

(1968) 11 GAU CK 0002
In the Gauhati High Court

North-East Frontier Railway Mazdoor Union	APPELLANT
Vs	
The General Manager, North-East Frontier Railway and Another	RESPONDENT

Date of Decision : 15-11-1968

Acts Referred:

Constitution of India, 1950 — Article 226, 309
Government of India Act, 1935 — Section 241
Industrial Disputes Act, 1947 — Section 22

Citation : AIR 1969 Guw 105 : (1970) 2 LLJ 486

Hon'ble Judges : P.K. Goswami, J;M.C. Pathak, J

Bench : Division Bench

Judgement

P.K. Goswami, J.—This application under Article 226 of the Constitution of India is directed against an order dated 22nd September, 1968 passed by the General Manager, N.F. Rly informing the President of the North-East Frontier Rly. Mazdoor Union and the General Secretary of the said union by telegram and a letter of the same date that the recognition of the Union was withdrawn.

2. The petitioner's case is that it is a Trade Union of non-gazetted employees, registered under the Indian Trade Union Act, 1926 and that it was accorded recognition by the Railway Administration as early as 1958. The petitioner states that it decided to call a token strike of its members on the 19th September, 1968 as per decision of the All India Railway men Federation and the Joint Council of Action. On 3rd September, 1968, the petitioner gave notice of a token strike on the 19th September, 1968 to the General Manager of the N.F. Railway as also to the conciliation officer u/s 22 of the Industrial Disputes Act, 1947. It further avers that the said strike was launched with due regard to the provisions of law and the same was not an illegal strike. It is then stated that the President of India issued an Ordinance called the Essential Services Maintenance Ordinance, 1968 on 13th September 1968 and passed an order declaring the strike as illegal and arrested almost all the members of the Joint Council of Action. On 30th September, 1968 the President of the petitioner union received a telegram dated

22nd September 1968 from the General Manager N.F. Railway withdrawing recognition of the petitioner Union. The telegram was confirmed by a letter of the same date. Prior to this notice, the petitioner was not asked to show cause why the recognition should not be withdrawn and no reason for the withdrawal of the recognition was communicated to the petitioner or to any of its office bearers. The petitioner makes a grievance that no opportunity was given to the petitioner Union to show cause before the recognition was withdrawn. The petitioner in this connection refers to a judgment of this Court dated 15th May, 1961 in Civil Rules Nos. 96, 109 and 110 of 1960 between the same parties, namely the petitioner and the General Manager and the Union of India and others as opposite parties, and submits that in view of that decision, the present order of the General Manager is absolutely void. The petitioner contends that the order is in contravention of the Rules framed by the Administration for recognition, contained in Chapter XXXVI (Appendix XIII of Part I of the Indian Railway Establishment Code, 1951). The petitioner further submits that as a consequence of the recognition, the petitioner and the members were conferred several rights of important nature, namely, use of telegraph service, collection of subscription in Railway premises, grant of special casual leave for PNM meeting, grant of special casual leave and pass for attending meeting of the Central Committee and the Council, prohibition of transfer of Union officials in certain circumstances, authority to Union officials to leave office during office hours for Union activities, negotiation with and attending departmental enquiries on behalf and to represent employees held by officers at all levels, holding of meeting in Railway land, use of Railway Notice Board for notices of the Union and free passes to certain Union officials. As a result of the withdrawal of the recognition, the members of the Union will cease to have these rights. The petitioner therefore claims that the impugned order is illegal and without jurisdiction and should be quashed.

3. The respondents in their counter affidavit have stated that the Government specified the channel through which representations from the Rly. servants could be submitted to the Administration. On the acceptance of this, among other such conditions, recognition was given to the petitioner Union subject to the condition that the Central Council of the Union should exercise control over the members of the Union and take steps to prevent illegal action calculated to interfere with the working of the Railway. They allege that the petitioner however adopted methods other than those specified for ventilating their alleged grievances. They also deny that the petitioner Union acted in conformity to the Rules for recognition of Service Association of non-gazetted Railway servants. The respondents submit that the strike launched on 19.9.68 was illegal under the Essential Service Maintenance Ordinance, 1968 and that the provisions of the Industrial Disputes Act, 1947 and all other Acts contrary to the provisions therein were inoperative and unenforceable in law. The General Manager notified the Union asking it to call off the contemplated strike and to desist from such illegal action. The respondents further state that the General Manager had to withdraw

the recognition of the Union as the members of the petitioner Union actively participated in the strike on 19th September, 1968 which was declared illegal by the President of India. Since the members of the petitioner Union joined in the illegal strike, the General Manager did not consider it necessary to issue any notice to the President of the petitioner Union to show cause why its recognition should not be withdrawn. The respondents claim that the General Manager has got discretion to issue or not to issue a notice prior to withdrawal of recognition of the Union which depends on the circumstances of each case. It is the discretion of the authority to grant recognition or to withdraw it at any time. The respondents claim that the impugned order was merely an administrative one and the General Manager as the head of the N.F. Railway passed that order. The respondents further submit that it has been decided by the Government that the Administrative Rules in Chapter XXXVI of the Indian Railway Establishment Manual, which require service of a show cause notice prior to withdrawal of recognition, should be dispensed with in this case and accordingly the respondent No. 1 did not serve any show cause notice. The respondents, therefore, submit that the order is a valid order and the same is not liable to be quashed.

4. The learned Counsel appearing on behalf of the petitioner submits that (1) the present case is governed by the previous decision of this Court in Civil Rules Nos. 96, 109 and 110 of 1960 dated 15th May.1961.and the principles of res judicator are attracted. (2) that Rule 1 of Part B of Appendix XIII of the Indian Railway Establishment Code Vol I, 1951 edition, has a statutory force and the impugned order has been passed in violation of this rule, and (3) that there is a flagrant violation of the principles of natural justice.

5. To take the second point first, we have to see whether the rules in Appendix XIII, Part B, are relatable to any statute. Appendix XIII appears in the Indian Railway Establishment Code, Vol. I, 1951 edition, Part B whereof relates to the rules for the recognition of Service Association of non-gazetted Railway servants. Rule 1 is in the following terms:

1. Government is prepared to accord official recognition to associations of its industrial employees. The grant and continuance of recognition Tests in the discretion of Government, but recognition when granted will not be withdrawn without due cause and without giving an opportunity to the association to show cause against such withdrawal.

Note:~The term "industrial employees" includes Railway servants.

There is a prefatory note in this volume dated 1st September, 1940 by order of the Railway Board, which indicates that the Rules contained in this Code have been made by the Governor General in Council under Sub-section (2) of Section 241 of the Government of India Act, 1935, in super session of all pre-existing rules relating to the same matters which are published in this Code under his authority. They govern the conditions of service of Railway servants who are

subject to the rule-making control of the Governor General in Council. This volume has since been revised and we, have the Indian Railway Establishment Code" Volume I, revised edition, published in 1959. There is also a prefatory note in this volume which shows that this has now been revised to incorporate all amendments issued up to 31st March, 1959, and is issued by the President in exercise of the powers conferred on him by the proviso to Article 309 of the Constitution of India. The note further contains in para 3 of the Appendices II, IIA, III, VI, XIII, XIII A and XXIV of the 1951 Edition (Reprint) which have been embodied in the Indian Railway Establishment Manual, which is being issued separately. The Indian Railway Establishment Manual, Second Edition, which is produced before us, contains Chapter XXXVI providing rules for the recognition of service associations of Railway servants, Part A whereof materially corresponds to Part A of Appendix XIII and Part B providing for rules for the recognition of associations of non-gazetted Railway servants corresponding to Part B of Appendix XIII of the Indian Railway Establishment Code Vol. I, 1951.

6. It is contended by the learned Advocate General that the rules for the recognition of service association of Railway servants in Chapter XXXVI are merely administrative orders and they have no statutory force. He further submits that the fact that the Indian Railway Establishment Code, Vol. I, 1959 Edition, does not contain Appendix XIII, which is the predecessor of Chapter XXXVI, goes to reinforce his submission. In order to appreciate the contention raised by the learned Advocate General we have only to refer to Appendix XII (Concordance) in the Indian Railway Establishment Manual (Second Edition). This Appendix gives out the Concordance showing the authority for the paragraphs occurring in various chapters of the Indian Railway Establishment Manual. At page 45 of the Appendix in the first column, paragraphs 3601 to 3612 have been mentioned and the authority for these rules in Chapter XXXVI is given in the second column where there is reference to the rules in Part A, Part B and Part C of the Indian Railway Establishment Code, 1951 (Reprint Edition). To make a precise reference to the particular rules which are now being considered, Rules 3601 to 3612 derive authority from Rules 1 to 3, Part B of Appendix XIII-RI, (1951-Rcprint) and Railway Board's letter No. E(L) 62 ASI-1 dated 7th March, 1963 and Case No. E56 (Manual) 1/XXXVI. It is not urged by the learned Advocate General that Appendix XIII, which finds place in the 1951 Code, has no statutory force and indeed he cannot urge that in view of the prefatory note appearing in the Code itself. It is not pointed out that these appendices have been repealed. As a matter of fact, Appendix XVIII (Concordance) appearing in the Indian Railway Establishment Code, 1959 Edition, showing the Rules in this edition and the corresponding Rules in the 1951 Code, Vol. 1, or other authorities on which each rule is made, clearly shows at page 341 a reference to Appendix XIII and XIII A and in the remarks column it is mentioned that these provisions are included in the Indian Railway Establishment Manual, and we have already seen Appendix XII in the Indian Railway Establishment Manual showing the relevant Concordance. We are, therefore, clearly of the opinion that the rules in

Appendix XIII, which now find place in Chapter XXXVI of the Indian Railway Establishment Manual, have statutory force. They were previously framed under Sub-section (2) of Section 241 of the Government of India Act, 1935 and after the commencement of the Constitution, under Article 309 of the Constitution of India.

7. The learned Advocate General next contends that rules in Part B of Appendix XIII and the same in Part B of Chapter XXXVI do not come within the scope of Article 309 of the Constitution of India. We may, therefore, read Article 309 of the Constitution:

309. Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of person appointed, to public services and posts in connection with the affairs of the Union or of any State.

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this Article, and any rules so made shall have effect subject to the provisions of any such Act.

It is contended on behalf of the respondents that rules for the recognition of associations do not relate to the conditions of service of the Railway employees. The title of Chapter XVII is "Conduct and Discipline", and Section 1 enumerates the conduct rules, Paragraph 1701 of this chapter of the 1951 Code may be read:

1701. Without prejudice to the provisions of any law, for the time being in force, relating to the conduct of Government servants, or to the rules made u/s 47(a) of the Indian Railways Act (Act IX of 1890) as amended, the conduct of railway servants shall be governed by the rules contained in Appendix XI.

Appendix XIII, which itself makes a reference to Appendix XI, in the 1951 Code contains the Railway Servants Conduct Rules and Rule 26 thereof provides for membership of service and labour associations of Railway servants. Note 2 of this Rule may be read: Note (2)?No Railway servant, other than a member of a Railway Service, Class I or Class II, shall be a member, representative or officer of any association representing or purporting to represent servants of the Government, unless the rules of such association conform strictly to the Rules for the recognition of associations contained in Part B of Appendix XIII and the conditions precedent to the recognition of a union by a Railway Administration contained in Part C thereof.

8. A Railway servant becomes a member of a trade union with a view to protect his interests in the service as well as to share the fruits of collective bargaining

which the Union strives to ensure. It is implicit under Rule 26 of Appendix XI that membership of a union has intimate connection with the conditions of service. The employees have to conduct themselves in a particular way while being employed under the Railway, even so far as their membership of a trade union is concerned. It is, therefore, too late in the day to contend that the rules regarding recognition of trade union composed of members of the Railway employees have no relation to the conditions of service. Although the Union has no fundamental right to recognition by the employer, recognition once obtained by it in accordance with Rules becomes its life-blood and gets integrated into its very existence. It adds status and lustre to a union and it can ill afford to lose it except for "due cause". What is "due cause" in a given case will have to be determined in accordance with the provisions of Rule 1 (Appendix XIII). It is not without any significance that Rule 1 in Appendix XIII finds its place. We are, therefore, unable to accept the contention of the learned Advocate General that Rule 1 of Appendix XIII, and what is reproduced as Rule 3601 of Part B of Chapter XXXVI of the Indian Railway Establishment Manual, 1959, cannot legitimately be made in exercise of the powers u/s 241 of the Government of India Act, 1935 and under Article 309 of the Constitution of India, respectively. We, therefore, feel no hesitation in overruling the contention of the learned Advocate General and hold that Rule I of Appendix XIII and corresponding Rule 3601 in Chapter XXXVI are statutory rules made by competent authorities. Accordingly, we accept the second submission of Mr. Ghose on behalf of the petitioner.

9. It is not necessary to pass on the first point raised by the petitioner regarding res judical. Basing on a decision of this Court in Civil Rules Nos. 96, 109 and 110 of 1960 the learned Counsel for the petitioner also relied on a decision of the Calcutta High Court in the case of Eastern Railway Employees' Congress Vs. General Manager, Eastern Railway and Others, , holding to the effect that the rule in question is statutory. It, however, appears that in the aforesaid Division Bench decision of this Court, the point was not gone into in detail nor did the question raised before us directly arise for decision. That was a case where the General Manager gave a notice asking the Union to show cause against withdrawal of recognition and the Court found that full reasonable opportunity was not given to the Union to represent their case. Before the Calcutta High Court both the parties even admitted that Rule 1 of Appendix XIII, Part B, was statutory. In the case of Nirode Chand Roy v. General Manager N.F. Railway, Pandu and Ors. AIR (1967) A & N 44, a Division Bench of this Court has held with reference to the seniority rules that the same are statutory, relying on Rules 157 and 158 of the Indian Railway Establishment Code (1959 Edition). The learned Advocate General wanted to distinguish Nirode's case on the ground that the rules that were considered in that case were seniority rules which, according to him, are different from the rules of recognition. We have, however, already overruled that submission holding that rules of recognition equally reflected on the conditions of service, and for the reasons discussed above, we hold that the

present rules in Appendix XIII, Part B, are statutory which still hold the field.

10. With regard to the third submission of Mr. Ghose that there has been a flagrant violation of the principles of natural justice, it is sufficient to state that the learned Advocate General admits that no show cause notice nor any bearing had been given to the petitioner prior to the passing of the impugned order. His whole contention is that being an administrative order, withdrawal of a privilege at the discretion of the General Manager does not require him to conform to the principles of natural justice. We have already held that Rule 1 of Appendix XIII, applicable in this case, has a statutory force, and, as such, non-compliance with this rule vitiates the order and the petitioner is entitled to a writ quashing the said order. The Rule contemplates two pre-conditions, namely, firstly that recognition cannot be withdrawn without due cause and secondly, without giving an opportunity to the union to show cause against such withdrawal. Since the statutory procedure has not been admittedly followed in this case, we quash the impugned order in exercise of our powers under Article 226 of the Constitution of India. We should, however, observe that we express no opinion regarding the merits of the order and it will be open to the authorities to take any appropriate action under the law, if they so desire, in accordance with the provisions of the rules in force.

11. The application is accordingly allowed and the impugned order dated 22nd September, 1968 withdrawing the recognition of the Union is quashed. Issue writ accordingly. In the entire circumstances of the case we, however, make no order as to costs.

M.C. Pathak, J.

I agree.