

PETITIONER:
GENERAL MANAGER, SOUTHERN RAILWAY, MADRAS

Vs.

RESPONDENT:
T M. PARAMASIVAM

DATE OF JUDGMENT 08/04/1976

BENCH:
BEG, M. HAMEEDULLAH
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RAY, A.N. (CJ)
SINGH, JASWANT

CITATION:
1977 AIR 355 1976 SCR (3)1085
1976 SCC (3) 430

ACT:
Retirement on superannuation-Condition prescribe for pre-1938 entrant are mandatory to avail the benefit under-Railway Establishment Code Rule 2046 (b).

HEADNOTE:

Under Rule 2046 (b) of Railway Establishment Code a Ministerial Railway servant was entitled to the higher age of retirement at 60 years (i) if he had entered service on or before 31st March 1938 and (ii) if he held on 31st March 1938 either a lien or a suspended lien on a permanent post under Rule 2008(a) or a provisional lien on a permanent post under Rule 2008(d) without interruption until he was confirmed in that post.

The respondent had been appointed a temporary clerk on 10th December 1936 and was confirmed in that post on 1st September 1938. When he was retired on attaining the age of 58, he challenged the orders claiming benefit of Rule 2046(b). The High Court allowed the writ petition holding that since he was confirmed on 1st September 1938 he would be deemed to have been permanently appointed since 10th December 1936.

Allowing the appeal by special leave the court,

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HELD: (1) Rule 2046(b) clearly lays down that not only the first but one of the two alternatives of the second set of conditions must also be fulfilled by the Government servant "on that date" i.e. 31st March 1938. The specified requirement of the rule could not be overridden by some deemed retrospective benefit alleged to accrue from a confirmation subsequent to 31st March 1938. [1086D-E]

State of Punjab v. Dharam Singh [1968] (3) S.C.R. 1; State of Nagaland v. G. Vasantha A.I.R. 1970 SC 537; Director of Panchayat Raj & Anr. v. Babu Singh Gaur [1972] (2) S.C.R. 400, (followed)

[His Lordship observed that the position was so clear, under the law, that it should not have been necessary at all for the parties to have had to come to this Court for a correct decision]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 571 of 1972.

Appeal by Special Leave from the Judgment and order dated the 15th June 1971 of the Madras High Court in W.P. No. 3112/70.

P. P. Rao and G. Chandra for the Appellant.

P. C. Bhartari and J. B. Dadachanji for the Respondent.

The Judgment of the Court was delivered by

BEG, J. The General Manager, Southern Railway obtained Special Leave to appeal to this Court against a judgment of a Division Bench of the Madras High Court. The learned Judges, Veeraswami, C.J., and Raghavan, J., had held, in a very short judgment, a notification of the Railway Department, retiring the petitioner-respondent from service with effect from 3rd October, 1970, to be inoperative.

The petitioner-respondent had been appointed a temporary Clerk on 10th December, 1936, and had been confirmed in that post on 1st September, 1938.

He contended that he was entitled to continue in service until he had attained the age of 60 years. He alleged that the notification retiring him had been issued on the wrong assumption that he had to retire at the age of 58 years which is the normal age of retirement. He claimed the benefit of Rule 2046(b) of the Railway Establishment Code.

According to Rule 2046(b), a Ministerial Railway Servant was entitled to the higher age of retirement provided; firstly, he had entered Government service on or before 31st March, 1938; and, secondly, he had held "on that date" (i.e. on 31st March, 1938), either: (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 Rule 2008 and had continued to hold the same without interruption until he was confirmed in that post".

It is clear that the respondent petitioner fulfilled the first condition inasmuch as he had entered Government service on 10th December, 1936, which was obviously before 31st March, 1938. The High Court, however, proceeded to hold that, since he was confirmed on 1st September, 1938, he would be deemed to have been permanently appointed since 10th December, 1936, so that he would get the benefit of the second condition which was also essential for him to satisfy before he could be held to be entitled to the higher age of retirement. It is very difficult to appreciate the reasoning of the High Court when Rule 2046(b) clearly lays down that not only the first but one of the two alternatives of the second set of conditions must also be fulfilled by the Government servant "on that date", that is to say, on 31st March, 1938. The specified requirements of the rule could not be over-ridden by some deemed retrospective benefit accruing from a confirmation subsequent to 31st March, 1938.

The second of the two alternatives in the second set of conditions could not apply to the respondent petitioner as he was only a "temporary Government servant" and not a "provisional Government servant" as defined by Rule 2008(2). Rule 2008 may be reproduced here. It reads:

"2008-Suspension of lien:-

- (a) A competent authority shall suspend the lien of a railway servant on a permanent post which he holds substantively if he is appointed in a substantive capacity:

- (1) to a tenure post or
- (2) to a permanent post outside the cadre on which he is borne, or
- (3) provisionally, to a post on which another railway servant would hold a lien had his lien not been suspended under this rule.

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- (b) A competent authority may, at its option, suspend the lien of a Railway servant on a permanent post which he holds substantively if he is deputed out of India or transferred to foreign service, or in circumstances not covered by clause (a) of this Rule, is transferred whether in a substantive or officiating capacity, to a post in another cadre, and if in any of these cases there is a reason to believe that he will remain absent from the post on which he holds a lien for a period of not less than three years.
- (c) Notwithstanding anything contained in Clause (a) and (b) of this Rule a railway servant's lien on a tenure post may, on circumstances, be suspended. If he is appointed substantively to another permanent post, his lien on the tenure post must be terminated.
- (d) If a railway servant's lien on a post is suspended under clause (a) or (b) of this Rule, the post may be filled substantively and the railway servant appointed to hold it substantively shall acquire a lien on it provided that the arrangements shall be reversed as soon as the suspended lien revives.

NOTE:- This clause applies if the post concerned is a post in a selection grade of a cadre".

The respondent petitioner having been confirmed on 1st September, 1938, could be said to be appointed in substantive capacity only on that date. He could neither have a lien nor a suspended lien on a permanent post. He could also not be found to hold a permanent post in a provisional capacity under clause (d) of Rule 2008 before 31st March, 1938. The respondent petitioner had not been shown to hold a permanent post on 31st March, 1938. Learned Counsel for the appellant, therefore, relied on: State of Punjab v. Dharam Singh State of Nagaland v. G. Vasantha Director of Panchayat Raj & Anr. v. Babu Singh Gaur. Learned Counsel for the respondent petitioner found it impossible to justify the order of the Madras High Court.

Learned Counsel for the appellant stated that the Railway Administration does not propose to claim any refund of salary paid to the respondent petitioner, who had worked until he retired at the age of sixty, and that this appeal was filed only to get the question of law involved settled. The position was so clear, under the law, that it should not have been necessary at all for the parties to have had to come to this Court for a correct decision.

We allow this appeal and set aside the judgment and order of the High Court. The parties will bear their own costs.

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Appeal allowed.