(1977) 09 CAL CK 0013

In the Calcutta High Court

Case No : F.M.A.T. 248 of 1977

Union of India (UOI) APPELLANT

Vs

Narendra Nath Bose RESPONDENT

Date of Decision : 01-09-1977

Acts Referred:

Central Services (Temporary) Services Rules, 1965 — Rule 5
Constitution of India, 1950 — Article 226, 309
Industrial Disputes Act, 1947 — Section 25F
Manual of Railway Pension Rules, 1950 — Rule 260, 620, 621

Citation : (1977) 2 ILR (Cal) 301

Hon'ble Judges : Sharma, J;M.M. Dutt, J

Bench : Division Bench

Advocate : N.C. Chakraborty, R.N. Das and Bhagabati Prosad Banerjee, for the Appellant;Saktinath Mukherjee, Jamini Kumar Banerjee and Madhusudan Banerjee, for the Respondent

Judgement

M.M. Dutt, J.—This appeal is at the instance of the Union of India and some officers of the Eastern Railway Administration and it is directed against the judgment of M.N. Roy J. whereby the Rule obtained by the Respondent on his application under Article 226 of the Constitution was made absolute.

2. The only question involved in this appeal is whether the Respondent, an Inspector of the Railway Protection Force, Coaching Post, Sealdah, under the Eastern Railway Administration, has been lawfully retired from service in accordance with Rule 620(h) of the Manual of Railway Pension Rules, 1950. Rule 620 reads as follows:

620(i) A Railway servant may retire from service at any time after completing 30 years'' qualifying service, provided that he shall give in this behalf a notice in writing to the appropriate authority, at least three months before the date on which he wishes to retire.

Note.--In the case of a Railway servant under suspension, the exercise of the right to retire on a retiring pension on completion of 30 years'' qualifying service shall be subject to the prior approval of the authority with powers to make substantive appointment to the post or service from which the Railway servant seeks retirement.

(ii) The authority competent to remove the Railway servant from service may also require him to retire any time after he has completed 30 years'' qualifying service provided that the authority shall give in this behalf, a notice in writing to the Railway servant, at least three months before the date on which he is required to retire or three months'' pay and allowances in lieu of such notice.

Note.--Both in the cases falling under sub-para (i) or (ii) above orders permitting/ requiring a Railway servant to retire after completing 30 years qualifying service should as a rule not be issued until after the fact that the Railway servant has indeed completed qualifying service for 30 years has been verified in consultation with the Accounts Officer.

(iii) A retiring pension shall be granted to a Railway servant who retires under sub-para (i) or is required to retire under sub-para (ii).

On July 19, 1976, the Chief Security Officer passed the following order:

Eastern Railway

No. SC.30/27-E/Con

Calcutta, the 19th July, 1976

ORDER

Whereas the Chief Security Officer is of the opinion that it is in the public interest to do so;

Now, therefore, in exercise of the powers conferred by Pension Rules, the Chief Security Officer hereby gives notice to Shri Narendra Nath Bose, Inspector/RPF/ CS/Sealdah that he on completing thirty years of qualifying service on the 6th April, 1976, (AN) shall retire from service with effect from the afternoon of 31.7.76 and directs that Shri Narendra Nath Bose, IPF shall be paid a sum equivalent to the amount of pay and allowances for three months (in lieu of the period of notice) included at the same rate at which he will be drawing them immediately before the date of retirement as specified hereinbefore.

Sd/- R.B. Singh, Chief Security Officer, Eastern Railway Calcutta. 19/7/76

3. The said order was served on the Respondent on July 31, 1976, at 5-30 p.m. On August 2, 1976, the Respondent moved a writ petition challenging the legality of the said order and obtained a Rule and an interim injunction. It was, inter alia, contended by the Respondent that as no payment of his pay and allowances was made or tendered to him simultaneously with the service of the said order as contemplated by Rule 620(ii), it was illegal, inoperative and void. The learned Judge accepted the contention of the Respondent and quashed the said order

and directed the Appellants not to give effect to the same or to act on the basis thereof. The learned Judge, however, granted liberty to the Appellants to take any fresh action against the Respondent in accordance with law.

4. It has been urged by Mr. Nani Coomar Chakraborty, learned Advocate appearing on behalf of the Appellants, that Rule 620(ii) does not contemplate payment of three months'' pay and allowances to the Railway servant sought to be retired along with the order of retirement in lieu of notice. He submits that the retirement or termination of service under Rule 620(ii) is not to be made by three months'' notice or by payment in lieu of such notice. It is contended that after an order for retirement is passed by the authority, it will be followed by three months'' notice in writing or payment of three months'' pay and allowances in lieu of such notice.

5. The question, in our opinion, is one of interpretation of Rule 620(ii). In this connection, we may refer to Rule 621(i) which inter alia provides that a Railway servant may ordinarily be required to retire only when it becomes necessary in public interest to do so. Indeed by the impugned order, the Respondent has been sought to be retired in the public interest. Reading Rules 620(ii) and 621(i) it appears clear that the authority competent to remove a Railway servant has not the absolute power to retire a Railway servant by the service of a three months'' notice or by payment of three months'' pay and allowances in lieu of such notice after the Railway servant concerned has completed 30 years'' qualifying service. So, before the Railway servant can be retired after the completion of 30 years'' qualifying service the authority concerned must be satisfied that such retirement of the Railway servant is in the public interest or that public interest demands that the Railway servant should not be continued in service any longer. It is the case of the Appellants that the Review Committee, after considering all relevant facts including the service records of the Respondent, recommended for his compulsory retirement to the Chief Security Officer and the latter accepted the said recommendation and passed the impugned order of retirement of the Respondent in the public interest. It follows, therefore, that before compulsory retirement of a Railway servant is directed, the authority concerned has to apply its mind and come to a decision as to whether the retirement should be made in the public interest. Rule 621(i) and the note below Rule 620(ii) clearly indicate the passing of an order for retirement. If there be no such order for retirement as contemplated by Rule 620(a) read with Rule 621(i), the authority concerned will have no power to retire a Railway servant by giving him three months'' notice in writing or three months'' pay and allowances in lieu of such notice. It is not disputed before us on behalf of the Respondent that before directing the compulsory retirement of the Respondent, the Chief Security Officer had applied his mind as to the existence of public interest justifying such retirement. The only argument that has been made on behalf of the Respondent is that as no payment was made to him simultaneously with the service of the impugned order, it is null and void. We are unable to accept this contention as we are of the view that an order for retirement is not to be made by the service of a three

months'' notice or payment in lieu of such notice. On this ground, the order of retirement, in our opinion, cannot be challenged.

6. Rule 620(ii) provides for the service of a three months ''notice or three months'' pay and allowances in lieu of such notice. It is true that the authority has directed the retirement of the Respondent in the public interest. But such order for retirement can be given effect to by the service of a three months'' notice or by payment to the Railway servant his pay and allowances in lieu of such notice. So long as either of these two conditions is not fulfilled, the order of retirement will not take effect and the service of the Railway servant will not stand terminated merely on the passing of the order of retirement. In order, therefore, to give effect to the order of compulsory retirement, either a three months'' notice in writing has to be served on the Railway servant or he should be paid three months'' pay and allowances in lieu of such notice.

7. On behalf of both parties some decisions of the Supreme Court have been relied on. None of these decisions, however, is on Rule 620(ii). In The State of Uttar Pradesh v. Dinanath Rai Civil Rule No. 1734 of 1968 disposed of by the Supreme Court on October 11, 1968 the Supreme Court had to interpret the following Rule:

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of U.P. is pleased to make the following general rule regulating the termination of services of temporary Government servant:

(1) Notwithstanding anything to the contrary in any existing rules and orders on the subject, the services of a Government servant in temporary service shall be liable to termination at any time by notice in writing given either by the Government servant to the appointing authority, or by the appointing authority to the Government servant.

(2) The period of such notice shall be one month given either by the appointing authority to the Government servant, or by the Government servant to the appointing authority, provided that in the case of notice of the appointing authority the latter may substitute for the whole or part of this period of notice pay in lieu thereof; provided further that it shall be open to the appointing authority to relieve a Government servant without any notice or accept notice for a shorter period, without requiring the Government servant to pay any penalty in lieu of notice.

8. In interpreting the above Rule the Supreme Court observed as follows:

It seems to us that the meaning of the statutory rule is clear. It gives option to the Government to either give a month''s notice or to substitute for the whole or part of this period of notice pay in lieu thereof. The rule does not say that the pay should be given in cash or by cheque at the time the notice is issued. Knowing the way the governments are run, it would be difficult to ascribe the intention to the rule making authority. There is no doubt that the Government servant would be entitled to pay in lieu of notice but this he would get in the ordinary course.

It follows from the above observation of the Supreme Court that the giving of notice or payment of one month''s pay in lieu thereof is not a condition precedent to the validity of an order terminating the services of a temporary employee. The decision of the Supreme Court in Dinanath Rai''s case Supra supports the contention of the Appellants to some extent. Strong reliance, however, has been placed on behalf of the Respondent on a later decision of the Supreme Court in Senior Superintendent, R.M.S., Cochin and Another Vs. K.V. Gopinath, Sorter, . In that case, the Supreme Court had to consider the order of termination passed under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. Rule 5 is as follows:

5. Termination of temporary service--(1)(a) The service of a temporary Government servant who is not in quasi-permanent service shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant;

(b) the period of such notice shall be one month; Provided that the service of any such Government servant may be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services, or, as the case may be, for the period by which such notice forms short of one month.

In that case, the service of the temporary servant concerned was sought to be terminated by an order dated September 25, 1968. He was, however, not paid his salary and allowances on the date of the order. On behalf of the Government, the observation of the Supreme Court in Dinanath Rai''s case Supra was relied on in support of its contention that the payment of one month''s pay and allowances to the temporary servant was not to be made simultaneously with the service of the order. G.K. Mitter J., who delivered the judgment of the Court, quoted the observation of the Supreme Court in Dinanath Rai''s case and the rule involved in that case and observed as follows:

No doubt the language of that Rule is somewhat similar to the words of Rule 5, but there is an essential difference. The Rule only means that the pay of thirty days or less may be substituted for service for the period of the notice. In other words, the Rule only entitles the employee to pay for the period of the notice without laying down any condition as to when the payment is to be given.

In this case, as we have already noted, ''termination forthwith'' is to be ''by payment to the Government servant'' of the sum mentioned. Payment is a condition of the termination of service forthwith....

In the instant case, Rule 620(ii) does not lay down that the retirement shall be made either by notice or by payment as we have already held that the retirement has to be made by an order of the competent authority only on the ground of public interest. Gopinath''s case Supra does not, therefore, lend any support to the contention of the Respondent.

9. In National Iron and Steel Company Ltd. and Ors. v. The State of West Bengal and Anr. AIR 1967 S.C. 1206, which has been relied on by the Respondent in support of his contention as to the invalidity of the impugned order, it has been held by the Supreme Court that u/s 25F(a) of the Industrial, Disputes Act, 1947, if a workman is retrenched without giving one month''s notice, his wage for the period of notice must be paid before he is asked to go. In this case, the Supreme Court has followed its earlier decision in Bombay Union of Journalists and Others Vs. The State of Bombay and Another, where it was observed that an employer could proceed to retrench a workman straightway on paying him his wages in lieu of one month''s notice. Section 25F(a) provides, inter alia, that no workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until the workman has been given one month''s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice. It is apparent from the language of Section 25F(a) that the giving of one month''s notice or payment of wages in lieu of such notice is a condition precedent to the retrenchment of a workman. The word ''until'' in Section 25F(a) is significant which means that so long as one month''s notice is not given or payment of wages in lieu of such notice is not made, there will be no retrenchment.

10. The language of Rule 260(ii) is different from that of Section 25F(a) of the Industrial Disputes Act, 1947, or Section 5 of Central Services (Temporary Service) Rule, 1965. We are, for the reasons already given by us, unable to accept the contention of the Respondent or as held by the learned Judge, that as the Respondent was not paid his pay and allowances simultaneously with the service upon him of the impugned order of compulsory retirement, it is null and void. In our view, non-payment to the Respondent of three months'' pay and allowances simultaneously with the service of the impugned order on him did not invalidate the impugned order, but because of such non-payment it did not take effect.

11. In these circumstances and on a proper construction of Rule 620(ii), we hold that the impugned order is legal and valid, but it has not taken effect, as admittedly the Respondent has not been paid his pay and allowances for three months in lieu of notice. The Respondent has not, therefore, retired from service. The impugned order dated July 19, 1976, will be effective and the Respondent shall retire from service, the moment he is paid or tendered for payment three months'' pay and allowances. The judgment of the learned Judge is modified to the above extent. The appeal is allowed to the extent indicated above, but in

view of the facts and circumstances of the case there will be no order for costs.

12. The operation of this judgment will remain stayed for a period of two weeks only as prayed for by the learned Advocate for the Respondent.

Sharma, J.

13. I agree.

