

(1968) 12 MAD CK 0041
In the Madras High Court

Southern Railway Mazdoor Union

APPELLANT

Vs

Southern Railway (by General Manager)

RESPONDENT

Date of Decision : 18-12-1968

Acts Referred:

Government of India Act, 1935 — Section 241

Citation : (1970) 1 LLJ 83

Hon'ble Judges : P.S. Kailasam, J

Bench : Single Bench

Judgement

P.S. Kailasam, J.—This petition is filed by the Southern Railway Mazdoor Union represented by its general secretary for the issue of a writ of certiorari to call for the records on the file of the General Manager, Southern Railway, and to quash his order dated 21 September 1963, withdrawing recognition to the petitioner-union.

2. The petitioner is a trade union registered on 13 February 1961 under the provisions of the Trade Unions Act, 1926. Classes III and IV employees of the Southern Railway are members of the petitioner-union and the strength of membership of the petitioner-union as on 31 December 1967 is 43,737. The petitioner-union was recognized by the railway by its order dated 21 September 1963.

3. The central executive council of the petitioner union met at Coonoor on 25 and 26 June 1963 and passed a resolution deciding to advise the members to go on a token strike on 19 September 1968. The resolution was conveyed to the railway on 3 September 1968. On 13 September 1968 the Central Government passed an Ordinance prohibiting the staff from going on or joining the strike, and providing certain consequences such as break of service which would follow from the participation of the strike. The Ordinance was published on 14 September 1968. On 19 September 1968 several members of the petitioner-union went on a token strike. The petitioner states that the union as a union did not go on a strike. On 21 September 1963, the impugned order withdrawing recognition was

passed.

4. The order is challenged as not in conformity with the provisions of Para. 3610 of the Indian Railway Establishment Manual which provide that granting, continuance of recognition vests with the discretion of the Government, but recognition when granted will not be withdrawn without due cause and without giving an opportunity to the association to show cause against such withdrawal. According to the petitioner-union, Para. 3610 is a statutory rule and it is obligatory on the railway to give notice before withdrawing the recognition. It is submitted that even if Para. 3610 is an administrative rule, the railway is bound to follow it and any order passed without giving notice to the petitioner will be in violation of the principles of natural justice.

5. The railway in its counter-affidavit submitted that Para. 3610 is not a statutory rule, and that it is only administrative in nature. It is also submitted that the petitioner sent a notice on 3 September 1968 conveying its decision to advise its members to go on a token strike on 19 September 1968 and that after an Ordinance was passed on 13 September 1968, the petitioner-union did not take part in the conciliation proceedings before the Assistant Labour Commissioner for calling off the strike on 17 September 1968. It is alleged that the conduct of the petitioner was deliberate and the petitioner had the intention to pursue its illegal action and take part in the illegal strike. It is the contention of the railway that as petitioner-union had failed to adopt legal means to represent its case, the petitioner cannot claim, having participated in the illegal strike, that it should be given an opportunity before its recognition is withdrawn. According to the railway, the withdrawal of the recognition was for due cause and the petitioner-union cannot complain that it was not given an opportunity.

6. The question that arises for consideration is the effect of Para. 3610 of the Indian Railway Establishment Manual which runs as follows:

Government is prepared to accord official recognition to associations of its industrial employees. The grant and continuance of recognition rests 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.

Paragraphs 3610 to 3612 in Part B of Chap. XXXVI, rules for the recognition of service associations of railway servants, are in Concordance Rules 1 to 3, Part B of appendix XIII RI (1951 reprint) and Railway Board's letter No. E (L) 62 AS 2-I, dated 7 March 1963 and case No. E. 56 (Manual) 1/XXXVI. In the 1951 edition of the Indian Railway Establishment Code. Vol. I, the rule corresponding to Para. 3610 is Rule 1 in Part B, rules for the recognition of associations of non-gazetted railway servants, of appendix XIII. Appendix XIII contains rules for the recognition of service associations of Government servants. Appendix XIII refers to Rules 26 and 27 of appendix XL Appendix XI contains Railway Servants' Conduct Rules framed under Rule 1701. Rules 26 and 27 to which reference is

made in appendix XIII relates to membership of service and labour associations of railway servants and subsidiary instructions. Rule 26 in appendix XI prohibits gazetted railway servants from being a member, representative or officer of any association representing or purporting to represent Government servants or any class of such servants unless such association satisfies the conditions enumerated in the rule. Rule 27 empowers the agent to issue subsidiary instructions as may be found necessary in regard to the conduct of non-gazetted railway servants under him and may authorize the head of a department to do so. Thus, in the appendix relating to Railway Servants' Conduct Rules, the membership of service and labour association of railway servants is regulated. Appendix XIII which relates to recognition of service associations of Government servants, provides for recognition as well as for withdrawal of service associations. Appendices XI and XIII will have to be read together and Rule 1701 under which appendix XI is framed relates to the conduct and discipline of the railway servants. Rule 1701 provides that 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(e) of the Indian Railways Act (9 of 1890) as amended, the conduct of railway servants shall be governed by the rules contained in appendix XI. The rules under this chapter, namely, Chap. XVII, provide for discipline and appeal rules for non-gazetted staff. So far as this chapter is concerned, as the rules relate to the service conditions, whether they are framed by the President or by a delegate of the President as envisaged under Article 309, the rules will be statutory in character.

7. It was submitted that so far as the rules relating to recognition of association are concerned, they will not fall under Discipline and Appeal Rules relating to the staff or under the provisions of Article 309. This contention cannot be accepted, for, reading Rule 1701, Rules 23 and 27, appendices XI and XIII, it appears that the scheme of the rules is to provide for permitting the Government servants to form associations only under certain circumstances, the Government servants being prohibited from joining associations if the conditions are not satisfied. Chapter XVII, Section 11, relating to discipline and appeal rules for the staff and appendices XL and XIII should be read as part of the rules relating to the conduct and discipline in S. I of Chap. XVII, in the prefatory note to the 1951 edition of the Indian Railway Establishment Code, Vol. I, It is stated 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 supersession of all pre-existing rules relating to the same matters, and 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.

Though the prefatory note cannot be read as meaning that all the rules in Vol. 1 had been made by the Governor-General in Council, the contention on behalf of the petitioner that the impugned rule is one under Sub-section (2) of Section 241

of the Government of India Act, 1935, derives some support. A reference to appendix 12, Concordance, in the 1968 edition of the Indian Railway Establishment Manual indicates that Para, 3610 is in concordance with the Railway Board's circular. Rules 156 and 167 of the Indian Railway Establishment Code empower the Railway Board and the General Managers of Indian Railways to make rules with regard to non-gazetted railway servants under their control. As Para. 3610 relates to the conduct and discipline of railway servants and as it has been framed by the Railway Board, the paragraph has statutory authority and the contention of the learned Counsel for the petitioner that the paragraph is statutory in nature will have to be accepted.

8. The paragraph specifically provides that the recognition of a union, when once it is granted, will not be withdrawn without sufficient cause and without giving an opportunity to the association to show cause against such withdrawal. In this case, it may be that the railway had proper cause for withdrawing the recognition. But the other requirement, namely, that the association should be given an opportunity against the withdrawal of the recognition, has not been complied with. As Para. 3610 has been found to be statutory in nature, the failure to comply with the requirement of giving an opportunity to the association to show cause against such withdrawal would vitiate the order.

9. Even if the contention of the learned Counsel for the railway that the paragraph is administrative in character is accepted, the withdrawal of the recognition without giving an opportunity to the association will be against the principles of natural justice. It has been held that the authority which framed the rules will have to follow that rule whether it is statutory in character or not. Even if it is an administrative rule it is incumbent on the authority to follow the rule. Vide *Nagarathinammal v. Ibrahim Saheb* (1955) 2 M.L.J. 49.

10. Sri Govind Swaminathan; learned Counsel for the respondent, submitted that the petitioner had given notice of strike and even after the Ordinance was passed declaring the strike to be illegal and providing for certain consequences in the event of the employees taking part in the strike, the petitioner-union continued in its illegal activities. Learned counsel pointed out that the petitioner-union failed to take part in the conciliation proceedings held the conciliation officer on 17 September 1968 and in the circumstances the conclusion is irresistible that the petitioner union was deliberately indulging in unlawful activities and the giving of an opportunity would only be an empty formality. Sri Dolia on behalf of the petitioner submitted that if the petitioner-union has been given an opportunity, it would have contended amongst other pleas that the petitioners as a union did not take part in the strike, but only some of the members without heeding to the association took part in the taken strike. From the fact that the petitioner union gave notice of strike which was not illegal at that time and from the circumstances that the Ordinance was passed on 13 September 1968, it cannot be said that the only irresistible conclusion is that the petitioner-union intended to take part in the taken strike which was declared illegal. Even if the

paragraph providing for giving an opportunity to the petitioner-union is administrative in character, an order cannot be passed to the prejudice of the union without giving it an opportunity against withdrawal of the recognition. Even on the basis that the order is only administrative in character, as the order has been passed without notice to the petitioner-union, the order cannot be sustained. The impugned order has, therefore, to be Quashed. Sri Dolia submitted that the matter is likely to be settled and the action against the union is likely to be dropped by the Government, it will of course be open to the railway to take such action as it deems fit in accordance with law. The writ petition is allowed. There will be no order as to costs.