

(2014) 10 KL CK 0003

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 24413 of 2012

Ajithkumar

APPELLANT

Vs

Indian Railway Catering and Tourism Corporation Ltd.

RESPONDENT

Date of Decision : 13-10-2014

Acts Referred:

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

Citation : (2015) 1 KLJ 143 : (2014) 4 KLT 914

Hon'ble Judges : Dama Seshadri Naidu, J

Bench : Single Bench

**Advocate : P. Ramakrishnan and Preethi Kesavan, Advocate for the Appellant;
C.S. Dias and Asha Cherian, Advocate for the Respondent**

Judgement

Dama Seshadri Naidu, J.—This case illustrates the eclectic approach of the petitioner to different judicial fora seeking remedies against the same set of respondents with, more or less, the same cause. Briefly stated, the petitioner was initially appointed in the Indian Railways on 10.6.1992 as a Booking Clerk at Bombay. Later, the petitioner was promoted in September 1993 as a Catering Inspector in the same place, i.e. Bombay. When the Indian Railways established the first respondent corporation, which is technically an independent legal entity, making use of the option given by the Indian Railways to its employees, the petitioner expressed his willingness to serve in the first respondent corporation. In response thereto, based on the performance of the petitioner in the ensuing selection process, the second respondent permitted the petitioner to join the first respondent corporation. As could be seen from Exhibit P2 proceedings, the petitioner joined the first respondent on 6.10.2005 as a permanent employee.

2. In course of time, on 18.2.2010, the petitioner requested for what is described as repatriation to his parent organization, i.e., the second respondent. The first respondent, however, rejected the said request through Exhibit P3 proceedings, dated 18.2.2010. In the meanwhile, the petitioner was transferred to New Delhi

on 28.05.2010. In any event, aggrieved by Exhibit P3 rejection, the petitioner filed O.A. No. 486/2010 before the Central Administrative Tribunal, Ernakulam, which eventually dismissed the said O.A. through its order dated 22.8.2011, leaving it open for the petitioner to take advantage of an option letter dated 27.6.2011 issued by the Railway Board providing an option of repatriation to the employees working in the first respondent Corporation.

3. Thus, once again, taking advantage of the Railway Board's letter dated 27.6.2011, the petitioner submitted Exhibit P7 option before the first respondent seeking repatriation. When no decision was taken on the option exercised by the petitioner, he approached this Court by filing W.P. (C) No. 2572/2012. Without having an occasion to advert to the merits of the matter, this Court disposed of the Writ Petition through Exhibit P10 judgment directing the second respondent to consider the option exercised by the petitioner, once the said option form in Exhibit P6 was forwarded by the first respondent. Eventually, in compliance with the direction of this Court, the second respondent is said to have rejected the petitioner's claim for repatriation-through Letter No. E (NG) 1/2011/TR/2, dated 26.9.2012, which was simply communicated by the first respondent through Ext. P11. Thus, assailing Ext. P11, the petitioner filed the present Writ Petition.

4. Before this Court could undertake any exercise to adjudicate the matter on merits, the learned Standing Counsel for the second respondent raised an objection regarding the maintainability of the Writ Petition. The objection is two-fold: (1) that the petitioner all through worked in Bombay and later in New Delhi and that even the relief has been sought against the respondents who have been stationed in Delhi; and (2) that the Writ Petition is hit by S. 14 of the Administrative Tribunals Act, 1985.

5. According to the learned Standing Counsel, this Court lacks the territorial jurisdiction to entertain the Writ Petition under Art. 226 of the Constitution of India. In support of the said submissions, the learned Standing Counsel has placed reliance on Anand Anoop Vs. Union of India, . The learned Standing Counsel has further submitted that initially when the petitioner questioned Exhibit P5 proceedings issued by the second respondent, he approached the Central Administrative Tribunal by filing the O.A. referred to above. He could not obtain any favourable orders except an observation that the petitioner could as well apply to the authorities in the face of the letter dated 27.6.2011 issued by the Railway Board giving an option for repatriation. The learned Standing Counsel has stressed that the very O.A. was dismissed on merits, rather than on the issue of jurisdiction.

6. As could be seen, the petitioner submitted another application seeking the same relief of repatriation, albeit in the wake of letter dated 27.06.2011 issued by the Railway Board. This time he chose to question the order of rejection in Exhibit P11 before this Court. According to the learned Standing Counsel, the petitioner ought to have approached the Central Administrative Tribunal as he did on the last occasion. Though the learned Standing Counsel has also made efforts

to address the issue on merits, it is not appropriate to refer to them at this juncture.

7. The learned counsel for the petitioner, in reply thereto, has stoutly defended the action of the petitioner in approaching this Court by filing the present Writ Petition. Prefatory, she has submitted that the jurisdictional and the juridical scope of Art. 226 are too expansive to be curtailed on technical considerations. Once a person's constitutional or even statutory right, partaking the character of a civil right, has been affected, there shall be no impediment against the approach of the aggrieved person seeking a constitutional remedy.

8. Coming to the specifics, the learned counsel for the petitioner has further submitted that initially questioning the action of the second respondent in rejecting the petitioner's Exhibit P7 option, the petitioner filed W.P.(C) No. 2572/2012. At that juncture, the respondents have not raised any objection with regard to the maintainability of the Writ Petition. In fact, this Court, submits the learned counsel, disposed of the Writ Petition with a direction to the first respondent to forward the petitioner's application to the second respondent and a further consequential direction to the said second respondent to consider it on merits. Thus contended the learned counsel that the respondents have been estopped from raising an objection at this stage, having remained quiet when the petitioner took recourse to this Court on an earlier occasion. The learned counsel, as a matter of technical objection, has further submitted that in the counter affidavits filed by both the respondents, no objection has been taken regarding the maintainability of the Writ Petition. The learned counsel has also submitted that even if the second respondent were to pass a positive order on the option exercised by the petitioner, it could be the first respondent who would eventually have to relieve the petitioner. Since the first respondent, still the petitioner's employer, has not been notified in terms of S. 15 of the Administrative Tribunals Act, 1985, it is fallacious for the respondents to contend that this Court does not have the jurisdiction. Accordingly, the learned counsel has urged this Court to entertain the Writ Petition on merits.

9. Heard the learned counsel for the petitioner and the learned Counsel for the 1st and 2nd respondents, apart from perusing the record.

10. From the respective submissions of the learned counsel for the petitioner and the respondents, it is clear that though initially an order of transfer was issued to the petitioner transferring him to Delhi from Ernakulam in 2010, the said order was not given effect to, and accordingly the petitioner has all along been continuing in his present place of posting, Ernakulam.

11. It is manifest from R.6 of the Central Administrative Tribunal (Procedure) Rules, 1987 that an aggrieved person can invoke the jurisdiction of the Administrative Tribunal based on the place of working, apart from based on the cause of action. Accordingly, the contention of the learned Standing Counsel for the respondents that the Administrative Tribunal has no territorial jurisdiction in

determining the issue cannot be sustained.

12. Since there is any amount of dispute whether the petitioner is required to invoke the jurisdiction of the Central Administrative Tribunal or take recourse to this Court under Art. 226 of the Constitution of India seeking a judicial review of his grievance, it is apt to extract S. 14 of the Administrative Tribunals Act, 1985 (for short "the Act"), which reads as follows:

"14. Jurisdiction, powers and authority of the Central Administrative Tribunal.-

(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court in relation to-

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian.

(b) all service matters concerning -

(i). a member of any All-India service; or

(ii). a person [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union; or

(iii). a civilian [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any defence services or a post connected with defence,

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation [or society] owned or controlled by the Government.

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation (or society) or other body, at the disposal of the Central Government for such appointment.

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations [or societies] owned or controlled by Government, not being a local or other authority or corporation [or society] controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations [or societies].

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation [or society], all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court in relation to-

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation [or society]; and

(b) all service matters concerning a person [other than a person referred to in clause (a) or clause (b) of sub-section (1)] appointed to any service or post in connection with the affairs of such local or other authority or corporation [or society] and pertaining to the service of such person in connection with such affairs."

13. The learned counsel for the petitioner, making a specific reference to S. 14(3) of the Act, has strenuously contended that unless the 1st respondent Corporation is notified in terms thereof, the Central Administrative Tribunal cannot have any jurisdiction. This contention, I am afraid, cannot be sustained. A holistic reading of the said sub-section makes it manifestly clear that if the dispute is concerning the recruitment and the matters concerning the recruitment in the said Corporation or any service dispute involving the Corporation and its employees, the question of notifying the Corporation so as to bring it within the fold of the Industrial Tribunal would arise.

14. On the other hand, the learned Standing Counsel for the 2nd respondent has placed reliance on Union of India and others Vs. Deep Chand Pandey and another, , wherein a three Judge Bench of the Hon''ble Supreme Court has dealt with S. 14 of the Act. The question that arose in the said decision was whether a casual employee of a Government Department could invoke the jurisdiction of the Administrative Tribunal/Their Lordships, after an elaborate reference to the statutory and also the constitutional provisions on the issue of establishing the Administrative Tribunals, have eventually held that even a casual employee of the Union of India would be entitled, or rather compelled, to invoke the jurisdiction of the Central Administrative Tribunal.

15. On the factual front, the decisions cited by the learned Standing Counsel for the 2nd respondent may not be of much use. Firstly, the petitioner herein is not a casual employee; on the contrary, he is a permanent employee of the 1st respondent. Secondly, the petitioner has not raised any service dispute vis-?-vis his employer, i.e., the 1st respondent. Thus, I am afraid the judicial precedent

referred to above may not have any relevance to the present set of facts.

16. Going by the provisions of the Act 1985, the singular question that is required to be addressed is whether the jurisdiction is conferred based on the status of the petitioner in the employer Organisation or based on the relief he has sought. In other words, whether the inherent jurisdiction of the Tribunal is required to be invoked based on the position of the petitioner or that of the respondent. In this case, indisputably, the petitioner is a permanent employee of the 1st respondent Corporation, which is not within the purview of the Central Administrative Tribunal, going by S. 14 of the Act, 1985. On the other hand, it is equally indisputable that the petitioner has questioned the order passed by the 2nd respondent, which is an entity under the control of the Union of India, or the Central Government. That apart, the petitioner has in fact sought employment or reemployment in the 2nd respondent establishment. It is axiomatic that even an unemployee, who was not borne in the cadre of any Organisation shall invoke the jurisdiction of the Tribunal once he has any claim to any civil post either in the services of the Union of India or those of the State Government, including the Corporations and other entities which have been notified. As such, it is manifest that the status of the petitioner may not be of much relevance in determining the jurisdiction of the Administrative Tribunal. Ipso facto, it can be stated that the relief sought plays a vital role in determining the jurisdiction. Though, the petitioner challenges Ext. P11, which was issued by the first respondent, his employer, the said exhibit is a mere communication of the order of the second respondent by way of reproduction and transmission, since the second respondent desired it to be communicated to the petitioner through his employer.

17. Viewed from another angle, the earlier conduct of the petitioner vindicates the stand of the respondents, inasmuch as at the earliest given opportunity, he invoked the jurisdiction of the Central Administrative Tribunal and invited the judgment in O.A. No. 486 of 2010. Having observed thus, I hasten to add that if it were to be assumed that the Tribunal lacked inherent jurisdiction, the petitioner's taking recourse to it earlier would not stop him later from approaching the correct forum. In this case, however, at no point of time has it been found that the Tribunal lacked jurisdiction to entertain O.A. No. 486 of 2010. Thus, in the first instance, the petitioner has correctly invoked the jurisdiction of the Tribunal and for reasons not forthcoming, this time chose to approach this Court, which act of his may border on forum shopping.

18. It is further incumbent to address the plea of the learned counsel for the petitioner that the petitioner earlier filed W.P. (C) No. 2572/2012 and obtained suitable directions. At that time, contended the learned counsel for the petitioner, no objection was raised by the respondents. This argument, I am afraid, is fallacious: In W.P. (C) No. 2572/2012 the issue of maintainability has never fallen for consideration. In the absence of an issue having been raised and actually decided, it passes sub silentio. It is, therefore, essential to hold that a decision sub silentio cannot be a binding precedent, for what has not been raised and

argued, as well as decided, cannot be a facet of the principle of stare decisis. Viewed from yet another angle, if jurisdiction, territorial or inherent, is absent, neither the consent of the parties to the proceedings, nor the lis getting entertained without objection on an earlier occasion does not operate as an estoppel, much less confer any jurisdiction on a forum which lacked it. In the facts and circumstances, the present Writ Petition is dismissed purely on jurisdictional ground, leaving it open for the petitioner to lay a proper challenge against the issue assailed by him before an appropriate forum.