

(1989) 12 AHC CK 0074

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 16209 of 1988

Ramesh Chandra Suri

APPELLANT

Vs

VIIIth Additional District Judge and Others

RESPONDENT

Date of Decision : 21-12-1989

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 19, 28, 29, 29A

Citation : (1990) 1 AWC 301

Hon'ble Judges : R.A. Sharma, J

Bench : Single Bench

Advocate : R.S. Misra and R.P. Misra, for the Appellant;

Final Decision : Allowed

Judgement

R.A. Sharma, J.—Petitioner, who is a Railway employee, tiled a suit in the Civil Court for declaration that he was entitled to be considered for promotion to the post of Charge man Group-A and for mandatory injunction directing Respondents to consider his promotion to the aforesaid post. Notice of the suit was served on the Respondent but they did not put in appearance before the Civil Court on 31-10-85 Civil Court decreed exparte the suit of the Petitioner.

2. The Administrative Tribunals Act, 1985 (hereinafter referred to as the Act) came into force an 1-11-85. After the enforcement of the Act, the Petitioner applied for execution of the decree and made representation on 3-2-86 before Respondents for complying with the decree but inspite of the aforesaid representation and reminder no action was taken. The Respondents however, on 31-5-86 made an application under Order IX Rule 13 of CPC (CPC) before the Civil Court for setting aside exparte decree. This application was allowed on 3-2-88 and exparte decree was set aside by the civil Court. Petitioner filed a revision against the aforesaid order of the civil Court. The revisional Court vide its order dated 27-5-88 dismissed the revision on the ground that after the enforcement of the Act, Civil Court had no jurisdiction to entertain any suit or proceeding in connection with the service matter of the Central Government

employee. Although on merit, the revisional Court had held that the order dated 3-2-88 setting aside exparte decree passed by the trial Court is absolutely without jurisdiction. Against the aforesaid two orders dated 3-2-88 and 27-5-88, the Petitioner has filed this writ petition before this Court.

3. I have heard learned Counsel for the Petitioner and Sri. Lalji Sinha learned Counsel for the Respondent at some length and this writ petition is being disposed of in accordance with the Rules of Court.

4. Learned Counsel for the Petitioner has urged that, -(i) after the enforcement of the Act on 1-11-85, Civil Court had no jurisdiction to entertain the application of the Respondent for setting aside the exparte decree and order dated 3-2-88 setting aside exparte decree is, as such, without jurisdiction; and

(ii) the revisional Court was not justified in rejecting the revision of the Petitioner because in the revision only the order dated 3-2-88 passed by the trial Court was challenged and. it did not relate to any service matters and revisional Court had full jurisdiction to set aside the order dated 3-2-88 passed by the trial Court.

5. Learned Counsel for the Respondent has. on the other hand argued that the trial Court was fully justified to set aside exparte decree and the revisional Court had no jurisdiction to entertain the revision in view of Sections 14, 19, 28 and 29 of the Act.

6. Section 28 lays down that on and from the date from which any jurisdiction, power and authority becomes exercisable under the Act by the Tribunal in relation to recruitment and service matter no Court excepting the Supreme Court and Industrial Tribunal or Labour Court will have jurisdiction to exercise any power or authority in relation to the aforesaid matters.

7. Section 29 of the Act provides that every suit or other proceedings pending before any Court or authority immediately before the date of establishment of a Tribunal under the Act shall stand transferred on that date to such Tribunal.

8. In case the suit has been decreed or proceedings have been concluded before the establishment of the Tribunal, Section 29A of the Act provides that aggrieved person can file an appeal against such decree or order before the Tribunal in case no appeal has already been preferred.

9. On 31-10-85 the suit was decreed and when the Act came into force on 1-11-85 and when the Tribunal was constituted, nothing was pending before the Civil Court. After the, constitution of the Tribunal the Civil Court ceased to have any jurisdiction over the, matter and it had no jurisdiction even to entertain the application for setting aside the exparte decree. By exparte decree the Civil Court directed the Petitioner to be considered for promotion and as such the decree relates to the service matter of the Central Government employee and after enforcement of the Act and constitution of the Tribunal Civil Court lost power to set aside such a decree. Only remedy to the Respondent was to file an appeal before the Tribunal u/s 29A of the Act against the exparte decree. Instead of

availing of the remedy provided by this section Respondents have erroneously moved the trial Court for setting aside the exparte decree. The revisional Court has itself relying on a Division bench judgment of this Court in Shanti Swaroop v. Additional Bench, Administrative Tribunal at Allahabad 1986 AWC 1099 held that the trial Court has no jurisdiction to set aside exparte decree, but even then it has erroneously dismissed the revision on the ground that the Civil Court had ceased to have any power in the matter of employee of the Central Government after enforcement of the Act. Revisional Court was not dealing with any service matter of the Central Government employee and the only question before it was whether order dated 3-2-88 of the trial Court setting aside exparte decree after enforcement of the Act was valid or not The revisional Court as such has full power to interfere with the order dated 3-2-88 passed by the trial Court.

10. Learned Counsel for the Respondent has contended that in view of the judgment of the Hon"ble Supreme Court in S.P. Sampath Kumar v. Union of India AIR 1987 SC 386 and decision of Full Bench of this Court in Udai Bhan Singh Chauhan v. Union of India 1987 AWC 369, the Tribunal is a real substitute of a High Court and after the enforcement of the Act the revisional Court had no jurisdiction to entertain the revision and writ is also not maintainable before this Court. It is true that after the enforcement of the Act Civil Court and the Court have ceased to have any jurisdiction over the service matters of the Central Government employees. Before the revisional Court and this Court there is no question relating to the service matters of the employees of the Central Government. Only question is whether the Civil Court after the enforcement of Act was justified in setting aside exparte decree. In my opinion this writ petition is maintainable and this Court had jurisdiction to set aside the order passed by the Civil Court after enforcement of the Act.

11. The writ petition as such is allowed and the orders of the Civil Court dated 3-2-88 and of the revisional Court dated 27-5-88 are set aside. In view of the facts and circumstances of the case, parties shall bear their own costs.