

(2007) 05 DEL CK 0268

In the Delhi High Court

Case No : Writ Petition (C) No. 11712 of 2004

Kendriya Vidyalaya

APPELLANT

Vs

Sushil Kumar

RESPONDENT

Date of Decision : 01-05-2007

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 14(1), 14(2), 14(3), 28
Constitution of India, 1950 — Article 136, 226

Citation : (2007) 142 DLT 542 : (2007) 2 ILR Delhi 339

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : S. Rajappa, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—The petitioner has filed the present petition praying inter alias for issuance of a writ in the nature of certiorari calling for the records in I.D. No. 428 of 1996 pending before the Labour Court, Delhi and for directions to the said Court to transfer the same before the Central Administrative Tribunal, New Delhi (in short `the CAT").

2. Before moving on to deal with the matter on merits, it is appropriate to discuss the facts of the case in brief. Kendriya Vidyalaya Sangathan (KVS for short), petitioner herein, is an autonomous body registered under the Societies Registration Act and is fully funded by the Government of India, Ministry of Human Resource Development, Department of Education, New Delhi. On 14th May, 1994 the respondent workman joined the services of the petitioner as a daily rated/casual/muster roll worker and was paid daily wages as per law. The respondent workman continued to work with the petitioner till 30th November, 1994, from which date his services were discontinued by the petitioner. Pursuant to the said termination of services, the respondent workman raised an industrial dispute seeking reinstatement and the dispute was referred to the Labour Court by the Government of N.C.T. by its order dated 19th June, 1996. Thereafter the

pleadings were completed. On 17th December, 1998, while the proceedings were still pending before the Labour Court, the Central Government issued a Notification u/s 14(2) of the Administrative Tribunals Act, 1985 (hereinafter referred to as 'the Act') thereby including Kendriya Vidyalaya Sangathan in the Schedule at Item 34 and bringing it within the purview and jurisdiction of the CAT for adjudication of disputes in so far as the service matters are concerned, w.e.f. 1st January, 1999. An application was preferred by the petitioner before the Labour Court questioning its jurisdiction and seeking transfer of the proceedings to the CAT, which application was dismissed by the Labour Court vide order dated 21st February, 2002. Aggrieved by the said action, the petitioner preferred the present petition. By an interim order dated 21.7.2004, further proceedings before the Labour Court were stayed.

3. The only issue sought to be raised by the petitioner by way of the present petition is that once the petitioner was brought within the purview and jurisdiction of CAT, then w.e.f. 1st January, 1999 the proceedings pending before the Labour Court automatically stand transferred to CAT by virtue of Section 29(2) of the Act and the Labour Court is divested of its jurisdiction in adjudicating the dispute raised by the respondent workman before it.

4. Learned Counsel for the petitioner submitted that on and from 1st January, 1999, no court has the jurisdiction to deal with the service matters of the staff of the petitioner and the matter which is pending before the Labour Court which pertains to service matter of the respondent workman, ought not to remain in the said court. It is the case of the petitioner that from the date of coming into force of the aforesaid notification, the provisions of Sub-section (3) of Section 14 of the Act shall apply and in view of the said section, the jurisdiction of the Labour Court is specifically barred. It was stated that in view of Section 29(2) of the Act, every suit or other proceeding pending before any court or other authority immediately before the date of establishment of a Tribunal under the Act, being a suit or proceeding, shall stand transferred on that date to such Tribunal.

5. Counsel for the petitioner contended that the Labour Court ought to have taken note of the definition of 'service matters' u/s 3(q) of the Act, which is reproduced as under:

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;

6. It was submitted that it is clear from a bare perusal of the above provision that service matters in relation to respondent workman would also include the issue under dispute in the proceedings before the Labour Court, and it being so, only CAT had the exclusive jurisdiction to adjudicate upon the pending dispute.

7. In support of his arguments, counsel for the petitioner relied on the judgment rendered by the Supreme Court in the case of Kendriya Vidyalaya Sangathan v. Subhash Sharma reported as : (2002)IILLJ448SC and averred that so far as the service matters involving the petitioner are concerned, it is CAT that is the court of the first instance and Therefore Labour Court ought to have transferred the matter to the CAT instead of proceeding to decide the matter on merits and passing an award, which would be a nullity, the Labour Court being devoid of jurisdiction. Attention of this Court was drawn to para 10 of the aforesaid judgment which is as under:

10. The Kendriya Vidyalaya is an autonomous body registered under the Societies Registration Act and controlled by the Government of India and that being the position the Administrative Tribunal has jurisdiction concerning service matters of the employees of the Kendriya Vidyalaya in view of Sub-clause (iii) of Section 14(1)(b). In this connection, the learned Additional Solicitor General has also drawn our attention to the notification of the Government of India dated 17th December, 1998 issued under Sub-section (2) of Section 14 of the Act by which the Central Government specified that the Act shall apply to the organizations mentioned in the schedule to the notification and the Kendriya Vidyalaya has also been included in the said notification at item no. 34. Therefore, Mr. Ahmed has rightly submitted that the service disputes concerning the employees of the Kendriya Vidyalaya would come under the jurisdiction of the Central Administrative Tribunal. It does not make any difference that the institution is located in Jammu and Kashmir and the respondent is working there.

8. Much emphasis was placed by the counsel for the petitioner on the term ? employees? as used by the Apex Court in the aforesaid para and it was stated that the mere use of the said term shows that the Court did not intend to draw any distinction between the class IV or the other employees and that the Act is applicable to all employees irrespective of their designation.

9. Reliance was also placed on an order dated 15th February, 2007 passed by a Single Judge of this Court in the case of Jahangir Khan v. Desk Officer, Ministry of Labour in W.P.(C) No. 3768 of 2003, wherein this Court following the aforementioned judgment of the Supreme Court, on similar facts quashed the order of the Labour Court and gave liberty to the respondent therein to approach the CAT, if he so chose to.

10. Counsel for the petitioner also referred to the judgment of the Supreme Court in the case of Sub-Inspector Rooplal v. Lt. Governor reported as 2001 (1)SCC 644 to state that this Court is bound by the judgment of a coordinate bench of this High Court, and Therefore this Court cannot take a view different from that taken in the case of Jahangir Khan(supra), and if at all this Court does not agree with the view taken by its coordinate bench, then the matter ought to be referred to a larger bench for consideration.

11. I have heard the counsel for the petitioner. Though none appeared for the respondent workman at the time of arguments, the counter affidavit filed by the respondent workman has been duly taken into consideration. I have also perused the order dated 3rd August, 2004, passed by another Single Judge in WP (C) No. 934/2003, and the case laws relied upon by the parties. The short issue that arises for consideration in the present petition is that whether CAT has an exclusive jurisdiction in respect of authority/ corporation/society notified u/s 14(2) of the Act and whether the jurisdiction of the Labour Courts/Industrial Tribunals is barred with respect to service matters concerning members of any service or post employed in such authority/corporation/society.

12. The relevant provisions for deciding the above issue, are Sections 14, 28 and 29 of the Act. Section 14 of the Act deals with jurisdiction, powers and authority of the CAT. The relevant clauses thereof read as under:

14. JURISDICTION, POWERS AND AUTHORITY OF THE CENTRAL ADMINISTRATIVE TRIBUNAL.

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 defense or in the defense 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
??.

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation or society, all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court in relation to - (a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation or society; and

(b) all service matters concerning a person [other than a person referred to in Clause (a) or Clause (b) of Sub-section (1) appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs.

13. Section 28 excludes the jurisdiction of certain courts and Section 29 relates to transfer of pending matters. Provisions of Section 28 and the relevant part of Section 29 of the Act are reproduced hereinbelow:

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, power 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 (14 of 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 requirement or such service matters.

29. Transfer of pending cases- (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.

(2) Every suit or other proceeding pending before a Court or other authority immediately before the date with effect from which jurisdiction is conferred on a Tribunal in relation to any local or other authority or corporation [or society], 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 the said date, 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.

14. A bare perusal of the aforesaid provisions makes it manifest that the argument of the respondent that only because the petitioner has been notified u/s 14(2) of the Act to be covered under the jurisdiction of CAT for adjudication of service matters of its employees, Therefore the industrial dispute pending before the Labour court ought to be transferred to CAT and that the Labour Court has

no jurisdiction to adjudicate upon the disputes of the employees of the petitioner after the said notification came into effect, is devoid of merits. The striking feature of Section 14 is that Sub-clauses (1) & 3 of the said provision begin with the words "Save as otherwise expressly provided in this Act". Thus, Section 14 contains a "Saving Clause". What is intended to be saved is contained in Section 28 of the Act which, incidentally, also excludes the jurisdiction of almost all the Courts in service matters except for those specified in the said provision. Section 14 and Section 28 have, Therefore, to be read harmoniously to find out the real intent and purport of the legislation as to the extent of jurisdiction retained or excluded. A reading of the provision of Section 28 makes it clear that the jurisdiction which is transferred to and vested in the Tribunal is the jurisdiction of all the Courts except the Supreme Court and any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 (14 of 1947), or any other corresponding law for the time being in force, which is expressly excluded. It is Therefore apparent that in spite of the existence of Section 14 in the the Act, the jurisdiction of the Industrial Tribunal, Labour Courts or other Authorities under the Industrial Disputes Acts or Authority created under any other corresponding law remains unaffected in view of the exception clause carved out in Section 28 of the Act.

15. Also, the argument of the petitioner to the effect that in view of the provisions of Section 29(2) of the Act, all suits pending in various Courts, would also include the proceedings pending before the Labour Courts and the Industrial Tribunal, and Therefore, such proceedings shall stand transferred to CAT from the date from which jurisdiction is conferred on a Tribunal in relation to any local or other authority or corporation, if accepted, would defeat the basic purpose and intent of the Act, and would also render nugatory the provision contained in Section 28 of the Act, which is contrary to all settled principles of interpretation. On a harmonious interpretation of Sections 14, 28 and 29 of the Act, the inevitable conclusion arrived at is that if any service matter was triable by an Industrial Tribunal, or Labour Court or other authority under the Industrial Disputes Act, 1947, or corresponding law before the Act is extended to any authority by way of a notification u/s 14(2) of the Act, mere issuance of such notification shall not affect the jurisdiction of such courts to continue to try such service matters even after such a notification comes into play. In taking this view, support is drawn by this Court from the judgment rendered by the Supreme Court in the case of Krishan Prasad Gupta Vs. Controller, Printing and Stationery, .

16. Reliance is rightly placed by the respondent on a judgment of a Single Judge of this Court, dated 3rd August, 2004 in the case of the ?Management of CCW v. Pratap Singh? in W.P.(C) No. 934/2002, wherein it was held as under:

2. There is no dispute that the petitioner is an industry nor is there any dispute that the respondent/workman is a workman within the meaning of the Industrial Disputes Act, 1947 (the Act). Quite clearly, the respondent/ workman is entitled

to invoke the jurisdiction of the machinery available under the Act notwithstanding the existence of the Administrative Tribunals Act.

17. The judgment of the Supreme Court in the case of Kendriya Vidyalaya Sangathan (supra), on which the petitioner has placed reliance, does not take its case any further. The scope, law and facts of the said case are completely different from those of the present case. In the said case, some employees of the Kendriya Vidyalaya directly approached the High Court under Article 226 of the Constitution of India for adjudication of certain disputes that arose with respect to their service conditions. Kendriya Vidyalaya, respondent in the writ petition, filed applications for transfer of the writ petitions to CAT on the ground that under the Act, the Tribunal had jurisdiction to decide the matters. It was in this context that the Supreme Court, following its earlier judgment in the case of L. Chandra Kumar Vs. Union of India and others, , held that the High Court erred in directly entertaining the writ petitions concerning service matters of the employees of the Kendriya Vidyalaya, once it had been notified to be covered under the jurisdiction of CAT vide notification u/s 14(2) of the Act, and held that the matters were to be transferred to CAT for adjudication. In the said case, the Supreme Court did not deal with or return any finding with regard to the jurisdiction of CAT vis-?-vis that of the Labour Court or the Industrial Tribunal. Also, only because the expression used by the Supreme Court in the said judgment is 'employees?', the same does not mean that all employees, irrespective of whether they are workmen under the Industrial Disputes Act, 1947 or not, necessarily need to approach the CAT for adjudication of their service matters, even if the disputes are of such nature so as to be covered under the Industrial Disputes Act. Such an understanding of the said judgment would render the provision of Section 28 of the Act entirely nugatory.

18. Also, the judgment of the Single Judge of this Court in the case of Jahangir Khan (supra), is not applicable in the present circumstances for the reason that the same was an order passed on the basis of a concession as the respondent therein had made a statement to the effect that he had no objection if the dispute in question was raised before the CAT. That being the position, the Court allowed the matter to be transferred to CAT. For the same reason, it cannot be said that the judgment in the case of Sub-Inspector Rooplal (supra) is applicable to the facts of the present case.

19. In view of the position of law as discussed above, the contentions raised on behalf of the petitioner to the effect that in view of a Notification issued in respect of the petitioner u/s 14(2) of the Act, the Labour Court loses the jurisdiction to deal with service matters of the staff of the petitioner, cannot stand. The provision of Section 14 of the Act do not render the provision of Section 28 of the Act nugatory. Any such interpretation as sought to be given by the petitioner is misconceived, apart from being contrary to the doctrine of harmonious construction. Section 28 of the Act specifically states that rights conferred on the employees under the special Enactments mentioned therein will

not be affected by the Administrative Tribunals Act. Hence the respondent workman rightly invoked the jurisdiction of the Labour Court under the Act for adjudication of his disputes and the Labour Court was entitled to continue the said proceedings even after issuance of the Notification dated 17th December, 1998 bringing the petitioner within the purview of the Central Administrative Tribunals Act, 1985.

20. The writ petition is dismissed being devoid of merits. The interim order stands vacated. No order as to costs.