
(2014) 01 KL CK 0019
In the High Court Of Kerala
Case No : O.P. (CAT) No. 1473 of 2013

Madhavan Nair

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 13-01-2014

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 14(1)
Constitution of India, 1950 — Article 227, 311(2)

Citation : (2014) 1 KLT 1054

Hon'ble Judges : T.B. Radhakrishnan, J; Babu Mathew P. Joseph, J

Bench : Division Bench

Advocate : P. Ramakrishnan and Preethi Ramakrishnan, Advocate for the Appellant; T.P.M. Ibrahim Khan, Sr. Advocate, Gopal Subrahmanyam, Solicitor General of India and P. Parameswaran Nair, Asst. Solicitor General of India, Advocate for the Respondent

Judgement

T.B. Radhakrishnan, J.—Petitioner was Secretary to Government of India in the Department of Space and Chairman of the Indian Space Research Organisation. For brevity, we refer to those establishments as GoI, DoS and ISRO respectively. He retired from service on superannuation on 31.10.2009. By Office Order dated 11.11.2009 of DoS, GoI, petitioner was conferred the Prof. Vikram Sarabhai Distinguished Professorship in the DoS/ISRO with immediate effect for a period of four years with ISRO Headquarters at Bangalore to be the Headquarters of the petitioner while on such professorship. The remuneration, admissible allowances and other benefits were to be drawn by ISRO Headquarters as per terms and conditions appended to that Office Order, which is Annexure-A5 in Ext. P1 and the annexure to it is available as Annexure-R7 in Ext. P4. That annexure stands with the caption "Scheme of Dr. Vikram Sarabhai Professorship Terms and Conditions".

2. Later, by Office Order dated 13.01.2012 (Annexure-A3 in Ext. P1), petitioner's such appointment was terminated with immediate effect. He moved the Central Administrative Tribunal under the provisions of the Administrative Tribunals Act,

1985, for short, "the Act", challenging the aforesaid action of termination of his such appointment and also against certain other matters about which he pleaded as being aggrieved, relating to certain in-house proceedings within the ISRO and DoS; the contents of which we do not have to advert to decide this Original Petition, either way.

3. The establishment, apart from placing pleadings in opposition to the petitioner's contentions on merits based on facts and law, pleaded that his professorship in terms of the Office Order noted above, is not one which would bring any of his grievances within the provisions of S. 14 of the Act. The Tribunal upheld that contention and dismissed the petitioner's Original Application as not maintainable before it in terms of the Act. Hence, this Original Petition is filed under Art. 227 of the Constitution of India.

4. Heard the learned counsel for the petitioner and the learned Solicitor General.

5. Petitioner's learned counsel argued that in terms of the nature of appointment, the requirement was that the petitioner would continue to discharge his contributions to the DoS/ISRO and that the terms of the offer of appointment and the terms and conditions of Dr. Vikram Sarabhai Professorship are sufficient enough to hold that the petitioner was in the civil service of the Union, whether he was holding a civil post or not. It is further, pithily, argued that, in fact, the nature of engagement had all characteristics of a civil post as understood in law, and therefore, the petitioner's engagement with the establishment under the aforementioned Office Order amounts to his holding a civil post and being in the civil service of the Union. Making reference to the decisions of the Honourable Supreme Court in *State of Assam and Others Vs. Shri Kanak Chandra Dutta*, , for short, "KC Dutta" hereinafter, *State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others*, , for short, "RLK Soni", *The Superintendent of Post Offices and Others Vs. P.K. Rajamma*, and *Union of India and others Vs. Deep Chand Pandey and another*, and the decision of this Court in *Smt. T.N. Radha Vs. The Station Director A.I.R. Trivandrum and Another*, , the petitioner's learned counsel dilated on the scope of the terms "civil service of the Union" and "civil post" and pointed out that there was a definite jural relationship of master and servant as between the petitioner and the establishment in terms of the aforementioned Office Order. It is thus argued that the impugned order of the Tribunal would not stand.

6. The learned Solicitor General argued that the nature of engagement is nothing but conferment of professorship, not amounting to an engagement in the nature of a master and servant relationship and the terms of engagement would have to be treated only as one under a particular scheme, whereby exceptionally distinguished persons are conferred professorship with honorarium support, so that they could contribute to the requirement of the establishment. He referred to the decision of the Apex Court in *State of Karnataka and Others Vs. Ameerbi and Others*, , for short, "Ameerbi" hereinafter, which dealt with the case of anganwadi workers under ICDS Scheme and discussions therein, to state that

many of the decisions rendered by the Honourable Supreme Court of India as referred to therein dealt with cases, where the posts were statutory, and the terms and conditions of services of the holder of the posts were governed by statute laws.

7. Section 14(1) of the Act gets classified into three. Clause (a) deals with recruitment, and matters concerning recruitment. Clause (b) deals with all service matters pertaining to the 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 of any corporation or society owned or controlled by the Government. This is pointedly confined to three categories. Clause (b)(i) deals with a member of any All-India Service. Clause (b)(ii) deals with a person not being a member of an All-India Service or a person referred to in clause (c) appointed to any civil service of the Union or any civil post under the Union. Clause (b)(iii) relates to a civilian not being a member of an All-India Service or a person referred to in clause (c) appointed to any defence services or a post connected with defence. Clause (c) of S. 14(1) is irrelevant in the context of this case. Pithily, the petitioner's case can stand only if it falls within clause (b)(ii) of S. 14(1), that is to say, if only he is a person, who is appointed to any "civil service of the Union" or any "civil post under the Union".

8. In K.C. Dutta, the Apex Court noted that there are no formal definitions for the terms "post" and "civil post", and that 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 relationship of master and servant between a State and a person holding a post under it, 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. The relationship of a master and servant may be established by the presence of all or some of the aforementioned indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relationship between the State and the alleged holder of a post. A post is an employment but every employment is not a post, as clearly stated in K.C. Dutta. That precedent handled the situation where the appointment required the appointee to discharge the function of collecting revenue on behalf of the State. Clearly, that decision was rendered in the light of the different nature and aspects of the duties and responsibilities attendant to the post, that came up for consideration in that case. It was, hence, held in that case that the post that was considered therein fell within Art. 311(2) of the Constitution of India. It was after noticing K.C. Dutta that Ameerbi was decided holding that anganwadi workers do not discharge any function of the State and they do not hold any post under a statute and their posts are not created under any statute law. While maintaining the aforementioned distinction, the Apex Court went on to say in Ameerbi that the appointment of anganwadi workers was under ICDS Scheme, which was not of a permanent nature although such engagement might have continued for a long

time. The distinction maintained in the aforesaid precedents would also stand supplemented by the decision in R.L.K. Soni, wherein it was said, among other things, that it is neither politic nor possible to lay down any definitive test to determine, when a person may be said to hold a civil post under the Government. It was pointed out that several factors may indicate the relationship of master and servant, and none may be conclusive, and that, no single factor may be considered absolutely essential. The presence of all or some of the factors, such as, the right to select for appointment, the right to appoint, the right to terminate the employment, the right to take disciplinary action, the right to prescribe the conditions of service, the nature of the duties performed by the employee, the right to control the employee's manner and method of the work, the right to issue directions and the right to determine the source from which wages or salary are paid and a host of such circumstances, may have to be considered to determine the existence of the relationship of master and servant. In each case, it is a question of fact whether a person is a servant of the State or not. What we note herein is, in our humble view, the ratio decidendi and the law laid in R.L.K. Soni.

9. Keeping the aforesaid in mind, from the materials on record, we see that the clear assertion of the establishment before the Tribunal, through its pleadings, was that the engagement of the petitioner as Dr. Vikram Sarabhai Professorship is under the visiting professor scheme of the ISRO and the same is not linked to any civil post and does not belong to any civil service of the GoI. Reverting to Annexure-R1 in Ext. P2 Office Memorandum dated 2.9.2008, it can be seen that the schemes of Distinguished Professors and Visiting Professors/Scientists/Engineers/Members in the DoS/ISRO have been in vogue in DoS/ISRO since long. That O.M. was issued in relation to revision of honorarium and grant of contingencies payable to such Distinguished Professors and Visiting Professors/Scientists/Engineers, etc. Annexure-R1 in Ext. P2 is the detailed Scheme of Prof. Vikram Sarabhai Professor/Prof. Satish Dhawan Professor/Prof. Brahma Prakash Professor. That says that such professorship is meant for a selected few Scientists/Engineers in recognition of their outstanding, pioneering and lifetime contributions to the development of Space Science and Technology. That Scheme is meant to enable the Scientists/Engineers to provide continuity in developmental efforts; guide the R & D and provide leadership continuity in India's Space Programme. While the opening paragraph of that Scheme does not *stricto sensu* confine the field of choice for the conferment of such professorship to members of the I.S.R.O. or DoS, there is a further provision which enjoins that where Scientists/Engineers from within ISRO/DoS are appointed to the position of Professor/Scientists, they may be allowed to draw honorarium as stated in that Scheme subject to the condition that the honorarium and the gross pension should not exceed the last pay drawn. Certain directions were issued to ensure uniformity in the matter. Looking at the logical end to which that Scheme can be applied, the provisions thereof clearly indicate that persons who were not working in the DoS/ISRO can be brought into the Scheme for conferment of

professorship. We may even indicate that we do not find any restriction, which confines such professorship to persons of Indian citizenship. We look at it from this angle in the reasoning process only because we are jurisprudentially sure that for employments in the DoS and in the ISRO, which are posts in civil service of the Union or civil posts under the Union, no person other than a citizen of India can be appointed. This is the requirement in terms of the Constitution and the laws. Nothing is pointed out to the contrary, even to a query by us to the learned counsel for the petitioner and the learned Solicitor General. There is also no disciplinary control for the GoI, DoS or ISRO on the person conferred with such professorship, as understood in the realm of service laws.

10. The nature of allowances, which are enlisted, and the amounts that are being paid as honorarium are also not definitely indicative of such control by the DoS/ISRO over the activities of a particular person, who has been conferred professorship, to be viewed as one that generates a master and servant relationship. Professorship is one conferred on varied considerations and for varied purposes in national interest. DoS and ISRO, in national interest, may require the assistance of an eminent person in the field of research to continue the process after that person's jural relationship with the DoS/ISRO comes to an end, including by superannuation. It is not an invitation for appointment by selection into a civil post or to the civil service. It is an invitation to occupy the exalted conferment to a stalwart, whose guidance and advice are treated as relevant in national interest. It is the conferment of a status and honour of a very high order with the hope that the said person would continue to contribute to the development of space science and technology, augmenting the empowerment of this Nation in that field. Honorarium in that regard is no pay, but a payment to meet the requirement of such exalted service. To treat it otherwise would be anathema to the constitutional setting of the concepts of "civil service of the Union" and "civil post under the Union" particularly in the context of Arts. 14 and 16 among the Fundamental Rights as well as the provisions in Chapter I of Part XIV of the Constitution which deals with services; in particular, Arts. 309, 310 and 311 therein.

11. Incidentally, to a query by us, we got a reply in the negative as to whether there is any law made by the Parliament creating monopoly in favour of the Union as regards Science and Technology in relation to Space. We state this only to say that we cannot avoid envisioning that there is fair field available for the DoS and ISRO to utilise such assistance as could be rendered to it by distinguished persons of eminence, unconnected with DoS and ISRO, who may also deserve to be honoured in the process, by the conferment of professorship in view of the O.Ms. noted above. Such engagement can never be treated as one generating a relationship as if between a master and servant, which would fall for being considered as amounting to an appointment to any "civil service of the Union" or any "civil post under the Union".

12. Even according to the petitioner, he stands accused of certain misdeeds,

while he officiated as the Chairman, ISRO, and as the Secretary in the DoS and those actions or omissions which are alleged against him are referable to that part of his service. If that were so, the visitation that could have been generated ought to be in terms of laws relating to civil service. For reasons, which may be different, including the jurisdictional impossibility to proceed in that line, the establishment would have ultimately decided to bring an end to the professorship of the petitioner. However, that is not justiciable here and now as it has been held hereinabove that the petitioner is not in "civil service of the Union" or holding a "civil post under the Union". For the aforesaid reasons, we find no way to hold that there is any jurisdictional infirmity or illegality in the decision of the Tribunal holding that the Original Application filed by the petitioner before it under the provisions of the Act is not maintainable. It is clarified that this judgment does not contain any expression touching the merits of the petitioner's claim that the allegations and the ultimate action taken against him are unfounded. This judgment only answers the question of jurisdiction. We also see that the learned Tribunal has also excused itself from answering, in any manner, on merits. This Original Petition fails....

In the result, this Original Petition is dismissed. No costs.