

(2013) 04 CAL CK 0093
In the Calcutta High Court
Case No : W.P.C.T. No. 345 of 2012

Pashupati Sardar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 11-04-2013

Acts Referred:

Citation : (2013) 3 CHN 35

Hon'ble Judges : Nishita Mhatre, J;Anindita Roy Saraswati, J

Bench : Division Bench

Advocate : S.K. Datta and Barun Chatterjee, for the Appellant;P.S. Basu, Debjani Mitra and Agniv Sinha, for the Respondent

Judgement

Nishita Mhatre, J.—The petitioners in these two petitions have challenged the order of the Central Administrative Tribunal Calcutta Bench dated 23.03.2012. W.P.C.T. No. 345 of 2012 arises from the judgement in Original Application No. 484 of 2007 whereas W.P.C.T. No. 346 has been filed by the applicants in Original Application No. 485 of 2007. A neat question of law arises in these two petitions, namely, whether the Administrative Tribunal has jurisdiction to decide whether the applicants were entitled to overtime allowance which is payable to them under the Factories Act.

2. It appears that several orders have been passed in different applications filed before various benches of the Administrative Tribunal from the year 1998 to 2005 directing the respondents to pay overtime allowance to their employees who were on duty for more than eight hours a day for five days in a week. The Railway Board issued a circular on 9th August 2005 indicating that if a railway servant renders extra hours of duty beyond the "rostered hours" he was entitled to be paid overtime for working those extra hours. The petitioners claimed overtime allowance on the basis of the Railway Board's circular by filing applications before the Central Administrative Tribunal, Calcutta Bench. These applications have been dismissed by the Tribunal along with several others by a common order. The Tribunal has held that the petitioners ought to have filed

applications u/s 33C(2) of the Industrial Disputes Act 1947 before the Labour Court instead of filing applications before the Administrative Tribunal. It has also held that the Administrative Tribunal did not have concurrent jurisdiction with the Labour Court or the Industrial Tribunal constituted under the Industrial Disputes Act. The Tribunal has observed further that since the Payment of Wages Act, 1926 provides a complete machinery for claiming overtime allowance, the petitioners could not move the Administrative Tribunal to claim such allowance. The Tribunal relied on the judgement of the Supreme Court in the case of Krishan Prasad Gupta Vs. Controller, Printing and Stationery, to conclude that the Administrative Tribunal had no jurisdiction to decide issues relating to overtime allowance.

3. We have perused the judgement in the case of Krishan Prasad Gupta (supra) and we do not find that the Tribunal has appreciated the ratio of this judgement correctly. The issue before the Supreme Court in that case, as framed by the Court, was "whether the appeals pending in the Court of the District Judge u/s 17 of the Payment of Wages Act, were liable to be transferred to the Administrative Tribunals u/s 29 of the Administrative Tribunals Act, 1985 for disposal on merits or the jurisdiction of the Authority u/s 15 and that of the District Judge u/s 17 of the Payment of Wages Act to hear and decide Claim Cases and Appeals, respectively remain undisturbed". After noticing the provisions of sections 14, 28 and 19 of the Administrative Tribunals Act, 1985 the Court held that the jurisdiction of the Industrial Tribunal, Labour Court and other authorities under the Industrial Disputes Act or authorities created under other "corresponding law" remains unaffected. It was held further that the Payment of Wages Act is a "Corresponding Law" u/s 28 of the Administrative Tribunals Act and that the jurisdiction of the Authorities under the Payment of Wages Act was saved. The Supreme Court however has not held that because a claim may lie before the Authority under the Payment of Wages Act, the Administrative Tribunal has no jurisdiction to decide the claim if it falls within the definition of "service matter" as defined under the 3(q) of the Administrative Tribunals Act.

4. Section 14 confers jurisdiction on the Administrative Tribunal to exercise all powers which could be exercised immediately preceding the appointed day by all Courts (except the Supreme Court) in relation to "service matters" of a person who is employed with an authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government of India. The petitioners are all working with the Eastern Railways which is controlled by the Government of India. Therefore, the Administrative Tribunal would have jurisdiction to decide a service matter relating to the petitioners.

5. Let us now considered whether a claim for overtime allowance could be construed as a "service matter". Section 3(q) reads as under:--

"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 respects--

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

The aforesaid definition includes the payment of overtime allowance as it tantamounts to remuneration and non-payment of such allowance would be a "service matter".

6. The Tribunal it appears from the impugned order concerned itself with section 28 of the Administrative Tribunals Act. This section reads as follows:--

Section 28. Exclusion of jurisdiction of Courts except the Supreme Court.--On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or post or service matters concerning members of any Service or persons appointed to any Service or post no Court except--

- (a) the Supreme Court; or
- (b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 (14 of 1947) or any other corresponding law for the time being in force, shall have], or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters.

7. The aforesaid section excludes the jurisdiction of all Courts, except the Supreme Court, the Industrial Tribunal, the Labour Court or other authorities constituted under the Industrial Disputes Act or any other corresponding law. This only means that the jurisdiction of the Industrial Tribunal, the Labour Court and other authorities under corresponding laws has been saved. The introduction of the Administrative Tribunals Act on to the statute book does not impinge on the jurisdiction of the Industrial Tribunal, the Labour Court etc. if the employee concerned is a workman. In such a case the employee would have the option to elect the forum; either the Administrative Tribunal or the authorities under the Industrial Disputes Act or corresponding laws in order to redress his grievance.

8. It has been argued by the learned counsel for the petitioners before us that the Tribunal has decided the applications contrary to the judgment of the Supreme Court in Telecom District Manager and Others Vs. Keshab Deb, . He

further submitted that the observation of the Tribunal that the petitioners ought to have filed applications u/s 33C(2) of the Industrial Disputes Act is unsustainable as the entitlement of the petitioners to overtime allowance was in question. He submits by relying on the judgment of the Supreme Court in *Central Inland Water Transport Corporation Limited Vs. The Workmen and Another*, that the jurisdiction of the Labour Court u/s 33C(2) is in the nature of an execution proceeding where the powers of the Labour Court are limited. According to him the entitlement to overtime allowance cannot be decided by the Labour Court u/s 33C(2) although if it was only a question of computation of the amount of overtime allowance the petitioners could have filed applications u/s 33C(2) as well. He submitted further that the Tribunal has erred in concluding that since the petitioners have an alternative remedy they ought to have approached the Labour Court rather than the Administrative Tribunal. The Learned Counsel pointed out that the Tribunal had erroneously relied on the judgement in the case of *Transport and Dock Workers Union and Others Vs. Mumbai Port Trust and Another*, where the Supreme Court had frowned on the High Courts entertaining writ petitions when there was a clear alternative remedy available to the workmen. The Learned Counsel submitted that the Administrative Tribunal cannot equate its jurisdiction with that of the High Court under Articles 226 and 227 of the Constitution of India.

9. Mr. Basu the learned counsel appearing for the respondents lay great emphasis on the judgment of the Supreme Court in *Krishan Prasad Gupta (supra)* and in the case of *Council of Scientific and Industrial Research and Another v. Padma Ravinder Nath (Smt) and Others*, (2001) 9 SCC 526 He submitted that the jurisdiction of the Administrative Tribunal is ousted because of the provisions of section 28 of the Administrative Tribunals Act. Mr. Basu submitted that the words "no Court except" used in section 28 excludes the jurisdiction of the Administrative Tribunal and only permits parties to approach the Supreme Court or the Industrial Tribunal, the Labour Court or other authorities constituted under the Industrial Disputes Act or any other corresponding law.

10. We are unable to accept this submission of Mr. Basu for the respondents. The interpretation sought to be placed by him on the provisions of section 28 is not in tune with the object of the Act. The Administrative Tribunals Act has been enacted to provide a forum for adjudication of disputes and complaints with respect to recruitment and conditions of service of persons appointed in public services and posts in connection with the affairs of the Union of India or of a State or of any local or other authority or under the control of the Government of India or any corporation or society owned or controlled by the Government in pursuance of Article 323A of the Constitution and for matters connected therewith or incidental thereto. As we have noted earlier payment of overtime allowance is a service matter and, therefore, the Administrative Tribunal does have jurisdiction to decide grievances of employees. of the railways which is a body controlled by the Government of India. It is no doubt true that the

employees who are workmen and who are working in the railways could file applications either before the Payment of Wages Act or the Labour Court u/s 33C(2) to claim overtime allowance where it is only a question of computation of the allowance. However, in the present case the entitlement of the petitioners to the allowance was in issue and, therefore, the petitioners would have to raise an Industrial Dispute to have their entitlement decided.

11. In the case of Telecom District Manager and others (supra) the Supreme Court had held where an employee files a writ petition not only on the ground of violation of the equality clause enshrined under Article 14 of the Constitution of India but also on the ground of a violation of the provisions of the Industrial Disputes Act, he has an option to choose his own forum. The Court has held that section 28 of the Administrative Tribunals Act does not bar the jurisdiction of the Central Administrative Tribunal; it in fact saves the jurisdiction of the Industrial Tribunal. The Court has further concluded that an employee, who claims that he is a workman, therefore would have a right of election in the matter of the choice of forum. The judgement of the Supreme Court in the case of Council of Scientific and Industrial Research and Another (supra) relied on by Mr. Basu, does not in any manner indicate that the jurisdiction of the Administrative Tribunal is ousted if a matter can be filed before the Industrial Tribunal or Labour Court. The Court has approved of a judgement of the full bench of the Administrative Tribunal where the Tribunal has held that if an applicant seeks relief under the provisions of the Industrial Disputes Act he must ordinarily exhaust the remedy available under that Act. The Court has also accepted the finding of the full bench that those matters over which the Labour Court or Industrial Tribunal or other authorities had jurisdiction under the Industrial Disputes Act "do not automatically become vested in the Administrative Tribunal for adjudication". The Court then concluded that the Council of Scientific and Industrial Research and Another (supra) was an industry as defined u/s 2(k) of the Industrial Disputes Act.

12. The Learned Counsel for the petitioner submits that the essence of the judgement in Council of Scientific and Industrial Research (supra) is that the Supreme Court has held that Council of Scientific and Industrial Research is an industry and any observations made by the Supreme Court relating to the jurisdiction of the Administrative Tribunal must be read in conjunction with the finding of the Supreme Court that the Council of Scientific and Industrial Research is an Industry. He relies on the decision of the Supreme Court in the case of State of Orissa and Others Vs. Md. Illiyas, wherein the Court has held that every observation in a judgment is not binding; the binding force attaches only to the ratio decidendi of a judgment. The Learned Counsel has also relied on the judgement of the Supreme Court in the case of N. Bhargavan Pillai (Dead) by Lrs. and Another Vs. State of Kerala, to submit that when a judgement expresses a view without analysing the statutory provision it cannot be treated as a binding precedent and would have to be considered as having been rendered per incuriam.

13. It is true that the judgement of the Supreme Court in the case of Council of Scientific and Industrial Research (supra) was not cited before the Supreme Court when it decided Telecom District Manager and others (supra). However a close scrutiny of the judgment in Council of Scientific and Industrial Research (supra) would indicate that the Supreme Court had merely approved of a judgment of the Central Administrative Tribunal Hyderabad Bench rendered by five members in which it was held that Administrative Tribunals are not substitutes for authorities under the Industrial Disputes Act and, therefore, the Administrative Tribunal does not exercise concurrent jurisdiction with those authorities. This judgement cannot create an impediment in the way of petitioners from approaching the Tribunal. It cannot be gainsaid that the Administrative Tribunals are not substitutes for authorities under the Industrial Disputes Act. However the issue before us is whether when a remedy is available to an employee, both under the Administrative Tribunals Act and the Industrial Disputes Act, the jurisdiction of the Administrative Tribunal would be ousted. As we have noted earlier the Supreme Court in Telecom District Manager and others (supra) has held that it is for an employee to opt for or to elect the remedy available to him. In the present case the petitioners have claimed overtime allowance based on a circular of the Railway Board and the judgments of the Supreme Court as well as the Tribunals regarding payment" of overtime allowance. Their entitlement to the overtime allowance is in question. Therefore, although they are industrial workers, their claim cannot be filed u/s 33C(2) of the Industrial Disputes Act. Apart from this it is not an alternative remedy at all as observed by the Tribunal because the entitlement of, in contra-distinction to, the computation of overtime allowance is the subject-matter in dispute. A demand would have to be raised and referred for adjudication before the Industrial Tribunal. Such a demand may or may not be referred for adjudication by the Appropriate Government. Thus it cannot be regarded as an alternative remedy.

14. Considering the matter from any angle and in the light of the observation of the Supreme Court in Telecom District Manager and others (supra) we are convinced that the Central Administrative Tribunal has the jurisdiction to entertain matters relating to the entitlement and payment of overtime allowance to railway employees. However this does not mean that the jurisdiction of the authorities under the Industrial Disputes Act or the Payment of Wages and similar legislations have been ousted in the case of workmen employed with an authority under the control of the Government of India or a Corporation or Society owned or controlled by the Government of India.

15. The Petitions are allowed. The impugned order of the Tribunal is set aside. O.A. Nos. 484 & 485 are remanded to the Tribunal for hearing them afresh on merits. Urgent certified photocopies of this order, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.

Anindita Roy Saraswati, J.

I agree.