
(1998) 09 BOM CK 0057
In the Bombay High Court
Case No : Writ Petition No. 296 of 1998

Marathwada Sarvashramik Sangathan	APPELLANT
Vs	
The State of Maharashtra and others	RESPONDENT

Date of Decision : 22-09-1998

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 15, 3
Constitution of India, 1950 — Article 136, 226, 323
Minimum Wages Act, 1948 — Section 2

Citation : (1999) 3 ALLMR 65 : (1999) 2 BomCR 209 : (1999) 81 FLR 452 :
(1999) 2 LLJ 226 : (1999) 3 MhLj 37

Hon'ble Judges : N.P. Chapalgaonker, J;B.H. Marlapalle, J

Bench : Division Bench

Advocate : S.K. Shelke, for the Appellant; S.K. Kadam, A.G.P., for the Respondent

Judgement

B.H. Marlapalle, J.—Heard Shri S.K. Shelke, learned Counsel for the petitioner. The petitioner Union claims the Department of Social Forestry, Government of Maharashtra has been engaging daily rated workers in its plantation farms as well as under various schemes and they are being paid on daily wage basis. It is further contended that the Social Forestry is a scheduled employment under the Minimum Wages Act, 1948 and the daily rated employees are entitled for the payment of minimum wages as prescribed by the Government of Maharashtra. It is further averred that these daily rated employees were being paid an amount of Rs. 41.20 ps. per day till 13-11-1997 and thereafter the daily rate of wages has been reduced to Rs. 23/-per day. The petitioner Union therefore has approached this Court seeking directions against the State of Maharashtra through the Department of Social Forestry to pay wages at the rate fixed under the Minimum Wages Act, 1948.

2. On the preliminary point of jurisdiction of this Court to entertain this petition under Article 226 of the Constitution of India, the learned Counsel for the petitioner has relied upon a judgment of this Court in Writ Petition No. 329 of

1992 along with other batch of petitions. The Division Bench of this Court vide its Judgment dated 9-4-1992, while relying upon the judgment of the Supreme Court in the case of State of Assam and Others Vs. Shri Kanak Chandra Dutta, and Jagdev Singh v. The State of Himachal Pradesh and others 1988 Lab. I.C. 1088, held that the casual employees appointed on daily wages in a Government Department do not hold a civil post and hence, they have no remedy under the Administrative Tribunals Act, 1985.

3. In the case of Union of India and others Vs. Deep Chand Pandey and another, , the question which fell for decision of the Supreme Court was whether the Central Administrative Tribunal was vested with the jurisdiction to entertain and decide the claim of the respondents who were engaged in the Office of Deputy Civil Engineer (Construction), Central Railway, Gwalior as casual typists on daily wages and whether their services were wrongly terminated and whether the Central Administrative Tribunal could entertain the claim of the respondents, who were before termination of their employment, engaged as casual servants of the Union of India. The Supreme Court held that remedy of the respondents employees was before the Tribunal under the Administrative Tribunals Act and not High Court. It was specifically ruled further that the High Court did not have the jurisdiction to entertain the claim of the respondents who were appointed as casual servants. Subsequently, in the case of Himachal Pradesh State Electricity Board, Shimla and others Vs. Tirath Raj and others, etc. etc., , the Supreme Court was dealing with a case of employees appointed on daily wages and a specific question came up for considerations whether the High Court had the jurisdiction to entertain the claim of such daily rated employees for the payment of equal pay for equal work. In para 4 of the said judgment, the Apex Court observed as under :

4. The only question that remains for decision is whether the High Court has jurisdiction to decide the dispute of the daily wages employees working under the appellant. The High Court took the view that since the daily wage employees are not appointed to a post, the Administrative Tribunals Act, 1985 (for short, "the Act") is not applicable. This controversy is no longer res integra. In Union of India and others Vs. Deep Chand Pandey and another, , the same contention was raised with regard to the casual typists working under the Deputy Chief Engineer (Construction), Central Railway, Gwalior. They contended that u/s 14 of the Act, all the jurisdiction, power and authority exercisable by all the courts excepting the Supreme Court have been vested in the Central Administrative Tribunals. Therefore, it was contended for the Union that the High Court had no jurisdiction to entertain the claims of the casual typists on daily wage basis. It was contended on behalf of the daily wage typists that since they were not holding any civil post under the Union and were engaged only on casual basis, the provisions of the Act were not attracted. This Court negated the contention and held thus (Para 5).

The scope of Article 323-A permitting the Parliament to legislate on the subject

covered therein is, having regard to the language, very wide, and by enacting 1985 Act this power has been exercised in almost full measure. An examination of section 14 and section 3(q) clearly indicates that the Act covers a very wide field, and there is nothing to suggest that the provisions dealing with the jurisdiction of the tribunal should receive a narrow interpretation. This is also supported by the clarification offered by the then Minister of Law, who was piloting the Bill, while replying to the demand for further enumeration of the conditions of service in section 15 and 15.

The Supreme Court concluded that the High Court had been divested of the power and jurisdiction under Article 226 of the Constitution of India and the same is vested in the Administrative Tribunal constituted in that behalf under the Administrative Tribunals Act, 1985.

4. Daily rated casual labourers are appointed by various departments of the State irrespective of the fact whether there are permanent sanctioned posts available or not and such casual appointees are continued for longer period of time. In fact, in the instant case, learned Counsel for the petitioner submits that the Department of Social Forestry has continued such daily rated employees even for a period of 10 years. It is also well known that many of these employees through their Unions or directly approached various forums created by law for seeking relief of regularisation of service or any other benefit arising out of their employment under the State. However, all these disputes either regarding regularisation of service, permanency in employment, payment of wages on the principle of equal pay for equal work or at the rates prescribed under the Minimum Wages Act or continuation in employment fall within the ambit of service matters as defined u/s 3(q) of the Administrative Tribunals Act, 1985. The judgment of this Court in Writ Petition No. 329 of 1992 was delivered on 9th April 1992 and the judgment of the Supreme Court in the case of Union of India v. Deep Chand Pande, (supra) was delivered on 27th August 1992. We are, therefore, of the view that our judgment dated 9th April 1992 stands impliedly overruled by the judicial pronouncements made by the Apex Court as referred to hereinabove in the cases of Deep Chand Pande v. Himachal Pradesh State Electricity Board (supra).

5. The learned Counsel for the petitioner relied upon a recent judgment of the Supreme Court in the case of L. Chandra Kumar Vs. Union of India and others, and submitted that the judgments in the case of Union of India v. Deep Chand Pande and Himachal Pradesh State Electricity Board, Shimla and others v. Tirath Raj and others stand overruled by the judgment of the Supreme Court in the case of L. Chandra Kumar. One of the issues that has been decided by the Apex Court in the case of L. Chandra Kumar v. Union of India and others is regarding supervisory jurisdiction of the High Court over the orders passed by the Administrative Tribunals constituted under the Administrative Tribunals Act, 1985. The Supreme Court, has inter alia, held that the jurisdiction of the High Court under Article 226 of the Constitution of India remains in tact and the

orders passed by the Administrative Tribunals are appealable by filing a writ petition under Article 226 of the Constitution of India before a Division Bench of the High Court. In fact, by this judgment, an additional appellate forum is available for the employees who are aggrieved by the orders passed by the Administrative Tribunals under the Administrative Tribunals Act, 1985 and SLP under Article 136 of the Constitution of India is not maintainable directly before the Supreme Court unless this remedy before the High Court is exhausted, The reliance placed by the learned Counsel, therefore, on the judgment of the Supreme Court in the case of L. Chandra Kumar in support of his contentions that the petition is tenable before this Court under Article 226 of the Constitution of India is, therefore, devoid of merits.

6. We, therefore, hold that this petition is not tenable and the remedy for the petitioner Union for redressal of their grievance, as set out in the petition, lies before the Maharashtra Administrative Tribunal under the Administrative Tribunals Act, 1985. We, therefore, direct the Additional Registrar (Judicial) to transfer this petition to the Maharashtra Administrative Tribunal, Bench at Aurangabad and the same may be subject to the payment of fresh Court fees, if any.

7. The Government Pleader may take a note of this judgment and take suitable steps to get the similarly placed pending matters transferred to the Maharashtra Administrative Tribunal and if such matters, which are already admitted, are transferred, we request the Maharashtra Administrative Tribunal to dispose of these matters as expeditiously as possible and preferably within a period of six months from the receipt of such matters.