

(1953) 12 P&H CK 0005
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 455 of 1953

Ram Sarn Dass Ganda Mal

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 08-12-1953

Acts Referred:

Citation : AIR 1954 P&H 142

Hon'ble Judges : Kapur, J

Bench : Single Bench

Advocate : H.R. Mahajan, for the Appellant; N.L. Salooja, for the Respondent

Final Decision : Dismissed

Judgement

Kapur, J.—This is a plaintiff's appeal against an appellate decree of Mr. Sheo Parshad, Senior Subordinate Judge, Gurdaspur, dated 8-6-1953 confirming the decree of the trial Court dismissing the plaintiff's suit for declaration and injunction.

2. The plaintiff alleges that he was appointed a Guard of Grade I on 15-9-1916 and was confirmed on 3-3-1918. He was appointed a Guard in Grade II on 16-3-1927 and was entitled to get seniority in service as from the date of his appointment in 1916 in accordance with the rules contained in Circular No. 1 of 1927 as revised in 1937, and being the seniormost Guard on the Eastern Punjab Railway he was entitled to be styled as "A" Class Guard with effect from the 1st January 1947. He sued for declaration and for permanent injunction ordering the defendant. Union of India, to amend the seniority list of its Guards thus placing him as No. 1 in Class "A". The plea of the Union was that such a suit did not lie. It was accepted by both the Courts below.

3. Mr. Hem Raj Mahajan contends that accord-Ing to the rules which have been made under the statute he is entitled as a matter of right to the seniority claimed by him. Even if that is so the question still remains whether a suit would lie to enforce this right.

This matter was considered by their Lordships of the Privy Council in - AIR 1937 31 (Privy Council) where it was held that the terms of Section 96B, Government of India Act contain a statutory and solemn assurance that the service, though at pleasure, will not be subject to capricious or arbitrary action and will be regulated by rules but that did not import a special kind of employment with an added contractual term that the rules are to be observed: At p. 34, Lord Roche observed:

".....control by the Courts over Government in the most detailed work of managing its services would cause not merely inconvenience but confusion."

At p. 34, Lord Roche said:

"But while thus holding on the clear facts of this case, as they now appear from the evidence, as they similarly held in - AIR 1937 27 (Privy Council) their Lordships are unable as a matter of law to hold that redress is obtainable from the Courts by action."

Reliance was there placed on the observations, of Lord Hobhouse in -- "Shenton v. Smith" (1895) AC 229 CO, where Lord Hobhouse said-

"It appears to their Lordships that the proper grounds of decision in this case have been expressed by Stone J., in the Full Court.

They consider that, unless in special cases where it is otherwise provided, servants of the-Crown hold their offices during the pleasure of the Crown; not by virtue of any special prerogative of the Crown, but because such are the terms of their engagement, as is well understood throughout the public service. If any public servant considers that he has been dismissed: unjustly, his remedy is not by a law-suit, but by an appeal of an official or political kind.....

As for the regulations, their Lordships again agree with Stone J. that they are merely directions given by the Crown to the Governments of Crown Colonies for general guidance, and that they do not constitute a contract between the Crown and its servants."

4. Following these authorities I am of the opinion that even though there may be rules of service made under the statute they do not become a part of the contract between the plaintiff and Union of India and in my opinion it is not a matter which is subject to the control of Courts. I would therefore dismiss this appeal with costs.