

(1987) 04 SHI CK 0010

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 559 of 1984

Jagdev Singh and Another

APPELLANT

Vs

The State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 08-04-1987

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14(1), 15, 15(1), 28, 29
Constitution of India, 1950 — Article 309, 310, 310(2), 311, 311(1)

Citation : (1988) 1 ShimLC 167

Hon'ble Judges : P.D. Desai, C.J;R.S. Thakur, J

Bench : Division Bench

**Advocate : Inder Singh, for the Appellant; P.N. Nag, General for Respondent
Nos. 1 and 2, M.C. Mandhotra and A.K. Goel, for the Respondent**

Judgement

P.D. Desai, C.J.—The Petitioner herein was appointed in April, 1983 as Beldas on daily wages of Rs. 8.25 in the Indora Sub-Division of the Irrigation and Public Health Department of the State Government, According to the Petitioner he was assigned the work of Diary-despatcher from the date of his appointment. He alleges that on February 8, 1984, his employment was terminated all of a sudden without assigning any reason although persons junior to him are still being provided employment on daily-rated basis in the said Sub-Division. He also complains that his wages for the month of September, 1983 have not been paid although he has been making repeated requests in that behalf to the competent authority. The Petitioner has, therefore, prayed that the termination of his employment on and with effect from February 8, 1984, be quashed and that he be ordered to be paid the outstanding wages for the month of September 1983 and also be held entitled to all the consequential benefits.

2. The case of the Respondents, on the other hand, is that the Petitioner was engaged as Beldar on daily wages at the rate of Rs. 8.25 per day for attending to miscellaneous jobs in the Indore Sub-Division. His engagement and termination were both dependant upon the exigencies of work. No appointment or

termination orders were required to be issued or were in fact issued since such practice does not obtain in the case of daily rated employees. The allegation that the Petitioner's employment was terminated is denied and the case put forward on behalf of the Respondents is that the Petitioner himself abandoned work and abstained from attending duty and that, therefore, he must be regarded as having left the employment voluntarily.

3. The question arising for determination, at the present stage, is whether by virtue of the enactment and coming into force of the Administrative Tribunals Act, 1985 (hereinafter referred to as "the Act"), the jurisdiction of this Court to determine the dispute raised in the petition is ousted and whether the case is required to be transferred to the Himachal Pradesh Administrative Tribunal (hereinafter referred to as "the Tribunal",).

4. In *Jeet Ram Thakur v. H.P. University and Ors.* Civil Writ Petition No. 455 of 1986, wherein a similar question arose for the consideration of this Court, an order has been passed on March 31/April 1, 1987, wherein the legislative history has been traced. Article 323-A and the relevant provisions of the Act have also been analysed and construed in the said order in the context of the service matters of the employees of the Himachal Pradesh University. Although an exhaustive review of the statutory provisions may not, therefore, be necessary for the purposes of the present case, a brief survey of the material part of the enactment will not be out of place.

5. The Act, as its long preamble states, has been enacted in pursuance of Article 323-A 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 of society owned or controlled by the Government" and for matters connected therewith or incidental thereto.

6. Section 3 is the definition section. Clause (k) thereof defines the word "post" to mean a post within or outside India. Clause (q) defines the word "service" to mean service within or outside India. Clause (q) defines the words "service matters" to mean, in relation to a person, "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:

- (a) remuneration "including allowances), pension and other retirement benefits;
- (b) tenure including confirming, seniority, promotion, reversion, premature retirement and superannuation;
- (c) leave of any kind;

(d) disciplinary matters; or

(e) any other matter whatsoever. Clause (t) defines the word "Tribunal" to mean the Central Administrative Tribunal or a State Administrative Tribunal or a Joint Administrative Tribunal.

7. Section 15 of the Act, which deals with the jurisdiction, powers and authority of the State Administrative Tribunals, provides in Sub-section (i) that save as otherwise expressly provided in the Act, the Administrative Tribunal for a State 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, inter alia, to:

(a) recruitment and matters concerning recruitment, "to any civil service of the State or to any civil post under the State";

(b) all "service matters" concerning a person (not being a person referred to in Clause (c) of subsection (1) of Section 15 or a member, person or civilian referred to in Clause (b) of Sub-section (1) of Section 14 "appointed to any civil service of the State or any civil post under the State" and pertaining to the service of such person in connection with the affairs of the State or of any local or other authority under the Control of the State Government or of any Corporation or society owned or controlled by State Government.

8. Section 28 provides for the exclusion of jurisdiction of courts except the Supreme Court and provides that on and from the date from which any jurisdiction, powers and authority becomes exercisable under the Act by a Tribunal "in relation to recruitment and matters concerning recruitment to any service or post or service matter concerning members of any service or persons appointed to any service or post, no court except 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, shall have, or be entitled to exercise, any jurisdiction, powers or authority in relating to such recruitment or matters concerning such recruitment or such service matters. Section 29 provides that every pending case before any court or any other authority immediately before the date of establishment of a Tribunal under the Act, 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 the concerned Tribunal, except the category of cases specifically mentioned in the said subsection.

9. It would be pertinent to mention here that by a notification dated December 31, 1985, January 1, 1986 was appointed the day on which the provisions of the Act, insofar as they relate to the Himachal Pradesh Administrative Tribunal, shall come into force. By a notification, dated August 26, 1986, the said Tribunal was established by the Central Government on and with effect from September 1, 1986. The Tribunal has been exercising within the State, on and with effect from the said day, the jurisdiction, powers and authority conferred by Section 15 of

the Act.

10. Now, after the institution of the petition and the issuance of notice thereof, the Court sought information on various points having a bearing on the nature and character of employment of the daily rated workmen in the irrigation and Public Health Department of the State Government. Those orders were passed on April 17, 1985, June 27, 1985 and September 19, 1985. In the course of the order, dated May 27, 1985, directions were issued to the competent authority with regard to the preparation and maintenance of the registers of daily-rated workmen in the employment of the Department. The concerned Respondents have placed on record the relevant material pursuant to the interim directions issued as aforesaid by way of affidavits, dated May 20, 1985, July 18, 1985, November 20, 1985 and September 15, 1986.

11. On a conspectus of these various affidavits, the following factual position emerges insofar as it is material for the purposes of determining the question under consideration:

(1) There is a relationship of master and servant between the daily-waged workmen and the competent authority of the State Government who employs them ; their employment and deployment is regulated by the said authority who also assigns them the work ; they render service in connection with the affairs of the State and the payment is made to them out of the revenues of the State.

(2) There are no Recruitment and Promotion Rules governing the employment of daily-rated workmen; they belong to unclassified, establishment.

(3) There are no specific cadres of daily-rated workmen; no Posts are sanctioned for the employment of daily-rated workmen and as such they are not appointed to nor do they hold any civil posts under the state nor are they the members of any civil service of the State; they are, however, broadly divided into three categories namely unskilled, semi-skilled and skilled workmen on functional basis with no fixed cadre strength; they are, given various designations such as, mason, carpenter helper, beldar, mate etc. depending upon the work performed by them.

(4) There are no specific service conditions governing the daily wages staff; they are not entitled to any regular pay scales but are given wages in accordance with the minimum daily rate wages fixed by the competent authority from time to time in some cases, however, they may be paid at rates higher than the minimum wages.

(5) The daily-rated workmen are not entitled to any service benefits including pension; they however, get one paid holiday after completion of continuous six days of working and also three National Holidays in a year.

(6) The daily-rated workmen are engaged on casual basis for the original and maintenance works depending upon the requirements of the specific categories of workmen from time to time and the availability of funds; the muster-rolls

ordinarily form the standing record of their employment; registers of daily-rated workmen have been instructed to be maintained now so that services of the junior most person can be terminated on reduction; the principle of "last come, first go" is generally being applied in the matter of their disengagement as far as practicable they are disengaged on the completion of the specific jobs for which they might have been employed, unless they can be shifted to or engaged on some other work in progress in the local area; the working seasons in the Pradesh being limited their disengagement take place also on that account; they are at liberty to report for or leave the employment as they like which they often do as they agriculturists.

(7) There are no rules/orders/instructions for promotion and/or absorption of the daily-rated workmen on the work charge/regular establishment of the HP PWD; however, on the basis of ad hoc decisions, the State Government absorbs some daily waged employees on the workcharge establishment.

12. The question whether or not the present case and similar cases pending before this Court are required to be transferred to the Tribunal since this Court has ceased to exercise jurisdiction to adjudicate and try the same upon the enactment of the Act is required to be answered bearing in mind the statutory provisions and the factual background referred to above.

13. u/s 15, Sub-section (I), on and from the appointed day, the Tribunal has been vested with all the all the jurisdiction, power and authority exercisable immediately before that day by all courts (except the Supreme Court; in relation inter alia, to:

(a) recruitment, and matters concerning recruitment to "any civil service of the State or to any civil post under the State;" and

(b) all service matters concerning a person (other than specifically excluded) appointed to "any civil service of the State or any civil post under the State" and pertaining to the service of any such person in connection with the affairs of the State.

In view of the material which has been placed on the record of the case in relation to the daily-rated employees, there is hardly any basis to contend that those employees are covered by the provisions of Sub-section (I) of Section 15 and that, therefore, the jurisdiction, powers and authority of this Court to determine the dispute, if any, in relation to matter such as their employment or termination, remuneration, seniority, the limited benefits to which they are entitled and such or similar matters is now lost and stands vested in the Tribunal. The main condition, which is required to be satisfied for the applicability of Sub-section (I) of Section 15, is that the case must relate to recruitment and matters concerning recruitment to any civil service or post or service matters concerning a person appointed to any civil service of the State or to any civil post under the State and concerning his service in connection with the affairs of the State. In view of the fact that no civil service or civil posts exist in which daily-rated

workmen are appointed and also that no specific conditions of service governing all the daily waged employees are prescribed by the State Government, the condition precedent to the applicability of Sub-section (I) of Section 15 is not satisfied insofar as the daily-rated employees are concerned.

14. It is significant to note that Article 311, Sub-Article (I), of the Constitution, uses language which is comparable to that employed in Section 15, Sub-section (I) of the Act. The said sub-article provides that no person who is "a member of civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State" shall be dismissed or removed by an authority subordinate to that by which he was appointed, Sub-Article (2) provides that no such person shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. The words "civil service" and "civil posts" are the same and the expressions "a member of a civil service" and "holds a civil post" are similar in substance to, if not exactly identical with, the words "appointed to any civil service of the State or any civil post under the State" used in Section 15 of the Act. If a daily-rated workman is to be regarded as having been appointed to any civil service of the State or any civil post under the State, he will have to be

I extended the bent fit of the protection of Article 311 of the Constitution. It is, however, not in dispute and rightly so, that the protection of the said article is not available to a daily-rated workman.

15. The view which is being taken as aforesaid as regard the status of a daily-rated workman and the nature of his employment finds support in *State of Assam and Others Vs. Shri Kanak Chandra Dutta*, The question in that case was whether a Mauzadar in the Assam Valley holds a civil post under the State of Assam and whether he was entitled to the protection of Article 311(2) of the Constitution. Having taken into consideration the various kinds of duties and functions to be performed by a Mauzadar, who was held to be a public servant and whose primary duty it was to collect land revenue and other Government dues on commission basis, the Supreme Court proceeded to observe as follows in para 9 of the judgment at page 886:

There is no formal definition of "post" and "civil post". The sense in which they are used in the Services Chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Article 310 from a post connected with defence; it is a post on the civil as distinguished from the defence side of the Administration, an employment in a civil capacity under the Union or a State, see marginal note to Article 311. In Article 311, a member of a civil service of the Union or an all-India service or a civil service of a State is mentioned separately, and a civil post means a post not connected with defence outside the regular civil services. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State, see the marginal notes to Articles 309, 310 and 311. The heading and the sub-

heading of Part XIV and Chapter 1 emphasise the element of service. There is a relationship of master and servant between the State and a person said to be holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post.

In the context of Articles 309, 310 and 311, a post denotes an office. A person who holds a civil post under a State holds "office" during the pleasure of the Governor of the State, except as expressly provided by the Constitution, see Article 310. A post under the State is an office or a position to which duties in connection with the affairs of the State are attached, an office or a position to which a person is appointed and which may exist apart from and independently of the holder of the post. Article 310(2) contemplates that a post may be abolished and a person holding a post may be required to vacate the post, and it emphasises the idea of a post existing apart from the holder of the post. A post may be created before the appointment or simultaneously with it. A post is an employment, but every employment is not a post, A casual labourer is not the holder of a post. A post under the State means a post under the administrative control of the State. The State may create or abolish the post and may regulate the conditions of service of persons appointed to the post.

(Underlining supplied)

16. These observations clearly indicate that before a person can be regarded as holding a civil post under the State, that is, as holding an office or a position not connected with defence but to which duties in connection with the affairs of the State are attached, such post has to be created and it must exist apart from the holder thereof. Such creation may be before the appointment or simultaneously with it. A post is undoubtedly an employment but every employment is not a post. In terms it was held in that case that a casual labourer is not the holder of a post.

17. True it is that in this decision the words "civil post" were assigned the aforesaid meaning in the context of Articles 309, 310 and 311 of the Constitution, the same meaning would, however, attach to the same words occurring in Section 15 of the Act, especially because the said provision denies the jurisdiction, powers and authority of a State Administrative Tribunal which has been set up as an alternative institutional mechanism for the adjudication or trial of disputes and complaints with respect to service matters including disciplinary matters.

18. Under the circumstances, so far as daily-rated workmen are concerned, the

adjudication or trial of disputes and complaints with respect to their recruitment as such, termination, remuneration, the benefits to which they are entitled etc. is a matter over which this Court still retains the jurisdiction to the exclusion of the Tribunal. In the present case, since the question pertains to the termination of the employment of the Petitioner and to the payment of his unpaid wages, the case is not required to be transferred to the Tribunal. The question whether or not the matter pertaining to absorption or regularisation of such workmen in the sanctioned posts still continues to remain for adjudication or trial within the jurisdiction of this Court is left open. The said question will be decided if and when raised in any pending case of that nature.

19. In light of the foregoing discussion, the Court holds that the present case and the cases where identical or similar questions arise for determination are not required to be transferred to the Tribunal since this Court still retains the jurisdiction to adjudicate or try such disputes and complaints.