
(1991) 09 PAT CK 0009

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2095 of 1989 (R)

Munilal Ram

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 30-09-1991

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 29, 3(q)

Citation : (1993) 1 PLJR 350

Hon'ble Judges : S.B. Sinha, J;N. Rai, J

Bench : Division Bench

Advocate : Kalyan Roy, for the Appellant; Debi Prasad, for the Respondent

Judgement

S.B. Sinha and N. Rai, JJ.—In this application the petitioner who has superannuated on 30.4.1986 has prayed for issuance of an appropriate writ for setting aside the order dated 8.2.1989 whereby and whereunder 50% of his pension has been directed to be withheld for a period of five years. Admittedly, the petitioner at all material times had been working as an Auditor under respondent no. 2. The petitioner, thus, was an employee of the Union of India.

2. Mr. Debi Prasad, Senior Standing Counsel, Central Government, raised a preliminary objection with regard to the maintainability of this writ application. According to Mr. Debi Prasad, regard being had to the phraseology used in section 14 of the Administrative Tribunals Act, 1985 read with the definition of "conditions of service" as contained in section 3 (q) thereof this Court's jurisdiction is ousted.

3. Upon hearing the counsel for the parties we are of the view that submission of Mr. Prasad has great substance.

4. Section 3 (q) and section 14 of the Administrative Tribunals Act, 1985 read as follows :?

3 (g) "Service matters" in relation to a person, means all matters relating to the

conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation (or society) owned or controlled by the Government as respect: ?

- (i) remuneration (including allowances) pension and other retirement benefits;
- (ii) tenure including confirmation, seniority, promotion, revision, premature retirement and superannuation;
- (iii) leave of any kind;
- (iv) disciplinary matters; or
- (v) any other matter whatsoever;

14. Jurisdiction, Powers and Authority of the Central Administrative Tribunal :

(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal 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 All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning :?

(i) a member of any All-India Service; or

(ii) a person not being a member of an All-India Service or a person referred to in Cl. (c) appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian not being a member of an All-India Service or a person referred to in Cl. (c) appointed to any defence service or a post connected with defence, and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government.

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of Cl. (b) being a person whose services have been placed by a State Government or any local or other authority or any corporation or society or other body at the disposal of the Central Government for such appointment

Explanation :?For the removal of doubts, it is hereby declared that references to

Union in this sub-section shall be construed as including references also to a Union Territory.

(2) 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 society owned or controlled by Government, not being a local or other authority or corporation (or society) controlled or owned by a State Government :

Provided that if the Central 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;

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal 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 cl. (a) or cl. (b) of sub-section (1) 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.

5. From a bare perusal of the definition of "conditions of service" as quoted hereinbefore, it is absolutely clear that payment of pension, gratuity etc. comes within the definition thereof.

6. The petitioner, in this writ application, as indicated hereinbefore, has contended that the impugned order as contained in Annexure-8 is insofar as thereby the penalty of withholding 50% of his pension for a period of five years has been imposed upon him. Such an order, In our opinion, comes within the purview of the conditions of service as any order relating to payment of pension or withholding of pension by way of penalty would pertain a condition of service of the petitioner.

Reference in this connection may be made to I.N. Subba Reddy Vs. Andhra University and Others, wherein it has been stated 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. Once it is held that the case of the petitioner comes within the purview of the words "conditions of service", particularly in view of its definition as contained in section 3 (q) of the Act which is of wide amplitude, there cannot be any doubt that this Court has no jurisdiction to entertain this writ application in view of section 14 of the said Act.

8. In this view of the matter, this application is not maintainable. The petitioner's remedy, it is needless to say, is to file a proper application before the Central Administrative Tribunal, Patna.

9. Mr. Roy, Learned Counsel appearing for the petitioner state that a fresh application before the Central Administrative Tribunal would be barred under the law of limitation.

10. this Court in exercise of its jurisdiction under sub-section (2) of section 29 of the said Act cannot transfer this application to the Central Administrative Tribunal, Patna. The petitioner will have to file a fresh application before it together with an application for condonation of delay which can be considered only by the said Tribunal on its own merits. This application is disposed of with the aforementioned observation. However, in the facts and circumstances of this case, there will be no order as to costs.