

(1984) 09 AHC CK 0084

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 10180 of 1980

Laxmi Narain Gupta

APPELLANT

Vs

U.P. Public Service Tribunal and Others

RESPONDENT

Date of Decision : 24-09-1984

Acts Referred:

Arbitration Act, 1940 — Section 21
Civil Procedure Code, 1908 (CPC) — Section 26, 3, 80
Payment of Wages Act, 1936 — Section 22
Uttar Pradesh Agriculturists Relief Act, 1934 — Section 12, 2(5), 27
Uttar Pradesh Municipalities Act, 1916 — Section 326, 326(1)
Uttar Pradesh Public Services (Tribunal) Act, 1976 — Section 1(4), 4, 4(1), 5, 5(1)
Uttar Pradesh Public Services Tribunal Rules, 1976 — Rule 6, 6A

Citation : (1985) AWC 32

Hon'ble Judges : B.N. Sapru, J

Bench : Single Bench

Advocate : B.D. Mandhyan, for the Appellant;

Final Decision : Partly Allowed

Judgement

B.N. Sapru, J.—This writ petition has been filed by Sri Laxmi Narain Gupta and is directed against the order dated 2-7-1980 of the U.P. Public Service Tribunal-I-2, Lucknow. Amongst the Respondents are the Municipal Board, Kasganj District Etah and Municipal Board, Ujhani District Badaun.

2. The Petitioner was an employee of the Municipal Board, Ujhani, District Badaun. With the sanction of the Government the Petitioner was sent on deputation to Municipal Board, Kasganj, District Etah. The deputation was for one year. The deputation was subsequently extended for a further period of one year. During the extended period of deputation of one year the Municipal Board, Kasganj took the stand that since the extension of deputation of the Petitioner had not been sanctioned, it informed the Petitioner that his services were no longer required by Municipal Board, Kasganj and refused to pay him salary. In this Court the stand taken by the Municipal Board, Kasganj is that as the

extension of the deputation of the Petitioner was not sanctioned by the Government it was not possible to employ the Petitioner. The Petitioner on 7-8-1970 wrote to Adhyaksha, Municipal Board, Kasganj that when his services were not required, he may be relieved from service. Alternatively it was mentioned that if he is required then his services should be transferred from Municipal Board, Ujhani. A copy of this letter was endorsed to Adhyaksha, Municipal Board, Ujhani with a request that in the event of Kasganj Municipal Board is not extending the deputation of the Petitioner, the Petitioner should be granted earned leave from 9-8-70. The Petitioner wrote a letter dated, the 28-1-72 to Adhyaksha, Municipal Board, Ujhani requesting that he be permitted to join his post at Ujhani. The Petitioner was also not allowed to re-join at Ujhani Municipal Board. The Petitioner then filed a suit which was withdrawn. Subsequently he filed another suit which abated on the coming into force of U.P. Public Services Tribunal Act, 1976 by virtue of Section 6(2) of the Act, and the record was transmitted to the Tribunal as provided in that Sub-section. The Petitioner's case came before the U.P. Public Services Tribunal. Before the Tribunal the relief sought was for recovery of Rs. 5833.43 as arrears of pay as well as for a mandatory injunction requiring the Respondents No. 1 to 3 to issue a letter to the Municipal Board, Ujhani relieving the Petitioner and returning him to Municipal Board, Ujhani.

3. The Tribunal found that after the expiry of the period of deputation of the Petitioner with the Municipal Board, Ujhani, which expired on 10-8-69, the Petitioner was not entitled to get any salary from Municipal Board, Kasganj. It, however, found that the Petitioner's claim for arrears of salary for the period from March, 1972 to July 1972 could be decreed. It, however, dismissed the claim petition as a whole on the ground that the Petitioner had not given notice u/s 326 of the U.P. Municipalities Act to the Municipal Board, Ujhani before instituting the claim petition.

4. Aggrieved against the decision of the U.P. Public Services Tribunal the Petitioner has filed the instant writ petition.

5. The first question in this writ petition is as to whether the reference application u/s 4 of the U.P. Public Services Tribunal Act was barred in view of the provisions of Section 326(1) of the U.P. Municipalities Act. Section 326(1) of the U.P. Municipalities Act lays down as follows:

No suit shall be instituted against a board, or against a member, officer or servant of a board, in respect of an act done or purporting to have been done in its or his official capacity, until the expiration of two months next after notice in writing has been, in the "case of a board, left at its office, and, in the case of a member, officer or servant, delivered to him or left at his office or place of abode, explicitly stating the cause of action, the nature of the relief sought, and the amount of compensation claimed, and the name and place of abode of the intending Plaintiff, and the plaint shall contain a statement that such notice has been so delivered or left.

6. The answer to the question depends on whether the Public Services Tribunal constituted under the Act is a court and the other question involved is whether a reference application is a suit.

7. The Public Services Tribunal is not a Court subordinate to the High Court within the meaning of Section 3 of Code of Civil Procedure. The personnel of the Tribunal consists of a Judicial Member and an Administrative Member. The Judicial Member has to be a person who is a serving Judge of the High Court or is qualified to be so appointed, and the Administrative Member shall be a person who holds or has held the post of, or any post equivalent to Commissioner of a Division. Section 4 of the U.P. Public Services (Tribunals) Act, 1976, under which reference applications are made, provide that by virtue of the proviso to the said Section, no reference shall ordinarily be entertained by the Tribunal until the claimant has exhausted his departmental remedies under the rules applicable to him. Section 5(b) provides that the provisions of the Limitation Act shall apply to all references u/s 4, as if a reference were a suit filed in the civil court. Section 5(1)(a) provides that the Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, or the rules of evidence contained in the Indian Evidence Act but shall be guided by the principles of natural justice, and subject to the provisions of this Section and of any rules made u/s 7, the Tribunal shall have power to regulate its own procedure (including the fixing of places and times of its sittings and deciding whether to sit in public or in private). Under Sub-section (5) of Section 5 certain powers of a Court under the CPC have been vested in the Tribunal. Sub-section (6) of Section 5 provides that the declaration made by the Tribunal shall be binding and Sub-section (7) makes the order of the Tribunal enforceable through the principal district court in a district. Rule 6 empowers the State Government to transfer any case from one Tribunal to another at any stage and Rule 6-A provides that the State Government may, from time to time, define the local limits of the jurisdiction and the classes of cases comprised in the jurisdiction of each Tribunal, and where more than one Tribunal has concurrent jurisdiction, the State Government may, by general or special order, issue directions regarding institution and transfer of cases.

8. All these are indications of the fact that the Tribunal constituted under the Act is not a court.

9. Section 326 of the U.P. Municipalities Act applies to a suit normally instituted in a court. Though the word "suit" is not defined in the Code of Civil Procedure, Section 4 of the U.P. Public Services (Tribunals) Act, 1976 has prescribed the types of the cases which a public servant may institute by means of a reference before the Tribunal. Section 6(1) of the U.P. Public Services (Tribunals) Act, 1976, provides, "No suit shall lie against the State Government or any local authority or any statutory corporation or company for any relief in respect of any matter relating to employment at the instance of any person who is or has been a public servant, including a person specified in Clauses (a) to (e) of Sub-section (4) of Section 1". Thus certain types of disputes which were instituted by means of a

plaint in a Civil Court were excluded from the jurisdiction of Civil Courts and the jurisdiction in respect to those disputes was vested in the Tribunal constituted under the Act.

10. There is no provision in the U.P. Public Services (Tribunals) Act, 1976 providing that a restriction of the nature on the institution of suit contemplated by Section 80 CPC or by Section 326 of the U.P. Municipalities Act will apply to reference applications instituted before the Tribunal.

11. Sri R.P. Goel, appearing for the Kasganj Municipal Board has invited my attention to certain decisions to which reference has to be made.

12. In 1949 All 100, Balram Singh v. Dudh Nath the question was as to whether proceeding u/s 12 of the U.P. Agriculturists' Relief Act is a proceeding in a suit before Civil Court within the meaning of Section 21 of the Arbitration Act, and the Arbitration Act applies to such proceeding. Court observed:

It is urged that proceeding u/s 12, Agricultures' Relief Act, is not a suit. The word "suit" has not been defined either in the General Clauses Act or in the Arbitration Act. Though there is no definition of the term "suit" in the CPC also, Section 26 of the Code, provides that:

Every suit shall be instituted by the presentation of a plaint or in such other manner as may be prescribed.

(3) On behalf of the Defendants stress is laid on the words "by the presentation of a plaint" while the rest of the Section "in such other manner as may be prescribed" is attempted to be slurred over. It may be that proceedings u/s 12, Agriculturists' Relief Act, are not started by the presentation of an application of a plaint but by the presentation of an application, but the words "in such other manner as may be prescribed" in Section 26 of the Code are, to my mind, wide enough to include an application u/s 12, Agriculturists' Relief Act. (4) Section 2(o), Arbitration Act, defines a "Court" and provides that:

Court" means a civil Court having jurisdiction to decide the questions forming the subject-matter of the reference if the same had been the subject matter of a suit, but does not, except for the purpose of arbitration proceedings u/s 21, include a Small Cause Court.

That the Tribunal before which an application u/s 12, U.P. Agriculturists' Relief Act, is filed is a Court is clear from the provisions of Section 2, Sub-section (5) Agriculturists' Relief Act, which says that a "Court" means a civil Court. In view of that definition, the word "Court" in Section 12 of the Act before which an application under that Section is to be filed must be deemed to be a civil court. I have, therefore, no hesitation in holding that the proceedings u/s 12, Agriculturists' Relief Act, are proceedings in a suit before a Civil Court to which the Arbitration Act is applicable.

Section 27, Agriculturists' Relief Act provides that "The provisions in the Code of

Civil Procedure, 1908 in regard to suits shall be followed, so far as they can be made applicable, to all proceedings under this chapter". It was, therefore, held that the word suit not having been defined in General Clauses Act, there was no reason to give a restricted meaning so as to take away their rights to have their jurisdiction settled by Tribunal of their own choice.

13. The same question came before Madras High Court in the case of Chotilal Sowear v. R. Jawantraj Sowear AIR 1966 Mad 322 and the same view was taken by the Madras High Court as had been taken by Allahabad High Court. The decision of the Allahabad High Court was approved by Madras High Court.

14. The last decision referred to by the learned Counsel before me is the case of Prem Nath L. Ganesh Dass v. Prem Nath L. Ram Nath AIR 1963 P&Hb 62. This was again a case arising out of Section 21 of the Arbitration Act. The learned Counsel relied on the remains contained in paragraph 3 of that judgment which runs as follows:

In our view, this case hinges exclusively on the construction of the language of Section 21 depending upon the meaning of "Suit" occurring there. Regardless of the context in which the term has been used, "suit" in its common parlance is a term of wide amplitude. Broadly, a suit is a proceeding in a Court of justice for the enforcement of a right denoting a legal proceeding of civil kind. It is a proceeding in a Court according to the forms of law to enforce the remedy to which a party deems itself entitled Lord Coke defines a suit to be "actio nihil aliud est, quam jus perseguendi In judicio quod sibi debetur" meaning "an action is nothing else than the right of pursuing in a Court of justice, that which is due to one". Blackstone simply says that a "suit" or "action" is a legal demand of one's right. In its generic sense, a "suit" is the pursuit or prosecution of some claim. The term "suit" in its comprehensive sense may be treated as applying to any original proceeding in a Court of justice by which a party pursues the remedy which the law grants him. The modes of proceedings may be various depending upon the different stages in the litigation, that is, proceedings in the original Court, Court of appeal, proceedings in the nature of review or revision and execution proceedings. This legal signification of the word "suit" is very broad, and the term has also a much narrower meaning when it is examined in the procedural sense.

15. On the basis of these authorities it is argued that a reference application u/s 4(1) of the U.P. Public Services (Tribunals) Act, 1976 is a suit. Section 6(1) expressly takes away the jurisdiction of civil court to decide disputes mentioned in Section 4(1) of the Act and vest the same in the Public Services Tribunal. The Tribunal consists of an Administrative Member and a Judicial Member. The procedure there is unlike the procedure of a Court under the Code of Civil Procedure. In fact apart from certain provisions of the Code of Civil Procedure, the Code does not apply and even the Indian Evidence Act is also excluded. The definition of the "jurisdiction of the various Tribunals and power to transfer cases from one Tribunal to another Tribunal is vested in the Government. These are all

indications of the fact that the Tribunal is not a court. They also indicate that a special procedure for the determination of disputes referred to in Section 4(1) of the U.P. Public Services (Tribunals) Act, 1976 has been created which are decided in the manner prescribed under the Act.

16. The U.P. Public Services (Tribunals) Act, 1976, as mentioned earlier, does not contain any provision of the nature of Section 80 CPC or Section 326 of the U.P. Municipalities Act. Thus the Legislation obviously placed no restriction on a public servant of the nature contained in those provisions when he desired to make an application u/s 4(1) to the Tribunal. The reference application can also not be treated as a suit which is normally instituted in a court of civil jurisdiction.

17. In the case of Farkhundali Nannhay Vs. V.B. Potdar and Another, the question was as to whether the word "suit" in Section 22 of the Payment of Wages Act included any legal procedure. The Full Bench observed in paragraph 8 of the judgment:

We are also not inclined to accept Mr. Singhavi's argument that the word "suit" in Section 22 of the Payment of Wages Act includes any legal proceeding. The word "suit" is a term of art and ordinarily means a proceeding instituted in a civil Court by the presentation of a plaint. A proceeding u/s 54 of the Cooperative Societies Act is not a suit and consequently Section 22 of the Payment of Wages Act cannot operate as a bar to such a proceeding being taken.

18. In these circumstances it must be held that the Tribunal was in error in holding that Section 326 of the U.P. Municipalities Act operated as a bar to the Tribunal entertaining the application before it u/s 4(1) of the Act.

19. The next question is whether the Petitioner is entitled to any relief at all. The Petitioner on the expiry of his deputation with the Municipal Board, Kasganj ceased to be an employee of Kasganj Municipal Board and cannot get any relief as against Municipal Board, Kasganj. The Tribunal was justified in rejecting the claim petition instituted by the Petitioner as against Kasganj Municipal Board. It may be added here that the Tribunal has held and rightly so that as the deputation of the Petitioner to Kasganj Municipal Board for one year was not extended by the Government, he could not be continued in service of Kasganj Municipal Board.

20. As far as the Municipal Board, Ujhani is concerned, the Petitioner was a permanent employee of that Municipal Board. When he went on deputation from Ujhani Municipal Board to Kasganj Municipal Board, he retained his lien on his post at Ujhani Municipal Board. No order terminating the Petitioner's services was made. Thus the Petitioner was entitled to be treated as in service of Municipal Board, Ujhani on the expiry of his deputation and to be paid his emoluments as such.

21. However, that is not the end of the matter. The Petitioner, after his deputation, did not work at Ujhani Municipal Board for a considerable period of

time. Pay is given in lieu of service rendered. The Petitioner cannot demand payment for the period he spent without attempting to rejoin service with Ujhani Municipal Board. It was in January, 1972 that the Petitioner requested Ujhani Municipal Board to let him join service. The Municipal Board, Ujhani did not permit him to re-join his services. It was from that date that the Petitioner became entitled to receive his salary and other emoluments from Ujhani Municipal Board. However, the Tribunal has in its judgment only found that the Petitioner is liable to get his salary from March, 1972 to July, 1972. The Petitioner has not contested this part of the Tribunal's judgment. As pointed out above the Petitioner attempted to rejoin his services with the Municipal Board, Ujhani on 24-1-72. Necessary action on the letter would have taken some time. The Petitioner would, therefore, be entitled to his salary from 1-2-1972.

22. In the result, the writ petition succeeds in part. The impugned order of Tribunal dismissing the claim petition as against the Municipal Board Kasganj is maintained. However, a writ of Mandamus is issued to Municipal Board, Ujhani commanding it to permit the Petitioner to rejoin the post He was holding when he was sent on deputation. The Petitioner shall also be paid his salary and allowances in future as well as arrears of salary and allowances due to him from Municipal Board Ujhani with effect from 1-2-1972. The Petitioner is entitled to his costs from the Municipal Board, Ujhani.