
(2011) 11 AP CK 0113
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 228 of 2010

Mr. Mohammad Azmat

APPELLANT

Vs

Director of Intermediate Education, Andhra Pradesh,
Hyderabad and Others

RESPONDENT

Date of Decision : 25-11-2011

Acts Referred:

Administrative Tribunals (Amendment) Act, 1986 — Section 2, 28
Administrative Tribunals Act, 1985 — Section 14, 15, 15(1), 2, 3
Andhra Pradesh State and Subordinate Service Rules, 1996 — Rule 2(15), 4, 9
Constitution of India, 1950 — Article 16, 226, 227, 308, 309

Citation : (2012) 3 ALT 151

Hon'ble Judges : V.V.S. Raothe, J;Sanjay Kumar, J;Ramesh Ranganathan, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Sri Justice Sanjay Kumar

1. The following issues, framed by a learned Division Bench comprising two of us (VVS & RR JJ), were referred to this Full Bench for consideration and decision:
(i) Whether a person appointed by the Government on contract basis under Rule 9(a) of the Andhra Pradesh State and Subordinate Service Rules, 1996 holds a civil post under the State?

(ii) Whether service matters concerning such a person fall within the ambit of Section 15(1)(a) and (b) of the Administrative Tribunals Act, 1985, necessitating his invoking the jurisdiction of the Andhra Pradesh Administrative Tribunal in the first instance?

The reference arose in the context of the writ appeal on hand filed against the order dated 29.01.2010 passed by a learned single Judge dismissing Writ Petition No. 25221 of 2009 as not maintainable. 2. It was the case of the appellant/writ petitioner that he was appointed as a contract junior lecturer in the fourth respondent Government Junior College at Korutla, Karimnagar District, during

the academic year 2006-07 and that his contractual appointment was renewed each year thereafter. However, his services were not continued during the academic year 2009-10. Aggrieved thereby, he filed the subject writ petition before this Court for a declaration that the action of the respondents in not continuing him as a contract junior lecturer was illegal and seeking a consequential direction to continue him in service as such.

3. The learned single Judge, at the threshold, was of the opinion that as the writ petitioner was in Government service, his grievance had to be agitated in the first instance before the Tribunal constituted under the Administrative Tribunals Act, 1985 (for brevity, "the Act of 1985") and accordingly dismissed the writ petition granting him liberty to work out his remedy.

4. The present writ appeal was filed contending that the decision of a learned Division Bench of this Court in Government of A.P. and Others Vs. P. Sulochanamma and Others, , holding the Act of 1985 inapplicable to a contract employee of the Government, barring the appellant/writ petitioner from approaching the Andhra Pradesh Administrative Tribunal would require reconsideration. When the matter was listed on 04.08.2010, the learned Division Bench took note of certain observations made in P. SULOCHANAMMA in the context of Rule 9 of the Andhra Pradesh State and Subordinate Service Rules, 1996 and having regard to the observations made by the Supreme Court in State of Karnataka and Others Vs. Ameerbi and Others, opined that the matter required reconsideration. In consequence, the reference, framing the two questions detailed supra for consideration and decision.

5. Heard Sri G.Vidya Sagar, learned counsel for the appellant/writ petitioner and Sri Siva, learned Special Government Pleader representing the learned Additional Advocate General for the State.

6. Chapter I of Part XIV of the Constitution, comprising Articles 308 to 314, deals with services under the Union and the States.

7. A brief overview of relevant Articles--

8. Article 309 provides that, subject to other constitutional provisions, Acts of the appropriate legislature may regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or a State. The proviso thereto enables promulgation of rules regulating recruitment and conditions of service of persons appointed to services and posts in connection with the affairs of the Union or a State, until a provision in that behalf is made by an Act of the appropriate legislature. Clause (1) of Article 310 provides that every person who is a member of a defence service or of a civil service of the Union or of an all-India service or holds any post connected with the defence or any civil post under the Union holds office during the pleasure of the President and every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor of the State. Clause (2) of Article 310 provides that a person with

special qualifications appointed under a contract, not being a member of a defence service or of an all-India service or of a civil service of the Union or a State, is guaranteed security of tenure and is entitled to be compensated if, before expiration of the agreed period under the contract, he is required to vacate the post for reasons not connected with any misconduct on his part. Article 311 is concerned with the dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State. Clause (1) thereof provides that no person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. Clause (2) of Article 311 provides that no such person shall be dismissed or removed or reduced in rank except after an enquiry, in which he has been informed of the charges framed against him and given a reasonable opportunity of being heard in respect of those charges.

9. This constitutional framework is a necessary backdrop for appreciating the issues that arise for consideration.

10. Pertinent to note, though Article 309 speaks of public services, Article 311 speaks of a civil service of the Union or a State or a civil post under the Union or a State. These phrases are not defined in the Constitution but the distinctive use of one or the other in the aforesaid Articles was obviously with definite purpose. Article 310 gives a clear indication as to the difference between a "public service" and a "civil service" by separating members of a defence service from members of a civil service of the Union or a State. Ergo, excluding defence services, all other services of a civil nature, be it under the Union or a State, would fall within the ambit of civil services. It is also necessary to note that apart from speaking of members of a civil service of the Union or a State, Articles 310 and 311 both speak of persons who hold "civil posts" under the Union or a State. Thus, a distinction needs to be drawn between persons who are members of a civil service under the Union or a State and persons who are merely holding civil posts under the Union or a State.

11. The term "civil post" is not defined in the Constitution but reading Articles 310 and 311 together, the conclusion is inescapable that a "civil post" means a post or office on the civil side of the administration as distinguished from a post connected with defence. It cannot be confined merely to posts which are borne on the cadre of any regularly constituted service and any post held by any public servant, if it does not belong to the military department or the defence forces, must be deemed to be a civil post [S.Mohan Singh V. Patiala and East Punjab States Union, Patiala Air 1954 Pepsu 136 (DB) and Judicial Dictionary by Justice L.P.Singh and P.K.Majumdar, Second Edition, Reprint 2003].

12. The observations of a Constitution Bench in *State of Assam and Others Vs. Shri Kanak Chandra Dutta*, are particularly illuminating in this regard:

9. There is no formal definition of "post" and "civil post". The sense in which they

are used in the Service Chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Article 310 from a post connected with defence; it is a post on the civil as distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State. See marginal note to Article 311. In Article 311, a member of a civil service of the Union or an all-India service or a civil service of a State is mentioned separately, and a civil post means a post not connected with defence outside the regular civil services. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State. See the marginal notes to Articles 309, 310 and 311. The heading and the sub-heading of Part XIV and Chapter I emphasise the element of service. There is a relationship of master and servant between the State and a person holding a post under it. The existence of this relationship 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. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post.

10. In the context of Articles 309, 310 and 311, a post denotes an office. A person who holds a civil post under a State holds "office" during the pleasure of the Governor of the State, except as expressly provided by the Constitution. See Article 310. A post under the State is an office or a position to which duties in connection with the affairs of the State are attached, an office or a position to which a person is appointed and which may exist apart from and independently of the holder of the post. Article 310(2) contemplates that a post may be abolished and a person holding a post may be required to vacate the post, and it emphasises the idea of a post existing apart from the holder of the post. A post may be created before the appointment or simultaneously with it. A post is an employment, but every employment is not a post. A casual labourer is not the holder of a post. A post under the State means a post under the administrative control of the State. The State may create or abolish the post and may regulate the conditions of service of persons appointed to the post.

13. Reference may also be made to the observations of another Constitution Bench in *State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others*,

27. We do not propose and indeed 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. Several factors may indicate the relationship of master and servant. None may be conclusive. On the other hand, 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 other 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 and 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.

14. In *Union of India and others Vs. Deep Chand Pandey and another*, the question that fell for decision before the Supreme Court was whether casual Typists engaged by the Union of India were the holders of civil posts requiring them to approach the Tribunal constituted under the Act of 1985 in the first instance. The argument advanced was that as the Typists were engaged on casual basis, they were not holding any civil posts under the Union and therefore the Act of 1985 would not be attracted. The Court observed that the scheme of Article 323A of the Constitution permitting the Parliament to legislate on the subject covered therein was very wide and by enacting the Act of 1985 this power had been exercised in almost full measure. Adverting to Sections 14 and 3(q) of the Act of 1985, the Court held that there was nothing to suggest that the provisions dealing with the jurisdiction of the Tribunal should receive a narrow interpretation. The Court accordingly held that the remedy of the Typists was before the Tribunal in the first instance.

15. In *STATE OF KARNATAKA v. AMEERBI*, the Supreme Court was considering whether Anganwadi workers and helpers appointed under the Integrated Child Development Service Programme held civil posts. The Court found that the posts of Anganwadi worker were not statutory posts but were only created in terms of the Scheme. The Court pointed out that it was one thing to say that there exists a relationship of employer and employee between the State and Anganwadi workers but it is another thing to say that they are holders of civil posts. The Court further found that Anganwadi workers did not carry on any function of the State and did not hold a post under a statute. Their posts were not created and recruitment rules, ordinarily applicable to the employees of the State, were not applicable in their case. The Court observed that appointments made under a scheme through a recruitment process carried out by a committee would not render the incumbents thereof holders of "civil posts". No rule or regulation governed the mode of their recruitment and therefore, the Court concluded that the Tribunal constituted under the Act of 1985 had no jurisdiction to entertain the application filed by such Anganwadi workers.

16. More recently, the Supreme Court had occasion to deal with this issue in *State of West Bengal and Another Vs. West Bengal Regn. Copy Writers Assn. and Another*, . The Court was considering whether copywriters in various Registration offices of the State of West Bengal were entitled to be absorbed in Government service - the core issue being whether there was any "master-servant" relationship between the State Government and the copywriters. The Administrative Tribunal found that the copywriters were mere licence holders and

that there was no relationship of master-and-servant between the State Government and them. It accordingly dismissed their applications. The High Court reversed the order of the Administrative Tribunal; found that there existed a relationship of master-and-servant between the State Government and the copywriters and held them entitled to the relief claimed. In appeal, the Supreme Court pointed out that the essence of a master-and-servant relationship is that the servant must be retained by the master for doing any duties given by the master and the remuneration must flow from the master to the servant. The servant must be under the total control of the master in so far as the duties are concerned. Considering these factors cumulatively, the Court found that there was no trace of such relationship between the State Government and the copywriters as they were merely licensees and there was no control over the manner in which they did their work of copying; there was no disciplinary control as the control provided was only qua the licences and crucially, they were not paid wages by the Government.

17. The Supreme Court considered KANAK CHANDRA DUTTA and found that there was no similarity between the duties of copywriters and the duties of Mauzadars in KANAK CHANDRA DUTTA . The Court then considered its later judgment in Union Public Service Commission Vs. Girish Jayanti Lal Vaghela and Others, which affirmed that the appointment of a person under the administration of a Union Territory on contract basis for a short period, de hors the statutory rules and without complying with Article 16, would not entitle such person to claim that he is a Government servant. The Court pointed out therein that such a person could not be viewed as a person holding a civil post. Reliance was placed on Cassidy v. Ministry of Health 1951 1 All Er 574 (CA) in the context of a "contract for service" where the master can order or require what is to be done as compared to a "contract of service" where he can not only order or require what is to be done, but can also direct how it is to be done. The Court also pointed out that the indicia laid down in KANAK CHANDRA DUTTA could not be the only test for determining whether a person holds a civil post.

18. Summing up, the Supreme Court observed that a look at GIRISH JAYANTI LAL VAGHELA suggested that the rules for appointment were to be given the utmost importance and found there were no such rules for appointment of copywriters and the rules only provided for creation and control of licences.

19. Considering RAMAN LAL KESHAV LAL SONI , the Supreme Court held that the situation therein was entirely different. As every case has to be decided on its own facts and there was no parity on facts between the two cases, RAMAN LAL KESHAV LAL SONI was held to be of no avail to the copywriters.

20. Dealing with Superintendent of The Superintendent of Post Offices and Others Vs. P.K. Rajamma, , the Supreme Court found that the rules relating to Extra-Departmental Branch Post Masters and Extra-Departmental Delivery Agents, whereby such persons were held to hold civil posts, were entirely different from the rules relating to copywriters. The Court therefore concluded

that copywriters did not do any Government duty; they were not controlled in the matters of their attendance, working hours, leave, pension and output of work and they were not paid from the Government coffers. In consequence, the Court held that there was no master-servant relationship between the Government and them.

21. Applying the above principles to the case on hand, the appellant/writ petitioner demonstrably stands on a different footing. He was appointed after due selection on a consolidated monthly salary by the fourth respondent Government college and his functioning and teaching were completely controlled by it. Further, his very appointment by contract was as per the relevant rules, the Andhra Pradesh State and Subordinate Service Rules, 1996 (for brevity, "the Rules of 1996").

22. The Rules of 1996 were framed under the proviso to Article 309 of the Constitution and apply to the State and subordinate Services and also to the holders of posts, appointed by contract or an agreement subsisting between such holders and the State Government, except to the extent otherwise expressly provided [Rule 1(c)]. "Direct recruitment" is defined under Rule 2(15) as under:

Direct Recruitment:-A candidate is said to be recruited direct to a post, class or category in a service, in case his first appointment thereto is made otherwise than by the following methods:

- (I) by promotion from a lower post, category or class in that service or from a lower grade of any such post, category or class, or
- (ii) by transfer from any other class of that service, or
- (iii) by appointment by transfer from any other service, or
- (iv) by re-employment of a person in case he had retired from service of Government prior to such appointment, or
- (v) by appointment by agreement or contract.

23. Rule 4 deals with method of appointment, and to the extent relevant, reads thus:

4. Method of Appointment:- (a) Appointment to any service, class or category shall be by one or more of the methods indicated below as may be specified in the Special Rules applicable to the relevant post:

- 1. Direct recruitment
- 2. Recruitment/Appointment by transfer
- 3. Promotion or
- 4. Contract/Agreement/Re-employment

24. It is therefore clear that appointment by agreement or contract would not

qualify as direct recruitment but is one of the methods of appointment under Rule 4. Rule 9 deals with appointment by agreement or contract.

9. Appointment by Agreement or Contract:

(a)(i) Notwithstanding anything contained in these rules or special rules it shall be open to the State Government to make appointment to any post in a service, class or category, otherwise than in accordance with these rules or special rules and to provide by agreement or contract with the person(s) so appointed, for any of the matters in respect of which, in the opinion of the State Government, special provisions are required to be made and to the extent to which such provisions are made in the agreement or contract, nothing in these rules or the special rules shall apply to any person so appointed in respect of any matter for which provision is made in the agreement or contract:

Provided that in every agreement or contract made in exercise of the powers conferred by these rules, it shall further be provided that in respect of any matter in which no provision has been made in the agreement or contract, provisions of these rules or special rules relating to the post shall apply.

(ii) The agreement or contract may inter alia include provisions in respect of conditions of service, pay and allowances, discipline, contract period of appointment, notice period for termination of appointment by either party and other relevant matters.

(iii) The Government may, by order, prescribe the form of such agreement or contract.

(b) A person appointed under sub-rule (a) shall not be regarded as a member of the service, in which the post to which he is appointed, is included and shall not be entitled by reason only of such appointment, to any preferential right to any other appointment in that or in any other service.

25. Rule 9(b) makes it clear that a person appointed by agreement or contract would not be a member of the service in which the post to which he is appointed is included and would therefore not be entitled, by reason of his appointment, to any preferential right to any other appointment in that or in any other service. However, as these appointments are permitted under Rule 4, such appointees would consequently form a separate category by themselves, but would not be part of a service under the State though the posts to which they were appointed may find inclusion in such service.

26. Article 323A in Part XIVA of the Constitution deals with Administrative Tribunals and empowers the Parliament, by law, to provide for the adjudication or trial of disputes and complaints pertaining to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State, amongst others, by Administrative Tribunals.

27. Article 323A speaks of public services and posts in connection with the affairs

of the Union or a State and the wide latitude afforded by these phrases cannot be whittled down to exclude those who are per se holding posts in connection with the affairs of the Union or a State or are in public services.

28. As pointed out in Chief Justice of Andhra Pradesh and Others Vs. L.V.A. Dixitulu and Others, the primary principle of interpretation is that a constitutional or statutory provision should be construed "according to the intent of they that made it" (Coke). ... where two alternative constructions are possible, the Court must choose the one which will be in accordance with the other parts of the statute and ensure its smooth, harmonious working, and eschew the other which leads to absurdity, confusion or friction, contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment. These canons of construction apply to the interpretation of our Constitution with greater force, because the Constitution is a living, integrated organism having a soul and consciousness of its own.

29. The Court is expected to and it should interpret the terms of the Constitution without doing violence to the language to suit the expanding needs of the society Managing Director, Ecil, Hyderabad v. B. Karunakar 1993 4 Scc 7271. The thrust of Article 323A, as is evident from the emphatic overriding effect it has under clause (3), is to provide a separate forum for resolution of disputes pertaining to the recruitment and service conditions of public services as well as posts connected to the affairs of the Union or a State. The import and effect of the Article must therefore be contoured by the wide amplitude of the language used therein and cannot be pared down to defeat the very objective sought to be achieved.

30. In exercise of the power conferred by Article 323A, the Act of 1985 was promulgated providing for establishment of separate Tribunals to resolve disputes pertaining to Central and State services and posts. Section 2 of the said Act excludes from its applicability members of the naval, military, air force and other armed forces of the Union. In effect, only civil services and civil posts in connection with the affairs of the Union or a State fall within the ambit of the Tribunals constituted under this Act.

31. The phrase "posts in connection with the affairs of the Union or of any State" in Article 323A undeniably takes within its fold all "civil posts". That being so, there is no reason as to why an appointment to a "civil post", be it even by an agreement or a contract, should be excluded from the purview of Article 323A and consequently, the Act of 1985. As pointed out in DEEP CHAND PANDEY , the legislature power conferred by Article 323A has been exercised in full measure by enacting the Act of 1985 and its provisions, dealing with the jurisdiction of the Tribunals constituted thereunder, have to be given full play and operation to achieve the underlying purpose. The Rules of 1996 would therefore have to be interpreted in conformity with the constitutional and statutory schemes envisioned by Article 323A and the Act of 1985 respectively, lest they fall foul thereof.

32. Trite to state, it is a well-settled rule of construction of statutes that where two interpretations are possible, one of which would preserve and save the constitutionality of the particular statutory provision while the other would render it unconstitutional and void, the one which saves and preserves its constitutionality should be adopted and the other rejected Union of India and Another Vs. Tulsiram Patel and Others,

33. Section 14 of the Act of 1985 deals with the jurisdiction, powers and authority of the Central Administrative Tribunal while Section 15 pertains to the jurisdiction, powers and authority of the State Administrative Tribunals. After the abolition of the Andhra Pradesh State Administrative Tribunal constituted under the Presidential Order, 1975 promulgated under Article 371D(3) of the Constitution, the Andhra Pradesh Administrative Tribunal was constituted under the Act of 1985. Its jurisdiction and powers are therefore delineated by Section 15 of the Act of 1985. Section 15 of the Act of 1985 is as under:

15. Jurisdiction, powers and authority of State Administrative Tribunals:

(1) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately, before that day by all Courts (except the Supreme Court) in relation to -

(a) recruitment, and matters concerning recruitment, to any civil service of the State or to any Civil post under the State;

(b) all service matters concerning a person [not being a person referred to in clause (c) of this sub-section or a member, person or civilian referred to in clause (b) of sub-section (1) of Section 14] appointed to any civil service of the State or any civil post under the State and pertaining to the service of such person in connection with the affairs of the State or of any local or other authority under the control of the State Government or of any corporation (or society) owned or controlled by the State Government;

(c) all service matters pertaining to service in connection with the affairs of the State concerning a person appointed to any service or post referred to in clause (b), being a person whose services have been placed by any such local or other authority or Corporation (or Society) or other body as is controlled or owned by the State Government at the disposal of the State Government for such appointment.

(2) The State 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 and corporations (or Societies) controlled or owned by the State Government;

Provided that if the State Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes

of, or different categories under any class of local or other authorities or corporations (or Societies).

(3) Save as otherwise expressly provided in this Act the Administrative Tribunal for a State shall also exercise on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or 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 in clause (b) of sub-section (1) of this section or a member, person or civilian referred to in clause (b) of sub-section (1) of Section 14] appointed 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.

(4) For the removal of doubts it is hereby declared that the jurisdiction, powers and authority of the Administrative Tribunal for a State shall not extend to or be exercisable in relation to, any matter in relation to which the jurisdiction, powers and authority of the Central Administrative Tribunal extends or is exercisable."

34. In *L. Chandra Kumar Vs. Union of India and others*, , a seven Judge Constitution Bench held that the Tribunals constituted under the Act of 1985 would be the only Courts of first instance in respect of the areas of law for which they were constituted and that it would not be open for litigants to directly approach the High Court overlooking the jurisdiction of the concerned Tribunal. When the very constitution of Tribunals under the Act of 1985 is to enable them to perform a supplemental role to the constitutional Courts in discharging the powers conferred by Articles 226/227 and 32 of the Constitution, as observed in *L.CHANDRA KUMAR* , it would be counter-productive and retrogressive to restrict the plenitude of the words used in Article 323A and the provisions of the Act of 1985.

35. Reference may also be made to a recent Judgment of this Court in *B. Satyanarayana Vs. A.P. Administrative Tribunal and Others*, wherein a Division Bench, which included one of us (VVSR,J), was considering the issue as to whether a Clerk in the Andhra Pradesh State Road Transport Corporation could approach the Andhra Pradesh Administrative Tribunal under the provisions of the Act of 1985 in the light of the amendment made to Sections 2 and 28 thereof. The contention advanced was that after the omission of Section 2(b) and the amendment to Section 28 under the Administrative Tribunals (Amendment) Act, 1986, every workman, including an employee of the Andhra Pradesh State Road Transport Corporation, had the right to approach the Tribunal constituted under the Act of 1985. Section 2 of the Act of 1985 delineates the persons to whom the

provisions thereof would not apply. Section 2(b), as it originally stood, excluded persons governed by the provisions of the Industrial Disputes Act, 1947 from the ambit of the Act. However, under the Amendment Act, 1986, Section 2(b) was omitted and Section 28 of the Act of 1985, which deals with the exclusion of jurisdiction of Courts, was amended to the effect that jurisdiction of Industrial Tribunals, Labour Courts and other Authorities constituted under the Industrial Disputes Act, 1947 was not excluded and they were entitled to exercise jurisdiction, powers and authority in relation to service matters which also fell within the ambit and jurisdiction of Tribunals constituted under the Act of 1985. Considering the aforesaid provisions, the Division Bench held as under:

9. The amendment, in our considered opinion, was made to safeguard the rights of employees whose disputes are industrial disputes as well as service matters. It was never intended to enlarge the jurisdiction of the Administrative Tribunal and extend its jurisdiction even to service matters in relation to persons appointed in connection with the affairs of the Corporation. The submission of the Counsel for the petitioners, therefore, cannot be accepted. The omission of Section 2(b) by itself does not confer the jurisdiction on the Administrative Tribunal nor bring the service matters of APSRTC employees within its jurisdiction. Therefore, though for a different reason, we do not find any substance in the writ petition.

36. In the light of the aforesaid decision, it is manifest that the Act of 1985 itself made it explicit u/s 2 thereof as to who were the persons excluded from its ambit and applicability. It is equally clear that persons holding posts in connection with the affairs of the Union or of a State, although under a contract or an agreement, are not specifically excluded from the purview of the Act of 1985. A *casus omissus* (a point unprovided for by a statute) ought not to be created by interpretation, save in some case of strong necessity [Per Lord Fitzgerald in *Mersey Docks Board v. Henderson* App. Cas. 595, at p.607]. It is therefore not for this Court to expand the contours of Section 2 of the Act of 1985 by reading something other than what is perspicuous therefrom. We are therefore of the opinion that the provisions of the Act of 1985 do not exclude, as a general rule, persons validly holding posts in connection with the affairs of the Union or of a State, albeit under a contract or an agreement.

37. The issue then arises as to whether a contractual appointee such as the appellant/writ petitioner would be covered by Section 15(1)(a) and (b) above and would have to approach the Tribunal constituted under the Act of 1985 in the first instance.

38. The terms of agreement whereby the appellant/writ petitioner was appointed as a contract junior lecturer in the fourth respondent Junior College reflect that he had to perform the teaching work entrusted by the College in accordance with the curriculum of the intermediate syllabus during the stipulated period and that he had to reach the pass percentage of the district average of Government Junior Colleges during the previous year. He also had to carry out further instructions given to him by the College in the discharge of his duties. He was to be paid a

consolidated amount of Rs.5,500/- per month by the College and his performance was to be reviewed by the College periodically. The College was entitled to terminate the agreement at any time but the appellant/writ petitioner was entitled to know the reasons for such termination during the contract period. The aforesaid conditions of service of the appellant/writ petitioner demonstrate that the appellant/writ petitioner was under the total control of the College and he was appointed under a "contract of service" and not a "contract for service". Therefore, viewed in the context of the constitutional/statutory framework detailed supra, this contract of service qualified the appellant/writ petitioner as a holder of a "civil post" under the State governed by the Rules of 1996.

39. In *P. SULOCHANAMMA*, the termination from service of contractual Multipurpose Health Assistants appointed under the "National Rural Health Mission" scheme was in issue. The learned Division Bench, having referred to Rules 2(15), 4 and 9 of the Rules of 1996 in the context of Section 15 of the Act of 1985, came to the conclusion that a contract appointee, not being a member of a service, could not be said to hold any post under any service of the State or a civil post. The observations of the learned Division Bench in this regard are as under:

11. Clauses (a), (b) and (c) above clearly refer to civil services or a civil post under the State, which is a sine qua non for approaching the State Administrative Tribunal for reliefs relating to recruitment, matter connecting to recruitment to any civil service of the State or any civil post under the State. Rule 9(b) of Andhra Pradesh State and Subordinate Service Rules referred to above clearly excludes a contract appointee from being regarded as a member of the service and thereby a contract appointee cannot be said to hold any post under any service of the State nor he can be said to hold a civil post. Therefore, the applicant could not have approached the tribunal for any relief, as the O.A itself is not maintainable for the reasons aforesaid.

40. Notably, *KANAK CHANDRA DUTTA*, *RAMAN LAL KESHAV LAL SONI* and *AMEERBI* were not brought to the notice of the learned Division Bench. The distinction between a member of a civil service of the Union or a State and a person merely holding a civil post under the Union or a State was also not considered in the context of the constitutional and statutory provisions mentioned supra. The learned Division Bench was of the opinion that once Rule 9(b) of the Rules of 1996 excluded a contract appointee from being regarded as a member of the service, he cannot be said to hold any post under any service of the State nor can he be said to hold a civil post. This approach lost sight of the fact that merely because a person did not become a member of a service owing to his contractual appointment, it would not automatically mean that he is also not holding a civil post under the Union or a State. Every member of a civil service ineluctably holds a civil post but the converse may not follow ordinarily as every holder of a civil post need not be a member of a civil service. As to whether such a contractual appointee held a civil post would be dependent on

the tests enumerated and adumbrated by the Supreme Court in the various decisions referred to supra. As the same were not brought to the notice of the learned Division Bench, these tests were not applied.

41. Further, the learned Division Bench was dealing with appointments of Multi Purpose Health Assistants under a scheme akin to that governing appointments of Anganwadi workers in AMEERBI . Therefore the learned Division Bench was correct in concluding that such Multi Purpose Health Assistants did not hold civil posts for the reasons recorded in AMEERBI . However, the general observation thereafter that a contract appointee cannot be said to hold a civil post, with due respect to the learned Division Bench, is not in keeping with the constitutional/statutory framework and the law laid down by the Supreme Court.

42. On the above analysis, we hold that the appellant/writ petitioner, a contractual junior lecturer appointed under Rule 9(a) of the Andhra Pradesh State and Subordinate Service Rules, 1996, holds a civil post and would be required to approach the Tribunal constituted under the Act of 1985 in the first instance for redressal of the grievance raised by him in the writ petition. We further hold that the Judgment of the learned Division Bench in P. SULOCHANAMMA to the extent that it held that a contract appointee cannot be said to hold a civil post does not lay down correct law. We answer the reference accordingly. No other issue survives for adjudication in the Writ Appeal, which is accordingly dismissed. Parties shall bear their own costs.