

(1977) 07 KL CK 0008
In the High Court Of Kerala
Case No : W.A. No. 83 of 1977

Central Government Production Centres Employees"
Association

APPELLANT

Vs

Industrial Tribunal and Others

RESPONDENT

Date of Decision : 05-07-1977

Acts Referred:

Constitution of India, 1950 — Article 246, 309
Industrial Disputes Act, 1947 — Section 10, 15, 17, 18(1), 2

Citation : (1977) 07 KL CK 0008

Hon'ble Judges : V.P. Gopalan Nambiyar, C.J.;K.K. Narendran, J

Bench : Division Bench

Advocate : M. Ramachandran and U.K. Ramakrishnan, for the Appellant;
Ratnasingh and Prabhakaran for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Gopalan Nambiyar, C.J.—I.D. No. 3 of 1974 and I.D. No. 27 of 1974 were referred by the Government of India to the Industrial Tribunal, Madras for adjudication. The issues referred were:

Whether the demands of the Central Government Production Centres Employees" Association of the Production and Extension Centres under the Directorate of Production Centres, Ettumanur in respect of the following matters are justified ?
If so, to what relief are they entitled ?

1. Absorption of employees listed below as Maistries in the scale of Rs. 110-155 with effect from their dates of appointment and consequential payment of arrears of dues.
2. Redesignation of Maistries as Tradesman, fitment at appropriate stage and normalisation in the relevant grades.
3. Framing of Service Rules of Maistries.

4. Provision of two sets of working dress per annum to all workshop staff.

On these issues the Tribunal gave its answers in regard to Issue Nos. 1 and 4 of I.C. No. 27 of 1974; but it did not answer Issue No. 2; and gave its finding on Issue No. 3 against the union. The workmen concerned, in respect of whom the dispute was referred for adjudication, were employees under the Government of India, and the "employer" within the meaning of the Act was the Central Government or the Government of India. In regard to the conditions of service of the employees rules have been framed by the President under Article 309 of the Constitution. It was the Tribunal's view that as these rules (a copy of which is produced as Ext. R-1 in these proceedings) had laid down the conditions of service of the employees, it was no longer open to the Tribunal to go over the same ground and to proceed to lay down the conditions of service under its powers of adjudication. It was in this view that the Tribunal recorded its conclusions on Issues 2 and 3. The position would be clear from what was stated in paragraph 14 and following, of the Tribunal's Award, Ext. P-3. In paragraph 14 the Tribunal noticed the argument of counsel for the union that it had the necessary powers to grant relief under Issues 2 and 5. It noticed that the Junior Central Government Standing Counsel had no case on behalf of the management that the Production Centres in question are not industrial establishments. The Tribunal observed:

The Government servants are governed by the Service Rules, such as Fundamental Rules, Civil Service Regulations, Central Civil Services (Classification, Control and Appeal) Rules, 1965 framed by the Government of India. In view of the fact that they are civil services; that they get necessary protection by virtue of these Fundamental Rules, Civil Services Regulations, Central Civil Services (Classification, Control and Appeal) Rules, 1965, etc, I am of the view that this Tribunal has no jurisdiction to modify or alter those statutory rules and frame new sets of rules.

Lower down in paragraph 17 the Tribunal observed:

Mr. M. Ramachandran, appearing for the union argued that in deciding industrial disputes the jurisdiction of the Industrial Tribunal is very wide and that the Industrial Tribunal can confer rights and privileges upon parties which it may consider reasonable. The question is whether in exercise of such power, the Industrial Tribunal can do anything which will have effect of amending statutory provision.

It observed:

as rightly pointed out by the Standing Counsel, the remedy of the Union is to approach the appropriate authorities and seek for alteration or modification of certain rules which are in the nature of hardship to them.

It wound up the relevant part of the discussion in paragraph 18, which is as follows:

On the question of merits of the claim, no doubt, there is something to be stated in favour of the claim of the workers. It is true that some of the mistries have reached the maximum without any further chances of promotion and also those persons having the same qualification in other companies are very well off. That is a matter for the consideration by the Central Government to give necessary relief and this Tribunal cannot suggest anything to improve their situation of some who have reached maximum in the scale of Maistries. I find Issue No. 1 in I.D. No. 27 of 1974 against the union. My finding with regard to Issue No. 2 in I.D. No. 27 of 1974, the redesignation of Maistries as Tradesmen, fitment in appropriate stage and normalisation in the relevant grades as wanted by them cannot be granted. I find Issue No. 3 in I.D. No. 27 of 1974 also against the Union.

2. The Union and one of the employees filed a writ Petition, which has given rise to this appeal, to quash the award of the Tribunal. A learned Judge of this Court dismissed the writ Petition. The reasoning of the learned Judge is contained in paragraphs 11 and 12 of the judgment. The learned Judge stated that the Industrial Tribunal is invested with judicial power; its jurisdiction is judicial in character; and it is bound to act judicially. The learned Judge then posed the question whether a judicial authority, can, like the executive, frame service rules regulating recruitment and conditions of service of Government servants when the legislative authority had not promulgated the relevant rules in that behalf under the proviso to Article 309. The learned Judge was of the view that the Tribunal did not possess this power (see paragraph 11). In paragraph 12 again, the learned Judge re-stated the same position some what differently, observing that although the jurisdiction and powers of the Industrial Tribunal are very wide, these would not justify its interfering with the contractual rights and obligations of employers and employees, nor extend to exercise the residual regal functions of the State, of regulating the conditions of service of its servants whose rights and liabilities stem, not from contract, but from status.

3. With respect, we find it difficult to accept the reasoning and the conclusion of the learned Judge. The Industrial Tribunal is a creature of statute and its powers and duties and the limits of its jurisdiction have to be sketched entirely with reference to the provisions of the statute. The definitions in Sections 2(a), 2(g), 2(j), 2(s) and other provisions of the Act leave no doubt that a dispute between the Central Government and its employees may well form the subject matter of reference u/s 10, and of adjudication u/s 15 and Section 17 of the Act. It is also clear that once a dispute is referred for adjudication (see Section 14, Section 15 and Section 17), there is a statutory duty and obligation on the Tribunal to adjudicate on the matter referred. The Tribunal was therefore wrong in having declined jurisdiction on the ground that a consideration and decision on issues 2 and 3 would land it into conflict with the Rules framed under Article 309 of the Constitution (copy Ext. R-1).

4. We have scanned Ext. R-1. It is unnecessary, and premature for us, to decide whether, in adjudicating upon Issues 2 and 3, there was likely to be any conflict

with Ext. R-1 rules. Even assuming such likelihood, we do not see how the Tribunal can shirk answering the Issues or decline jurisdiction in respect of the decision on them. If it felt itself powerless to go against Ext. R-1, it could well have adopted Ext. R-1 Rules as the rules which it was bound to repeat or to accept in discharging its adjudicatory function under the provisions of the Industrial Disputes Act. We mention this only to show that the Tribunal was not justified in abdicating jurisdiction, and certainly not to indicate the only line of action for the Tribunal.

5. Could there be another way of looking at the matter ? In discharge of its statutory function, can the Tribunal proceed to adjudicate upon Issues 2 and 3, taking, into due account the rules under Article 309 of the Constitution? And leave the question of reconciling the conditions of service laid down by it and the rules under Article 309, to be dealt with by the appropriate authorities or for appropriate modes of relief? This was the line of thought and reasoning in a recent judgment of a Division Bench of the Patna High Court in *State of Bihar v. Presiding Officer, Industrial Tribunal, Patna 1977 Lab I.C. 803* cited to us by counsel for the Appellant. In paragraph 11 of the said decision the contention of the learned Solicitor General is noticed that reference of the dispute u/s 18(1)(d) was illegal and infructuous, as it was attempted to alter the conditions of service of persons who were in the service of the State. It was argued that this function of altering or laying down the conditions of service had been entrusted by the constitution to the legislature or to the Governor under Article 309 of the Constitution and that it was not permissible for the Industrial Tribunal to constitute itself as a supervisory body over these authorities. Adverting to this argument the Court observed:

It is true that the conditions of service of a Government servant can be laid down either by the appropriate legislature and in the absence of the same having been so laid down, by the Governor of a State. But the mere fact that there is such a power, does not in our view, affect the jurisdiction of a properly constituted Tribunal to adjudicate in relation to an industrial dispute between the Government servant and the State. Article 309 of the Constitution itself indicates that the powers conferred therein are "subject to the provisions of this Constitution". In our opinion, therefore, the mere fact that conditions of service have been laid down under Article 309 of the Constitution does not effect the exercise of powers by a validly constituted authority, if it derives its power under a provision of the Constitution itself. Article 246 of the Constitution enumerates the subject matter of laws which can be made by the Parliament and by the Legislature of a State. It is not in dispute that the Industrial Disputes Act has been enacted in exercise of the powers conferred by the Constitution. If the Industrial Disputes Act provides for adjudication of disputes, the power to so adjudicate is derived under a provision of the Constitution itself and the exercise of such power, effecting the conditions of service of persons serving the State would be permissible as Article 309 of the Constitution itself indicated that this Article is subject to the provisions of the Constitution. This includes any law

validly enacted by a competent Legislature. Thus, in our opinion, the Industrial Tribunal is not shut out or precluded from adjudicating an industrial dispute which may have an impact, either direct or indirect on the service conditions of persons serving in the Union or the State.

6. The decision no doubt supports the stand of the counsel for the Appellant. We do not propose to express our view at this stage, and it may not be proper to do so. If the Tribunal decides to accept Ext. R-1 Rules this aspect would not arise for consideration. If it does not accept the rules, it would be time enough to then consider its course of action. We are satisfied, for the reasons indicated, that the abdication of jurisdiction by the Tribunal cannot be supported and that the view of the learned Judge upholding the award cannot be sustained.

7. We allow this appeal and set aside the judgment of the learned Judge. The result would be that O.P. No. 4228 of 1975 would stand allowed to the extent of quashing Ext. P-3 award in so far as the same relates to Issues 2 and 3 in I. D. No. 27 of 1974. The said dispute will stand remitted back to the Tribunal for fresh disposal in accordance with law and in the light of the observations contained in this judgment. We make no order as to costs.