
(1971) 09 MAD CK 0005
In the Madras High Court

K. Srinivasan

APPELLANT

Vs

The General Manager, Southern Railway and Another

RESPONDENT

Date of Decision : 08-09-1971

Acts Referred:

Citation : (1972) 85 LW 457 : (1972) 2 MLJ 1

Hon'ble Judges : T. Ramaprasada Rao, J

Bench : Single Bench

Judgement

T. Ramaprasada Rao, J.—The petitioner is admittedly functioning, as at present, as the Law Superintendent in the Office of the General

Manager, Southern Railway, Madras-3. He rose up from the position of a Clerk in the Office of the Chief Commercial Superintendent, he having

joined the Madras and Southern Maharatta Railway Company when it Was in existence. A question arose whether the rule of retirement, in so far

as it is applicable to ministerial servants in the employ of the Railways, should uniformly be applied or whether it depended upon the fact whether

the employee entered the service of the quondam company or the latterly acquired State Railways. This is now settled by the decision of a Division

Bench of this Court which held that to deprive an employee who is admittedly a ministerial railway servant, whether he was taken into service by

the Madras and Southern Maharatta Railway Company or at a later stage, would create a discrimination within the meaning of Article 14 and

would thus violate the provisions of the Constitution. In this view, this Court held that all ministerial servants in the employ of the railways are

entitled to the benefit of Rule 2046. In this writ petition the petitioner states that he is admittedly a ministerial servant. He refers to a notification of

the railway Board issued on 1st August, 1951, which classified ministerial posts. According to him, his duties are purely clerical and even

otherwise, as the Railway Board has treated Superintendents (Office) as ministerial servants and so classified them, he would be entitled as of right

to obtain all the privileges annexed to the office of a ministerial servant, to wit, inter alia he would be entitled to continue in office till the age of 60.

It appears that the respondent, by an order dated 1st March, 1971, notified that the petitioner should retire on 14th July, 1971. On these facts he

has come up to this Court for the issue of a writ of certiorari to quash the said order. The contention of the respondent is that the notification dated

1st August, 1951, should be deemed to have been issued by the Railway Board in exercise of its powers vested and referred to in Rule 3003(17)

and the Railway Board having declined at one time, when the question arose whether Law Superintendent should be treated as ministerial servant,

it is not open to the petitioner to seek for a Writ of certiorari, nor has this Court jurisdiction to issue a rule as requested.

2. On 1st August, 1951, the Board acting under Rule 2046(2) purported to classify certain railway servants as ministerial staff. Whilst doing so, the

Board expressed the view that Superintendents (Office) should be so classified. Rule 2046(2) which has been recently interpreted by this Court,

refers to the age of retirement of a ministerial servant; but it does not deal with the duties of a ministerial servant or as to who should be deemed

and considered as ministerial servants. Therefore, the notification dated 1st August, 1951, is primarily intended for the purpose of fixing the period

when a ministerial servant should compulsorily retire. It was in this notification that Superintendent (Office) was said to be a ministerial servant.

Thereafter it appears that the General Manager of Central Railway, Bombay, enquired the Railway Board as to under what category Law

Superintendent, amongst others, should be placed, as such an office was created for the first time, long, after the introduction of these rules and in

or about April, 1963. The Board gave a clarification in its letter dated 22nd January, 1966, stating as follows:

The Railway Board have carefully considered your proposal regarding classification of the posts of (i) Law Superintendent, Grade Rs. 450-575-...

as Ministerial for the purpose of Rule 2046(2) a Rule 11. But they regret their inability to agree to the same....

This copy is said to have been sent to all the railway organisations in the country. This clarification issued by the Railway Board does not contain

any reason as to why Law Superintendent is not to be considered as a ministerial servant. Apparently based on the clarification, so issued by the

Railway Board, the impugned order has been passed.

3. The simple point for consideration is whether the petitioner, who is a Law Superintendent, is a railway servant of a subordinate service, whose

duties are entirely clerical. For this purpose one has to look into the definition of "ministerial servant" provided in Rule 2003(17). The definition runs

as follows:

Ministerial servant means a railway servant of a subordinate service whose duties are entirely clerical, and any other class of servants specially

defined as such by general or special order of a competent authority.

It is very clear that by general or special order of a competent authority, which is the Railway Board in this case, a railway servant whose duties

are not entirely clerical may be deemed to be a ministerial servant. If therefore, any other Superintendent in the office is so considered or adapted

by a general or special order of the Railway Board, then notwithstanding the fact that his duties are not entirely clerical, he would be deemed to be

a ministerial servant. We are not however concerned in the instant case with the latter portion of Clause (17) of Rule 2003. The notification dated

1st August, 1951, referred to by both the parties, obviously is an order made, by the competent authority in exercise of its discretionary power

given to it under Rule 2003(17). It covers all office Superintendents but it should be remembered that the fact that the competent authority is so

authorised to do a particular thing either by its general or special order, does not exclude the jurisdiction of this Court to consider the facts and

circumstances of each case to decide whether a particular railway servant of a subordinate service is a ministerial servant having regard to his

duties. If it is found on an examination of such duties rendered by a particular railway servant of a subordinate service that they are entirely clerical,

then obviously he would be a ministerial servant, whether declared as such or not by a general or special order of the Railway Board under the

latter part of Rule 2003(17).

4. In this context therefore it is necessary to scrutinise the duties rendered by

the petitioner who is eo nomine designated as Law Superintendent.

Both the parties have given me the list of duties actually being rendered as Law Superintendent. The information given also includes the duties

rendered by other Office Superintendents in the subordinate service of the railway. I am not inclined to make a comparison of such duties rendered

by other Office Superintendents with that performed by the petitioner so as to arrive at the conclusion which is necessary in this case, whether the

duties of the petitioner are entirely clerical. It is sufficient, therefore, if the duties of the petitioner are scrutinised to find out as to what the nature of

such duties are:

The Law Superintendent and his assistants whose work he supervises possess legal qualifications and are technical men. They do not do work of a

routine or clerical nature. Their work involved looking into suit Claims, the completion of inquiries regarding the Claims, examination of legal

aspects of cases, scrutinising and drafting pleadings, preparing the case for Lawyers, comments on judgments, instructions to advocates, deciding

on to documentary evidence, taking out execution proceedings, personal attendance in Courts, reviewing of important cases from time to time,

critical study of judgments and decided cases, put forward recommendations for filing appeals, give legal opinion.

The above excerpt is given by the learned Counsel for the respondent and it refers to the duties of the petitioner as Law Superintendent. The

contention of the learned Counsel for the respondent is that, as advices are given by the petitioner as a technical person qualified to render such

legal advice, it would not be proper to classify him as a person rendering purely clerical service. But the nature of duties rendered even by technical

personnel in certain establishments leads one to a fair and reasonable conclusion that the duties attached to their officers are purely clerical in

nature. Excepting for the designation that the petitioner is a Superintendent, I do not think that he is any the better than a dignified clerk, having

regard to the nature of duties performed by him. He looks into Claims, examines whether the Claims of parties are sustainable, drafts pleadings,

instructs advocates, personally attends Courts and sometimes makes recommendation for filing appeals, etc. But it is conceded very clearly that

whatever legal assistance the petitioner might render in his chamber, meaning

thereby office, it is always subject to approval by the legal advisers of the organisation. He merely assists in the preparation of drafts for the ultimate authority to work upon it finally and approve of it. No doubt, he uses his technical knowledge as a qualified Law Graduate to put up such notes as would be Worthy of acceptance and adoption by his superior officers, such as the legal advisers etc. The course of conduct and the nature of duties rendered by the petitioner cannot be said to be supervisory in nature or is non-clerical as is popularly understood.

5. The contention of the learned Counsel for the petitioner is that the Railway Board, when it had the opportunity to consider whether the services rendered by the petitioner are to be deemed to be clerical or otherwise or it should exercise its discretion under the latter part of Rule 2003(17), expressed the view that it was not possible for it to classify the Law Superintendent as a ministerial servant. One has to look into the non-speaking clarificatory note made by the Railway Board on 22nd January, 1966, only to reject it. While giving a clarification on a Very important issue, it is obligatory on the part of a statutory functionary to assign reasons, so that when that note is ultimately scrutinised by a higher hierarchy it should be in a position to express the view that such statutory authority did apply its mind on the problem before it and came to the conclusion after weighing and considering the material referred to by it. Repeatedly, the Supreme Court has held that in such circumstances a non-speaking order made by an authority functioning under a statute ought not to be given the due weight it purports to claim, and in this regard I am unable to hold that the order of the Railway Board dated 22nd January, 1966, is either indicative of its mind that it has decided once and for all that a Law Superintendent does not perform the duties which are entirely clerical, nor can it be said that it exercised its discretion under the latter part of Rule 2003(17) to hold that a Law Superintendent cannot be classified specially as a ministerial servant either. If this is, therefore, the position, the order challenged which springs from the order of the Railway Board, cannot be sustained.

6. The Court has to fall back on the material produced before it for the issue of a rule nisi and that material projects the nature of duties performed by the petitioner. I have already referred to it and I am of the view that on a fair reading of the duties assigned to the petitioner, he is a ministerial

servant of a subordinate service whose duties are entirely clerical. In this view of the matter the rule nisi is made absolute and there will be no order as to costs.