

(2014) 09 RAJ CK 0112

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 6613, 6614, 6615, 6616, 6617, 6618, 6619, 6620, 6621, 6622, 6623, 6624 and 6625/2014

Managing Committee, Bhartiya Shiksha Prachar Samiti

APPELLANT

Vs

Bhoopal Singh Babel

RESPONDENT

Date of Decision : 26-09-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Constitution of India, 1950 — Article 226
Suits Valuation Act, 1887 — Section 11, 11(1)(b)

Citation : (2014) 09 RAJ CK 0112

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : B.L. Tiwari, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Dr. Vineet Kothari, J.—These writ petitions have been filed by the Managing Committee of the Bhartiya Shiksha Prachar Samiti, Udaipur and Managing Committee, Vidhya Niketan Secondary School & Vidhya Niketan Senior Secondary School, Udaipur being aggrieved by the order passed by the Rajasthan Non-Government Educational Institutions Tribunal, Jaipur, (for short, hereinafter referred to as "Tribunal") on 11.04.2014 allowing 13 applications filed by the respondents/employees, who were working as teachers and in other capacities in the petitioner Institutions prior to their retirement and they approached the said Tribunal for relief from the petitioners for payment of their gratuity and leave encashment etc. The applications filed u/s 21 of the Act of 1989 were allowed by the learned Tribunal while holding that the petitioner Institution was under an obligation to pay the amount of leave encashment and gratuity to the respondents/employees of the petitioner Institution.

2. Mr. B.L. Tiwari, learned counsel for the petitioner submitted that the said Tribunal constituted u/s 22 of the Rajasthan Non-Government Educational

Institutions Act, 1989 (Act of 1989) whose jurisdiction by way of application is defined u/s. 21 and by way of appeals u/s. 22 of the said Act, did not have any jurisdiction to decide the said applications filed by the respondents/employees and since this question of lack of Tribunal's jurisdiction goes to the root of the matter, he submitted that this question can be raised even for the first time before this Court in the present writ petitions, even though the said question admittedly was not raised before the Tribunal itself while opposing the applications filed u/s. 19 of the Act of 1989 by the respondents.

3. For this purpose, learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court in the case of Kiran Singh and Others Vs. Chaman Paswan and Others, particularly para 6, which will be discussed herein after. The two important submissions, which the learned counsel for the petitioner raised are that the liability to pay the gratuity and leave encashment amount to the respondents/employees is not dispute but the same was to be paid out of the grant-in-aid to be received from the State Government, which for some time, the petitioner Institution is not receiving since 2011. Secondly, the learned counsel for the petitioner fairly submitted that this question was not raised before the Tribunal, however, in view of remedy provided under the said Act of 1989, read with Rules of 1993 framed under the said Act, the remedy by way of recovery of due amount was available to the non-petitioners/employees was by way of approach before the District Education Officer with further appellate remedy before the Director of the Education Department under Rule 36 of the Rules of 1993 and not by way of original jurisdiction u/s 19 of the Act of 1989 before the Tribunal, and therefore, the impugned order of Tribunal deserves to be quashed by this Court.

4. Having heard the learned counsel for the petitioner at length and upon perusal of the relevant provisions and the judgment cited at Bar, this Court is not inclined to invoke its extraordinary jurisdiction under Article 226 of the Constitution of India in the present case and the writ petitions deserve dismissal. The reasons are as follows.

5. Firstly, there was no good reason or explanation from the side of the petitioner Institution for not raising the said question of jurisdiction, which according to petitioner goes to the root of the matter, before the Tribunal itself. It is beyond the pale of doubt that the question of jurisdiction goes to the root of the matter but then it has to be raised in the first available instance to the objector. The Tribunal or the authority, whose lack of jurisdiction is sought to be contended, should be first made aware of such lack of jurisdiction and not for the first time before the higher courts. From the perusal of the order of the Tribunal impugned before this Court, it is clear that the petitioner Institution contested the matter on merits before the Tribunal without any demur of jurisdiction raised before the Tribunal, therefore, this Court is not inclined to allow this objection of jurisdiction to be raised for the first time before the writ court.

6. The judgment relied upon by the learned counsel for the petitioner in the case

of Kiran Singh (supra), arose in entirely different context. The para 5 of the said judgment throws light on the context in which the Apex Court allowed such question to be raised even before the Apex Court itself. The question was as to whether the proper valuation of the suit was Rs. 2,950/- as given in the plaint or Rs. 9,880/- as determined by the High Court since it would make a difference in the forum to which the appeal from the decree of trial court would lie and in this context in para 6 of the judgment, the Hon'ble Supreme Court allowed the said question to be raised before it while observing as under:-

"5. It will be noticed that the proper Court to try the present action would be the Subordinate Court, Monghyr, whether the valuation of the suit was Rs. 2,950 as given in the plaint, or Rs. 9,880 as determined by the High Court; but it will make a difference in the forum to which the appeal from its judgment would lie, whether the one valuation or the other is to be accepted as the deciding factor. On the plaint valuation, the appeal would lie to the District Court; on the valuation as determined by the High Court, it is that Court that would be competent to entertain the appeal. The contention of the appellants is that as on the valuation of the suit as ultimately determined, the District Court was not competent to entertain the appeal, the decree and judgment passed by that Court must be treated as a nullity, that the High Court should have accordingly heard S.A. No. 1152 of 1946 not as a second appeal with its limitations u/s 100 of the CPC but as a first appeal against the judgment and decree of the Subordinate Judge, Monghyr, and that the appellants were entitled to a full hearing as well on questions of fact as of law.

And alternatively, it is contended that even if the decree and judgment of the District Court on appeal are not to be treated as a nullity and the matter is to be dealt with u/s 11 of the Suits Valuation Act, the appellants had suffered "prejudice" within the meaning of that section, in that their appeal against the judgment of the Subordinate Judge was heard not by the High Court but by a Court of inferior jurisdiction, viz., the District Court of Monghyr, and that its decree was therefore liable to be set aside, and the appeal heard by the High Court on the merits, as a first appeal.

6. The answer to these contentions must depend on what the position in law is when a Court entertains a suit or an appeal over which it has no jurisdiction, and what the effect of section 11 of the Suits Valuation Act is on that position. It is a fundamental principle well-established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr

was coram non-judice, and that its judgment and decree would be nullities. The question is what is the effect of section 11 of the Suits Valuation Act on this position."

7. Further, while allowing the said question to be raised before it about the lack of jurisdiction of the District Court to hear the appeal on the basis of suit valuation given in the plaint, which was later on upwardly revised by the High Court, the Hon''ble Apex Court negating the said plea raised on behalf of respondent/defendant in the following manner on the ground that no prejudice was caused to the defendant even if as per higher valuation of the suit determined by the High Court, the District Court could not have the appellate jurisdiction to decide the same without any objection raised by the defendant on merits. It is worthwhile to quote the para 15 to 18 of the aforesaid judgment cited by the learned counsel for the petitioner, which reads as under:-

"... No purpose, however, is served by attempting to enumerate exhaustively all possible cases of prejudice which might come u/s 11 of the Suits Valuation Act. The jurisdiction that is conferred on appellate Courts under that section is an equitable one, to be exercised when there has been an erroneous assumption of jurisdiction by a Subordinate Court as a result of over-valuation or under-valuation and a consequential failure of justice. It is neither possible nor even desirable to define such a jurisdiction closely, or confine it within stated bounds. It can only be predicated of it that it is in the nature of a revisional jurisdiction to be exercised with caution and for the ends of justice, whenever the facts and situations call for it. Whether there has been prejudice or not is, accordingly, a matter to be determined on the facts of each case.

16. We have now to see whether the appellants have suffered any prejudice by reason of the under-valuation. They were the plaintiff in the action. They valued the suit at Rs. 2,950. The defendants raised no objection to the jurisdiction of the Court at any time. When the plaintiffs lost the suit after an elaborate trial, it is they who appealed to the District Court as they were bound to, on their valuation. Even there, the defendants took no objection to the jurisdiction of the District Court to hear the appeal. When the decision went on the merits against the plaintiffs, they preferred S.A. No. 1152 of 1946 to the High Court of Patna, and if the Stamp Reporter had not raised the objection to the valuation and to the Court-fee paid, the plaintiffs would not have challenged the jurisdiction of the District Court to hear the appeal. It would be an unfortunate state of the law, if the plaintiffs who initiated proceedings in a Court of their own choice could subsequently turn round and question its jurisdiction on the ground of an error in valuation which was their own. If the law were that the decree of a Court which would have had no jurisdiction over the suit or appeal but for the over-valuation or under-valuation should be treated as a nullity, then of course, they would not be estopped from setting up want of jurisdiction in the Court by the fact of their having themselves invoked it. That, however, is not the position u/s 11 of the Suits Valuation Act. Why then should the plaintiffs be allowed to resile from the

position taken up them to the prejudice of their opponents, who had acquiesced therein?

17. There is considerable authority in the Indian Courts that clauses (a) and (b) of section 11 of the Suits Valuation Act should be read conjunctively, notwithstanding the use of the word "or" If that is the correct interpretation, the plaintiffs would be precluded from raising the objection about it jurisdiction in an appellate Court. But even if the two provisions are to be construed disjunctively, and the parties held entitled u/s 11(1)(b) to raise the objection for the first time in the appellate Court, even then, the requirement as to prejudice has to be satisfied, and the party who has resorted to a forum of his own choice on his own valuation cannot himself be heard to complain of an prejudice. Prejudice can be a ground for relief only when it is due to the action of another party and not when it results from one's own act. Courts cannot recognise that as prejudice which flows from the action of the very party who complains about it. Even apart from this, we are satisfied that no prejudice was caused to the appellants by their appeal having been heard by the District Court. There was a fair and full hearing of the appeal by that Court; it gave its decision on the merits on a consideration of the entire evidence in the case, and no injustice is shown to have resulted in its disposal of the matter. The decision of the learned Judges that there were no grounds for interference u/s 11 of the Suits Valuation Act is correct.

18. In the result, the appeal fails and is dismissed with costs."

8. Therefore, the aforesaid contention of the learned counsel for the petitioner Institutions even if were to be allowed to be argued for arguments" sake, then also, though this Court is not inclined to do so is bound to be repelled for the same reasons as given by the Hon"ble Supreme Court in the aforesaid judgment relied upon by the learned counsel for the petitioner himself. It is, accordingly, rejected.

9. Now the matrix of statutory provisions may be noticed here for dealing with other contentions raised by the learned counsel for the petitioners. Sections 19, 21, 22, 23 and 32 of the Act of 1989 and Rules 36 and 64 of the Rules of 1993 framed under the aforesaid enacting of 1989 Act, are quoted herein below for ready reference:-

"19. Appeal to the Tribunal. (1) If a managing committee is aggrieved from the order of refusal made by the Director of Education u/s 18, it may prefer an appeal to the Tribunal constituted u/s 22 within ninety days of the date of receipt of such order.

(2) An employee aggrieved from an order of the managing committee made u/s 18, may prefer an appeal to the said Tribunal within ninety days of the date of receipt of such order.

21. Application to the Tribunal-(1) Where there is any dispute between the management of a recognised institution and any of its employee with respect to

the conditions of service, the management or the employee may make an application in the prescribed manner to the Tribunal and the decision of the Tribunal thereon shall be final.

(2) Any dispute of the nature referred to in sub-section (1) and any appeal of the nature referred to in section 19, pending before the State Government or any other officer of the State Government immediately before the commencement of this Act, shall, as soon as may be after such commencement, be transferred to the Tribunal for its decision.

22. Constitution of the Tribunal-(1) There shall be constituted by the State Government, by notification, one or more Tribunals for the purposes of this Act.

(2) The Tribunal shall have jurisdiction over the whole of the State or such area as may be specified in the notification.

(3) The State Government shall appoint a Judicial Officer of the rank of a District Judge to constitute the Tribunal.

23. Functions of the Tribunal-The Tribunal shall entertain, hear and decide appeals preferred u/s 19 and the disputes referred to in section 21.

32. Recoveries of amounts due from aided institution.-(1) where, at the commencement of this Act or thereafter, pursuant to any agreement, scheme or other arrangement, any salary or other dues are payable by the management of an aided institution to its employee according to the scale fixed by such agreement, scheme or arrangement, the District Education Officer or the Competent Authority may, by order in writing, direct the secretary of the managing committee to deposit, with him the amount so payable.

(2) Before making an order under subsection (1), the District Education Officer shall conduct an enquiry as to the amount payable to the employee in such manner as may be prescribed.

(3) An appeal may be preferred against the order made under sub-section (1) to such officer as may be empowered by the Director of Education in this behalf within such time and in such manner as may be prescribed.

(4) Any money due from the management under the orders of the District Education Officer, or where an appeal was preferred, under the orders of the officer making an order in appeal shall be recoverable as an arrear of land revenue under the provisions of the Rajasthan Land Revenue Act, 1956. Such money may also be recovered by setting it off against any sum due to the management from the State Government. Any amount deposited or recovered under this subsection shall be paid to the employee concerned.

(5) Any amount due at the commencement of this Act or thereafter, to the State Government pertaining to any aid given or grant paid by the State Government may be recovered from the management as an arrear of land revenue under the provisions of the Rajasthan Land Revenue Act, 1956.

Rule 36. Procedure for Enquiry and appeal u/s 32 of the Act.-The following procedure shall be adopted for enquiry and appeals as contemplated u/s 32 of the Act in relation to recoveries of amounts due from aided institutions:-

(i) Enquiry: Whenever it comes to or brought to the notice of the enquiry officer as specified in sub-section (2) of Section 32 of the Act that any salary or other dues payable to an employee, have not been paid by the management of an aided institution, the enquiry officer shall inspect the entire relevant records of the institution. The Secretary of the institution and the employee shall be given reasonable opportunities of being heard and to adduce evidence oral or documentary, if any. After having completed the enquiry, in the manner aforesaid, if the enquiry officer is satisfied about the correctness of the allegations, he shall pass an order under sub-section (1) of Section 32 of the Act.

(ii) Appeal-If the Managing Committee of the institution is aggrieved from the order made by the enquiry officer, it may prefer an appeal under sub-section (3) of Section 32 of the Act to such officer as may be empowered by the Director of Education in this behalf within thirty days of the date of receipt of such order.

On receipt of an appeal, the officer hearing the appeal shall promptly call for the relevant records from the enquiry officer and after examination of such records and giving an opportunity of being heard to the appellant and the employee confirm, modify or reverse the order appealed against and his decision thereon shall be final. The said decision shall forthwith be communicated to the appellant and employee.

Rule 64. Litigation on Service matters-No employee shall attempt to seek in Court of Law a decision on grievances arising out of his employment or conditions of service, even in cases where such a remedy is legally admissible, without first taking resort to the normal official channel of redress."

10. The gravamen of the contention raised by the learned counsel for the petitioner revolves around the word "with respect to conditions of service" employed in Section 21 of the Act of 1989 quoted above. The contention of the learned counsel for the petitioner, Mr. B.L. Tiwari, is that since the liability of the petitioner Institution to pay the gratuity and leave encashment was there and the amount due was also ascertainable/ascertained, therefore, this dispute will fall outside the ambit of the words quoted "with respect to conditions of service". According to learned counsel for the petitioner, the conditions of service govern only the currency of service and not thereafter and, therefore, the payment of gratuity as per provisions of Payment of Gratuity Act, 1972, and the leave encashment due as per the terms of contract of the employment of the respondents will not fall within the four corners of the words employed in Section 21 of the Act of 1989 and for this reason, the Tribunal could not have entertained the applications filed u/s. 21 of the Act and the impugned order of the Tribunal, therefore, deserves to be set aside by this Court.

11. In the considered opinion of this Court, this contention raised by the learned

counsel for the petitioner is misconceived, to say the least. The gratuity, which an employee earns on account of long stipulated period of service of the employer Institution, is a statutory right, which accrues to him/her as per the provisions of Payment of Gratuity Act, 1972, which have to be read with the terms of contract of service between the two parties. Similarly, the leave encashment depending upon the contract of employment, which also depends upon the number of days, to which the leave can be allowed and the encashment of earned leave upon retirement. The mere fact that the liability to pay these dues of the respondents/employees is admitted by the petitioner Institution itself is enough to dispel and repel their contentions that it does not pertain to the conditions of service of the respondents/employees. How else this liability would have accrued and could be fastened upon them, if it was not pertaining to their conditions of service? Merely because, the payment of this liability becomes due after superannuation or retirement of the teachers and other staff of the educational institution, the character of such dues is not lost and they remain there because of the conditions of service agreed to between the parties either on the basis of some statutory provisions or other contractual terms. The words "with respect to conditions of service", in the opinion of this Court, are wide enough to cover the dues for which the respondents/employees approached the Tribunal in the present case, namely, for payment of gratuity and leave encashment dues. Therefore, the said contention of the learned counsel is also without any merit and the same is rejected.

12. Learned counsel for the petitioner Institution was unable to produce any judicial precedent to the contrary for upholding the proposition raised before this Court even though not raised before the Tribunal. The question of jurisdiction which has to be decided by a litigative debate or interpretative process, is not like a mathematic equitation whereby the Court can pronounce $2 + 2 = 4$ or not. If a debate and litigative process on the question of jurisdiction is possible, it will definitely not give rise to the patent lack of jurisdiction so as to oust and set aside the order or a judgment passed by a quasi-judicial or a judicial Tribunal subordinate to this Court.

13. The learned Tribunal in the present case, is a statutory Tribunal created under the enactment, namely, the Act of 1989 and Section 22 thereof would indicate that a judicial officer of the rank of District Judge is to head the said Tribunal, which has state-wise jurisdiction to deal with the disputes relating to service matters of the employees governed by the said Non-Government Education Institutions Act, 1989. The remedy by way of appeal provided u/s 19 of the said Act in case of disputes between the Managing Committee and the State; and in case of employees aggrieved by the order of the Managing Committee on the one hand, and the original applications u/s 19 of the Act of 1989, in case of dispute between the management of the recognized institution and its employees with respect to conditions of service. Both the parties, Management or the employees are allowed to file such original applications u/s 21 of the Act of 1989. Sub-section (2) of Section 21 provide for transfer of

pending cases to the Tribunal upon constitution of the said Tribunal, which were earlier pending before the State Government or any of its authority before constitution of such appellate forum or the Tribunal. Section 27 of the Act bars the jurisdiction of civil courts and Section 27A provides for execution of the orders of the Tribunal. The contention raised by the learned counsel for the petitioner, that the order of the Tribunal is without jurisdiction on account of aforesaid reasons as the dispute fell without the prescribed words "with respect to conditions of service", is therefore, liable to be rejected and the same is, accordingly, rejected.

14. Coming to the third and the last contention raised by the learned counsel for the petitioner Institution that the remedy which was and is available to respondents/employees for the admitted liability of the petitioner Institution was to approach the District Education Officer under Rule 36 of the 1993 Rules, with a further appeal to the Director, Education Department, as per Section 32 read with Rule 36 of the Rules of 1993, quoted above, is also equally devoid of merit. Rule 64 of the Rules of 1993, quoted above, which seeks to avoid a direct litigation before the Court of law at the instance of the employees governed by these rules and directing them to first take resort to normal official channel for redressal of their grievances, which also read with Rule 36 and Section 32 of the Act, does not render the impugned order of the Tribunal as lacking the foundational jurisdiction. Firstly, the Rule 64 is directory in nature and not mandatory and it leaves the option open to the employees to avail the remedy either before the Departmental authorities or before the statutory Tribunals directly.

15. The procedure under Rule 36 of the Rules of 1993 which provides for holding of enquiry and recovery, and appeal under Rule 36 of the Rules of 1993 cannot cut into the jurisdiction of the statutory provisions constituted u/s 21 of the Act of 1989. At best, it provides an alternative forum of seeking the remedy for recovery of their dues to the employees. It is not mandatory or the prescribed channel of redressal of the grievances, which would render the order of the Tribunal a higher statutory quasi-judicial body, if the departmental remedies are not availed of, much-less, after the judgment or the order of such quasi-judicial bodies are rendered on merits, without a demur of objection about the jurisdiction raised before them in the first instance. The Tribunal can decide the dispute and controversies and then execute their orders, whereas the departmental authorities can only get the dues of the employees, if the liability is already admitted by the Institution, recovered after holding enquiry and if necessary by deduction from the grant-in-aid payable to the Institution.

16. The other aspect of the contentions raised by the learned counsel for the petitioners that since the liability to pay the gratuity and leave encashment is admitted by the petitioner Institution and, therefore, for recovery thereof only, the respondents/employees ought to have availed the departmental remedies before the District Education Officer or the Director of Education Department, is

like blow hot and cold in the same breath. It is nothing but a sheer lame excuse on the part of the petitioner Institution to somehow delay and in fact defeat the payment of the legally due amount to the respondents/employees who served the petitioner Institution for long years and then got their right to receive the gratuity and leave encashment. The plea of lack of financial resources, stoppage of grant-in-aid by the State and likely impact on the current financial position of the Institution, are admittedly of no relevance and cannot out weigh the equity which lies in favour of respondents/employees, who themselves got this relief at the hands of the Tribunal, after a litigative battle before the Tribunal since the year 2011 when these applications were filed before the Tribunal. A bare perusal of the cause title before the Tribunal would show that all the applicants are in their advance age, therefore, against the relief given to them by the Tribunal directing the payment of amount of gratuity and leave encashment, the lack of financial resources of the Institution cannot be allowed to stand in the way of respondents/employees to receive such relief, nor any such financial inability was established either before the Tribunal or before this Court i.e. only a bald argument was raised.

17. Therefore, viewed from any angle either of the question of lack of jurisdiction of Tribunal, estoppel on the part of petitioner Institution, and the equity against the petitioners or financial arrangements, this Court does not find any sustainable grounds to upset and set aside the order of the Tribunal impugned before this Court by way of present set of writ petitions filed by the Managing Committee of the Institution. The writ petitions being devoid of any force, are hereby dismissed. No costs. A copy of this order be sent to the concerned parties forthwith.