
(1989) 12 RAJ CK 0048

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2382 of 1986

Bhanwar Lal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 06-12-1989

Acts Referred:

Administrative Tribunals Act, 1985 — Section 28, 3
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 12, 25F

Citation : (1990) WLN 95

Hon'ble Judges : S.C. Agrawal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.C. Agarwal, J.—Bhanwar Lal, the petitioner in this writ petition, filed Under Article 226 of the Constitution was appointed as casual labourer on T.L.A. basis on 4th May, 1980. The case of the petitioner is that his services were terminated on 31st December, 1985 and he raised an industrial dispute before the Conciliation Officer i.e. Assistant Labour Commissioner (Central) Ajmer, (respondent No 5 here in) where in he submitted that the termination of the services was in contravention of the provisions of Section 25F 6f the Industrial Disputes Act, 1947 (here in after referred to. as "the Act"). The petitioner has also stated that conciliation proceedings were held by respondent No. 5 and inspite of representations the respondent No. 5 has not submitted the failure report and no orders have been passed by the appropriate Government for referring the industrial dispute for adjudication. The petitioner has, therefore, prayed that the respondents be directed to make a reference to the Labour Court, Jodhpur.

2. The writ petition has been contested by respondents Nos. 2,3 and 4 who have filed a reply to the writ petition. In the said reply a preliminary objection has been raised with regard to the jurisdiction of this Court to entertain the writ

petition and has urged that in view of the provisions of the Administrative Tribunals Act, 1985, the Central Administrative Tribunal can alone grant the appropriate relief to the petitioner. In the reply it has been admitted that the petitioner had completed 790 days service with the answering respondent but it is stated that the services of the petitioner were not terminated and he was asked to report for duty to the Permanent way Inspector, Northern Railway, Deedwana and he did not report the duty to him and that the provisions of Section 25F of the Act are not applicable.

3. Before Ideal with the merits, I will consider the preliminary objection that has been raised on behalf of the respondents with regard to the jurisdiction of this Court to entertain this writ petition.

4. Shri Singhvi, the learned Counsel for the respondents, has urged that the dispute which has been raised by the petitioner relates to the termination of his services and it is a service matter, as the said expression is defined in clause (q) of Section 3 of the Administrative Tribunal Act, and that in respect of service matters exclusive jurisdiction has been conferred on the Central Administrative Tribunal to give appropriate relief. The submission of Shri Singhvi is that the powers of the Central Administrative Tribunal in this regard are the same as those of this Court Under Article 226 of the Constitution and in the present case involving failure on the part of the Conciliation Officer to submit his report appropriate direction could be given by the Central Administrative Tribunal to the Conciliation Officer in the same terms in which this Court in exercise of its powers Under Article 226 of the Constitution can give a direction.

5. I have carefully considered the aforesaid submission of Shri Singhvi but I am unable to accept the same. The jurisdiction that has been conferred on the Central Administrative Tribunal under the Administrative Tribunals Act is in respect of orders passed in a service matter as defined in Section 3(q) of the Act and in case no final order is passed by the Government or other authority or officer or other person who is competent to pass such order with regard to the appeal preferred or representation made by the aggrieved person, an application can be moved before the Tribunal within a period of 6 months on which such an appeal was made or representation was Preferred, this would show that the Administrative Tribunals Act postulates that relief can be granted by the Central Administrative Tribunal in respect no final orders and also in cases where no final order is made within a period of six months from the date of preferring an appeal or making the representation. The report which is submitted by the Conciliation Officer u/s 12 of the Act is not an order. In Sub-section (3) of Section 12 it is provided that where a settlement has been arrived the report of the Conciliation Officer should be accompanied by the memorandum of settlement and in cases where no settlement has been arrived at during the course of Conciliation Sub-section (4) of Section 12 requires that the Conciliation Officer shall send full report setting for the steps taken by him for ascertaining the facts and in the circumstances relating to the dispute and for bringing about a settlement thereof

together with a full statement of such facts and circumstances and the reasons on account of which in his opinion a settlement could not be arrived at. In Sub-section (5) of Section 12 the appropriate Government is required to consider the report of the Conciliation Officer referred to in Sub-section (4) of Section 12 and if it is satisfied that there is a case for reference to an appropriate Government or Labour Court or Industrial Tribunal, it may make such reference. This shows that the report which is required to be submitted by the Conciliation Officer Under Sub-section (4) of Section 12 is with a view to enable the appropriate Government to take a decision as to whether the dispute should be referred for adjudication or not. Such a report is not a final order. Shri Singhvi also concedes that the report of the Conciliation Officer Under Sub-Section (4) of Section 12 of the Act is not an order against which remedy is available before the Central Administrative Tribunal and the jurisdiction to deal with the said report is only with the appropriate Government is the Central Government. Shri Singhvi has however, urged that in cases where the Conciliation Officer fails to submit a report as required by Sub-Section (4) of Section 12 of the Act the Central Administrative Tribunal can exercise the jurisdiction and require the Conciliation Officer to submit the report. I find it difficult to appreciate this contention. If the action taken by the Conciliation Officer in sending his report Under Sub-section (4) of Section 12 does not fall within the ambit of the jurisdiction of the Central Administrative Tribunal it is difficult to appreciate how the failure of the part of Conciliation Officer to act in accordance with the requirement of Sub-section (4) of Section 12 falls within the ambit of the jurisdiction of the Central Administrative Tribunal. In my view the entire field covered by Section 12 of the Industrial Disputes Act relating to conciliation and reference falls outside the ambit of jurisdiction of the Central Administrative Tribunal. In this connection, it may also be pointed out that in Section 28 of the Administrative Tribunal Act, the jurisdiction exercisable by any Industrial Tribunal, Labour Court or other authority constituted under the Act has been expressly excluded from the jurisdiction of the Central Administrative Tribunal. The conciliation proceeding and an order of reference contemplated by Section 12 of the Act are preliminary steps for conferment of jurisdiction on the Industrials, Labour Court or other authorities under the Act. The said proceedings are also outside the ambit of the jurisdiction of the Central Administrative Tribunal.

6. The jurisdiction of the Central Administrative Tribunal can be held to be co-terminus with that of the High Court Under Article 226 of the Constitution in the sense that in respect of a grievance against an order in respect of a service matter the relief which could be granted by the High Court Under Article 226 of the Constitution can now be granted by the Central Administrative Tribunal. But the present case stands on a different footing. Here the petitioner is not seeking to challenge the validity of the order with regard to the termination of his services. He is seeking to challenge the action of the Conciliation Officer in not submitting his report as required by clause (4) of Section 12 of the Act and the consequent failure on the part of the appropriate Government to make a

reference for adjudication of the dispute to the Labour Court. That matter, in my view, does not fall within the ambit of the jurisdiction of the Central Administrative Tribunal, The preliminary objection raised by Shri Singhvi, is, therefore, rejected.

7. Coming to the merits. I find that after holding sittings on March 12, 1986, April 16, 1986 and July 8, 1986, the respondent No. 5 did not take further action in the matter. By his letter (Ex.5) dated July 8, 1986, respondent No. 5 informed the petitioner that since he is a member of the Railway Union he advised the petitioner to make effort to have a settlement through his union in the P.N.M. This shows that respondent No. 5 after making efforts for conciliation to bring about the settlement dropped the matter. In cases where a settlement can not be arrived at clause (4) of Section 12 of the Act, required the Conciliation Officer, to submit his failure report and on that basis the appropriate Government after considering the said report is required to pass an appropriate order to either make a reference or refer a reference. It was, therefore, incumbent upon respondent No. 5 to submit his report as required by Section 12(4) of the Act. On account of the failure on the part of respondent No. 5 to submit his report, the question as to whether the dispute should be referred for adjudication or not has been considered by the appropriate Government. The petitioner is entitled to succeed and necessary directions should be issued to respondent No. 5 to submit his report as required Under Clause (4) of Section 12 of the Act and after considering the said report the appropriate Government should take the necessary decision with regard to reference of dispute for adjudication Under Clause (5) of Section 12 of the Act.

8. The writ petition is, therefore, allowed and the respondent No. 5 is directed to submit his report as required by clause (4) of Section 12 of the Act within a period of one month. The appropriate Government shall consider the said report as required by Section 12(5) of the Act and take a decision as to whether the dispute raised by the petitioner should be referred to the Labour Court for adjudication within a period of one month from the date of the receipt of the report submitted by respondent No. 5 Under Clause (4) of Section 12 of the Act. No. order as to costs.