
(1996) 03 MAD CK 0150

In the Madras High Court

Case No : Writ Petition No's. 2278, 2279 and 3489 of 1993

A. Rajendran and Others

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 07-03-1996

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 15(1), 19, 3
Constitution of India, 1950 — Article 226

Citation : (1997) 1 LLJ 122 : (1996) 1 LW 470 : (1996) 2 MLJ 126

Hon'ble Judges : A.R. Lakshmanan, J

Bench : Single Bench

Judgement

1. The above matters are listed for being mentioned today, at the instance of the office. On December 22, 1995, I passed the following order in the above writ petitions.

"Heard Mr. G. Masilamani, Senior Counsel appearing for the petitioners and Mr. P. Krishnamoorthy for the respondents.

2. In view of the Full Bench decision of our High Court reported in Government of Tamil Nadu etc. and two others, v. P. Hepzi Vimala Bai, 1994 W.L.R. 690, these writ petitions will have to be transferred to the Central Administrative Tribunal Madras.

3. Accordingly, these writ petitions are disposed of."

The Special Officer (Grouping), High Court, Madras, transferred the above records to the Central Administrative Tribunal, Madras Branch on January 8, 1996. On receipt of the records and the letter dated January 8, 1996, the Deputy Registrar (J) Central Administrative Tribunal, Madras Bench, sent a communication dated nil, January 1996 (signed on January 23, 1996). The communication reads thus :

"I am directed to refer to your letter No. nil dated January 8, 1996 on the above

subject and to return the records of W.P. Nos. 2278, 2279 and 3489 of 1993, as these cases have been filed after the Constitution of this tribunal. The applicants concerned may be advised to file original application afresh if they so desire, under Sec. 19 of the Act 1985.

Please acknowledge the receipt of this letter."

2. The said communication was received by the office on January 29, 1996. It is seen from the above communication, the applicants concerned were advised to file original applications afresh, if they so desire, under Sec. 19 of the Administrative Tribunals Act, 1985. It is also stated that these cases had been filed after the constitution of the tribunal.

3. When the matters are listed today, Mr. G. Masilamani, learned senior counsel for the petitioners, would submit that these writ petitions were filed in this Court on the basis of the judgment of the Division Bench of this Court consisting of Dr. A. S. Anand, Chief Justice, and Justice Sathidev in *Chairman, Railway Recruitment Board Vs. S. Ruban Peter and others*, . In that case, the writ petitions were filed by the unsuccessful candidates challenging the pre-recruitment. The question before the Division Bench was regarding the exclusion of jurisdiction of the High Court under Arts. 226 and 227 of the Constitution of India, to deal with service matters after the coming into force of the Administrative Tribunals Act, with effect from November 1, 1985 and in particular, as to "who" are the persons, who are required to approach only the Tribunal for the adjudication of disputes concerning their services and to whom the writ jurisdiction of the High Court is no longer available for the adjudication of those disputes. The Bench held that the jurisdiction of the High Court under Arts. 226 and 227 of the Constitution of India to deal with the service matters with effect from November 1, 1985 is excluded only insofar as the employees already in service of the Government, local authority, etc. are concerned, provided they relate to matters which strictly fall within Sec. 14 read with Sec. 3(q) of the Act and not in other cases. It is only an "aggrieved person" as contemplated by Sec. 19 of the Act, who is required to approach the Tribunal only for adjudication and trial of such disputes "complaints" etc. and in all other cases, the jurisdiction of the High Court under Arts. 226 and 227 of the Constitution remains in-tact even after November 1, 1985. Therefore, the Bench held that the learned single Judge of this Court was right in rejecting the preliminary objection and holding that the question raised in the writ petitions, which arose at the pre-recruitment stage by persons not already "in service" could be gone into by the High Court in exercise of the writ jurisdiction. This judgment of the Division Bench was in force on the date when the writ petitioners filed these writ petitions. However, this Division Bench judgment was overruled by the Full Bench of this Court in *Government of Tamil Nadu etc. and two others v. P. Hepzi Vimala Bai*, (supra). The Full Bench to which I was also a party held that the use of the expression "matters concerning recruitment" is wide enough to cover and include all matters concerning recruitment. There is no

warrant to make a distinction between "pre-recruitment matters" and "recruitment matters". The Full Bench was of the opinion that the view expressed by the Division Bench in Ruban's case, (supra), that only "in service" candidates can raise disputes in respect of matters pertaining to recruitment and not a person not in service, is not acceptable. On the contrary, "recruitment" is a process which would cover within its ambit all the necessary steps commencing from the stage of notifying the vacancies and ending with appointment of selected candidates. The Full Bench thus answered the questions referred to them as follows :

"(a) Recruitment to any civil service of the State or to any civil post under the State would exclusively fall within" the provisions of Sec. 15(1)(a) of the Administrative Tribunals Act, 1985, and the same would be outside the purview of a petition under Art.226 of the Constitution of India.

(b) The second question viz., "whether the recruitment by interview is justified in law" was not rightly argued before us, for, this is a matter which has to be decided by the "Forum" constituted under Administrative Tribunals Act, 1985."

When these matters were placed before me for final bearing, the Full Bench judgment has already come into existence overruling the Division Bench judgment above referred to. Therefore, I passed an order directing the office to transfer all the three cases to the Central Administrative Tribunal. However, the Central Administrative Tribunal has returned the papers to this Court stating, that the applicants may have to file original applications afresh if they so desire, under Sec. 19 of the Administrative Tribunals Act. In my opinion, such a direction by the Administrative Tribunal is totally unwarranted. No litigant should be prejudiced because of the act of court. On the date when the writ petitions were filed, the Division Bench ruling in Ruban's case, (supra) was in force. But on the day, when the writ petitions were posted for final hearing, the above referred Division Bench judgment was overruled by the Full Bench. Therefore, as this Court could not take up the matters for final bearing, the matters were transferred to the Central Administrative Tribunal. The petitioners, as rightly pointed out by Mr. G. Masilamani, learned Senior counsel, have not committed any mistake when they presented the writ petitions. They presented the writ petitions in accordance with the rule then in force. When that ruling is now reversed by a Full Bench, this Court cannot hear the writ petitions and therefore, I again direct the office to forthwith dispatch all the three writ petitions to the Central Administrative Tribunal, Madras Bench. The Central Administrative Tribunal is directed to take the transferred cases on file, re-number them and dispose them of in accordance with law.