
(2010) 11 AP CK 0069

In the Andhra Pradesh High Court

Case No : Rev W.P.M.P NO. 35762 of 2010 In W.P No. 6068 of 2004

B. Rama Moorthy and Others

APPELLANT

Vs

G. Rajababu Rao and Others

RESPONDENT

Date of Decision : 03-11-2010

Acts Referred:

Andhra Pradesh Labour Subordinate Service Rules — Rule 17
Constitution of India, 1950 — Article 133(1), 134A, 226, 371D

Citation : (2010) 11 AP CK 0069

Hon'ble Judges : Ramesh Ranganathan, J;B. Prakash Rao, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, J.—This application is filed seeking review of the order passed in W.P. No. 6068 of 2004 dated 9.3.2007 whereby this Court set aside, among others, the order of the A.P. Administrative Tribunal (APAT) in O.A. No. 6334 of 1997 dated 27.3.2003 to the limited extent the Tribunal had held that the judgment of the Supreme Court, in (judgment dated 7.11.2001), would apply prospectively from the date of the judgment i.e., 7.11.2001.

2. Facts, to the extent relevant, are that the application, in O.A. No. 6334 of 1997, was filed before the Tribunal to declare the amendment issued to the A.P. Labour Subordinate Service Rules, in G.O. Ms. No. 22, Labour, Employment, Training and Factories (Lab.IV) Department dated 9.5.1996, as illegal, arbitrary, contrary to Article 371D of the Constitution of India and the Presidential Order dated 9.10.1974. The applicants in the O.A. sought a consequential direction to the Respondent that the vacancies caused by repatriation of employees of the Factories and Boilers department be filled up only by employees working in subordinate offices in that particular zone, and to further declare the action of the Respondents, in seeking to fill up the vacancies of Assistant Labour Officers in Zone III by drawing candidates from the Head Office, as illegal and arbitrary.

3. The Tribunal, by its common order in O.A. Nos. 1854/97 and batch (of which

O.A. No. 6334/97 forms part of) dated 27.3.2003, set aside the Rules framed under G.O. Ms. No. 22 dated 9.5.1996 to the extent they provided a channel for Senior Assistants and Senior Stenographers in the A.P. Ministerial Services working in the Head Office of the Labour, Factories and Boiler Departments, and Subordinate Offices in the Factories and Boiler Departments, for appointment by transfer to the post of Assistant Labour Officers. The related provisions, providing for quota and rotation etc., to these categories, were declared void as violative of the mandatory provisions of the A.P. Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 1975. The Respondents were directed not to give effect to these provisions. The Tribunal, however, held that, since the judgment of the Supreme Court in V. Jagannadha Rao and Others Vs. State of A.P. and Others, was rendered only on 7.11.2001, the Rules should be held as violative of the Presidential order only from that date, and any action taken in compliance with the Rules till 7.11.2001 should not be disturbed so as to result in reversion of any employee from the post to which he had been promoted under the Rules. Aggrieved by the order of the Tribunal, to the extent it gave prospective application to the judgment of the Supreme Court in V. Jagannadha Rao and Others Vs. State of A.P. and Others, the applicant in O.A. No. 6334/97 filed W.P. No. 6068 of 2004 before this Court.

4. This Court, in its common order in W.P. No. 6068 of 2004, 6123 of 2004 and 16890 of 2006 dated 9.3.2007, followed the judgments of the Supreme Court in I.C. Golak Nath and Others Vs. State of Punjab and Another, ; State of Himachal Pradesh and Others Etc. Etc. Vs. Nurgpur Private Bus Operators Union and Others Etc. Etc., ; Raymond Ltd v. M.P. Electricity Board (2001)1 SCC 534 ; M/s. Somaiya Organics (India) Ltd. Vs. State of Uttar Pradesh and Another, ; Kailash Chand Sharma Vs. State of Rajasthan and Others, ; Sarwan Kumar and Another Vs. Madan Lal Aggarwal, and M.A. Murthy Vs. State of Karnataka and Others, and held that the decision of the Supreme Court, enunciating a principle of law was applicable to all cases irrespective of the stage of its pendency; the law laid down by the Supreme Court must be held to be the law from the inception unless the Supreme Court itself indicated that its decision operated prospectively; it was not open for Courts/Tribunals to apply the law laid down by the Supreme Court only from the date on which the judgment came to be passed; and, in the absence of any direction by the Supreme Court in V. Jagannadha Rao and Others Vs. State of A.P. and Others, that the law laid down therein was prospective in operation, it was not open to the Tribunal to hold that the law would apply prospectively only from 7.11.2001 i.e., from the date on which the Supreme Court rendered its judgment in V. Jagannadha Rao and Others Vs. State of A.P. and Others, This Court set aside the order of the Tribunal to the limited extent that the judgment in V. Jagannadha Rao and Others Vs. State of A.P. and Others, was held applicable only from 7.11.2001.

5. Curiously, this Review application is filed not by the applicants in O.A. No. 6334 of 1997, (the Petitioners in W.P. No. 6068 of 2004), but by persons who were neither parties to the O.A. nor to the Writ Petition. Sri B. Adinarayana Rao,

Learned Counsel for the Review Petitioners, would seek review, of the order in W.P. No. 6068 of 2004 dated 9.3.2007, on the following ground. (1) the review Petitioners were necessary and proper parties to the O.A, and failure of the Writ Petitioners to array them as Respondents in the O.A./Writ Petition would necessitate both the O.A. and the Writ Petition being dismissed for non-joinder of necessary parties; and (2) as the Division Bench of this Court, by its judgment in W.P. No. 9422 and 9552 of 2005 dated 10.3.2006, had granted leave to appeal to the Supreme Court, this Court should also grant leave to the Review Petitioners to appeal to the Supreme Court.

6. On the other hand Sri M. Panduranga Rao, Learned Counsel for the Respondent-writ Petitioners would draw attention of this Court to the judgment of the Supreme Court, in *Rajeev Kumar v. Hemraj Singh Chauhan* 2010(2) Supreme 517, in support of his submission that the remedy available to the Review Petitioners" for redressal of their grievance, of not being arrayed as Respondents in O.A. No. 6334 of 1997 despite their being necessary parties, is only to approach the Tribunal; and, not having done so, they cannot, in view of the law laid down in *L. Chandra Kumar Vs. Union of India* and others, approach this Court directly treating it as a court of first instance for adjudication of their grievance.

7. With regards the review Petitioners grievance, of their not being arrayed as Respondents either in the O.A. or in the Writ Petition, it is necessary to note that what was under challenge in the O.A. was the validity of the A.P. Labour Subordinate Service Rules notified in G.O. Ms. No. 22 dated 9.5.1996. Where the constitutionality of a statutory rule is assailed, the necessary parties to be impleaded in such proceedings are those against whom the relief is sought, and in whose absence no effective decision can be rendered by the Court. Employees, who are likely to be affected as a result of invalidation of the Rules, are, at best, proper parties and not necessary parties, and their non-joinder would not be fatal. The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others, It is, therefore, not necessary that employees, who may be aggrieved as a consequence of a Rule being invalidated, should be arrayed as Respondent to the O.A. as they are not necessary but, at best, proper parties thereto.

8. Even otherwise, the Review Petitioners have not sought review, of the order in the O.A, before the A.P.A.T. nor have they invoked the jurisdiction of this Court by way of an independent Writ Petition questioning the order passed by the Tribunal in O.A. No. 6334 of 1997 dated 27.03.2003. It is only the applicants, in O.A. No. 6334 of 1997, who had approached this Court against the order passed in O.A. No. 6334 of 1997 to the limited extent the Rules were held invalid only from 7.11.2001, and not prior thereto.

9. The relief sought for in a review application cannot travel beyond the scope of the relief sought for in the Writ Petition, review of which is sought for. In a review application, filed seeking review of the order passed in W.P. No. 6068 of 2004

dated 09.03.2007, the review applicants cannot seek to have the order passed in O.A. No. 6334 of 1997 dated 27.03.2003 set aside on the ground of non-joinder of necessary parties, as the order of the Tribunal, in O.A. No. 6334 of 1997 dated 27.03.2003, was subject only to a limited challenge in W.P. No. 6068 of 2004 on the ground that the order of the Supreme Court, in V. Jagannadha Rao and Others Vs. State of A.P. and Others, was given prospective operation.

10. The order of the Tribunal, in O.A No. 6334 of 1997 dated 27.3.2003, cannot be questioned in a review application, and it is only by way of an independent Writ Petition can the validity of the order passed in O.A. No. 6334 of 1997 dated 27.3.2003 be questioned. The Review Petitioners ought to have approached the Tribunal in the first instance seeking review of the order passed in O.A. No. 6334 of 1997 dated 27.3.2003 and, after an order is passed by the Tribunal in the Review application, are they entitled to invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India. In similar circumstances the Supreme Court, in Rajeev Kumar 2010(2) Supreme 517 , observed:

... The grievances of the Appellants in this appeal are that they were not made parties in proceedings before the Tribunal. But in the impleadment application filed before the High Court it was not averred by them that they were not aware of the pendency of the proceedings before the Tribunal. Rather from the averments made in the impleadment petition it appears that they were aware of the pendency of the proceedings before the Tribunal. It was therefore, open for them to approach the Tribunal with their grievances. Not having done so, they cannot, in view of the clear law laid down by the Constitution Bench of this Court in V. Jagannadha Rao and Others Vs. State of A.P. and Others, : P. Purushottam Reddy and Another Vs. Pratap Steels Ltd., approach the High Court and treat it as the court of first instance in respect of their grievances by "overlooking the jurisdiction of the Tribunal". CAT also has the jurisdiction of review under Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987. So, it cannot be said that the Appellants were without any remedy....

The challenge to the order passed in W.P. No. 6068 of 2004 dated 9.3.2007, on the first ground, must fail.

11. On the second ground, regarding grant of leave to appeal to the Supreme Court, it is necessary to note that Article 133(1) of the Constitution of India stipulates that an appeal shall lie to the Supreme Court from a judgment of the High Court, if the High Court certifies, under Article 134A, that the case involves a substantial question of law of general importance and, in the opinion of the High Court, the said question needs to be decided by the Supreme Court. Under Article 134A, every High Court, passing a judgment referred to in Article 133(1), may, if it deems fit so to do, on its own motion; and (b) shall, if an oral application is made by or on behalf of the party aggrieved immediately after the passing of such judgment, determine, as soon as may be after such passing, the question whether a certificate of the nature referred to in Clause (1) of Article 133 may be given in respect of that case.

12. While the High Court, under Article 134A(b) is required to determine the question, whether a certificate of the nature referred to in Article 133(1) may be given in respect of the case, if an oral application is made by the aggrieved party immediately after the passing of the judgment, it also has the discretion under Article 134A(a), if it deems fit so to do on its own motion, to determine the question. In the case on hand, the aggrieved parties in W.P. No. 6068 of 2004 did not make any oral application immediately after the passing of the judgment dated 9.3.2007. As such the question of this Court being required to determine the question, whether a certificate of the nature referred to in Article 133(1) may be given in respect of that case, does not arise. The question whether this Court should have, on its own motion, determined the question of granting a certificate under Article 133(1), would arise only if it deemed it fit to do so. Since a specific provision is made under Clause (b) of Article 134A for a party aggrieved to make an oral application, it is not open for such a person to contend that the High Court should have determined the question on its own motion.

13. The twin requirements which the High Court is required to bear in mind while determining whether or not a certificate should be granted under Article 134A read with Article 133(1) are whether the case involves a substantial question of law of general importance and, even if the case does involve such a question, whether the said question needs to be decided by the Supreme Court. Under Article 134A read with Article 133(1) of the Constitution, it is not a case of "granting leave", but of "certifying" that the case is a fit one for appeal to the Supreme Court. The High Court would not be justified in passing on an appeal for determination by the Supreme Court when there are no complexities of law involved in the case, requiring an authoritative interpretation by the Supreme Court. *Sidheswar Ganguly Vs. The State of West Bengal*, The High Court should be slow to certify cases. *Babu and Others Vs. State of Uttar Pradesh*, The grant of a certificate under Article 134A is not as a matter of course. The power has to be exercised after considering what substantial questions of law of general importance are involved in the case which should require further

14. consideration of the Supreme Court. If the case as decided by the High Court, on the face of it, does not involve any such questions, then there is no justification for the High Court to certify that the case is a fit one for appeal to the Supreme Court. *Sunder Singh Vs. State of Uttar Pradesh*, The High Court should not grant a certificate on the mere plea that a substantial question of law of general importance arises in the case on hand which needs to be decided by the Supreme Court. *A.P. SEB v. Easun Engg. Co.*, (2002) 10 SCC 458. The discretion of the High Court, under Articles 133(1) read with Article 134A, is a judicial one and must be judicially exercised along well-established lines which govern these matters. *Banarsi Parshad v. Kashi Krishna* 28 Ind App 11; *Radhakrishna Ayyar v. Swaminatha Ayyar* AIR 1921 PC 25 ; and *Nar Singh and Another Vs. The State of Uttar Pradesh*,

15. Reliance placed by Sri B. Adinarayana Rao, Learned Counsel for the Review

Petitioners, on the order passed in W.P. No. 9422 and 9552 of 2005 dated 10.03.2006, is misplaced. The word "certify", in Articles 133(1) and 134A, is a strong word postulating exercise of judicial discretion in determining if the question, requiring the decision of the Supreme Court, involves a substantial question of law of general importance. Such a certificate is not to be given as a matter of course. There must be exceptional or special circumstances like some difficult question" of law of great public importance. It is not to be granted so as to convert the Supreme Court into an ordinary Court of further appeal. State of Bihar Vs. Bhagirath Sharma and Another, The High Court must bring its mind to bear on the question, and the reasons for the order must be apparent on the face of the order itself. The Supreme Court must be in a position to know first that the High Court has applied its mind to the matter and not acted mechanically and, secondly, exactly what substantial question of law of general importance the High Court feels the Supreme Court ought to decide. It is not enough to say "leave to appeal is given" and no more because an appeal is not allowed in the ordinary way when the conditions are not satisfied. Merely to say that leave is given, and no more, is tantamount to saying that the High Court will usurp the functions of the Constitution-makers, and allow the whole case to be opened up despite the fact that the Constitution has specifically limited the normal right of appeal. Baladin and Others Vs. State of Uttar Pradesh, in any event, unlike the present case, W.P. Nos. 9422 and 9552 of 2005 were filed by the Respondents in the respective O. As.

16. What all this Court has done in its order in W.P. No. 6068 of 2004 dated 9.3.2007, in holding that the Tribunal did not have the power to give the judgment of the Supreme Court in V. Jagannadha Rao 2010(2) Supreme 517 prospective application from the date of the judgment i.e., 7.11.2001, is merely to follow the law laid down by the Supreme Court in I.C. Golak Nath and Others Vs. State of Punjab and Another, ; State of Himachal Pradesh and Others Etc. Etc. Vs. Nurgur Private Bus Operators Union and Others Etc. Etc., ; M/s. Somaiya Organics (India) Ltd. Vs. State of Uttar Pradesh and Another, ; Kailash Chand Sharma Vs. State of Rajasthan and Others, ; Sarwan Kumar and Another Vs. Madan Lal Aggarwal, ; and M.A. Murthy Vs. State of Karnataka and Others, . No substantial question of law of general importance arises for consideration, much less a question which needs to be decided by the Supreme Court. We, therefore, see no reason to grant leave as sought for.

17. Viewed from any angle, the Rev. W.P.M.P. is without merit and is, accordingly, dismissed. However, in the circumstances, without costs.