

(1956) 07 BOM CK 0001

In the Bombay High Court

Case No : Special Civil Application No. 950 of 1956

E. Thillai Natarajan

APPELLANT

Vs

C.P. Fernandes

RESPONDENT

Date of Decision : 03-07-1956

Acts Referred:

Constitution of India, 1950 — Article 227, 309, 313
Government of India Act, 1935 — Section 241

Citation : (1956) 58 BOMLR 821 : (1957) 1 LLJ 490

Hon'ble Judges : M.C. Chagla, C.J.;Dixit, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.C. Chagla, C.J.—The petitioner was employed as an abstract clerk in the office of the Goods Superintendent of the Central Railway at Wadi Bunder in Bombay. On August 27, 1955, he was served with a notice to show cause why his service should not be terminated. This notice was served upon him under the Railway Services (Safeguarding of National Security) Rules, 1954. On September 5, 1955, the petitioner was suspended from service. The monthly wages to which the petitioner was entitled were Rs. 170-8-0 and the railway authority paid to him for the month of September when he was suspended a sum of Rs. 123-12-0. The petitioner made an application to the authority under the Payment of Wages Act for the balance of the amount, viz. Rs. 46-12-0. The authority dismissed the application and the petitioner has come here under Article 227 of the Constitution.

2. Mr. Singhvi has strenuously argued before us that the Authority under the Payment of Wages Act has failed to give effect to a clear decision of this Court reported in K.P. Mushran Vs. B.C. Patil and Another, . According to Mr. Singhvi that case lays down on identical facts that notwithstanding the suspension of the petitioner there was a subsisting contract of master and servant between the petitioner and the railway authority, and as under that contract the petitioner

was entitled to his wages, the attempt on the part of the railway authority to deduct anything from those wages was an illegal deduction within the meaning of the Payment of Wages Act and the railway authority was liable to pay to the petitioner his full wages and his application should have been granted by the Authority under the Payment of Wages Act. Turning to that judgment, a significant feature to which pointed attention was drawn was the fact that notwithstanding the suspension the railway authority had issued an order upon the petitioner there to the effect that he should remain in headquarters and report to his officer-in-charge every day until his ease was finally decided, and we pointed out at p. 1014 that whatever might be the correct position in other cases of suspension, what we had to consider and decide was what was the position on the facts of that case, and on the facts of that ease we came to the conclusion that the respective obligations of master and servant continued under the contract, that the employee was under an obligation to serve, and if the employee was under an obligation to serve, the employer was under an obligation to pay wages. The Payment of Wages Authority in that case had also held that the rules of the railway authority with regard to the payment of subsistence allowance were bad as offending against the Payment of Wages Act and counsel for the railway authority wanted to argue that that decision of the Authority was erroneous in law. We refused to go into that question as in our opinion there was no error apparent on the face of the record, and we made it clear that we expressed no opinion whatever on the contention that the Authority had erroneously come to that conclusion, as that conclusion was arrived at with jurisdiction. Therefore, this particular question as to whether the rules which offend against the Payment of Wages Act were bad was left undecided and that question now directly comes up before us for decision.

3. It may be pointed out that there are certain distinguishing features in this case. In this ease we do not find an order issued upon the petitioner similar to the order that was issued in that ease and which drew our pointed attention. It is true as Mr. Singhvi pointed out, that we have here a directive issued by the railway board that an employee under suspension may not leave his headquarters except with the permission of the competent authority, and Mr. Singhvi has also drawn attention to certain rules which provide that a railway servant who is suspended holds a lien on his post while under suspension, that no leave should be granted to any railway servant under suspension, that a railway servant under suspension is not permitted to retire, and that a railway servant under suspension is not entitled to subsistence allowance if he leaves his jurisdiction. From these rules and the directive issued by the railway board Mr. Singhvi wanted to argue that the position in the case before us was the same as the position that arose in Mushran's case and that here too, notwithstanding the order of suspension, the contract of employment was not suspended and the relation of master and servant continued to subsist between the petitioner and the railway authority and that the petitioner was under an obligation to render services to the railway authority and the railway authority was under a

corresponding obligation to pay wages. In view of the conclusion we have arrived at on the question of the rules framed by the Governor General, in our opinion it is unnecessary to decide this aspect of the case. Even if the contract of employment subsisted, if the law provided that the employer was only liable to pay not the full wages but the wages fixed by the rules, then the employee could not fall back upon the Payment of Wages Act unless the payment of Wages Act prevailed over the rules regulating the conditions of service between the railway authority and the employee. It is clear and it is not disputed that the rules framed by the Governor General under s. 241(2) of the Government of India Act regulate the conditions of service between the petitioner and the railway authority with regard to his suspension and with regard to the subsistence allowance permissible to him while he is under suspension. It is also not disputed that the railway authority has paid to the petitioner subsistence allowance according to these rules. Therefore, the only question is whether these rules can prevail over the special provisions contained in the payment of Wages Act with regard to the liability of an employer to pay wages.

4. The Government of India Act, 1935, came into force on April 1, 1937. The Payment of Wages Act was passed on April 23, 1936, and it came into force on March 28, 1937. A question has also been raised whether it could be said of the Payment of Wages Act that it regulates the conditions of service between the railway authority and its employees, but for the purpose of this argument we will assume that that Act does regulate the conditions of service. Therefore, the position in law was that prior to April 1, 1937, there was on the statute book an Act which, with regard to payment of wages, regulated the conditions as between employer and employee including the railway authority and the petitioner. Then was passed the Government of India Act on April 1, 1937, and Section 241(i) expressly deals with conditions of service in the case of services of the Federation, and the railway service is a service of the Federation, and Sub-section (2) of that section provides:

Except as expressly provided by this Act, the conditions of service of persons serving His Majesty in a civil capacity in India shall, subject to the provisions of this section, be such as may be prescribed-

(a) in the case of persons serving in connection with the affairs of the Federation, by rules made by the Governor-General or by some person or persons authorised by the Governor-General to make rules for the purpose;...

Pursuant to this Sub-section the Governor-General has framed rules and the rules in question with regard to suspension and subsistence allowance fall within these rules framed by the Governor-General. Therefore, without more, it is clear that this Parliamentary legislation must override any provision made with regard to the conditions of service in the case of services of the Federation made by an Indian statute passed before the Parliamentary legislation was put on the statute book. It may well be that Parliamentary legislation may save any existing legislation with regard to the conditions of service of Government servants in the

Federation, and therefore we must try and see whether any such legislation has been saved. The only provision with regard to this is to be found in Sub-section (4) of Section 241 and that Sub-section provides:

Notwithstanding anything in this section, but subject to any other provision of this Act, Acts of the appropriate Legislature in India may regulate the conditions of service of persons serving His Majesty in a civil capacity in India, and any rules made under this section shall have effect subject to the provisions of any such Act:

It must be borne in mind that the Government of India Act for the first time in the constitutional development of India set up a Federal scheme of Government and sovereign powers were conferred both upon the Central Legislature and the Provincial Legislature within the ambit of the subjects mentioned in the Lists to the Seventh Schedule. Power was conferred by item No. 8 in List I of the Seventh Schedule upon the Central or Federal Legislature to legislate with regard to Federal Public Services and Federal Public Service Commission, and power was conferred upon the Provincial Legislature to legislate with regard to Provincial Public Services and Provincial Public Service Commissions by item No. 6 in List II. Having conferred this power upon the Federal and the Provincial Legislature with regard to Federal Public Services and Provincial Public Services, Parliament had to make it clear that although power was being conferred upon the Governor-General to make rules with regard to Federal Public Services and the Governor with regard to Provincial Public Services, the sovereignty of the appropriate Legislature, viz. the Federal Legislature and the Provincial Legislature, was not to be affected by this power, and therefore express provision was made in Sub-section (4) of Section 241 to the effect that the appropriate Legislature may regulate conditions of service of persons serving His Majesty in a civil capacity in India and that the rules framed by the Governor-General u/s 241(2) were made subject to the provisions of any such Act. In our opinion, it is clear that the legislation referred to in Sub-section (4) of Section 241 is legislation to be passed by the appropriate Legislature after the Government of India Act came into force. It is difficult to accept Mr. Singhvi's contention that Sub-section (4) also referred to legislation passed by a Legislature which was functioning before the Government of India Act came into force. The argument is untenable for two reasons. In the first place, the language of Sub-section (4) connotes futurity and refers to legislation that may be passed and not which has already been passed and is on the statute book; and secondly, the expression "appropriate Legislature", if one is forgiven the tautology, is only appropriate to the scheme set up under the Government of India Act. There was no question of any appropriate Legislature under the Constitution existing before the Government of India Act was passed. Therefore, both these indications make it clear that what Parliament was referring to in Sub-section (4) of Section 241 was legislation to be hereinafter passed by the two sovereign Legislatures set up under the Government of India Act. If the intention was to save the laws already passed by the Legislature, different and more appropriate language would have been used,

and even if the laws were saved, there is nothing to suggest that Parliament did not intend to confer upon the Governor-General the power to frame rules inconsistent with the laws which already were on the statute book, because under Sub-section (4) it could not be said that not only future laws which were to be passed by the appropriate Legislature but even laws passed before the Government of India Act came into force were to prevail over the rules to be framed by the Governor-General with regard to which express power was conferred upon him u/s 241(2).

5. It is rather interesting to look at the scheme with regard to these rules that we have now embodied in our Constitution. Article 309 confers the power upon the appropriate Legislature to regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State, To this extent the scheme is radically different from the scheme of the Government of India Act that the power is conferred upon the Legislature and not upon the executive to make these rules. The proviso to that article confers the power upon the President and the Governor or Rajpramukh of a State to make these rules until provision is made in that behalf by or under an Act of the appropriate Legislature, and the rules to be framed by the President and the Governor or Rajpramukh shall have effect subject to the provisions of any such Act. But the more important provision is to be found in Article 313 which expressly saves all the laws in force immediately before the commencement of the Constitution and applicable to any public service or any post which continues to exist after the commencement of the Constitution, as an all-India service or as service or post under the Union or State, in so far as they are consistent with the provisions of this Constitution. Therefore, all laws which regulated the conditions of services were saved and power was given to Parliament to make rules, and until Parliament made rules, power was conferred upon the President and the Governor or Rajpramukh as the case may be. But in the Government of India Act we find no provision corresponding to Article 313 of the Constitution. If there had been such a provision, then undoubtedly there would have been force in Mr. Singhvi's contention that to the extent that the Payment of Wages Act regulated the conditions of service that Act was saved by the Government of India Act, 1935.

6. We will, therefore, decide this matter on the narrow ground that the conditions of service of the petitioner with regard to his suspension and with regard to the wages to which he is entitled during the period of suspension are regulated by the rules framed by the Governor-General u/s 241 of the Government of India Act and that the Payment of Wages Act has no application with regard to those conditions, and it is not open to the petitioner to claim an amount as being illegally deducted by the railway authority when that deduction is legal and permissible under the rules framed by the Governor-General under the Government of India Act.

7. The result is that the petition fails.

8. We are informed that after this petition was filed the petitioner has been reinstated in the service of the Government and all his past wages in full will be paid to him. Therefore, there will be no order on the petition. No order as to costs.