
(1989) 02 MAD CK 0062
In the Madras High Court

R. Subbureddy

APPELLANT

Vs

The Union of India (UOI) and Another

RESPONDENT

Date of Decision : 22-02-1989

Acts Referred:

Citation : (1989) 1 MLJ 229

Hon'ble Judges : K.M. Natarajan, J

Bench : Division Bench

Judgement

K.M. Natarajan, J.—This petition is filed for the issue of a writ of certiorari or any other appropriate writ or order or direction to call for the records in C.C.P. No. 8 of 1982 and C.C.P. No. 38 of 1984 dated 27-7-1988 on the file of the Presiding Officer, Central Labour Court, Madras, and quash the same.

2. It is seen from the affidavit filed in support of the petition that the petitioner was employed in the Southern Railway as General Clerk and in 1973 he was served with a charge-memo dated 28-11-1973 for the alleged misappropriation of a sum of Rs. 47.30 while he was working at Shencottah Railway Station. Thereafter, he was removed from service with effect from 1-4-1976. He challenged the said order of removal by way of a civil suit in O.S. No. 3055 of 1977 on the file of the 11th Assistant Judge, City Civil Court, Madras, seeking a declaration that the order of removal was null and void. He also prayed for a consequential relief that he should be deemed to be continued in service with all benefits. The said suit was dismissed and the appeal was allowed with costs on 15-12-1980 and the order of removal of the petitioner from service was declared to be null and void. In spite of the Judgment, he was not reinstated. Thereafter, he filed a Claim Petition in O.P. No. 8 of 1982 before the Central Government Labour Court u/s 33-C(2) of the Industrial Disputes Act claiming benefits which include pay, dearness allowance, additional dearness allowance, house rent allowance and city compensatory allowance for the period from 1-4-1976 to 31-12-1981 and also other benefits including interest thereon. In the meantime, a second appeal was preferred by the first respondent and the said appeal was

dismissed. Subsequently, the petitioner was reinstated on 11-12-1983. However, he was retired from service on 31.12.1983 on account of the attaining the age of superannuation. After his retirement, he filed another claim petition in C.P.N.38 of 1984 before the second respondent claiming certain benefits which include the basic pay, dearness allowance, additional dearness allowance, house rent allowance and city compensatory allowance and other monetary benefits for the period from 1-1-1982 to 31-12-1983. Both the claim petitions were heard by the second respondent and he dismissed both the petition on 27-7-1988. It is against the said order, the present writ petition is filed.

3. Learned Counsel appearing for the first respondent raised objection to the maintainability of the writ petition. According to the learned Counsel for the first respondent, since admittedly the petitioner was employed in the Southern Railway and he claimed the benefits which included his salary and other monetary benefits, the proper forum is Central Administrative Tribunal after its constitution under the Administrative Tribunals Act, 1985. In this connection, he also drew my attention to the fact that after the constitution of the Central Administrative Tribunal, the very same petitioner has filed a transfer Application No. 299 of 1986 invoking the jurisdiction of the Central Administrative Tribunal in a suit filed by him in C.S. No. 452 of 1984 on the file of the High Court, Madras, wherein he claimed damages to the tune of Rs. 2,00,000 with interest, under various heads for wrongful removal from service and the said suit was transferred to the Central Administrative Tribunal as Transferred Application No. 299 of 1986 and the said claim was dismissed on 16-3-1987. It is also not in dispute that a Review Petition was also filed and that was also dismissed. According to the learned Counsel for the respondent, even in the order passed by the Central Administrative Tribunal it has been observed that the applicant had been paid his salary including that resulting from performs promotion with reference to his junior's promotion from 1-4-1976 till the date of his retirement and that the claim for damages on account of loss of earnings cannot stand in the light of the above.

4. On the other hand, the petitioner who appeared in person, would state that the cause of action arose for the present claim five years before the establishment of the Central Administrative Tribunal and the present claim is not concerned with any pension or any confirmation, seniority, promotion etc., and it is further stated that he is deemed to be in service with all benefits and he was paid only the admitted amount and that has been referred to in the Central Administrative Tribunal's order. He contends that this Court has got jurisdiction to dispose of this writ petition and that the same need not be transferred.

5. For appreciating the respective contentions of both the parties, it is worthwhile to quote the relevant provisions of the Administrative Tribunals Act, 1985. Section 3(q) of the Act defines "service matters" which reads as follows:

"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) to (iv) x x x

(v) any other matter whatsoever;

Section 4 deals with the establishment of the Tribunals and the Benches thereof. Section 14 of the Act deals with the jurisdiction, powers authority of the Tribunals and it reads as follows:

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

(a) xxx

(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 of 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) x x x x

(2) x x x x

(3) x x x x

Section 28 provides for exclusion of jurisdiction of Courts except the Supreme Court on and from the date from which any jurisdiction, powers and authority becomes exercisable under the said Act by the Tribunal in relation to recruitment and matters concerning recruitment to any device or post or service matters concerning members of any Service or persons appointed to any Service or post. It has been provided under that Section that no court except the Supreme Court or any industrial Tribunal, Labour Court or any other authority constituted under the Industrial Disputes Act, 1947 or 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. Section 29 deals with transfer of pending cases.

6. Learned Counsel for the first respondent drew my attention to a decision reported in *Subramaniam v. Union of India* AIR 1986 Ker. 158 where the scope of Sections 14(1), 28 and 29 has been dealt with and it was held as follows:

The legislative intention seems to be that all service matters relating to Central Government Servants should be exclusively dealt with by the Central Administrative Tribunal, when once such a Tribunal is established and that no Court including the High Court, shall have thereafter original jurisdiction to deal with such matters. Even pending cases relating to such matter cannot be proceeded with, in view of the statutory transfer ordained by Section 29. Section 14(1) speaks of the date from which the jurisdiction of the Tribunal becomes exercisable under this Act. Therefore, with effect from 1st November, 1985 (which is the appointed day for the Central Administrative Tribunal), the power of the Tribunal became exercisable and that from that point of time, the High Court's jurisdiction stood ousted. The Supreme Court's reluctance to stay transfer of pending Article 226 petition in *Workmen Employed in Associated Rubber Industry Ltd., Bhavnagar Vs. Associated Rubber Industry Ltd., Bhavnagar and Another*, in the same manner as Article 32 petitions itself shows what the true position is.

The conclusion, therefore, is that the writ petitions cannot now be entertained by the High Court.

7. In *Chhangu Lal and Ors. v. Assistant Engineer Cross Bar Santhappan and Ors.* AIR 1987(1) CA.T. 654 Bench of Central Administrative Tribunal, Allahabad, while dealing with the jurisdiction of the Administrative Tribunal u/s 28 of the Act, observed as follows:

In view of the amended provisions of Act XIII of 1985, we are of the opinion that as Clause (b) of Section 2 barring the jurisdiction of the Central Administrative Tribunal in respect of the persons governed by I.D. Act has been deleted and Section 28, as it stands now, provides for the concurrent jurisdiction of the Central Administrative Tribunal, or Labour Court in respect of service, matters of the employees of the Central Government, the contention raised by Sri Ashok Mohily cannot be accepted. As the Central Administrative Tribunal was not in existence in 1976 and Section 28 of Act XIII of 1985 specifically saves the jurisdiction of the Central Administrative Tribunal in the service matters of such Central Government Employees, who are governed by the I.D. Act, we see no bar to our jurisdiction to entertain the present petitions based on the rights conferred on the petitioners under the I.D. Act.

8. It is seen that the present claim petitions in C.P.Nos. 8 of 1982 and C.P. No. 38 of 1984 were filed in respect of the salary, dearness allowance, additional dearness allowance, house rent allowance and city compensatory allowance for the period from 1-4-1976 to 31-12-1981 and other benefits which include

medical benefits, value for privilege ticket, monetary value for allowance for national holidays, earned leave etc., and also for the period from 1-1-1982 to 31-12-1983. According to him, though the petitioner is said to be retired from service on account of superannuation, he is deemed to be continued in service with all benefits. It is clear from Section 3(q) of the Act that the claim of remuneration which includes allowances is defined as "service matters" and in view of the provisions of Sections 28, 29 and 14 and the ratio laid down in the above decisions and in view of the fact that the petitioner's case has been considered with reference to the claim for damages apart from the salary, by the Central Administrative Tribunal, I have no hesitation in holding that the proper forum is only the Central Administrative Tribunal and not the High Court even though cause of action arose prior to the constituted of the Tribunal. Accordingly, the writ "petition is ordered to be returned to the petitioner for presentation before the proper forum, namely the Central Administrative Tribunal, within two weeks from the date of return. No costs.