

(2022) 07 KL CK 0142

In the High Court Of Kerala

Case No : Writ Petition (C) NO. 16823 OF 2021

P.T. Benny

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 15-07-2022

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 54(1)(c)(ii), 300A
Administrative Tribunals Act, 1985 — Section 2(q), 14, 14(1)(b), 14(1)(b)(ii)

Citation : (2022) 07 KL CK 0142

Hon'ble Judges : Anu Sivaraman, J.

Bench : Single Bench

Advocate : Elvin Peter P.J., K.R.Ganesh, Sidharth Sudheer, Gouri Balagopal, A.Dinesh Rao, M. Rajeev

Judgement

Anu Sivaraman, J.

1. This writ petition is filed with the following prayers:-

“(i) Issue a writ of mandamus or any other writ, direction or order, directing the respondents to disburse the arrears of salary to the petitioner in the revised scale of pay of Rs.1,80,000/- to Rs.3,40,000/- with effect from September till 08/09/2017 forthwith along with 9% interest per annum from 10/03/2020 till the date of payment;

(ii) Issue a writ of direction or any other writ, direction or order, directing the respondents to disburse the arrears of salary due to the petitioner for the period during which he had worked as Whole Time Director of the Corporation with effect from 08/09/2017 till 30/03/2019, coming to Rs.13,77,018/- along with 9% interest per annum with effect from 10/03/2020 till the date of payment.;

(iii) Declare that the action of the respondents in not disbursing the arrears of salary due to the petitioner for the period during which he worked as Whole Time Director of the Corporation with effect from 08/09/2017 till 30/03/2019 is absolutely illegal, unfair, arbitrary, discriminatory, unconstitutional and violative

of Article 14, 21 & Article 300A of the Constitution of India;”

2. Heard the learned counsel for the petitioner, the learned Government Pleader and the learned standing counsel appearing for respondents 2 to 4.

3. It is submitted by the learned counsel for the petitioner that the petitioner, while working as Deputy Chief Engineer (Construction) South Western Railway, Bangalore was deputed by the Ministry of Railways as Whole Time Director (Project and Planning) in the 2nd respondent Corporation. It is submitted that the 2nd respondent is incorporated under the Companies Act by the Government of Kerala and that 51% of its shares are held by the Government of Kerala and 49% by the Ministry of Railway, Government of India. It is contended that the petitioner was deputed pursuant to Exhibit P1 order and was appointed as Whole Time Director by Exhibit P2 dated 7.9.2017. Thereafter, he joined as Whole Time Director on 8.9.2017 and was repatriated on administrative grounds by Exhibit P4 order dated 13.3.2019 and is presently working as Additional Divisional Railway Manager, Southern Railway, Thiruvananthapuram. It is stated that the petitioner had drawn basic pay of Rs.1,57,600/- and gross salary including Dearness Allowance and Deputation Allowance of Rs.1,80,784/- as evidenced from Exhibit P6 Last Pay Certificate dated 23.5.2019. It is stated that a decision was taken on 10.3.2020 to revise the scales of pay of Directors and employees of the 2nd respondent in the 16th meeting of the Board of Directors by Exhibit P7. The revision was effective from 03.1.2017 and the scale of pay of Whole Time Director was enhanced as Rs.1,80,000 – 3,40,000/- w.e.f. 3.1.2017. Petitioner submitted Exhibit P8 option for adopting the revised scale of pay on 12.11.2020 and the fixation statement was also prepared and forwarded as Exhibit P9. Thereafter, a representation was submitted on 12.3.2021 to the 3rd respondent seeking the release of the arrears due. However, no orders were passed thereon, nor were any amounts released to the petitioner. It is stated that all other officers, who came on deputation from the railways to the Corporation were granted the benefits of revised scale of pay. It is stated that one Ajith Kumar, who was appointed as Managing Director from December, 2017 was granted arrears of salary of more than Rs.14 lakhs in the revised scale of pay. One Smt.Sheba Brittas, who was the DGM/HR who came on deputation from the Railways on December, 2018 onwards was also granted arrears of salary in the revised scale of pay. It is stated that one Jibu Jacob, who worked as DGM-Finance from 2019 onwards, was also granted arrears of salary in the revised scale. However, in the petitioner's case alone, the amounts are not disbursed. The learned counsel for the petitioner contends that since the pay revision was effective from 3.1.2017, the petitioner is also entitled to be paid the revised emoluments from 8.9.2017 to 30.3.2019.

4. A counter affidavit has been filed by respondents 2 to 4 raising the question of maintainability of the writ petition as a preliminary issue. It is contended by the learned counsel for the respondents that the petitioner is a Group A Senior Officer working in the Ministry of Railways and that his salary and allowances, on

deputation, while in a Public Sector Undertaking/Joint Venture company comes under the purview of the Department of Personal and Administrative Reforms of the Ministry of Railways and that the issue raised by the petitioner is a service dispute within the meaning of Section 2(q) of the Administrative Tribunals Act, 1985 and the petitioner has to approach the Central Administrative Tribunal in case he has any contention with regard to payment of amounts due. Without prejudice to the above contentions, it is also contended that the petitioner had been repatriated to the Ministry of Railways on 30.03.2019 and that it was only long thereafter that the pay revision was effected in the 2nd respondent and only the existing employees, who were continuing on deputation in the 2nd respondent, had been granted the benefits.

5. The learned counsel for the respondents places reliance on the decisions of the Apex Court in Major P.R.Penghal v. Union of India and others [(1998) 5SCC 454] and of this Court in Suresh Babu P(Dr.), IAS v. State of Kerala and another [2019(3) KHC 295] and Gopalan v and others v.Government of Kerala and others [2012 (2) KHC 733]. It is contended that the claim of the petitioner falls squarely under Section 14(1)(b)(ii) of the Administrative Tribunals Act and that as such, he has to approach the Central Administrative Tribunal.

6. I have considered the contentions advanced . It is clear from Exhibit P1 order of deputation itself that the petitioner had been deputed from the Ministry of Railways to the Government of Kerala for appointment as Director (Project and Planning) in the 2nd respondent Corporation. It is stated in Exhibit P1 that the petitioner will draw salary in his parent cadre plus deputation allowance. Thereafter, Exhibit P2 order of appointment was issued to the petitioner, which reads as follows:-

“ORDER

In exercise of the powers confirmed under clause 54(1) (c) (ii) of Articles of Association of Kerala Rail Development Corporation Limited, Government are pleased to appoint Shri.PT. Benny, IRSE Dy.CE nominated by Ministry of Railways, Government of India as the Whole Time Director in the Board of Directors of the Kerala Rail Development Corporation Limited.

By order of the Governor”

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The petitioner assumed charge as Director (Project & Planning) on 8.9.2017.

Section 14 of the Administrative Tribunals Act reads as follows:-

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 Cour.

(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 clause (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 clause (c)] appointed to any defence services 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 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 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 clause (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 societies] 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 [or societies].

(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 clause (a) or clause (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.

7. A reading of provisions would make it clear that all service matters concerning a person appointed to any civil service of the union or any civil post under the Union and pertaining to the service of such person 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 of any Corporation owned or controlled by the Government would be liable to be considered by the Central Administrative Tribunal.

8. The Apex Court in *Major M.R.Penghal v. Union of India and others* [(1998) 5 SCC 454] had considered the case of an employee of the Posts and Telegraphs Department posted on deputation to the Indian Army Postal Service and had held that since the appellant was selected by the Postal Department for appointment to the post of clerk and he was deputed to work in the Army Postal Service on condition that he would remain a civilian employee on deputation in the Army., the appellant did not become a full fledged Army personnel and therefore, the CAT had jurisdiction to entertain and decide the original application filed by the employee.

9. In *Gopalan v and others v. Government of Kerala and others* [2012 (2) KHC 733] the question was whether the High Court had jurisdiction to entertain service disputes where the aggrieved persons were Part Time Sweepers in the Department of Sports and Youth Affairs, Government of Kerala. A learned single Judge of this Court held that the definition of 'service' under the Act is very wide and includes all persons employed when their service pertains to the affairs of the State.

10. In *Suresh Babu P(Dr.), IAS v. State of Kerala and another* [2019(3) KHC 295] a Division Bench of this Court held that where the service matter concerns a person, who is a member of the All India Service and pertains to his service in connection with the affairs of the State as Deputy Collector, the issue is a service dispute falling under Section 14 of the Administrative Tribunals Act and that only the CAT would have jurisdiction to consider the matter. That was a case where the deputation was from the Central Government to the State Government and would specifically fall within the ambit of Section 14(1)(b)(ii) and the residual clause thereof.

11. In the instant case, it is an admitted case that the petitioner had been deputed by the Ministry of Railways to the Government of Kerala for

appointment to the post of Whole Time Director in the 2nd respondent Corporation in which the Government of Kerala hold 51% shares. This aspect is not disputed by the respondents. The appointment order issued to the petitioner would also show that the petitioner is appointed as nominated by the Ministry of Railways, Government of India as a Whole Time Director in the Board of Directors of the 2nd respondent- Corporation. If that be so, though the petitioner is a person appointed to a civil post under the Union of India, he is not deputed to the State Government or any local or other authority under the control of Government of India or any Corporation owned or controlled by that Government. The dispute raised by the petitioner is with regard to payment of amounts as revised pay by the 2nd respondent-Corporation, which is admittedly a Joint Venture concern in which the Government of Kerala holds 51% shares. In such a situation, I am of the opinion that the contention that the jurisdiction rests only with the CAT cannot be accepted.

12. For the ouster of the jurisdiction of the High Court in terms of Section 14(1)(b) three requirements have to be satisfied.

- i) the matter must be a service dispute,
- ii) the employee concerned should be a person appointed in a civil post under the Union of India and
- iii) the matter must pertain to his/her 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 of any corporation or society owned or controlled by the Government.

The specific use of the words 'local or other authority' and 'of any corporation or society' separately in the provision would go to show that they are intended to be understood as separate and distinct from each other. So also, the "Government" used in the last part of the provision can only mean such Government as specifically stated in the earlier part of the provision that is, the Government of India.

In the instant case, since it is the admitted case of the parties that the petitioner, a Central Government employee, had been deputed to the 2nd respondent, which is a Joint Venture Company in which the State of Kerala holds majority shares, the restriction in Section 14(1)(b)(ii) cannot apply to the petitioner.

13. On the merits of the matter, I notice that the petitioner has specifically pleaded that all other employees have been granted the benefits of the pay fixation, which was made effective from a retrospective date, that is 3.01.2017. The petitioner had served as a Whole Time Director of the Company from 8.9.2017 to 30.3.2009. In that view of the matter, I am of the opinion that the contention raised that the revision of pay is applicable only to employees, who were in service as on the date of Exhibit P7, is unsupported by anything stated in Exhibit P7. The claim raised by the petitioner is, therefore, liable to be considered

by the respondents.

14. There will, accordingly, be a direction to the 3rd respondent to take up, consider and pass appropriate orders on the request made by the petitioner for payment of arrears, taking note of the fact that the petitioner was serving in the Corporation till 2019 and that the pay revision has been made effective in the Corporation with effect from 3.01.2017. Necessary shall be done by the respondents within a period of two months from the date of receipt of a copy of this judgment.

The writ petition is ordered accordingly.