
(1992) 08 RAJ CK 0032

In the Rajasthan High Court

Case No : Civil Revision Petition No. 3 of 1992

General Manager, Western Railway and Others

APPELLANT

Vs

Authority under Payment of Wages Act and Another

RESPONDENT

Date of Decision : 06-08-1992

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19, 19(1), 20, 3
Payment of Wages Act, 1936 — Section 15, 15(4B), 17

Citation : (1994) 1 LLJ 1066 : (1993) 1 WLC 641

Hon'ble Judges : G.S. Singhvi, J

Bench : Single Bench

Advocate : G.C. Garg, for the Appellant;

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—An interesting question which arises for determination in this Revision Petition is as to whether jurisdiction of the Court of Small Causes or District Court to hear Appeals against an order passed u/s 15 of the Payment of Wages Act, 1936 (for short "the Act of 1936") by a competent authority stands excluded by virtue of the provisions of the Administrative Tribunals Act, 1985 (for short "the Act of 1985").

2. An application u/s 15(2) of 1936 Act was filed by respondent No. 2 before the Authority appointed under the Act of 1936, Sawaimadhopur, claiming a sum of Rs. 3,42,874.12. Respondent No. 2 alleged that he has unlawfully been deprived of the benefits flowing from his retrospective promotion to the higher post.

3. After hearing the parties, the Authority appointed under the Act of 1936 passed an order dated August 31, 1990 u/s 15(3) of the Act and directed the appellants to pay a sum of Rs. 2,55,278.91 towards wages alongwith one time penalty and a sum of Rs. 500/- as cost awarded by the Central Industrial Tribunal. The competent authority awarded cost of Rs. 2,000/-in respect of the application filed u/s 15 of 1936 Act.

4. Feeling aggrieved by the order of the Authority, the petitioners filed an appeal in the District Court, Sawaimadhopur. During the course of hearing of appeal an objection was raised on behalf of respondent No. 2 that the District Court had no jurisdiction to hear the appeal in view of the provisions contained in the Act of 1985.

5. By making a reference to the decision of a Full Bench of the Central Administrative Tribunal (Chandigarh Bench) in Union of India v. Samp Chand Singla 1989 (1) SLJ (CAT) 490 the learned District Judge, Sawaimadhopur held that the District Court had no jurisdiction to hear the appeal after the coming into force of the Act of 1985. On that ground he dismissed the appeal.

6. The order of the learned District Judge, Sawaimadhopur has been questioned by the petitioners on the ground that the learned District Judge has failed to exercise jurisdiction vested in him and has dismissed the appeal without appreciating the provisions of "1936 Act" and the "Act of 1985".

7. The Act of 1936 was enacted with a view to regulate the payment of wages to certain classes of the persons employed in industries. Section 15(1) of 1936 Act provides for appointment of an Authority to hear and decide all the claims relating to deductions from the wages or delay in payment of wages of persons employed or paid in a particular area including all matters incidental to such claims. Proviso to Section 15(1) empowers the State Government to appoint more than one Authority for any specified area and also to provide for the distribution or allocation of work to be performed by them under the Act of 1936. Section 15(2) lays down that if any deduction has been made from the wages of an employed person in contravention of the provisions of 1936 Act or there has been a delay in the payment of wages, such person may either himself or through his legal representative or any official of a registered trade union or any Inspector appointed under that Act or any other person acting under the permission of the Authority appointed under the Act, apply for a direction u/s 15(3) of the Act. On filing of such application, the competent Authority is to hear the applicant and the employer or other persons responsible for payment of wages and after making such enquiry as it may consider necessary, direct refund to the employed person of the amount deducted, or the payment of the delayed wages, together with payment of such compensation as the Authority may determine. Such compensation shall however not exceed ten times of the amount deducted or in respect of which payment has been delayed. Section 17 of the Act makes a provision for appeal against an order dismissing an application made under Sub-section (3) or (4) of Section 15 of the Act of 1936. Section 15(3), Section 15(4) and Section 17 of 1936 Act can usefully be extracted below:-

"Section 15(3): When any application under Sub-section (2) is entertained, the authority shall hear the applicant and the employer or other persons responsible for the payment of wages u/s 3, or give them an opportunity of being heard, and, after such further inquiry (if any) as may be necessary, may, without

prejudice to any other penalty to which such employer or other person is liable under this Act, direct the refund to the employed person of the amount deducted or the payment of the delayed wages, together with the payment of such compensation as the authority may think fit, not exceeding ten times the amount deducted in the former case and not exceeding twenty-five rupees in the latter, and even if the amount deducted or the delayed wages are paid before the disposal of the application, direct the payment of such compensation, as the authority may think fit, not exceeding twenty-five rupees:

Provided that no direction for the payment of compensation shall be made in the case of delayed wages if the authority is satisfied that the delay was due to:

- (a) a bonafide error or bonafide dispute as to the amount payable to the employed person or,
- (b) the occurrence of an emergency, or the existence of exceptional circumstances such that the person responsible for the payment of the wages was unable, though exercising reasonable diligence, to make prompt payment, or
- (c) the failure of the employed person to apply for or accept payment.

Section 15(4): If the authority hearing an application under this section is satisfied:

- (a) that the application was either malicious, or vexatious, the authority may direct that a penalty not exceeding fifty rupees be paid to the employer or other person responsible for the payment of wages by the person presenting the application, or
- (b) that in any case in which compensation is directed to be paid under Sub-section (3), the applicant ought not to have been compelled to seek redress under this section, the authority may direct that a penalty not exceeding fifty rupees be paid to the State Government by the employer or other person responsible for the payment of wages.

(4-A) Where there is any dispute as to the person or persons being the legal representative or representatives of the employer or of the employed person, the decision of the authority on such dispute shall be final.

(4-B) Any inquiry under this section shall be deemed to be a judicial proceeding within the meaning of Sections 193, 219 and 228 of the Indian Penal Code.

(5) Any amount directed to be paid under this section may be recovered:

- (a) if the authority is a Magistrate, by the authority as if it were a fine imposed by him as Magistrate, and
- (b) if the authority is not a Magistrate, by any Magistrate to whom the authority makes application in this behalf, as if it were a fine imposed by such Magistrate."

Section 17 : Appeal (1) An appeal against an order dismissing either wholly or in

part an application made under Sub-section (2) of Section 15, or against a direction made under Sub-section (3) or Sub-section (4) of that section may be preferred, within thirty days of the date on which the order or direction was made, in a Presidency- town before the Court of Small Causes and elsewhere before the District Court:

(a) by the employer or other person responsible for the payment of wages u/s 3, if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees or such direction has the effect of imposing on the employer or the other person a financial liability exceeding one thousand rupees, or

(b) by an employed person, or any legal practitioner or any official of a registered trade union authorised in writing to act on his behalf or any Inspector under this Act, or any other person permitted by the authority to make an application under Sub-section (2) of Section 15, if the total amount of wages claimed to have been withheld from the employed person exceeds twenty rupees or from the unpaid group to which the employed person belongs or belonged exceeds fifty rupees, or

(c) by any person directed to pay a penalty under Sub-section (4) of Section 15.

(1-A) No appeal under Clause (a) of Sub-section (1) shall lie unless the memorandum of appeal is accompanied by a certificate by the Authority to the effect that the appellant has deposited the amount payable under the direction appealed against.

(2) Save as provided in Sub-section (1), any order dismissing either wholly or in part an application made under Sub-section (2) of Section 15, or a direction made under Subsection (3) or Sub-section (4) of that section shall be final.

(3) Where an employer prefers an appeal under this section, the Authority against whose decision the appeal has been preferred may, and if so directed by the court referred to in Sub-section (1) shall, pending the decision of the appeal, withhold payment of any sum in deposit with it.

(4) The court referred to in Sub-section (1) may, if it thinks fit, submit any question of law for the decision of the High Court and, if it so does, shall decide the question in conformity with such decision."

8. The Act of 1985 has been enacted by the Parliament in exercise of its power under Article 323A of the Constitution of India. Initially this Act was not applicable to a person governed by the provisions of the Industrial Disputes Act, 1947 or any corresponding law for the time-being in force, by virtue of Section 2(b) of the Act. Section 2(b), which contained this exception, was deleted by Administrative Tribunals (Amendment) Act, 1986. Section 3(q) of 1985 Act defines "service matters". Section 14(1) specifies the jurisdiction, powers and authority of the Central Administrative Tribunal. Section 19(1) which finds place in Chapter IV, provides for filing of application by a person who is aggrieved by

any order pertaining to any matter within the jurisdiction of a Tribunal. Section 28 contains provision regarding exclusion of jurisdiction of the Court. Section 29(1) provides for transfer of pending cases. All these provisions have direct bearing on the question which is required to be determined in this petition and, therefore, they are being quoted below:-

"Section 3(q): "service matters" in relation to a person, means all matters relating to the conditions 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 respects-

- (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;

Section 14(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 (if) 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.

Section 19(1): Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressed of his grievance.

Explanation - For the purposes of this subsection, "order" means an order made,-

(a) by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation or society owned or controlled by the Government; or

(b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation or society referred to in Clause (a).

Section 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 Dispute Act, 1947 or any other corresponding law for the time being in force.

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

Section 29(1): Every suit or other proceeding pending before any Court or other authority immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal:

Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before a High Court."

9. In order to determine as to whether a particular matter falls within the jurisdiction of the Central Administrative Tribunal or not, it is absolutely necessary to examine the ambit and scope of the various provisions of 1985 Act.

10. A combined reading of these provisions of the Act of 1985 show that the Act is applicable to various categories of employees. Those who are excluded from

the application of the Act of 1985 are members of the naval, military or air forces or of any other armed forces of the Union officer or servant of the Supreme Court or of any High Court; or person appointed to the secretarial staff of either House of Parliament or to the secretarial staff of any State Legislature or a House thereof or, in the case of a Union Territory having a Legislature, of that Legislature. Any person who is governed by the provisions of the Act of 1985 can submit application before the Tribunal in respect of his grievance pertaining to any matter which falls within the jurisdiction of the Tribunal. With effect from the commencement of the Act of 1985, the Central Administrative Tribunal can exercise all the jurisdiction, power and authority in respect of recruitment and matters concerning recruitment, to any All India service or to any civil service of the Union or service matters concerning a member already in service or other civil service or a civilian appointed to any defence services or a post connected with defence services or service matters in connection with the affairs of the Union and in respect of all those matters which fall within the jurisdiction and power of the Central Administrative Tribunal and by virtue of Section 28 of the Act of 1985 no other Court has jurisdiction, power or authority in relation to such recruitment or matters concerning such recruitment or such service matters except that the jurisdiction of the Supreme Court or 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 remains unaffected. It must, therefore, be held that in respect of the employees covered by the provisions of the Act of 1985, the Central Administrative Tribunals have exclusive jurisdiction of adjudication of grievances in relation to recruitment to any service or post or service matters after coming into force of the Act of 1985. However by virtue of the specific exception contained in the exclusion clause itself, jurisdiction of the Supreme Court and the Industrial Tribunal or the Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force has been retained. In other words, the exclusion clause contained in Section 28 of the Act of 1985 has no application so far as the jurisdiction of the Supreme Court, Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any corresponding law for the time being in force is concerned. Section 29 of the Act of 1985 relates to transfer of pending cases i.e., suit or other proceedings pending in other Court or Authority immediately before the date of establishment of the Tribunal in relation to recruitment and matters concerning to recruitment to any service or post or service matters. Section 3(q) contains a broad definition of the phrase "service matters" and it comprehends within itself all matters relating to condition of service. Section 14 refers to the jurisdiction, powers and authority of the Central Administrative Tribunal. Section 19(1) which falls in Chapter IV pertaining to procedure, provides that a person aggrieved by an order pertaining to any matter within the jurisdiction of the Tribunal may make an application to the Tribunal for redressal of his grievance. The scope of the word "order" has been amplified in the form of explanation added below Section 19(1). This explanation lays down that for the purposes of Section 19(1)

"order" means an order made (a) by the Government or a local authority or other authority within the territory of India or under the control of the Government or India or by any corporation or society owned or controlled by the Government; or (b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation or society referred to in Clause (a). Section 20 lays down that the Tribunal shall not ordinarily admit an application unless the aggrieved applicant has availed all the remedies available to him under the relevant service Rules. In case no final order is made by the competent authority, the employee can file an application within six months from the date of filing of appeal or representation. Section 21 specifies the period of limitation for filing of the application. Section 28 and Section 29 fall in Chapter V. Section 28, as already mentioned, contains exclusion clause and Section 29 deals with transfer of pending cases.

11. It can, therefore, be said that in respect of any of the service matters, an aggrieved person can make an application u/s 19(1). Such application can be filed even in the absence of a written order provided that the conditions specified in Section 19(2) are satisfied. However, such order or deemed order, against which an application has been filed, must be one which has been passed by the Government or a local or other authority or corporation or society within the territory of India or under the control of the Government of India. An Authority appointed by the State Government u/s 15(1) of 1936 Act is neither the Government nor a local or other authority within the territory of India; it is also not a corporation or society owned or controlled by the Government, it is not an officer, committee or other body or agency of the Government. In fact the prescribed authority under 1936 Act has the trappings of the courts although it is not a Court in strict sense of the term. The phrase "Local or Other Authority" appearing in explanation below Section 19(1) has to be construed ejusdem generis. It must take its colour from the preceding word namely "Government". There can be little justification for giving a general meaning to the phrase "Local or Other Authority" so as to include within its ambit "other bodies or persons" who may be entrusted with the powers of judicial or quasi-judicial nature under different statutes enacted by the Parliament or the State Legislatures. An Authority appointed under 1936 Act is bound to exercise its jurisdiction in a judicial manner. It is required to comply with the basic principles of natural justice inasmuch as it has to offer opportunity of hearing to the applicant as well as to the employer or other person or any person responsible for payment of wages. The Payment of Wages Authority can make such inquiry, as it may consider necessary, for the purpose of deciding such application. Inquiry made by the Payment of Wages Authority has to be treated as a judicial proceeding for the purpose of Sections 193, 219 and 228 of the Indian Penal Code by virtue of Section 15(4B) of 1936 Act. Thus, an order made by an Authority appointed under the Act of 1936 cannot be treated as an "order" for the purpose of Section 19(1) of 1985 Act.

12. Apart from the above conclusion, it is clear that an order made by the

competent Authority under 1936 Act cannot be treated as a service matter for the purpose of Section 3(q) of the Act of 1985. A quasi-judicial order made by the Payment of Wages Authority may affect service condition of an employee insofar as the question of pay is concerned but a direction issued under 1936 Act cannot be construed as a service matter in the light of the scheme of 1985 Act. Above all, it has to be seen from Section 17 of 1936 Act that appeal is maintainable against an order dismissing an application wholly or in part u/s 15(2) of 1936 Act as well as against a direction given under Sub-section (3) or Sub-section (4) of that Section. Appeal can be filed against an employer or other person responsible for the payment of wages by an employed person or any legal practitioner or any officer of a registered trade union authorised in writing to act on behalf of such person or any inspector under the Act or any other person directed under the Authority to make an application u/s 15(2) or by a person who is directed to pay penalty u/s 15(4). However, the Act of 1985 does not envisage filing of an application by the Government or a local or other authority. Obviously the Government or its agency cannot be treated as person aggrieved for the purpose of the provisions of 1985 Act and in particular Section 19 of the said Act. It is, therefore, impossible to accept the proposition that against an order passed by a competent authority under the Act of 1936 an appeal will not lie to the District Court or to the Court of Small Causes but an application will lie before the Administrative Tribunal constituted under the Act of 1985. If that proposition was to be accepted, the Government or the employer would become an aggrieved person for the purposes of Section 19. That situation is not comprehended in the scheme of 1985 Act nor can it be said that the Payment of Wages Authority can pass any order affecting service matter of the Government or an employer.

13. As per Section 29(1) of the Act of 1985, every suit or other proceedings pending before any Court or other authority immediately before the date of establishment of Central Administrative Tribunal under the Act of 1985, being a suit or proceedings the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment within the jurisdiction of the Tribunal, shall stand transferred on that date to such Tribunal. The term "other proceedings" used in Section 29(1) may be construed widely so as to include an appeal and, therefore, in the first blush it may appear that an appeal pending before the Court of Small Causes or the District Court will have to be transferred to the Tribunal on the appointed day. However, this interpretation does not bear out from a close scrutiny of the provisions contained in Section 29(1). Only such suit or proceedings will be treated as transferred to the Tribunal which are founded on a cause of action, which, if it had arisen after the appointed day, can be adjudicated upon by the Tribunal only. The cause of action for filing of appeal under the Act of 1936 is the decision of the Authority appointed under the Act of 1936 and since the order passed by the competent Authority under the Act of 1936 cannot be treated to be an order for the purpose of Section 19(1) of the Act of 1985, it will have to be held that the appeals pending before the

competent Court under the Act of 1936 will not stand transferred on the appointed day.

14. The decision of the Full Bench of the Central Administrative Tribunal in Sarup Chand's case (supra) no doubt contains an elaborate discussion on the subject. Detailed analysis of the provisions of the Acts of 1936 and 1985 have been made. After placing reliance on some decisions of the Supreme Court, the Tribunal has concluded that the Court of Small Causes or District Court has no jurisdiction to entertain appeal u/s 17 of 1936 Act in view of the provisions contained in Section 28 of 1985 Act. The Tribunal further held that remedy available to an aggrieved employee under the Act of 1936 can also be sought by filing an application under the Act of 1985 and if two remedies are available, it is open to the aggrieved person to make an election of the forum. The Tribunal further held that u/s 19(1) an aggrieved employee could approach the Tribunal because extraordinary writ jurisdiction of the High Court also vests in the Tribunal and the Tribunal can give relief to the employee which High Court could have given in exercise of its extra ordinary jurisdiction. The Full Bench of the Tribunal did not accept the view of the Jodhpur Bench of the Tribunal in D.P.O. v. Laxmi Narain 1988 (6) ARC 1.

15. With great respect, I find myself unable to agree with the reasoning given by the Full Bench of the Central Administrative Tribunal. In my opinion, the Full Bench of the Tribunal has clearly failed to appreciate the true scope of Section 14 read with Sections 19, 28 and 29 of the Act of 1985. The Tribunal has completely overlooked the fact that an order passed by Authority appointed under the Act of 1936 may be an order in favour of the employee or against him. If an order is passed in favour of an employee, appeal can be filed by the employer which may be Government itself. The Tribunal has not at all examined the question as to how the Government can be an aggrieved person for the purpose of filing an application under the provisions of 1985 Act and how an order passed by the prescribed Authority under the Act of 1936 can be treated as an order for the purpose of Section 19(1).

16. On the basis of the above discussion, I hold that an appeal u/s 17 of the Act of 1936 is maintainable before the District Court against an order passed by the prescribed Authority appointed under 1936 Act and the jurisdiction of the District Court is not excluded by virtue of Section 28 of 1985 Act. I further hold that the Central Administrative Tribunal has no jurisdiction to entertain appeal against an order made by the prescribed Authority under the Act of 1936. The learned District Judge, Sawaimadhopur has committed a serious error of law in rejecting the appeal filed by the petitioners. The order passed by the learned District Judge leaves much to be desired. The learned District Judge has not cared to even look into the provisions of the Act of 1936 and 1985 Act. The learned District Judge completely surrendered his discretion to the decision of the Central Administrative Tribunal as if it is a Court subordinate to the Central Administrative Tribunal and is, therefore, bound to follow the decision of the

Central Administrative Tribunal blindfolded. The learned District Judge was duty bound to examine the provisions of the relevant law before holding that the jurisdiction of the District Court is excluded by virtue of Section 29 of the Act of 1985.

17. The Revision Petition is, therefore, allowed. Order dated November 16, 1991, passed by the District Judge, Sawaimadhopur, is quashed. The appeal filed by the petitioners before the District Court, Sawaimadhopur is remanded for fresh decision on merits in accordance with law. The learned District Judge, Sawaimadhopur should now give notice to the respondents and then hear and decide the appeal of petitioners expeditiously. The petitioners are directed to pay a sum of Rs. 25,000/- to respondent No. 2 because he has been deprived of the benefit of the order passed by the Payment of Wages Authority for a period of almost two years. This payment will be subject to the final decision of the District Judge, Sawaimadhopur. Parties are left to bear their own costs.