
(1960) 04 AP CK 0002
In the Andhra Pradesh High Court

Gujju Kotraju

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 20-04-1960

Acts Referred:

Citation : (1960) 04 AP CK 0002

Hon'ble Judges : P. Chandra Reddi, C.J.;Srinivasachari, J

Bench : Division Bench

Judgement

P. Chandra Reddi, C.J.—This is an appeal under Clause 15 of the Letters Patent against the judgment of our learned brother, Bhimasankaram, J., in S.A. No. 15 of 1956 confirming that of the District Judge, East Godavari at Rajahmundry.

2. A few facts material for the present enquiry may be briefly narrated. The appellant was first entertained as a peon in the Madras and Southern Mahratta Railway Company in 1924 on a salary of Rs. 10-8-0 per month. In 1929, he was promoted as a guard and on 25 June 1945 he was reemployed as in the same capacity. On 8 July 1947, he was in charge of No. 34 up passenger train proceeding from Rajahmundry to Bezwada as a guard. When the train reached Eluru station and stopped and when the station master opened the brake-van he found a ticketless traveller in the van. There was an enquiry by the traffic inspector and it was suspected that this person was in the brake-van with the connivance of the plaintiff (appellant) for the purpose of committing theft of aluminium vessels. A chargesheet was served on the appellant on 16 July 1947 the details of which need not be given here and he was called upon to explain. Accordingly, he submitted his explanation. He was served with a memorandum dated 25 August 1947 that his services were no longer required and he was given one month's salary in lieu of one month's notice.

3. The plaintiff carried the matter in appeal to the Chief Commercial Manager but unsuccessfully.

4. Thereupon, he filed the present suit, O.S. No. 30 of 1951 (on the file of the

Subordinate Judge's Court, Rajahmundry), for a declaration that the order dated 23 August 1947 dismissing him from service was ultra vires, illegal and inoperative and that he should be regarded as continuing to be a member in the service of the defendants on the date of the suit. The learned Judge decreed the suit. On appeal by the railway administration, the suit was dismissed. This was confirmed in the second appeal carried by the aggrieved plaintiff. However, the learned Judge granted leave under Clause 15 of the Letters Patent. Hence the appeal.

5. In this appeal, two points are urged on behalf of the appellant. Firstly it was argued that the appellant could not be removed from service without holding an enquiry and that Rule 148(3) of the Indian Railway Establishment Code, Vol. 1, which provides "that the service of a non-pensionable railway servant shall be liable to termination on notice on either side for the period specified in that sub-rule" would not apply to the case of a person reemployed. It was contended that that rule would apply only to a railway servant who had executed a service agreement in the form as provided by Rule 143 and that the appellant had not executed such an agreement which contained the provision "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." We do not think we can give effect to these contentions. It is true that the plaintiff was reemployed and that he had not executed the service agreement in the form prescribed as provided by Rule 143. But that does not avail the appellant for the reason that in the very circular which contains the terms of re-employment and which formed the basis of reemployment there is a clause, viz.: "The State Railway Rules as applicable to persons appointed on or after 1 January 1946 will apply." in the light of this recital, the argument of Sri I.A. Naidu that the circular embodying the terms of employment does not contain the rule similar to the one embodied either in Rule 148(3) or in the service agreement to be executed by the persons who are reemployed, is without substance and the learned Judge Has rightly rejected it.

6. The second ground of attack against the impugned order is that it was only the General Manager that could remove the appellant from service and not the District Transportation Superintendent. This is founded on Ex. A. 22, the schedule of powers of the Agent and General Manager, etc., of the Madras and Southern Mahratta Railway Company, Ltd. This argument is the result of a misconception. The appellant was not removed from service as suggested on behalf of the appellant. His services were only terminated. That apart, that very document establishes that in regard to subordinate staff on a salary of less than Rs. 250 the head of the department has full powers in that behalf. We are told that the District Transportation Superintendent in regard to the area over which he has jurisdiction is the head of the department. Further, there was the approval of the Chief Commercial Manager to terminate the services of the appellant. Consequently, the order now impugned before us is not invalid for that reason.

7. The last submission made on behalf of the appellant is that the action of the defendant cannot fall within the scope of Rule 148 for the reason that charges were framed against the appellant and his explanation was called for, and the proceedings must be deemed to have been initiated under Rule 1708 of the Indian Railway Establishment Code. We are unable to subscribe to this proposition. The mere fact that the appellant was served with a chargesheet does not indicate that action was taken in the exercise of disciplinary jurisdiction. It is quite consistent with the intention of the department to dispense with his services in the exercise of contractual rights. In fact, the very order reads that his services were no longer required. There is nothing to indicate that he was either dismissed or removed from service in the exercise of disciplinary jurisdiction.

8. Kishan Prasad Vs. The Union of India, is authority for this position. To the same effect is the decision of Rajagopalan, J., in Swaminathan v. Union of India AIR 1956 Mad. 686 . The learned Judge held that there was general power of termination vested in the administration under Rule 148(3) and that the mere fact that charges had been framed and investigation started earlier was not proceeded with, did not invalidate the order of simple termination. This contention also fails and is rejected.

9. In the result, the letters patent appeal is dismissed with costs.