

Secy. of State Vs. Bhola Nath Mitra

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Court : Kolkata

Decided On : Feb-21-1933

Reported in : AIR1933Cal409

Appellant : Secy. of State

Respondent : Bhola Nath Mitra

Judgement :

Mallik, J.

1. This appeal arises out of a suit for recovery of arrears of pay and gratuity. The suit was instituted by one Bhola Nath Mitra who was in service under the East Indian Railway Company and w330026his case was that when he was discharged on a certificate of unfitness on medical grounds, he asked for gratuity under Rule (SIC) of the rules for the grant of gratuities on retirement, to subordinate railway employees and his application was refused. The Courts below both held that the plaintiffs case was a case of discharge on the ground of unfitness on medical grounds and on that finding the lower appellate Court gave to the plaintiff a decree for Rs. 52 odd as arrear pay as also for Rs. 384 as gratuity. Against this decision the Secretary of State for India in Council who was impleaded in the Court of appeal below as a defendant on the devolution of the interest of the East Indian Railway Company on him, has appealed before us. A preliminary objection was raised on behalf of the respondent. It was said that the present appeal is

incompetent inasmuch as it has been filed by the Secretary of State for India in Council and not by the East Indian Railway Company. I do not think that there is any substance in this preliminary objection. It would appear that the Secretary of State for India in Council was a party in the Court of appeal below and the decree that was made by the lower appellate Court was against the Secretary of State for India in Council as well. That being so it cannot for a moment be contended that the Secretary of State for India in Council is not a party who can be said to have been adversely affected by the lower appellate Court's decree.

2. Coming now to the merits of the case it would seem that the only point that arises for consideration, is whether the lower appellate Court was justified in allowing the gratuity to the plaintiff on the basis of Rule 8 of the Rules for the grant of gratuities. Rule 8 runs thus;

In case of men whose service is less than 15 years and who have been discharged either in consequence of reduction of establishment or a certificate of unfitness on medical grounds, not due to the employee's own fault, a gratuity may be allowed which shall ordinarily be limited to half a month's pay for each year of service or six 'month's pay in all and which may in special cases where circumstances warrant be raised to a full months pay subject to a similar maximum.

3. On behalf of the respondent it was contended that the word 'may' in this Rule means shall.' But no reason was assigned why the word may,' as it is to be found in this rule, should be taken to mean shall.' Rule 8 seems to me to be only an enabling rule enabling the directors to pay gratuity from the railway revenue, leaving the matter of payment of gratuity entirely at their discretion. It was said that the discretion in the present case should have been properly exercised. I could have understood this contention if the exercise of the discretion was something that had been imposed on the Railway Administration by any Statute. But there is nothing to show that it was imposed on them in that way. Section 47, Railways Act 1890, enumerates the purposes for which rules can be framed under the provisions of that Act. But the granting of gratuity finds no place in the list of these purposes. Besides, gratuity, in my opinion, is something of the nature of a gift and

a gift is not a thing which can be compelled. I am therefore of opinion that Rule 8 of the Gratuity Rules, did not impose any legal liability on the Railway Administration to pay any gratuity to the plaintiff nor did it confer on the plaintiff any right which he could lawfully demand. The result therefore is that the decree of the lower appellate Court in so far as it awarded to the plaintiff Rs. 384 as gratuity is set aside and the appeal succeeds to this extent only. The appellant is entitled to his costs in this Court and in proportion to his success in the Courts below.

Jack, J.

4. This appeal has arisen out of a suit for recovery of arrear pay and gratuity by the plaintiff who was discharged by the East Indian Railway Company from their service. The appeal is by the Secretary of State for India in Council and relates only to the gratuity which it is maintained, has wrongly been decreed by both the Courts below, in favour of the plaintiff. The claim is based on Rule 8 of the rules for the grant of gratuities on retirement to subordinate railway employees. The rule states:

In case of men whose service is less than 15 years and who have been discharged either in consequence of reduction of establishment or a certificate of unfitness on medical grounds not due to the employee's own fault, a gratuity may be allowed which shall ordinarily be limited to half a month's pay for each year of service or six months' pay in all and which may in special cases where circumstances warrant be raised to a full month's pay subject to a similar maximum.

5. Rule 1 states that such bonuses are to be given at the discretion of the Board of Directors and the Railway Board. From this it is clear and this has been found by both the Courts below that the grant of the gratuity is discretionary. The gratuity is in fact a gift which, under the authority of the Directors may be given when an employee is discharged, as in this case, on medical grounds. Being a gift it is something which the employee cannot claim as of right and this is so even in cases in which its payment has been sanctioned, as shown by the authorities to which we have been referred by the learned Counsel for the appellant: Janki Das

v. E.I. Ry. Co. (1884) 6 All 634 and Natha Gulab v. W.C. Shatter and C.I.P. Ry. Co. AIR 1924 Bom 88. In these cases it was held that a gratuity which had not been actually paid could not be attached because it was money which the employee could not claim as of right. Similarly it was held in another case, Secy. of State v. Jamuna Das AIR 1932 Pat 311, that it could not be claimed by the creditors of the employee as part of his assets even where the company had the intention of paying it to the employee. But it is urged that the Court is entitled to interfere and compel payment if it is found that the discretion vested in the Railway Administration was not exercised bona fide but arbitrarily or has been influenced by extraneous and irrelevant consideration. No authority has been shown for the proposition that the Court has any such powers of interference except in the case of an authority constituted under a Statute to carry out statutory powers with which it is entrusted. Such cases are discussed in the case of Short v. Poole Corporation (1926) 1 Ch 66 at p. 84 where the cases of Reg. v. Governors of Darlington School (1871) 6 QB 682 and Rex v. Board of Education (1910) 2 KB 165 are referred to.

6. But in the present case the gratuity is payable under rules made by the Directors of the East Indian Railway Company and as the plaintiff continued in the service of the Railway Company after the Secretary of State took over the assets and administration of the company, these rules are still applicable to him. There is however nothing to indicate that the Court has any authority to interfere with the discretion of the Railway Administration in the payment of such gratuities. Even if it be held that there were such powers in the Court inasmuch as in the present case the railway has been taken over by the State, the lower appellate Court has not definitely found that the discretion of the Administration was wrongly exercised. The learned Subordinate Judge merely says: I cannot say that the gratuity was not refused to the plaintiff arbitrarily and illegally.' To justify the Court, if it could at all be justified in compelling the payment of a gratuity it should in any case be found positively that the discretion had been wrongly exercised. I therefore think that this appeal should be allowed and that the amount of gratuity Rs. 384 should be deducted from the amount decreed in favour of the plaintiff. The decree of the lower appellate Court will be modified accordingly with costs in this Court and in proportion to the success of the appellant in the Courts below.

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