

(1977) 08 MAD CK 0028
In the Madras High Court
Case No : W.A. No. 359 of 1975

The General Manager, Southern Railway, Madras another	APPELLANT
Vs	
Y. Subramaniam, Senior Pay Clerk, Chief Cashiers Unit, Southern Railway, Madras	RESPONDENT

Date of Decision : 03-08-1977

Acts Referred:

Citation : (1977) 08 MAD CK 0028

Hon'ble Judges : Govindan Nair, C.J;Varadarajan, J

Bench : Division Bench

Advocate : K. Venkateswara Rao, for the Appellant; S. Balathandapani, for the Respondent

Judgement

Govindan Nair, C.J.—This is an appeal by the General Manager, Southern Railway, Madras, and the Railway Board, Ministry of Railways, New Delhi, against the judgment of Ramanujam, J. allowing W.P.No. 687 of 1972, taken by the respondent seeking the relief that he be given the benefit of the Railway Board's Circular letter No. E. (P.A.)1--71/RT/11, dated 10th January, 1972, and seeking further orders that this court may deem fit and proper to pass. That the respondent entered service and was confirmed before 31st March, 1938 is not disputed. He was at that time called a "pay clerk". The rule relating to the retirement, is contained in the Indian Railway Establishment Code--Volume II. The relevant Rule is R. 2046 (F.R. 56) which reads as follows--

.....(a) Except as otherwise provided in this rule, every railway servant shall retire on the day he attains the age of fifty eight years.

(b) A ministerial railway servant who entered Government service on or before the 31st March, 1938, and held on that date--(i) a lien or a suspended lien on a permanent post, or (ii) a permanent post in a provisional substantive capacity under clause (d) of R. 2008 and continued to hold the same without interruption until he was confirmed in that post, shall be retained in service till the day he attains the age of sixty years.

Note: For the purpose of this Clause, the expression Government Servant includes service rendered in a former Provincial Government and in ex-Company and ex-State Railways.....

The case of the respondent was that he was entitled to the benefit of R. 2046(b). An amendment was made to the note to the said rule by providing that the rule will apply only "If the rules of the Company or the State had a provision similar to clause (b) above." The validity of this portion of the note came up for consideration before the Supreme Court in *Railway Board Vs. A. Pitchumani*, and the Supreme Court held that such a provision cannot be sustained, and struck down that portion which we have put in quotation above. After that judgment was rendered, a circular was issued by the Railway Board on 10th January, 1972, and the respondent had claimed the benefit of Cl.(c) of paragraph 5 of that Circular, in the writ petition. This claim was met by the appellants by contending that R. 2046 was not applicable to the respondent because the respondent was not a "ministerial railway servant".

2. A "ministerial railway servant" is defined in R. 2003(17) of the Railway Fundamental Rules--Service Conditions, Pay and Deputation--which is contained in the Railway Establishment Code--Volume II. The learned Judge in the judgment under appeal rejected the contention by relying on the decision of a Division Bench of this court in *Kandasami v. General Manager, Southern Railway*, Madras W.P.642 of 1972, which was disposed of along with a number of other cases by a common judgment.

3. Before us, counsel on behalf of the Railways, Sri K. Venkateswara Rao contended that the definition in R. 2003(17) insists that a ministerial servant must be a railway servant of a subordinate service whose duties are "entirely clerical". According to counsel, the duties of the respondent are not entirely clerical. The duties of the respondent have been detailed in a statement filed before this Court which is seen as an annexure to the counter affidavit filed on behalf of the Railways. It is stated that the original designation of the respondent as pay Clerk has also been changed into that of Cashier. In view of the duties enumerated in the annexure to the counter affidavit and because of the change in the nomenclature of the designation, on behalf of the Railways it was contended that the duties of the respondent are not "entirely clerical". Emphasis was made on the fact that the respondent was entrusted with cash and that he had to disburse the cash, get proper vouchers and receipts and had also to keep accounts regarding the cash entrusted to him and which was disbursed by him in accordance with the directions of his superior officers. It is, therefore, that it is contended that he has become a Cashier or more an Accountant than a clerk, and his duties cannot, therefore, be said to be entirely clerical. This question had not been dealt with in detail in the judgment in *Kandasami v. General Manager, Southern Railway*, Madras W.P. 642 of 1972 which has been relied on by the learned Judge in the judgment under appeal. Counsel has placed before us the various meanings of the expression "clerk", and we think that it will be useful to

refer to those definitions in order to understand the true import of the word.

4. Ramanatha Iyer in his Law Lexicon has lucidly stated the meaning of the term "Clerk". The passage runs thus--

The term "clerk" as used, in its popular sense, denotes as one whose duties are clerical, and they may be of various kinds (in ecclesiastical law), clerk is a person in holy orders; a clergyman (In court practice), clerk is an officer of a court who keeps its minutes, or records, its proceedings, and has the custody of its records and seal, i.e., the clerk of the court. (In commercial law) one employed to keep records and accounts; a scribe, penman or accountant;.....

In Stroud's Judicial Dictionary, it is stated that "clerk" is either secular or regular, and in the latter sense, the term signified a penman who got his living in some court or otherwise by the use of his pen. This is a very general definition and without attempting to enumerate the various forms in which a pen can be used in carrying out the duties of his office, such as, by writing letters, dealing with correspondence or keeping accounts or notes, gives an indication that the clerk is a person employed for doing such duties as are assigned to him by his master which are mainly performed by use of a pen.

5. We have also been referred to Bouvier's Law Dictionary where again we find similar meanings given. The apposite passage therefrom reads thus--

A person employed in an office, public or private, for keeping records, or accounts.

Words and Phrases judicially defined, generally edited by John B. Saunders (Volume I), wherein it is mentioned that "clerical work" includes writing, book-keeping, sorting papers, filing, typing, duplicating, machine calculating, drawing and the editorial preparation of matter for publication.

6. Shorter Oxford Dictionary also includes a person who keeps accounts in the meanings given for the word "clerk".

7. In the light of the various definitions and meanings that have been given in the citations which we have referred to, and considering the details of the duties performed by the respondent, which have been annexed to the counter affidavit filed by the Railways, and which we are also annexing to this judgment for ready reference, there can be little doubt that the respondent was a ministerial servant whose duties were entirely clerical. Part of his duties was keeping accounts, disbursement of money and making necessary entries relating to such activities in the books that he had to keep for the purpose. The disbursements, it is seen from the first paragraph, were to be in accordance with the orders of the superior officers. Therefore, he was carrying out instructions by keeping records, keeping accounts in regard to the amounts entrusted to him and making notes regarding all the moneys that had been expended. In this process, he was not called upon to take any decision of his own. In general parlance, we understand that a Clerk is a person who carries out instructions of the superior officers and keeps records

or discharges functions in accordance with those instructions, and the discharge of those functions will be evidenced by the entries that he makes or the notes that he prepares, as has been mentioned in Stroud's Judicial Dictionary, by a pen which now indicate the nature of the work he has been doing. In the light of the above, we see no reason to differ from the learned Judge. We accordingly dismiss this appeal with costs. Counsel's fee Rs. 250.

Annexure-Duties of Pay Clerks

1. The duties of Pay clerks consist of the disbursement of salaries, wages, etc., of the staff and of Bills of Contractors, for work done or stores supplied to the Railway duly authorised by Competent authority, viz. the F.A. and C.A.O., as may be given to them by the Chief Cashier.
2. The Pay clerk is personally responsible for the safety and correct accountal of the Railway cash entrusted to him for payment.
3. The Pay clerk will receive vouchers duly giving acquittance for the same in the record maintained by the voucher distribution Pay clerk.
4. The Pay clerk will, on receipt of the vouchers satisfy himself that the vouchers, which, he has signed for, pertain to his pay unit or sphere of payment assigned to him. The pay clerk will further satisfy himself that the vouchers he has signed for are correct and complete in all respects, viz., signatures by the Departmental and passing officers, mode of payment of specified, nomination of witnessing official, etc.

Note : The Pay clerk in his own interest will verify the accuracy of the totals of the column "payable" in the pay sheets before making payments.

5. The Pay clerk will carefully enter all vouchers, after satisfying himself as required in para-2 above, in his receipt book (C.A. 137).
6. The requisition for funds duly sanctioned by Assistant Treasurer or in his absence by the Chief Cashier will be presented by the Pay clerk to the Head cash Counter (Payments), and funds (cash/cheques) therefore will be received by him and the signed requisition will be surrendered to the Head cash counter (Payments).
7. Any receipts, either in cash or cheque, other than those from the Chief Cashier will be similarly entered by the Pay Clerk in the receipt book giving full particulars and signing a receipt for the same below the total amount (cash/cheque).
8. The Pay Clerk will be responsible for the safe custody of vouchers until these are cleared to Voucher Clerk. Before leaving office he will satisfy himself that no vouchers or copy of the receipt book or any other record for which he is responsible is left on the table or out of the box. All records must be properly secured. Any case of loss of a voucher or receipt book or other records will be seriously dealt with.

9. The Pay Clerk will ensure that payments are effected according to a programme of payments, duly taking care to see that payments are effected on the date, at the place prescribed and in the presence of the witnessing official nominated. In regard to witnessing payments and obtaining certificates for payment, the instructions contained in circular Nos. 16/2/A/CAD/FB/F , 46, dated 31st July 1952, published, in the Weekly Gazette, dated 25th August 1952 and CAD/FB/E. 46 of 29th September 1952 should be adhered to (circulars reproduced under annexure-A).