to his compulsory retirement due to mental or physical incapacity or to his removal or dismissal as a disciplinary measure after compliance with the provisions of Clause (2) of Article 311 of the Constitution of India. If the termination of his service is due to some other cause, he shall be entitled to one month's notice provided he was engaged on a contract for a definite period and the contract does not provide for any other period of notice, and to a notice of 14 days if he was not engaged on a contract. The periods of notice specified above shall apply on either side, and steps should be taken to bring this condition to the notice of the railway servants concerned.

Note.-No notice of termination will be necessary in a case where a railway servant is deemed to have resigned his appointment and ceased to be in railway employ in the circumstances detailed in "Note 2 " below Exception (ii) to Rule 732(1).

(2) Apprentices - Except as otherwise provided in his service agreement, the service of an apprentice shall be liable to termination on one week's notice.

(3) Certain other railway servants. The services of certain other railway servants specified below shall be liable to termination on notice on either side for the periods shown against each. Such Notice is not, however, required in cases of dismissal or removal as a disciplinary measure after compliance with the provisions of Clause (2) of Article 311 of the Constitution and compulsory retirement due to mental or physical incapacity-

(a) Probationary Officers and Gazetted railway servants on probation other than those in the Medical Department.

(3 months' notice)

(b) Gazetted railway servants on probation in the Medical Department.

(1 month's notice)

(c) Non-gazetted railway servants or probation.

(1 month's notice)

(4) In lieu of the notice prescribed in this rule, it shall be permissible on the part of the Railway Administration to terminate the service of a railway servant by paying him the pay for the period of notice.

Note.-The appointing authorities are empowered to reduce or waive, at their discretion, the stipulated period of notice to be given by an employee, but the reason justifying their action should be recorded.

This power cannot be re-delegated.

(5) The notice of termination of service under this rule should be given by an authority not lower than the appointing authority :

This amendment takes effect from 1-4-1959.

(6) Notwithstanding anything contained in Clauses (1), (2) and (4) of this rule, if the railway servant or apprentice is one to whom the provisions of the Industrial Disputes Act, 1947, apply he shall be entitled to notice or wage in lieu thereof in accordance with the provisions of that Act".

The learned Judge was of the view that the above rule was applicable when a person without a lien on a permanent post under Government was appointed to hold a temporary post or to officiate in a permanent post. It was observed that the respondent would not come within the categories specified in the Rule, and

that Ext. P3 order itself had stated that his services were being dispensed with and no formal order of appointment was being issued as the verification of the character and antecedents of the petitioner showed that he would not be a desirable person to be appointed to the Railway Service.

2. The respondent was appointed on 5-4-1973 and Ext. P3 order was on 5-4-1975. We think, the learned Judge was wrong in holding that Rule 149 had no application. It appears to us that Rule 149(3) clearly applies to the case of the respondent, and, therefore, in his case, termination could be effected with one month's notice. Counsel for the respondent himself realised that Rule 149(3)(c) was applicable in his case. He, therefore, rightly shifted his ground of defence, and sought to sustain the order by contending that the termination of the services of the writ petitioner was contrary to the provision of Section 25F of the Industrial Disputes Act. Our attention was called to the definition of the term "retrenchment" in Section 2(oo) of the Industrial Disputes Act, which is as follows :

" retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

(a) voluntary retirement of the workman ; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(c) termination of the service of a workman on the ground of continued ill-health".

Section 25F of the Industrial Disputes Act provides :

25F. Conditions precedent to retrenchment of workmen.-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice :

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service ;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days " average pay for every completed year of continuous service or any part thereof in excess of six months ; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the official gazette.

In the light of the above provisions it was argued that, having regard to the statutory definition of " retrenchment" as a termination of service "for any reason whatsoever" it had to satisfy the requirements of Section 25F in order to be regarded as valid and proper. As compensation had not been paid, it was contended that the termination was illegal and ineffective, and, therefore, the learned Judge was justified in quashing the same. Counsel for the respondent placed reliance on the Division Bench Ruling of this Court in L. Krishnan and Others Vs. The Divisional Personnel Officer, Southern Railway and Another, and on two recent decisions of the Supreme Court, viz., The State Bank of India Vs. Shri N. Sundara Money, and Hindustan Steel Ltd. Vs. The Presiding Officer, Labour Court, Orissa and Others, The earlier Supreme Court decision states in categorical fashion that, once there has been a termination of service, the reasons therein would be immaterial and that it must be tested on the touchstone of the provisions of Section 25F. The latter decision in Hindustan Steel Ltd. Vs. The Presiding Officer, Labour Court, Orissa and Others, has considered the position in the light of the two previous pronouncements of the Supreme Court in Ppraich(sic) Sugar Mills case 1957 I L.L.J. 255 and Hariprasad Shivashankar Shukla's case, AIR 1957 S.C. 121 and has pointed out that, on the actual facts of the case before the Supreme Court, the conclusion that, there was retrenchment of the workman, was quite consistent with the two previous decisions of the Supreme Court. In Hindustan Steel Ltd. Vs. The Presiding Officer, Labour Court, Orissa and Others, the termination of service of the workman was to streamline the organisation and to effect economies wherever possible.

3. In the light of these pronouncements of the Supreme Court, we are of the opinion that the termination in this case satisfies the definition of " retrenchment" u/s 2(oo) of the Industrial Disputes Act, and, therefore, virlites(sic) the provisions of Section 25F of the Act. In that view, the conclusion of the learned Judge that the termination was illegal, is correct.

4. Counsel for the appellant contended that, even if the termination be illegal, the respondent has an alternative remedy by way of reference of the dispute to the Industrial Tribunal, and, therefore, a petition under Article 226 of the Constitution would not be entertainable. We are unable to accept this argument. Reference of industrial dispute to the Tribunal can only be at the instance of the Government on certain conditions mentioned in Section 10 of the Act. We cannot regard it as an alternative remedy available to the respondent for the purpose of holding that a petition under Article 226 is not maintainable, and attracting Clause (3) of Article 226 of the Constitution, as amended by the 42nd Amendment read with Section 58 of the 42nd Amendment Act.

5. It was objected by counsel for the appellant that the Union of India should be impleaded in the writ petition, and that the writ petition was improperly constituted in the absence of the Government of India. The counsel's plea seems to be supported by the decision of the Supreme Court in Ranjeet Mal v. G.M.. Northern Railway (1977) 1 S.C.C. 434, but, the plea was not raised either in the

counter affidavit or even at the hearing of the writ petition ; and if a timely objection of nonjoinder of parties had been raised, the defect could have been cured by impleading the Union of India. It is unfair and improper at this late state, to entertain such a plea ; and we, accordingly, decline to entertain the same.

6. In the result, we sustain the order passed by the learned Judge, although on a different ground, and dismiss this writ appeal. There will be no order as to costs.