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(1982) 08 GAU CK 0027

In the Gauhati High Court

Case No : Civil Rule No. 18 of 1981

Shri Pritam Singh — APPELLANT

Vs

The Divisional Railway Manager, North-East Frontier Railway Lumding and Others — RESPONDENT

Date of Decision : 26-08-1982

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1982) 1 GLR 719

Hon'ble Judges : D. Pathak, Acting C.J.;K.N Saikia, J

Bench : Division Bench

Advocate : S.N. Bhuyan and A.C. Buragohain, for the Appellant; A.R. Barooah and M.K. Sarma, for the Respondent

Final Decision : Allowed

Judgement

D. Pathak, Actg. C.J.

1. This application under Article 226 of the Constitution of India is directed against the order of removal of the Petitioner passed by the Divisional Electrical Engineer North-East Frontier Railway, Lumding. The Petitioner preferred an appeal before the Divisional Railway Manager, North-East Frontier Railway, Lumding which was also rejected.

2. At the time of hearing Mr. A.R. Barooah, the learned Counsel appearing on behalf of the Respondents, takes a pre-liminary point that as the Union of India is not impleaded as a party this petition is Incompetent. According to the learned Counsel the Union of India is a necessary party and as the Union of India is not made party this petition cannot proceed. In this connenction the learned Counsel refers to a decision of the Supreme-Court in Shri Ranjeet Mal Vs. General Manager, Northern Railway, Baroda House, New Delhi and Another, where a similar question came up for consideration by their Lordships of the Supreme Court as to whether the Union of India is a necessary party. In that case, the

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Appellant was removed from service by the Railway authorities against which he preferred an application underArticle 226 the Constitution of India. The learned Single Judge of the Rajasthan High Court held that as the Union of India was now uploaded as a party thr petition was not maintainable, against which there was Letters Patent appeal where the Division, Bench also affirmed the decision of the learned Single Judge. The Petitioner in that case being aggrieved went up in appeal before the Supreme Court where their Lordships of the Supreme Court held that Union of India is a necessary party in a case of this nature and as the Union of India was not made a party the petition of the Appellant was rightly rejected. The reasons given by their Lordships of the Supreme Court read as follows:

The employee, was a servant of the Union, whose removal would be removal from service of the Union. Any order which can be passed by any court on a challenge of such removal would have to be enforced against the Union. The General Manager or any other authority acting in the railway administration is as much a servant of the Union as the employee.

Their Lordships further observed that the Union of India represents the railway administration. The Union carries on administration through different servants. Those servants all represent the Union in regard to activities whether in the matter of appointment or in the matter of removal. It cannot be denied that any order which will be passed on an application under Article 226 which will have the effect of setting aside the removal will fasten liability on the Union of India, and not on any servant of the Union. Accordingly the Supreme Court hold that the Union of India was a necessary party.

3. Being, faced with this predicament Mr. S.N. Bhuyan, the learned Counsel for the Petitioner submits that the Petitioner should be given seven days time to implead the Union of India as party to this case, From the records it transpires that as back as ,on 1.4.81 the Respondents filed the affidavit-in-opposition and this point was specifically taken in para 15 of the affidavit-in-opposition. Even inspite of the averment in the affidavit-in-opposition the Petitioner''did not take any steps for impleading the Union of India, as a necessary, party. It shows that there was laches on the part of the Petitioner and for the lashes of the Petitioner we cannot give any, premium by allowing the Petitioner to implead the Union of India as a party at this stage.

4. In the above view of the matter we find that this petition is not maintainable and accordingly it is rejected. The Rule is discharged.

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