

(1962) 01 RAJ CK 0001
In the Rajasthan High Court
Case No : Second Appeal No. 183 of 1956

Union of India (UOI)

APPELLANT

Vs

Parmindar Singh

RESPONDENT

Date of Decision : 03-01-1962

Acts Referred:

Constitution of India, 1950 — Article 311, 311(1), 311(2)
General Clauses Act, 1897 — Section 16
Railway Establishment Code — Rule 148

Citation : AIR 1962 Raj 244 : (1962) RLW 296

Hon'ble Judges : Jagat Narayan, J

Bench : Single Bench

Advocate : S.K. Agarwal, for the Appellant; P.N. Datt, for the Respondent

Judgement

Jagat Narayan, J.—This is a second appeal by the union of India against an appellate decree of the District Judge, Kota, confirming a decree of the Munsif Kota granting a declaration to the plaintiff-respondent that his removal from service was void and inoperative and that he continued in the service of the Railway.

2. The relevant facts are these : Parmindar Singh plaintiff filed an application (Ex. P. A) to the Chief Engineer, B. B. and C. I. Rly. through the Executive Engineer Kota. This application was forwarded by the Executive Engineer on 23-8-49 to the Chief Engineer with the recommendation that he may be employed as a Mason Mistry in place of Shri Surendra Narain Mathur who had been recommended for the post of S. O. S. R. by him. This recommendation was accepted by the Chief Engineer who issued the following order (Ex. P. S):

"One Mr. Parmindar Singh is appointed as a temporary Mason Mistry vice Shri Surendra Narain Mathur wide para 1 above, on the usual terms of service.

Sd/-

Chief Engineer.

Copy forwarded to the Executive Engineer Kota for compliance..... Shri Parmindar Singh should be appointed as a temporary Mason Mistry on the usual terms of service and this office advised.

Sd/-

Chief Engineer."

3. On receipt of the above order the Executive Engineer made an offer of appointment (Ex. P. 1) to the plaintiff on 26-9-49 the material portion of which runs as follows:

"You are hereby offered the post of a temporary Mistry on Rs. 80/- p.m. in the grade of Rs. 80-5-120.E.B.-8-160 on the following terms and conditions :

(i) The appointment is purely temporary and subject to termination as provided in Rule 148 of the State Railway Establishment Code, Volume I....."

The plaintiff having accepted the appointment he was posted as a temporary Mistry with effect from 3-10-49.

4. On 17-5-50 the Executive Engineer Kota served a notice on the plaintiff terminating his services from 31-5-50 under Rule 148 of the State Railway Establishment Code, Vol. I. The present suit was instituted on 11-4-51 for a declaration that the above termination of service was void and inoperative and that the plaintiff continued in the service of the Railway.

5. The suit was contested by the Railway on the ground that the plaintiff being only a temporary employee his service could validly be terminated under Rule 148 of the State Railway Establishment Code, Volume I by the Executive Engineer, Kota.

6. Both the courts below held that the plaintiff was appointed as a temporary Mistry by the Chief Engineer, that the termination of his service amounted to "removal" within the meaning of Article 311(1) and as under that article he could not be removed by an authority subordinate to that which had appointed him the termination of his service was void and inoperative.

7. The first contention on behalf of the Union of India is that upon a proper interpretation of the orders referred to above the appointment of the plaintiff was in fact made by the Executive Engineer wider the direction of the Chief Engineer and it cannot be treated as an appointment made by the Chief Engineer himself. Reliance was placed on Dr. Ishwar Narain Sinha Vs. Union of India (UOI), The appellant in that case was appointed on probation by the Chief Medical Officer. There was a committee appointed to report as to the persons who were to be confirmed. On a consideration of the report of the committee the General Manager issued certain directions to the Heads of the Departments including the Chief Medical Officer. The General Manager's letter stated the following instructions which were issued for information and guidance of the officers concerned:

"1. Statements of the confirmation of category "B" men in 30 per cent. of reserved vacancies :

(a).....

(b).....

(c) The category (B) men will be confirmed in the various grades as shown in the statements from the dates on which they attained the category "B" status i.e. from the dates from which they have been working against permanent vacancies after completion of the probationary period of one year in case of subordinate staff.

(d) The man confirmed should be informed of the fact and in doing so the date from which they have been confirmed should also be intimated to them."

In compliance with these directions the Chief Medical Officer directed that the appellant be confirmed from 21st February 1946. It was held that the appellant was confirmed by the Chief Medical Officer and not by the General Manager on the following reasoning:

"The General Manager's letter which was addressed to the various Heads of Departments was a circular letter. It did not mention the appellant's name at all. The General Manager issued certain general directions which were to be carried out by the Heads of Departments, and, in accordance with those directions, individual cases were to be picked out, and they were to be informed as to from what date they were confirmed in their substantive posts. It is not disputed that the Chief Medical Officer had the power to appoint the appellant and therefore to confirm him. In "our opinion where an officer has the power of confirmation of a servant and issues the letter of confirmation, even though the letter was issued (sic) the orders of a higher authority, the confirming authority should be deemed to be the person who has actually issued the letter of confirmation."

8. In the present case there is no material on record from which it can be inferred that on the date on which the plaintiff was appointed as a temporary Mistry the Executive Engineer had the power to appoint him.

9. On behalf of the appellant it Was contended that from the offer of appointment (Ex. P. 1) it should be presumed that the Executive Engineer had the power of appointment. Reliance was placed on Mst. Mehtab Bai v. Mst. Motan Bai, ILR (1960) Raj 1088. The facts of that case was distinguishable. The question which arose in that case was whether the Munsarim who signed a proclamation under Order 21, Rule 66, C. P. C. had the authority to do so delegated to him under Rule 508 of the General Rules (Civil). Their Lordships drew a presumption u/s 114, Evidence Act that he had the necessary power relying on their own every day experience that similar processes were normally signed by the Munsarim on behalf of the District Judges.

10. In the present case there is nothing to show that other Executive Engineers

passed orders appointing temporary Mistries and no presumption u/s 114 Evidence Act can be drawn.

11. In the absence of proof that the Executive Engineer was empowered to appoint a temporary Mistry it has to be held in the present case that the appointment of the plaintiff was in fact made by the Chief Engineer.

12. The next contention on behalf of the appellant is that the service of the plaintiff having been terminated Wider Rule 148 of the State Railway Establishment Code Volume I the termination of service does not amount to removal within the meaning of Article 311 and consequently even if the order of termination of service is passed by an authority subordinate to the appointing authority it is not invalid if such authority is otherwise competent to pass it. Having heard the learned counsel for the parties I am satisfied that this contention must be upheld.

13. It was held by their Lordships of the Supreme Court in Parshotam Lal Dhingra Vs. Union of India (UOI), that the words "dismissed", "removed", and "reduced in rank" as used in Article 311 of the Constitution were used in the same sense in which they were used in Rule 55 of the Civil Services (Classification, Control and Appeal) Rules framed by the Secretary of State for India namely as signifying or denoting the three major punishments which could be inflicted on Government servants. The result is that it is only in those cases where it is intended to inflict the punishment of removal or dismissal within the meaning of the Civil Services (Classification, Control and Appeal) Rules that the termination of service of a civil servant can amount to removal or dismissal within the meaning of Article 311.

14. It is quite clear that the words "removal" or "dismissal" have been used in the same sense both in Clause (1) and Clause (2) of Article 311. The learned District Judge erred in holding that the word "removed" as used in Clause (1) was wide enough to include ail forms of termination of service whereas in Clause (2) it was confined to termination of service by way of punishment on ground of misconduct or inefficiency.

15. It is not the case of the plaintiff that his service was terminated by way of punishment on the ground of misconduct or inefficiency. As such the termination of his service does not amount to removal within the meaning of Article 311 of the Constitution. Clause (1) of Article 311 is therefore not applicant to the termination of service of the plaintiff. It is not necessary that the order terminating his service should be passed by the authority which appointed him or by an authority of equal rank. His case is governed by Section 16 of the General Clauses Act which runs as follows:

"Power to appoint to include power to suspend or dismiss.--Where, by any Central Act or Regulation, a power to make any appointment is conferred, then,- unless a different intention appears, the authority having for the time being power to make the appointment shall also have power to suspend or dismiss any

person appointed whether by itself or any other authority in exercise of that power."

16. An order terminating the service of an employee under Rule 148 can therefore be passed by an authority competent to appoint him at the time when the order terminating his service is passed.

17. My attention was drawn to the following observations made in para 13 of the AIR report of the decision of this Court in *The Union of India (UOI) and Others Vs. Askaran*,

"It is enough to say that para 148 does not mention who is the person who will give notice under it. The general law therefore must be followed namely that the notice under para 148(3) would be given by the authority who appointed the railway servant whose services are to be terminated."

18. The above observations are merely obiter as the point that the order under Rule 148(3) was not passed by a proper person was not allowed to be raised in that case. Further the attention of their Lordships was not drawn to Section 16 of the General Clauses Act in the above case. The general law is contained in that section.

19. I accordingly hold that the order terminating the service of the respondent under Rule 148 would be valid if on the date on which it was passed the Executive Engineer had the power to appoint a temporary Mistry.

20. In the present case however there is no proof on record that the Executive Engineer had such power even on 17-5-50. On behalf of the appellant it was argued on the basis of ILR (1960) Raj 1088 that I should presume that he had the necessary power. But for reasons similar to those given above no such presumption can be made in the present case.

21. Next it is contended on behalf of the Railway that the plaintiff was only a temporary servant and the courts below grossly erred in the exercise of their discretion in granting to him a declaration that the termination of his service was null and void and he continued in service. I am fully in agreement with this contention. In the case of the wrongful dismissal of a temporary servant damages are generally an adequate remedy. The only declaration which should be granted in the present case is that in serving a notice under Rule 148 the Executive Engineer acted in disregard of the departmental rules. In this connection I may refer to the case of *Barber v. Manchester Regional Hospital Board*, (1958) 1 All ER 322. On behalf of the respondent my attention was drawn to the case of *Vine v. National Dock Labour Board*, (1956) 3 All ER 939. This case was distinguished in (1958) 1 All ER 322 on facts. Whether or not damages are an adequate remedy in a particular case depends on the facts and circumstances of it. In the present case the service of the plaintiff could admittedly be terminated by a notice under Rule 148. His service was in fact terminated in 1950.

22. It would not be sound exercise of judicial discretion to grant him a declaration which would entitle him to recover his salary for about twelve years without discharging any duty and without proof of actual damage. On this ground therefore I allow the appeal in part and dismiss the suit of the plaintiff for the grant of a declaration that his removal from service was void and inoperative and that he continued in the service of the Railway. I grant him instead a declaration that in serving a notice under Rule 148 the Executive Engineer acted in disregard of the departmental rules. The suit is decreed in part for the grant of this declaration.

23. In the circumstances of the case, I direct that parties shall bear their own costs throughout.

24. Leave to file Special Appeal was prayed for and is granted.