

(2014) 04 PAT CK 0031

In the Patna High Court

Case No : CWJC Nos. 3741, 3774, 3799, 3807, 3916, 3942, 13043, 15757 of 2007 and 1735, 1847, 1979, 1995 of 2008

Motilal Singh

APPELLANT

Vs

The Chief G.M. (Telecommunication)
 Rajanesh Kumar
Singh Vs The Bharat Sanchar Nigam Ltd.

RESPONDENT

Date of Decision : 01-04-2014

Acts Referred:

Citation : (2014) 3 PLJR 205

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Shivendra Kishore, Alka Verma, Jagannath Singh and Nirmal Kumar Sinha-3, Advocate for the Appellant; Renuka Sharma and Ashok Kumar Dubey, Advocate for the Respondent

Judgement

Chakradhari Sharan Singh, J.—The common question of law in all these cases has arisen as to whether all these writ applications should be treated to have been transferred to the Central Administrative Tribunal by operation of Section 29(2) of the Administrative Tribunals Act, 1985 (hereinafter referred to as the Act) read with Sections 14(2) and 14(3) of the said Act. The petitioner in CWJC No. 13043/2007 seeks a direction for quashing of the order dated 22.9.2006 passed by the respondent General Manager (Maintenance), ETR, Patna whereby his services have been terminated. He has also prayed for quashing of order dated 22.6.2004 whereby his services have been reverted to "Daily Rate Mazdoor" from a "Regular Mazdoor". The petitioner in CWJC No. 15757/2007, on the other hand, seeks direction commanding the respondents to make payment of wages for the period given therein. Petitioners of all other cases seek direction for regularization of their services in Bharat Sanchar Nigam Ltd. Evidently, the grievance of all these petitioners pertain "to service" in the Bharat Sanchar Nigam Ltd.

2. This is to be noted and not in dispute that Bharat Sanchar Nigam Ltd. was

constituted in the year 2000. The employees working under the Department of Telegraph and Telephone Department of Govt. of India became employees of the Bharat Sanchar Nigam Ltd. either by way of deputation or by way of their absorption under some schemes framed at the time of creation of Bharat Sanchar Nigam Ltd. Telegraph Department being a part of the Govt. of India, service matters pertaining to employees of the department fell within the jurisdiction of the Central Administrative Tribunal in view of the provision under Section 14(1)(b)(ii) of the Act prior to creation of Bharat Sanchar Nigam Ltd. After creation of Bharat Sanchar Nigam Ltd., though the employees of Telegraph Department were absorbed in Bharat Sanchar Nigam Ltd. or were sent to Bharat Sanchar Nigam Ltd. on deputation, there being no simultaneous notification in terms of Section 14(2) of the Act, the matters pertaining to their services stood excluded from the purview of the Administrative Tribunals Act, 1985. However, the Ministry of Personnel, Public Grievance and Pensions (Department of Personnel and Training) Govt. of India subsequently came out with a notification issued in exercise of powers conferred under sub-section (2) of Section 14 of the Act with respect to the company, i.e., Bharat Sanchar Nigam Ltd. declaring that the Act will apply to the Corporations mentioned in the notification including Bharat Sanchar Nigam Ltd. The notification specified "10.11.2008" as the specified date on and from which provisions of sub-section (3) of Section 14 of the Act shall apply to the organizations mentioned in the said notification including Bharat Sanchar Nigam Ltd. There is no controversy up to this. What will be the effect of such notification on the writ proceedings instituted and pending before this court on or prior to issuance of the notification is the question involved.

3. This is to be kept in mind that all these writ applications were filed prior to issuance of the notification dated 31.10.2008.

4. Section 14(2) of the Act provides that the Central Government may, by notification, apply "with effect from such date as may be specified" in the notification, the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to Corporations [or Societies] owned or controlled by Government, not being a local or other authority or corporation [or society] controlled or owned by State Government. Sub-section (3) provides that Central Administrative Tribunal shall exercise, on and from the date with effect from which the provisions of this section apply to any local or other authority of corporation or society, all the jurisdiction, powers and authority exercisable immediately before that date by all Courts (except the Supreme Court) in relation to--

"(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation [or society]; and

(b) all service matters concerning a person [other than a person referred to the clause (a) or clause (b) of subsection (1)] appointment to any service or post in

connection with the affairs of such local or other authority or corporation [or society] and pertaining to the service of such person in connection with such affairs."

5. Section 29 of the Act deals with transfer of pending cases and as this is the provision which requires interpretation for the purpose of present order, it would be apt to quote the provision verbatim which reads thus:--

"29. Transfer of pending cases -- (1) Every suit or other proceeding pending before any Court or other authority immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal:

Provided that nothing in this subsection shall apply to any appeal pending as aforesaid before a High Court [***].

(2) Every suit or other proceeding pending before a Court or other authority immediately before the date with effect from which jurisdiction is conferred on a Tribunal in relation to any local or other authority or corporation [or society], being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after the said date, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal:

Provided that nothing in this subsection shall apply to any appeal pending as aforesaid before a High Court [***].

Explanation.--For the purpose of this sub-section "date with effect from which jurisdiction is conferred on a Tribunal", in relation to any local or other authority or corporation [or society], means the date with effect from which the provisions of sub-section (3) of Section 14 or, as the case may be, subsection (3) of Section 15 are applied to such local or other authority or corporation [or society]."

6. From a bare reading of Section 29(2) of the Act, it would appear that the provision requires transfer of every suit or other proceeding pending before a court or other authority immediately before the date with effect from which jurisdiction is conferred on a Tribunal in relation to any local or other authority or corporation, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after the said date, within the jurisdiction of such Tribunal. The provision mandates that all suits or proceedings pending before a court immediately before the date with effect from which jurisdiction is conferred on the Tribunal would stand transferred to the Administrative Tribunal.

7. This is to be noted that in the notification dated 31.10.2008, the date with effect from which provisions of sub-section (3) of Section 14 with respect to Bharat Sanchar Nigam Ltd. have made to apply has been specified as 10.11.2008. In my opinion, in terms of Section 29(2), all proceedings pending in

any court prior to the said specified date, i.e., 10.11.2008 shall stand transferred to Central Administrative Tribunal.

8. Learned senior counsel appearing on behalf of the petitioners, however, attempted to read explanation to Section 29 of the Act to contend that only such proceedings are required to be transferred which were instituted after the specified date with effect from which the provisions of sub-section (3) of Section 14 of the Act have been made to apply in the notification dated 31.10.2008. This submission cannot be accepted for a simple reason that there would not be question of transfer of a proceeding instituted after the specified date because the proceeding has to be instituted at the first instance before the Central Administrative Tribunal after the specified date or the date with effect from which the jurisdiction is conferred on the Tribunal. When Section 29 of the Act talks of transfer of pending cases, it certainly deals with only such matters which are pending prior to the specified date, that is, the date with effect from which the jurisdiction is conferred on the Tribunal.

9. It has also been argued that the reason behind furnishing explanation to Section 29(2) of the Act is that the Tribunal shall acquire jurisdiction to deal with matters specified under Section 14(3) of the Act only from the date specified in the notification issued under Section 14(3) of the Act and, therefore, the proceedings pending before the court prior to the said date would not stand transferred by virtue of Section 29(2) of the Act since the court had jurisdiction to deal with the matter, prior to the date specified in the notification under Section 14(2) of the Act. Even this submission cannot be accepted. Explanation to Section 29 of the Act deals with transfer of pending cases immediately before "date with effect from which jurisdiction is conferred on a Tribunal" and not "the date of notification". This would simply mean that a proceeding instituted before this court even after issuance of notification but prior to the specified date shall stand transferred by virtue of Section 29(2) of the Act. In my opinion, purpose of Section 29(2) of the Act is to ensure that the Administrative Tribunal exercises jurisdiction with respect to all matters pertaining to service in relation to the bodies/organizations notified under Section 14(2) including suits/proceedings/cases instituted already or to be instituted after the specified date, before a court or other authority, barring exception of Appeals pending before High Courts.

10. Learned counsel for the petitioners has also placed reliance upon an order of this court reported in Radhe Raman Kumar Vs. The Union of India and Others wherein this court has held that the notification dated 31.10.2008 issued in exercise of power under Section 14(3) of the Act is prospective in nature with effect from 10.11.2008 and, therefore, such proceedings are not required to be transferred to the Central Administrative Tribunal.

11. I have carefully gone through the order of this court in case of Radhe Raman Kumar (supra). It appears to me that the said order has been passed without noticing the provisions of Section 29(2) of the Act. The said order having been passed in ignorance of the said statutory provision, cannot be treated as binding

precedent. Such decision in my opinion is per incuriam.

12. It has been held by the Supreme Court in the case of A.R. Antulay Vs. R.S. Nayak and Another, that per incuriam are those decisions given in ignorance or forgetfulness of some inconsistent statutory provisions or of some authority binding on the court concerned. The Supreme Court in the said judgment in paragraph 47 has held that if a decision has been given per incuriam, the court can ignore it. I am of the considered view, therefore, that the order of this court in case of Radhe Raman Kumar (supra) being per incuriam cannot be treated as binding precedent.

In view of discussions as above I hold that all matters pertaining to service in Bharat Sanchar Nigam Ltd. pending in this court, barring appeals, on or before the specified date i.e. 10.11.2008 stood transferred to the Central Administrative Tribunal, Patna with effect from 10.11.2008 by virtue of notification dated 31.10.2008 issued by the Government of India under Section 29(2) of the Administrative Tribunals Act, 1985.