

(1995) 12 MAD CK 0031

In the Madras High Court

Case No : Writ Petition No's. 9064 and 10304 to 10349 of 1995

District Livestock Farm

APPELLANT

Vs

P. Muthiah and Others

RESPONDENT

Date of Decision : 15-12-1995

Acts Referred:

Administrative Tribunals Act, 1985 — Section 15, 28, 29, 3
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 33(2)

Citation : (1996) 1 LLJ 872 : (1996) 1 MLJ 331

Hon'ble Judges : AR. Lakshmanan, J

Bench : Single Bench

Advocate : V.P. Sengottuvel, G.A, for the Appellant; K. Chandru, for the Respondent

Final Decision : Dismissed

Judgement

Ar. Lakshmanan, J.—By consent of both parties, the main writ petitions themselves have been taken up for final hearing.

2. Admit. W.P. 9064 of 1995

3. Writ petition No. 9064 of 1995 has been filed against the award passed by the Principal Labour Court. Madurai in I.D.No. 143 of 1987 dated

January 31, 1992. Writ Petition Nos. 10304 to 10349 of 1995 are against the common award passed by the Labour Court, Tirunelveli, in C.P.

Nos. 188 of 1993, etc. batch, for quashing the said awards of the respective Labour Courts.

4. The case of the petitioner in short, is as follows ;

The District Live Stock Farm at Abishegapatti, Tirunelveli Kattabomman District is functioning as a Research and Livestock Development Centre

wherein sheep and cattle are reared and fodder crops are raised. Poultry is also maintained in the Livestock farm for the purpose of research and development of Livestock and for distribution to the public. Various developmental activities and schemes formulated by the Government are implemented by the Livestock Farm. Milk, eggs and other poultry products sold in the Farm, are only on subsidised rate, as per Government orders and it is only incidental to the development and research work carried on by the Farm, and without any profit motive. The Livestock Farm is part of Animal Husbandry Department with sovereign functions. Its main activity is to serve as a model farm propagate hybrid varieties of cattle breeding and management. The sales effected by the farm is only to maintain the cows and buffaloes in the farm and milking work is being done only to find out the milk potentiality of the animals and milching cows and buffaloes are used as mother cow and they are inseminated by the semen of high pedigree qualities of buffaloes and bulls. The off-spring bulls, semen has been distributed to local breeds, which is the policy of the Government. Therefore, the petitioner farm comes under the exceptional provision in Section 2(J) and it will not come within the purview of Industrial Disputes Act, 1947 as it is not engaged in any business, trade, manufacture or distribution of goods nor rendering any material service on profit motive to the community at large by engaging labour District Livestock of the Animal Husbandry Department are governed by the Rules formulated by that Department Manual wherein in Chapter I, at page 1, it is stated as under :

1. Object : The object of starting the Government Livestock and Poultry Farms and allied Sections is mainly to supply acclimatised seed material for scientific breeding in different parts in the form of pedigree bulls, rams, boars, cocks, etc. Also, the object is to afford practical training and research facilities in all aspects of livestock and poultry husbandry as far as possible and to serve as visual demonstration units for the public in scientific management of cattle, sheep, pigs, and poultry. These units are not, therefore, intended to be commercial enterprises."

5. According to the petitioner, the respondents were engaged on daily wages for the purpose of milching cows and buffaloes, collection of semen from bulls and for performing other manual works relating to livestock, poultry and fodder development. The respondents were engaged directly

without consulting the Employment Exchange, according to the day to day needs. Only when permanent vacancies arise, qualified persons are appointed on regular basis by selecting among the daily wagers through Employment Exchange. The respondents herein do not have the requisite qualifications, namely, education and age and they were nor recruited through Employment Exchange. According to the petitioner, the Principal Labour Court, Madurai, without properly appreciating the facts passed the impugned award. Hence the petitioner prayed for the quashing of the order of the Labour Court passed in I.D.No. 143 of 1987, wherein the Principal Labour Court, Madurai, has given to all the 67 workers the benefit of regularisation, permanency and time scale of pay from the date on which they had completed five years of service and that they would be Government servants coming under the Animal Husbandry Department.

6. Aggrieved by the award passed in I.D. No. 146 of 1987 (common award was passed by the Labour Court in I.D. Nos. 143 and 146 of 1987) the petitioner herein filed W.P. No. 10795 of 1992 and the said award was affirmed and the writ petition was dismissed on merits by Srinivasan, by order dated August 3,1992.

7. Thereafter, out of the 67 workers, 46 claimed monetary benefit of the award by filing claim petition Nos. 188 to 233 of 1993 u/s 33-C(2) of the Industrial Disputes Act before the Labour Court, Tirunelveli and the Labour Court allowed those petitions and computed the money value of the award by order dated May 26,1994. Against the said award, W.P. Nos. 10304 to 10349 of 1995 have been preferred.

8. In para 7 of the affidavit, the petitioner has explained the delay in filing the above writ petitions belatedly.

9. Before the Labour Court, Tirunelveli, the respondents herein have given details of their claim such as salary, pay to be fixed, arrears to be paid, etc. and the petitioner herein did not file any objection to such a claim made. Therefore, the Labour Court held that the petitioners before it, i.e.

respondents herein are entitled to the claim as made by them in the respective claim petitions.

10. Learned Government Advocate submitted that the award passed by the Labour Court regarding the fixation of pay, arrears and amount due as claimed by the respondents herein are not correct, and that the respondents

herein are not entitled to claim anything as they are not entitled to claim that they are to be regularised with time scale of pay and that the petitioner would be exempt from the provisions of Industrial Disputes Act under Sec. 2(j) thereof and even assuming that the petitioner would come within the purview of the Industrial Disputes Act, the respondents herein cannot claim anything retrospectively and they would be entitled to claim pay etc. only from the date of award passed by the Principal Labour Court, Madurai, i.e. January 31, 1992. In view of that, the order passed by the Labour Court, Tirunelveli is illegal and unreasonable and is liable to be quashed.

11. Learned Counsel for the petitioner also submitted that the order was passed by the Principal Labour Court, Madurai, on January 31, 1992 and after the receipt of the order copy, a draft affidavit was prepared and submitted to the Government through the Director of Animal Husbandry on June 9, 1992 and it was received back by the petitioner on October 1, 1994 with some modifications and as there were several claim petitions pending at various courts, there was delay in filing the writ petition and that the delay was not wanton and if the delay is not condoned, the petitioner will be put to much hardship.

12. On the other hand, Mr. Chandru, appearing for the respondents, raised a preliminary objection with regard to the maintainability of the writ petitions in this Court. According to him, after the introduction of the Administrative Tribunals Act, 1985, Central Act 13 of 1985 and after the constitution of the Tamil Nadu Administrative Tribunal with effect from 1988, u/s 15 of the Administrative Tribunals Act, by virtue of Section 28 of the said Act, the jurisdiction conferred under Article 226 of the Constitution of India, on this Court to deal with service matters of the Government servants, is excluded.

12(A). Section 28 of the Act reads as follows:

"28. Exclusion of jurisdiction of Courts except the Supreme Court under Article 136 of the Constitution : On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any service or persons appointed to any service or post, no Court except -

(a) the Supreme Court; or

(b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for

the time being in force,

entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service

matters."

In view of the fact that the Tamil Nadu Administrative Tribunal had been constituted as such and has been functioning from 1988 u/s 15 of the Act,

the contention raised by Mr. Chandru has force.

13. The term "service matters" has been defined in Section 3(q) of the said Act as under

"Service matters" in relation to a person, means all matters relating to the condition of his service 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, as the case may be, of

any corporation or society owned or controlled by the Government, as respect, -

(i) remuneration (including allowances), pension and other retirement benefits ;

(ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;

(iii) leave of any kind;

(iv) disciplinary matters; or

(v) any other matter whatsoever;

14. A Division Bench of this Court in *Subbu Reddy v. Union of India* 1991 writ LR 106 has held that the Government cannot maintain a writ

petition against the orders of Labour Court computing the monetary value of a Government servant. In the above case, the order of the Labour

Court was challenged on the ground that this Court has no jurisdiction to entertain a dispute with regard to "service matters" in view of the

provisions contained in the Administrative Tribunals Act, 1985. Affirming the judgment of K.M. Natarajan J., the Division Bench held that this

Court has no jurisdiction to entertain a petition under Article 226 of the Constitution and the remedy of the Government is approach the

Administrative Tribunal.

15. Paras 6 and 8 in the aforesaid judgment can be usefully extracted here, which is as under

As regards the second contention, the language of Section 28 of the Act is very clear and it is mandatory. Under that Section, no Court, except

the Courts mentioned therein, shall have or be entitled to exercise any jurisdiction, powers or authority in relation to the matters referred to therein.

That will certainly include the jurisdiction of this Court under Arts. 226 and 227 of the Constitution of India. There is no exception made in the

Section. The only exception is with reference to the pending appeals before the High Court as provided in Section 29 of the Act. But for the

pending appeals before the High Court, all other proceedings shall have to go before the Tribunal. Hence, the second contention should also fail"

In this case, the appellant filed claim petitions before the Labour Court in 1982 and 1984 under S. 33(c)(2) of the Industrial Disputes Act. The

Labour Court had jurisdiction to deal with the same in view of the provisions of S. 2(b) of the Act, as it stood originally and under S. 28 of the Act

after the amendment introduced by Act 19 of 1986. The jurisdiction of this Court under Art. 226 having been taken away, the absence of any

specific provision by way of appeal or revision to the Administrative Tribunal against the order passed by the Labour Court in the claim petitions

filed by the appellant appears to be a lacuna. It is not clear whether the Legislature intended in such cases that the party should resort to Art. 136

of the Constitution and approach the Supreme Court with a petition for special Leave. It may also be stated that inasmuch as the Central

Administrative Tribunal has been recognised as an effective substitute by the Supreme Court in S.P. Sampath Kumar's case

" (1987-I-LLJ-128) and J.B. Chopra's case (1987-I-LLJ-255), the Tribunal is entitled to entertain and consider an application challenging the

correctness of the orders of Labour Court and Industrial Tribunals. We hold that this Court has no jurisdiction to entertain the writ petition under

Art. 226 of the Constitution and the remedy of the appellant is to approach the Central Administrative Tribunal. In view of the pronouncements of

the Supreme Court, referred to above, the appellant will be able to get a remedy which is equal in efficacy to that of a writ of this Court if he

convinces the Tribunal on merits."

16. The Supreme Court in a recent decision in Krishan Prasad Gupta Vs. Controller, Printing and Stationery, has held that even under Article 227

of the Constitution conferring powers of superintendence over the subordinate Courts, Labour Courts and Industrial Tribunals, on the High Court,

it cannot quash the awards passed by the Labour Court and the Industrial Tribunal inasmuch as the Administrative Tribunal has been constituted as

a substitute for the High Court under Article 323A of the Constitution. In the words of the Supreme Court:

"though the Tribunal has been constituted as a substitute for the High Court under Article 323A, the Labour Courts and Industrial Tribunals etc.,

over which the High Court exercises supervisory jurisdiction continue to function with the incongruous result that though the High Court cannot

quash their judgments, it must continue to supervise their function."

Therefore, in my opinion, all the 46 writ petitions deal with the service matters of Government servants and as such, the Tamil Nadu Administrative

Tribunal, constituted under the said Act with effect from 1988, will have jurisdiction and this Court cannot exercise its jurisdiction under Article

226 of the Constitution, That apart, as these writ petitions were not pending proceedings before this Court at the time when the Tribunal was

constituted, Section 29 of the Act does not apply and these writ petitions have to be dismissed on this ground.

17. Besides, the writ petitions are liable to be dismissed on the question of laches as well. As already seen, the common award was passed on

January 31, 1992, which give the benefits of regularisation, permanency and time scale of pay from the date of completion of five years by those

employees with the 2nd respondent. Out of the common award in I.D. 143 and 146 of 1987, the writ petition filed as against the award in I.D.No.

146 of 1987 had been dismissed by Srinivasan.J as far back as August 3, 1992. That writ petition in W.P.No. 10795 of 1992 had been dismissed

on merits and it is not the case of the petitioner herein that any appeal had been entertained by this Court as on date and as such, that order has

become final. Out of 67 employees, covered by that common order passed by the Labour Court, 46 moved the Labour Court, Tirunelveli in C.P.

Nos. 188 to 233 of 1993 under vSection 33-C(2) of the Industrial Disputes Act

for computing the money value of the award passed by the Principal Labour Court, Madurai and the award therein had been passed on May 26, 1994. In the affidavit filed in support of the writ petition in W.P. No. 9064 of 1995 in para 7, it is stated that the award of the Labour Court, Madurai, was passed on January 31, 1992 and after receiving the copy of the award, draft affidavit had been prepared and sent to the Government through the Director of Animal Husbandry on June 9, 1992 and it was received back from the Government by the petitioner on October 1, 1994 with some modifications. It is further vaguely stated that as there are several claim petitions pending at various Courts, viz., Labour Court, Tirunelveli, Tamil Nadu Administrative Tribunal etc., there occasioned delay in filing the writ petition. The petitioner has not cared to explain the delay with any details, as to when the copy of award was taken delivery of, when it was sent from the office of Director of Animal Husbandry to the Government and when the Government returned it. Admittedly, there is a delay of more than 3 years in filing the writ petition. Besides the above, even though, it is stated that the draft affidavit was received in the office of the petitioner on October 1, 1994, the writ petition has been presented in this Court only on April 28, 1995 and even this delay has not been properly and satisfactorily explained by the petitioner. In my opinion, the petitioner has not chosen to explain the delay in any manner and as such, W.P. No. 9064 of 1995 is liable to be dismissed on account of laches on the part of the writ petitioner. Even with regard to W.P. Nos. 10304 to 10349 of 1995, in the affidavit filed in support of those writ petitions, the petitioner has stated that the award copy was received by the petitioner only on August 10, 1994 and after getting the approval from the higher authorities, the writ petition has been filed. Admittedly, the writ petition has been filed only on March 1, 1995 and the petitioner has also not chosen to explain the delay properly. Further, the petitioner has not chosen to disclose the factum of dismissal of W.P. No. 10795 of 1992 by order dated August 3, 1992.

18. For the forgoing reasons, I hold that these writ petitions are liable to be dismissed on the ground of maintainability as well as Inches ^nd accordingly, these writ petitions are dismissed. However, there will be no order as to costs.