

(2011) 06 JH CK 0062
In the Jharkhand High Court
Case No : L.P.A. No. 440 of 2009

Harsh Vardhan Mathur

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 17-06-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Jharkhand Education Tribunal Act, 2005 — Section 10, 10(1), 14, 5, 8
Limitation Act, 1963 — Section 10, 11, 12, 13, 14

Citation : (2011) 06 JH CK 0062

Hon'ble Judges : Prakash Tatia, Acting C.J.; Jaya Roy, J

Bench : Division Bench

Judgement

1. Heard learned Counsel for the parties.
2. Short, but important question of law arises in this L.P.A. The Appellant-Petitioner filed the petition under the provisions of the Jharkhand Education Tribunal Act, 2005, before the Jharkhand Education Tribunal and the said application has been dismissed by the Tribunal in view of the bar contained in Sub-clause (a) of Sub-Section 1 of Section 10 of the Act of 2005, which provides that the Tribunal shall not admit an application unless in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date of establishment of the Tribunal. If this order is upheld as has been upheld by the Single Bench of this Court then question arises that whether the Appellant will be rendered remedyless?
3. The Appellant initially has challenged the order dated 15.4.1994 passed by the Managing Committee of the Xavier Labour Relations Institute, Bistupur, Jamshedpur, before the Labour Court, Jamshedpur, by which the Petitioner-Appellant was removed from the service. The Labour Court, Jamshedpur dismissed the claim of the Petitioner on 29.3.2005 holding that the Educational Institutions are not Commercial Institutions, and therefore, the proceeding

initiated before the Labour Court by the Petitioner-Appellant under the Shops and Establishment Act, 1953 was not maintainable. The Petitioner-Appellant aggrieved by the order of the Labour Court dated 29.3.2005, preferred the writ petition being W.P. (L) No. 4917 of 2005, which was dismissed by the High Court vide order dated 17.1.2006, whereby the order passed by the Labour Court dated 29.3.2005 has been upheld and now, it is conclusively decided against the Petitioner-Appellant that the Labour Court had no jurisdiction to entertain the claim of the writ Petitioner.

4. After the dismissal of the writ petition on 17.1.2006, the Petitioner submitted an application before the Jharkhand Education Tribunal obviously u/s 9 of the Act of 2005 for the same relief for which he approached the Labour Court. The Education Tribunal was of the view that since the cause of action accrued to the Petitioner-Appellant on 15.4.1994 i.e. before three years from the date of constitution of the Tribunal and the Tribunal can entertain the application u/s 9 only, when the order under challenge has been made within three years, immediately before the establishment of the Tribunal.

5. The Petitioner aggrieved by the order passed by the Education Tribunal dismissing his application u/s 9 dated 30.11.2006, preferred the writ petition before this Court and the writ petition of the writ Petitioner was dismissed by the Single Bench of this Court, hence, this L.P.A.

6. Learned Counsel for the Appellant-Petitioner submitted that the Education Tribunal as well as the learned Single Judge have committed error of law in dismissing the original application of the Petitioner-Appellant by the Tribunal and writ petition by the Single Bench of this Court rendering the writ Petitioner remedyless and if the impugned orders are upheld then the Petitioner's claim which has not been decided by any authority, will not be even entertainable anywhere, as the Labour Court has no jurisdiction and Education Tribunal also held that it also has no jurisdiction as cause of action accrued before three years of establishment of the Tribunal.

7. Learned Counsel for the Petitioner-Appellant reiterated that the petition of the Petitioner was maintainable, whereas learned Counsel for the Respondents has submitted that in view of the clear bar as contained in Sub-clause (a) of Sub-Section 1 of Section 10 of the Act of 2005, the claim of the Petitioner was not maintainable as being barred by time.

8. We have considered the submissions of the learned Counsel for the parties and perused the relevant provisions of law.

9. The Jharkhand Education Tribunal Act was enacted and was published in the Gazette on 14.8.2005, and it has been enacted to make suitable provision for constitution of statutory forum to be known as "Appellate Tribunal" for looking into the grievances of the management of the aided, affiliated and private educational institutions as well as of all the parents/ guardians/ students only who may be affected by the action of the educational institutions and also to

decide disputes in relation to service matters in Educational Institutions. It appears that this Act was enacted following the decision rendered by the Hon''ble Supreme Court in the matter of T.M.A. Pai Foundation and Ors. v. State of Karnataka and Ors., reported in 2002 SCC 8.

10. Section-8 is relevant, which defines the jurisdiction, power and authority of the Jharkhand Education Tribunal. Section 8 of the Act of 2005 is as under:

8. Jurisdiction, power and authority of the Jharkhand Education Tribunal- Save as otherwise expressly provided in this Act, the Jharkhand Education Tribunal shall exercise on and from the appointed day, all the jurisdiction, power and authority exercisable immediately before that day by all Courts (Except the Jharkhand High Court and Supreme Court of India) regarding:

(a) Matters concerning recruitment to any post in connection with the affairs of the educational institution;

(b) All matters concerning the service conditions of employees of the educational institution;

(c) Grievances of the employees against the management of the educational institutions;

(d) Grievances of the guardians and parents of students against the management of the educational institutions regarding teaching standards, fee structure, infrastructural facilities, development works and allied matters related thereto;

(e) Such matters relating to educational institutions as may be referred to the tribunal by the State Government by notification from time to time.

11. In view of the provisions made u/s 8 of the Act, it is clear that the Jharkhand Education Tribunal has been given power, jurisdiction and authority to act on and from the appointed day and that jurisdiction, power and authority, which were vested in all Courts prior to establishment of the Tribunal stand vesting in the Tribunal. Therefore, when there is a specific provision made by special enactment empowering the authority to deal with and exercise all the jurisdiction of the Courts, then that excluded the jurisdiction of the Civil Courts in relation to the matters for which jurisdiction has been given to the Tribunal. Consequently, in the day when the Petitioner's writ petition was dismissed by the High Court on 17.1.2006 the Civil Court had no jurisdiction to entertain the Petitioner's claim and that jurisdiction vest in the Tribunal. In view of the above, the writ Petitioner -Appellant could not have approached the Civil Court for getting any relief.

12. Section 10 is applicable to the cases where any order has been passed during the period of three years immediately preceding the date of establishment of the Tribunal. There is no provision in the Act of 2005, which provide for transferring of pending cases in the Civil Courts to the Tribunal but Civil Court from the day when Tribunal has been constituted cannot entertain suits of the nature covered

under the Act of 2005. However, there is a Sub-clause (b) under Sub-Section 1 of Section 10 dealing with the matters pending before the High Court, which is not the relevant provision for deciding this L.P.A.

13. It is not in dispute that the Petitioner challenged the order passed by the competent authority, though before the wrong forum by approaching the Labour Court and he could have either filed the suit for declaration and consequential relief before the Civil Courts as admittedly, Respondent-institute is a private educational institution and not the instrumentality of the State, therefore, even jurisdiction under Article 226 of the Constitution of India was not available to the Petitioner. If the Petitioner would have opportunity to file the Civil Suit, he would have benefit of Section 14 of the Limitation Act, 1963 for condonation of delay.

14. After coming into the force of the Act of 2005 as apparent from Sub-Section 1 of Section 8 of the Act of 2005, the jurisdiction of the Civil Courts vests in the Tribunal, therefore, as held above, the jurisdiction of the Civil Courts is excluded by the Act of 2005 and not only excluded, but is vesting in the Tribunal and particularly, "Jurisdiction of the Civil Courts" is now vested in the Tribunal specifically by operation of law. Therefore, a combined reading of Section 8 and Section 10(i)(a), we can hold that the Tribunal while exercising jurisdiction u/s 8 can entertain the cases for which cause of action accrued even before three years from coming into force of the Act of 2005 as the Civil Courts and there is no provision of exclusion of the Indian Limitation Act made in the Act of 2005, and therefore, Sub-Section 2 of Section 29 of the Act of 1963, certainly can take care of applicability of the Sections 4 to 24 of the Indian Limitation Act for the application under the Act of 2005, which includes Section 14 also as well as Section 5.

15. Otherwise than this harmonious construction of Section 8 and Section 10(i)(a) will render such person like Petitioner remedyless because of the reason that by operation of the Act of 2005, the Civil Courts shall not have jurisdiction to entertain any suit of the Petitioner, and by operation of Sub-clause a of Sub-Section 1 of Section 10, the Tribunal will not have jurisdiction and since the Respondent Educational Institution is not instrumentality of the State, the Petitioner cannot approach the High Court directly under Article 226 of the Constitution of India, thereby the Petitioner, who approached the Court in time, would be rendered remedy-less because he was pursuing his cause before the wrong forum and in spite of the fact that Section 14 has been enacted in the Indian Limitation Act, 1963 to take care of such situation for the party pursuing remedy before the wrong court.

16. In view of the above reasons, we are of the considered opinion that the order passed by the learned Single Judge dated 13.12.2007 cannot be sustained and deserves to be set aside. The order passed by the Educational Tribunal dated 30.11.2006 is also set aside and the matter is remitted back to the Educational Tribunal and both the parties are directed to appear before the Educational Tribunal on 11th July, 2011.