

(1974) 09 RAJ CK 0010
In the Rajasthan High Court

Union of India and Others

APPELLANT

Vs

Madharam Verma

RESPONDENT

Date of Decision : 05-09-1974

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 309
General Clauses Act, 1897 — Section 3
Government of India Act, 1935 — Section 241

Citation : (1975) 2 LLJ 160 : (1974) RLW 500 : (1974) 7 WLN 628

Hon'ble Judges : B.P. Beri, C.J.; D.P. Gupta, J

Bench : Division Bench

Judgement

B.P. Beri, C. J.

1. A learned single Judge of this Court by his judgment dated March 30, 1972 set aside an order retiring Madhoram Verma from Railway service on his completing 58 years and directed the Union of India and others to pass proper orders in accordance with Rule 2046(2)(a) of the Railway Establishment Code (hereinafter referred to as "R. II") within 6 months. The Union of India and others have come up in appeal.

2. The facts of this case are not in dispute. Madhoram Verma, the respondent before us, joined the former Bikaner State Railway as a clerk on February 1, 1929. The Union of India took over the Bikaner State Railway on April 1, 1950 and even then Verma was working as a clerk and, therefore, he was a member of the ministerial staff. He was given an option to elect the Central Pay Commission Scale of Pay, abbreviated as "CPC Scale", or to retain his scale of pay and conditions of service as were prevalent in the ex-Bikaner State Railway. He opted for the "CPC Scale". According to the conditions of service in ex-Bikaner State Railway, Verma would have retired on January 9, 1969 on completing 60 years, but the Railway Administration informed him vide Ex. 1 that he would be retired with effect from January 9, 1967 on attaining the age of 58 years. He preferred an appeal against this order which was rejected on the ground that Verma having

elected the "CPC Scale" should be considered to have elected for the Government service with effect from April 1, 1950, i.e., after March 31, 1938 for the purposes of Rule 2046, R. II. "This decision was communicated to Verma by a memorandum Ex. 3 dated February 27, 1967. An appeal before the Minister for Railways preferred by him did not succeed. He thereafter preferred a petition under Article 226 of the Constitution of India challenging the validity of the notice Ex. 1 and the order Ex. 3 relating to his retirement. "The grounds, inter alia were that he was being discriminated against and that the option which he had exercised for the "CPC Scale" could not furnish the administration the foundation for the fiction of treating his service to commence with effect from April 1, 1950 when in point of fact he had commenced it way back in 1929. The Union of India and other respondents filed an answer to the petition reiterating that his option for the "CPC Scale" meant that he had come under the purr view of R. II on April 1, 1950 and, therefore, his retirement at the age of 58 was legal. The learned single Judge held that the Railway Administration remained under the mistaken impression that Verma was a post-April 1, 1938 employee and that his tenure of service was governed by Rule 2046(2)(b) instead of 2046(2)(a). R. II and this basic error of law was responsible for the position adopted by (the Railway Administration. In. result the learned single Judge set aside the order Ex. 1 dated January 3, 1967 and the Railway Administration was directed to decide the petitioner's case afresh according to Rule 2046(2)(a). R. II and to pass a proper order within a period of six months with due regard to the fact that he has retired since.

3. Learned counsel for the Railway urged that in the background of the agreement between the Government of. India and the Government of Rajasthan dated February 2, 1950, the Press Communique of March 24, 1950, the Federal Financial Integration dated April 1, 1950 and the Annexures O, Q and C filed in the case, Verma could not get the benefit of having entered the Government service prior to April 1, 1938. He placed reliance on *Binda Lal v. Union of India* 1972 Lab. I.C. 1462 His further submission was that Verma had no legal right and therefore, he was not entitled to file a petition for a writ of mandamus. He placed reliance on *Kailash Chandra Vs. Union of India (UOI)*, *Railway Board Vs. A. Pitchumani*, *S.N. Pallegal Vs. The State of Mysore*, and *The State of Assam and Others Vs. Premadhar Baruah and Others*, etc., and invited our attention to certain passages from the Halsbury's Laws of England, Volume II. His last argument was that Verma could not be in Government service prior to 1-4-1938 as the term "Government" has been defined in Section 3(60) and Section 3(23) of the General Clauses Act.

4. Mr. Kapoor, appearing for the respondent Verma, urged that after *Pitchumani's* case, (supra), the, judgment of the learned single Judge under appeal stands reinforced. *Madhoram Verma* could not be discriminated against. He placed reliance on *B.P. Misra v. Union of India* AIR 1971 S.C. 104 : (1971) Lab. I.C. 290 and *Sudhir Ranjan Guha Vs. Union of India (UOI) and Others*,

5. Historically speaking Rule 2046, R II was framed for the first time in 1940 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. (Cf. Prefatory Note, State Railway Establishment Code, Volume I, 1940 Edition). Relevant portion of Rule 2046 corrected upto 26th July, 1962 reads as follows:

2048. (F.R. 56.)(1) Except as otherwise provided in the other clauses of this rule the date of compulsory retirement of a railway servant other than a ministerial servant is the date on which he attains the age of 55 years. He may be retained in service after the date of compulsory retirement with the sanction of the competent authority on public grounds, which must be recorded in writing but he must not be retained after the age of 60 years except in very special circumstances.

(2)(a) A ministerial servant, who is not governed by Sub-clause (b) may be required to retire at the age of 55 years, but should ordinarily be retained in service, if he continues efficient upto the age of 60 years. He must not be retained after that age except in very special circumstances, which must be recorded in writing, and with the sanction of the competent authority.

(b) A ministerial servant--

(i) who has entered Government service on or after the 1st April, 1938, or

(ii) who being in Government service on the 31st March, 1938 did not hold a lien or a suspended lien on a permanent post on that date.

shall ordinarily be required to retire at the age of 55 years. He must not be retained after that age except on public grounds which must be recorded in writing, and with the sanction of the competent authority and he must not be retained after the age of 60 years except in very special circumstances.

.. . .

Correction Slib Serial No. 1873-- Circular No. 831-E/9-IV (Riv.), dated 6-12-1962 contains the following amendments:

2. It has now been decided by the Government of India with the sanction of the President,, that the age of compulsory retirement of railway servants should be 58 years subject to the following exceptions:

(i) The existing Rule 2046 (F.R. 56)(2)(a)-R-II, under which ministerial railway servants who held a lien or suspended lien on a permanent post on 31-3-1938 are to be retained in service upto the age of 60 years subject to their continuing to be efficient and physically fit after attaining the age of 55 years, will remain in force.

.. . .

According to this amendment, Rule 2046(2)(a) R II remained in force and intact.

The appellant treated Verma as an employee who was governed by Rule 2046(FR. 56)(1) and therefore retired him on completing the age of 58. The pointed question, therefore, which arises for our consideration is whether Madhoram Verma is governed by Rule 2046(2)(a) or 2046 (1). R II?

6. In order to take Verma out of the benefit of Rule 2046(2)(a) R II the learned Counsel for the appellant has placed reliance on four documents.. Let us examine them.

7. The first document is Ex. "O" dated 10-12-1951. This relates to the permanent staff of the Part B States. It is issued by order and signed by the Assistant Secretary to the Government of India, Ministry of Finance. This is a clarificatory office memorandum in regard to the applicability of F.R. 56 (b) (ii) in regard to the permanent staff of the Part B States. In our opinion it is not directly relevant to a Railway servant because it does not speak of Rule 2046. R II and art best it is a memorandum endeavouring to interpret Fundamental Rule 56 and it need not detain us.

8. The next document, to which our attention was specifically invited is Ex. "Q" dated 14-5-1952 issued by the Deputy Director, Railway Establishment Board in regard to the retirement age of the staff of the ex-States Railways. It inter alia, says,--

? The Railway Board have decided with the sanction of the President, to issue the following clarificatory orders in respect of the age of retirement:

(a) In the case of staff of the Ex-States Railway who elect the CPC Scales of pay, the retirement age will be 55 years as laid down in Rule 2046(F.R. 56) of the Indian Railway Establishment Code, Volume II, except that the provisions of Sub-rules 2(a) and 2(b)(ii) of the rule relating to Ministerial staff will not apply to them.

.. . . .

This indeed is a decision, of the Railway Board although it has the sanction of the President. In other words, the President has merely approved the interpretation put by the Board and we cannot give it the status of a rule framed in exercise of the powers under Article 309 of the Constitution of India amending the statutory Rule 2046, R II.

9. The next document is Ex. "C" dated 24-9-1952 issued by the Railway Board conveying the decision of the President regarding the retirement age of the staff (Gazetted and non-gazetted) of ex-State Railways. It reads,--

The President is pleased to decide that Items (a) and (b) of para. 1 of the Board's letter of even number dated the 14th May, 1952, shall be substituted by the following:

(a) In the case of the staff of ex-State Railways who elect the CPC Scales of pay or who have been, or may be, brought on these scales of pay on promotion, the

provisions of Rule 2046, R II F.R. 56) shall apply. All employees of the ex-State Railways should, however, be considered to have entered Government service on 1-4-1950 (1-8-1949 in the case of ex. G.B.S. Railway) i.e., after 31-3-1938.

.. . . .

It no doubt carves out an exception excluding the ex-State Railway servants from the benefit of Rule 2046(2)(a), R II and treats them as having entered on 1-4-1950 and thereby not eligible for the benefit of the Sub-rule (2)(a). Could we say that it is a statutory rule embodying an exception in regard to the applicability of Rule 2046(2)(a). R-II"? We regret we are unable to give it such a status notwithstanding its high source as it is a mere decision and not an amendment of the rule.

10. The last document to which our attention was invited, is Ex. "P" dated 2-12-1958 which defines "Government service" for the purposes of Rule 56(b)(i) of the Fundamental Rules. It says that the service of the ex-Princely States will be treated differently. At the highest it has a persuasive value because it is a decision on analogous provisions.

11. To sum up Exs. "O" and "P" are not directly relevant to Rule 2046, R II. Ex. "Q" contains the President's approval in regard to the Railway Board's interpretation and Ex. "C" is a decision of the President which excludes the servants of ex-State Railway servants from the benefit of Rule 2046(2)(a) by fixing their date of entry in the Government service on 1-4-1950. Even if we assume that "C" and "Q" have an amendatory status we are of the opinion for the reasons hereinafter stated that they are void because they are discriminatory and offend Article 14 of the Constitution of India.

12. Ex. "B" which has been relied upon by the learned single Judge is the form, of election of the "CPC Scales." No date is given on this but the learned Counsel for the Railway says that it is dated 21-10-1950. Madhoram Verma elected this "CPC Scales" with effect from 1-4-1950 and Ex. "B" clearly indicated the following terms:

The staff will have the option to elect either the CPC scale of pay or to continue on their existing scales of pay. Those who elect the former will be governed by the Indian (Government) Railway's rules and conditions of service in all matters and will come on to full cash dearness allowance (not the grainshop concession plus dearness allowance at the lower rates). Those who elect to continue on their existing scales will continue to be governed by their existing conditions of service in the matter of--

.. . . .

(e) retirement age-- .. .

Note : Underlining is ours.

Madhoram Verma having opted to be governed by Railway Rules including Rule

2046, R II and having abandoned his own age of retirement of 60 under the Bikaner State Railway is now being told by an interpretative process that the benefit of Rule 2046(2)(a), R II is not available to the ex-State Railway servants and the learned single Judge has observed that it is not possible and in our opinion rightly. There is another reason which persuades us to hold that Verma could not be denied the benefit of Rule 2046(2)(a), R II for it is not permissible under Article 14 to classify Railway servants in regard to the matter of retirement by treating the source from which they have come into the Railway service as the basis and we shall immediately examine what the Hon"ble the Supreme Court has said in this regard. Reference may be made to Pitchumani's case (supra). For the application of this case, to the question which confronts us, it will be necessary to briefly examine the facts of Pitchumani's case. He was appointed as a clerk in the Madras and Southern Mahratta Railway Company in 1927 which was amalgamated with the Indian Railway Administration in 1947. He was also a ministerial Railway servant. On January 11, 1967 Rule 2046 was amended and a Note was added thereto which said that for the purposes of this clause the expression "Government service" includes service rendered in ex-company and ex-State Railways and any former provincial Government. On December 12, 1967 this Note was substituted by another Note reading--

For the purpose of this clause the expression "Government Service" includes service rendered in a former provincial Government and in ex-company and ex-State Railways, if the rules of the company or the State had a provision similar to Clause (b) above.

Pitchumani's original company service did not entitle him to go beyond 55 years and the Railway wanted to retire him on his attaining the age of 58 years. He filed a writ petition and the Mysore High Court held that the substituted Note dated December 12, 1967 was discriminatory. An appeal was taken by the Railway Board to the Supreme Court and the following observations of their Lordships deserve quoting:

The point to be noted is that though a distinction has been made in the rule between a railway servant coming under Clause (a) and a ministerial railway servant coming under Clause (b), those clauses will apply uniformly to all members of the Indian Railway Administration depending upon whether they are railway servants coming under Clause (a) or a ministerial railway servant coming under Clause (b), as the case may be.

.. ..

We are emphasising this aspect to show that no distinction has been made either in Clause (a) or Clause (b) regarding the uniform application in respect of the age of retirement to the officers mentioned therein and who are governed by those clauses. That is, there is no inter se distinction made, The distinction made in Clause (b) regarding the ministerial railway servants who entered Government service on or before March 31, 1938 is again of uniform application. That rule

only makes a broad distinction between the ministerial railway servants who entered Government service on or before March 31, 1938 and who entered Government service after that date.

.. . . .

That means both persons, like the respondent, and the officers who have straightly joined the service under the Indian Railway Administration, prior to March 31, 1938 and who satisfy the requirements under Sub-clause (i) or Sub-clause (ii) of Clause (b) will be equally entitled to continue in service till they attain the age of 60 years. These facts clearly show that Clauses (a) and (b) of Rule 2046 had uniform application to all the employees of the Indian Railway Administration.

.. . . .

Therefore, from what is stated above, it is clear that upto and inclusive of January 11, 1967, no distinction inter se apart from that made by Clauses (a) & (b) between the officers of the Indian Railway Administration, from whatever source they may have come, was made.

.. . . .

The position after the new Note was added, is that the employee who had throughout been under the Indian Railway Administration is entitled to continue in service till he attains the age of 60 years whereas the persons, like the respondent, who are also the employees of the Indian Railway Administration, but whose previous services were with the company, will have to retire at the age of 58 years, because a provision similar to Clause (b) did not exist in the service conditions of the company. Discrimination, on the face of it, is writ large in the new Note, which is under challenge.

.. . . .

Where there is no indication that any further distinction inter se sought to be made amongst the officers mentioned in Clauses (a) and (b) and when a uniform age of retirement has also been fixed in respect of the officers coming under these two clauses, the classification carving out the ex-employees of the three authorities mentioned therein, with the added condition that the rules of the company or the State should have a provision similar to Clause (b), has, in our opinion, no nexus or relation to the object of the rule.

And the result was that their Lordships struck down the new Note as discriminatory.

13. In Pitchumani's case a statutory Note was struck down because it discriminated between one Railway servant and another on the ground that their original appointment was by a different authority than the Railway Administration and on the further ground that similar conditions did not prevail in the rules of the original appointing authorities. The case before us is stronger than

Pitchumani's case, firstly because originally Madhoram Verma's age of retirement was 60 years as against Pitchumani's 55 years. Verma was assured by Ex. " B ", his option form that all the service conditions of Railway service will be applicable to him and that the interpretative documents Exs. "Q" and "C" cannot stand on a higher footing than a statutory Note appended to the amended Rule 2046, R II as amended on 12-12-3967. Therefore, there is no force in the contention raised by the learned Counsel for the Railway that Madhoram Verma having entered service in the ex-Bikaner State Railway was to be treated differently from the other Railway servants in so far as the applicability of Rule 2046(2)(a) R II is concerned. It will be a case of discrimination against him.

14. We might now briefly refer to some of the other cases of the Supreme Court cited by the learned Counsel for the Railway. Kailash Chandra's case (supra) was a matter of compulsory retirement under Rule 2046(2)(a). R II. The question which arose for consideration was that even if a servant continued to be efficient under that rule the Railway Administration had a discretion to retire him or not and the Supreme Court held that the Railway Administration had such discretion. In the case before us the Railway Administration proceeded on the assumption that because Madhoram Verma was originally appointed by the ex-Bikaner Railway, therefore, he was retired bona fide and not on any other ground.

15. Pallegal's case (supra) again revolves on the subject that where a discretion rested in the Government to retire at 55 or later a servant, then the exercise of the discretion cannot be challenged. It is also patently a different matter.

16. Premadhar's case (supra) was a case where right to continue after 55 years was dependent upon exigencies of public service and the retirement, therefore, on that ground was not discriminatory. In our case the reasons for retirement are altogether different. They are clearly contained in Ex. 1 and Ex. 3 which admit of no ambiguity. It is not necessary to refer to other authorities.

17. The argument of the learned Counsel that Madhoram Verma had no legal right to claim a writ of mandamus is devoid of force. If a Railway servant is being discriminated against on an unsustainable ground, his legal right guaranteed under Article 14 of the Constitution of India is infringed and Pitchumani's case answers the question. It is not necessary to refer to Halsbury in the light of Pitchumani's case.

18. The result is that this appeal fails and is dismissed with costs.