

(2001) 02 AP CK 0051
In the Andhra Pradesh High Court
Case No : WA No. 385 of 2001

Government of A.P. and others	Vs	APPELLANT
Kolla Raghavaiah and others		RESPONDENT

Date of Decision : 12-02-2001

Acts Referred:

Administrative Tribunals Act, 1985 — Section 15, 19, 28, 3, 4
Constitution of India, 1950 — Article 226, 323

Citation : (2001) 3 ALD 122 : (2001) 3 ALT 309

Hon'ble Judges : S.B. Sinha, C.J; S.R. Nayak, J

Bench : Division Bench

Advocate : A.A.G, for the Appellant; Mr. V. Jagapathi and Mr. P. Raghavender Reddy, for the Respondent

Judgement

S.B. Sinha, CJ

1. This appeal is directed against a judgment dated 27-7-1998 passed by a learned single Judge of this Court in writ petition No.26338 of 1996 whereby and whereunder the writ petition filed by the respondents 1 and 2 herein praying to declare the action of the appellants 2 and 3 and respondent No.3 herein in not regularising the services of respondents 1 and 2 herein and not paying them the time scale of pay as arbitrary, unjust and illegal and consequently direct appellants 2 and 3 and respondent No.3 herein to absorb the services of respondents 1 and 2 on regular basis and pay them time scale of pay in the posts held by them with retrospective effect from the date of their initial appointment with all consequential benefits; has been allowed with the following directions:

"In the light of the view taken by me, a direction is given to respondents 1 and 2 to pass orders on the proposals sent by the Executive Officer of the 3rd respondent-Gram Panchayat on 5-10-1994, the services of the petitioners are liable to be regularised on any ground. Accordingly a direction is given to the respondents to regularise the services of the petitioners from the date of

receiving of the proposals as per the Resolutions No.41 and 43 of the Gram Panchayat dated 5-9-1994 within eight weeks from today. If any approval of the Government is required, it is the duty of the 1st and 2nd respondents to get the approval within that time limit and pass appropriate orders. The petitioners may be placed in the last grade service in the time scale of pay as there is no approved staffing pattern approved for the Gram Panchayat. For payment of arrears, respondents 1 and 2 are given eight weeks time more after passing of the orders of regularising the services of the petitioners, for payment of arrears of salary. Any deviation on the part of the official concerned, will be taken serious note of."

2. The first appellant herein was not a party in the writ application before the learned single Judge. It filed an application for grant of leave to prefer this appeal, which having been dismissed Civil Appeal Nos.5621 and 5622 of 2000 were filed. By reason of an order dated 27-9-2000 passed in civil appeals, leave was granted. Pursuant to and in furtherance of the said direction of the Apex Court, this writ appeal was taken up for hearing.

3. Learned Additional Advocate-General has raised two contentions in support of this appeal, viz., (1) From a perusal of the judgment passed by the learned single Judge it would appear that the State was a necessary party and in its absence a writ petition could not have been effectively adjudicated upon, and (2) having regard to a notification bearing G.O. Ms. No. 652, General Administration (SPF-B) Department, dated 11-11-1989, this Court had no jurisdiction to entertain writ application having regard to Section 15(3) of the Administrative Tribunals Act, 1985 (hereinafter referred to as "the Act" for brevity).

4. We find substance in the aforementioned contentions. The aforementioned notification dated 11-11-1989 reads thus:

"Extension of Jurisdiction of Andhra Pradesh Administrative Tribunal for" consideration of Cases Relating to Local Bodies Employees

(G.O.Ms.No.652, General Administration (SPF-B), 11th November, 1989)

In exercise of the powers conferred by sub-section (2) of Section 15 of the Administrative Tribunals Act, 1985 (Central Act 13 of 1985) the Government of Andhra Pradesh hereby specified the Eleventh day of November, 1989 as the date with effect from which the provisions of sub-section (3) of Section 15 of the said Act shall apply to the local authorities under the control of the State Government."

5. The Administrative Tribunals Act, 1985 (Act No.13 of 1985) was enacted to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts 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 in pursuance of Article 323A of the Constitution and for matters connected therewith or incidental thereto.

6. Section 3(q) of the Act defines "service matters" as under:

" "Service matters" in relation to a person, mean all matters relating to the conditions of his service in connection with the affairs of 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) remunerations (including allowances), pension and other retirement benefits;
- (ii) tenure including confirmation, seniority, promotion, revision, premature retirement and superannuation;
- (iii) leave of any kind;
- (iv) disciplinary matters; or
- (v) any other matters whatsoever."

7. Section 4 deals with the establishment of Tribunals and Benches thereof. It is not in dispute that in relation to State employees also a State Administrative Tribunal has been constituted. Section 15(2) of the said Act reads thus:

"The State Government may, by notification, apply with effect from such date as may be specified in the notification of sub-section (3) to local or other authorities and Corporations or Societies controlled or owned by the State Government:

Provided that if the State Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or Corporations, or Societies."

8. Having regard to the fact that the aforementioned notification dated 11-11-1989 has been issued in terms of sub-section (2) of Section 15 of the Act, all the service matters coming within the purview of Section 3(q) will have to be adjudicated upon only by a Tribunal. The writ petitioners-respondents 1 and 2 have prayed for regularisation of services, which would mean their permanent absorption in the services of the local body.

9. The word "recruitment" has a wide connotation. As the prayer of writ petitioners that they be permanently absorbed in the services of local authority by reason of their being in its service for a long time, there cannot be any doubt whatsoever that the same would come within the purview of sub-section (3) of Section 15 of the Act. In *L. Chandra Kumar Vs. Union of India and others*, , the Apex Court, while holding that by reason of the provision u/s 28 of the Act the power of judicial review conferred upon a High Court in terms of Article 226 of the Constitution of India could not be taken away, regard being had to the fact

that the power of judicial review forms the basic structure of the Constitution of India, directed that all applications should be heard and disposed of, at the first instance, by the Tribunal itself and thereafter only the Division Bench of the High Court can exercise the power of judicial review. In view of the decision of Apex Court in L. Chandra Kumar's case (supra), we are of the opinion that the writ petition was not maintainable.

10. The learned Counsel for the writ petitioners submits that this question has not been raised before the learned single Judge. The learned Counsel is correct, but no occasion arose in relation thereto as the first appellant before us was not a party in the writ proceedings. In any event, the question of jurisdiction can be raised at any stage and it is now well settled principles of law that any order passed without jurisdiction is a nullity.

11. For the reasons aforementioned, we have no other option but to allow this appeal. Accordingly, we do so and set aside the impugned judgment. We may, however, observe that it would be open to the writ petitioner-respondents 1 and 2 to avail remedies provided to them in terms of the provision u/s 19 of the Act. No order as to costs.