

(1997) 09 KL CK 0037
In the High Court Of Kerala
Case No : O.P. No. 12433/97

Maria and Another

APPELLANT

Vs

Senior Divisional Personal Officer Southern Railway and
Another

RESPONDENT

Date of Decision : 26-09-1997

Acts Referred:

Administrative Tribunals Act, 1985 — Section 28, 5(6)
Constitution of India, 1950 — Article 136, 226, 227, 32, 323A

Citation : (1998) 1 KLJ 63

Hon'ble Judges : C.S. Rajan, J

Bench : Single Bench

Advocate : R.T. Pradeep, for the Appellant; T.P.M. Ibrahim Khan, for 1st Respondent and V.N. Achutha Kurup and B.S. Sarath Kumar for 2nd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Rajan, J.—The prayer in the Original Petition is to stay the disbursement of amount towards the D.C.R.G. of late Shri K.M. George employed in Thiruvananthapuram Railway Division as Khalasi worker until the final adjudication of the subject matter in O.P. No. 539/97 pending before the Family Court, Thiruvananthapuram.

2. According to the Petitioners they are the legal wife of late Sri K.M. George and his son respectively. Since the matter relates to payment of gratuity to a late employee of the Railways, a preliminary objection has been raised that this Original Petition is not maintainable in this Court in view of the provisions contained in the Administrative Tribunals Act, 1985.

3. Sri R.T. Pradeep, learned Counsel appearing for the Petitioners strongly urged that this Court has got ample jurisdiction to deal with cases like this and that this Court's jurisdiction is not ousted by the provisions contained in the Administrative Tribunal's Act. According to him, the subject matter of this

Original Petition is not a matter which has to be dealt with by the Central Administrative Tribunal exclusively. In order to drive home the above point, the learned Counsel has relied on a decision of the Supreme Court reported in *State of Punjab Vs. Kailash Nath*, . According to the learned Counsel the expression "Conditions of service" will not take in within its scope the claim to gratuity of a deceased employee. But paragraph 7 of the above judgment is a complete answer to the arguments of the Petitioners, which reads as follows:

...the expression "conditions of service" means all those conditions which regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond it, in matters like pension etc.

7. In the normal course what falls within the purview of the term "conditions of service" may be classified as salary or wages including subsistence allowance during suspension, the periodical increments, pay scale, leave, provident fund, gratuity, confirmation, promotion seniority, tenure or termination of service, compulsory or premature retirement, superannuation, pension, changing the age of superannuation, deputation and disciplinary proceedings.

4. The learned Counsel also relied on two other decisions of the Supreme Court. The first is the decision reported in *R.K. Jain Vs. Union of India and Others*, . In the above case the Supreme Court was considering the question of appointment of the President of Customs, Excise and Gold Control Appellate Tribunal. Therefore I do not think that the above ruling is applicable to the facts of this case.

5. The second ruling which the learned Counsel relied on is the one reported in *L. Chandra Kumar Vs. Union of India and others*, . The following paragraphs were read to me by the learned Counsel:

92. We may add here that under the existing system, direct appeals have been provided from the decisions of all Tribunals to the Supreme Court under Article 136 of the Constitution. In view of our abovementioned observations, this situation will also stand modified. In the view that we have taken, no appeal from the decision of a Tribunal will directly lie before the Supreme Court under Article 136 of the Constitution; but instead, the aggrieved party will be entitled to move the High Court under Articles 226 / 227 of the Constitution and from the decision of the Division Bench of the High Court the aggrieved party could move this Court under Article 136 of the Constitution.

99. In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323A and Clause 3(d) of Article 323B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226 / 227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the Aegis of Articles 323A and 323B would, to the same extent, be constitutional. The jurisdiction conferred upon the High Courts under Articles 226 / 227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure

of our Constitution. While this jurisdiction cannot be ousted, other Courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226 / 227 and 32 of the Constitution. The Tribunals created under Article 323A and Article 323B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal) is challenged by over looking the jurisdiction of the concerned Tribunal. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.

Thus it is obvious that the Supreme Court was of definite view that this Court can entertain the petition under Article 226 / 227 of the Constitution against the decision of Central Administrative Tribunal. It does not go to show, as contended by the learned Counsel, that a party can approach this Court directly without resorting to the remedy under the Central Administrative Tribunals Act.

6. There cannot be any doubt that matters relating to an employee even after his retirement will come within the ambit of conditions of service. If the deceased employee cannot maintain an Original Petition before this Court while he was in service for getting the gratuity from the Railways the Petitioners who are his legal representatives also equally cannot approach this Court for the same relief. The fact that the Petitioners are only the legal representatives of the deceased employee will not clothe them with any better right than the deceased employee had. Therefore I do not find any merit in the contentions of the, Petitioners that this Original Petition is maintainable in this Court. Therefore the Original Petition is dismissed. I hold that this Original Petition is not maintainable in this Court.