

(2012) 07 AHC CK 0112

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition (S/B) No. 605 of 1999

Adhyaksha Nagar Palika Parishad, Hardoi

APPELLANT

Vs

U.P. State Public Services Tribunal

RESPONDENT

Date of Decision : 25-07-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, 151

Constitution of India, 1950 — Article 226

Uttar Pradesh Public Services (Tribunal) Act, 1976 — Section 4A

Citation : (2013) 3 ADJ 611

Hon'ble Judges : Surendra Vikram Singh Rathore, J;Rajiv Sharma, J

Bench : Division Bench

Advocate : D.C. Mukerjee, Anuj Kumar Srivastava and Shishir Jain, for the Appellant; Mahendra Pratap Verma, for the Respondent

Final Decision : Allowed

Judgement

1. Heard Sri Shishir Jain, learned counsel for the petitioner and learned Standing Counsel and Sri Mahendra Pratap Verma, learned counsel for the opposite party No. 2. Through the instant writ petition under Article 226 of the Constitution of India, the petitioner challenges the ex parte judgment and orders dated 26.5.1997 and 27.1.1999 passed in Claim Petition No. 258/11/1990 by the U.P. State Public Services Tribunal, whereby the Tribunal allowed the claim petition and rejected the petitioner's application preferred under Order IX Rule 13 read with Section 151 C.P.C., contained as Annexures 1 and 1-A to the writ petition.

2. While working as Safai Karmchari in Nagar Palika Parishad, opposite party No. 2 Sohan Lal was dismissed from service after due enquiry vide order dated 21.11.1983, against which a departmental appeal had been preferred by the opposite party No. 2, which was dismissed vide order dated 23.4.1990. Feeling aggrieved, the opposite party preferred a claim petition, bearing No. 258/11/1990, before the U.P. Public Services Tribunal, Lucknow.

3. According to the petitioner, since no notice of the above claim petition was

served/received on the petitioners, as such, the claim petition preferred by the opposite party No. 2 remained uncontested and proceeded ex parte against the petitioners. Ultimately, the claim petition was allowed by the Tribunal vide order dated 26.5.1997, whereby the order of suspension dated 20.7.1983, order of dismissal dated 21.11.1983 and appellate order dated 23.4.1990 were set-aside. On coming to know the aforesaid judgment and order dated 26.5.1997 petitioners preferred an application for recall of the judgment and order dated 26.5.1997 under Order IX Rules 13 of the CPC alongwith an application for condonation of delay in filing the recall application. Notice was issued and in response thereof, objection has been preferred by the opposite party No. 2, to which petitioners filed rejoinder-affidavit. Ultimately, after hearing the parties, the Tribunal rejected the petitioners' application for recall vide order dated 27.1.1999, Hence the instant writ petition.

4. Assailing the impugned judgment and orders, Sri Shishir Jain, learned counsel for the petitioners submits that impugned judgment and order dated 26.5.1997 passed by a single member (Judicial Member) of the Tribunal, quashing the orders of suspension, dismissal and rejection of appeal of the opposite party No. 2 was without jurisdiction insofar as in view of the provisions of Section 4-A of the U.P. Public Service (Tribunal) Act, such matters could be heard and finally decided by a Bench consisting of two members as the opposite party No. 2 was a permanent employee and was dismissed from service but as the impugned order dated 26.5.1997 having been passed by a single member alone, therefore, it is vitiated in law and is inoperative as well as nullity in the eyes of law.

5. Countering the submissions of learned counsel for the petitioners, learned counsel for the opposite party No. 2 submits that there is no illegality and infirmity in the impugned orders insofar as the Tribunal after recording the findings of fact allowed the claim petition.

6. In order to appreciate the rival submissions of the learned counsel for the parties. It is necessary to quote Rule 4-A of U.P. Public Services (Tribunal) Act, 1976, which reads as under:

4-A. Hearing of reference by the Tribunal. The Chairman may from time to time constitute Benches consisting of a single member or two members, for the disposal of such references of claims and other matters as may be specified by him.

(2) It shall be lawful for the Chairman to nominate himself as a member of any such Bench.

(3) A Bench consisting of the two members shall include a Judicial Member and an Administrative Member.

Explanation.--For the purpose of this sub-section the Chairman who has been a District Judge shall be deemed to be a Judicial Member and a Chairman or Vice-Chairman who has been the member of the Indian Administrative Service shall

be deemed to be Judicial Member and a Chairman or Vice-Chairman who has been the member of the Indian Administrative Service shall be deemed to be an Administrative Member.

(4) The jurisdiction, powers and authority of the Tribunal may be exercised by any such Bench and anything done by any such Bench in exercise of such jurisdiction, powers or authority shall be deemed to have been done by the Tribunal.

(5) (a) A reference of claim wherein the validity of any order of dismissal or removal from service (not being an order for termination of temporary service) or reduction in rank is involved, shall be heard and finally decided by a Bench consisting of two members:

Provided that any order, other than an order finally disposing of the case on merits, may be passed, evidence may be received and proceeding (except hearing of oral arguments for final disposal of the case) may be conducted by a single member.

(b) A reference of claim other than referred to in clause (a) may be heard and finally decided by a Bench consisting of a single member.

(c) The Chairman may, if he thinks fit to do so, transfer a case from one Bench to another Bench.

(6) Where the members of a Bench consisting of two members are unable to agree, the matter shall be referred to another nominated by the Chairman and the decision of such other member shall be final and operative.

(7) The Tribunal, its Benches and members shall for transacting business under this Act sit at Lucknow or at such other places as the State Government may direct.

7. On perusal of the Section 4-A of subsection 5 (a), it reflects that a reference of claim, wherein the validity of any order of dismissal or removal from service (not being an order for termination of temporary service) or reduction in rank is involved, shall be heard and finally decided by a Bench consisting of two members.

8. Admittedly, in the present case, the opposite party No. 2 preferred the claim petition against the order of dismissal as well as appellate order but one single member of the Tribunal has passed the impugned order, which is against the provisions of Section 4-A of the Act. Thus, it is clearly established the impugned judgment and order has been passed without jurisdiction. In view of the above, the writ petition is allowed. The impugned judgment and orders dated 26.5.1997 and 27.1.1999 passed in Claim Petition No. 258/11/1990 are set-aside. The matter is remitted to the Tribunal for deciding afresh, after affording opportunity of hearing and for filing pleadings, if the same has not been filed.

Since the matter is lingering since 1990, we hope and trust that the Tribunal will

make earnest endeavour in deciding claim petition No. 258/11/1990, expeditiously.