
(1990) 10 MP CK 0013

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1274 of 1990

R.B. Shukla

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 25-10-1990

Acts Referred:

Administrative Tribunals Act, 1985 — Section 15(1), 17(1), 18(1), 28, 29
Constitution of India, 1950 — Article 323A
Industrial Disputes Act, 1947 — Section 2(K)
Payment of Wages Act, 1936 — Section 15, 17

Citation : (1993) 3 LLJ 648 : (1991) 36 MPLJ 284 : (1991) MPLJ 284

Hon'ble Judges : T.N. Singh, J; Sachendra Dwivedi, J

Bench : Division Bench

Advocate : R.D. Jain, for the Appellant; H.D. Gupta, for the Respondent

Final Decision : Allowed

Judgement

T.N. Singh, J.

Writ of prohibition/mandamus prayed by petitioner to restrain Union of India and others from pursuing a misconceived proceeding at a forum of incompetent jurisdiction, to nip in the bud the mischief complained.

Facts of the case for disposal of the instant petition are few and admitted and those we state at the outset. Petitioner has been in the service of the Central Railways and during the relevant period he was posted at Gwalior Railway Station as Travelling Ticket Examiner. During the period, 2.1.1987 to 10.11.1987, it is alleged, he committed certain fiscal irregularities and an order was accordingly made for deduction from his salary of certain amount. That order was challenged u/s 15 of the Payment of Wages Act, 1936 (for short, P.W. Act) in Labour Court No. 1 Gwalior. On 11.10.1989 directions were made by that Court in those proceedings against authorities concerned that they shall not give effect to the order passed for deduction from petitioner's salary of two sums of Rs. 5,342/- and Rs. 1,006/-. The notice issued in regard to the said deduction was held void.

u/s 17 of the said Act that order is appealable.

The appeal contemplated under aforesaid Section 17(1) lies "in a Presidency-town before the Court of Small Causes and elsewhere before the District Court"". Be it also mentioned that there is a State amendment in Madhya Pradesh of Section 17(1) by which these words have been substituted by the words "before the Industrial Court". Evidently, the aforesaid order dated 11.10.1989, was passed by the Labour Court No. 1, Gwalior, could be challenged u/s 17(1), P.W. Act before the Industrial Court in view of the State amendment. However, instead of pursuing the specific statutory remedy the respondents took the matter to the Central Administrative Tribunal at Jabalpur (for short, Tribunal or CAT) and from there notice was issued to the petitioner for his appearance and showing cause in the matter brought before the Tribunal by the respondents. That notice was issued on 28.8.1990. But the petitioner, having learnt of lodgment of respondent's application, rushed to this Court on 17.7.1990, complaining against misadventure of the respondents, to restrain them from continuing the said proceedings before the Tribunal.

Counsel for the parties were heard on 4.9.1990 but on 11.9.1990 we took the view that the question of Tribunal's jurisdictional incompetence being not only an important question but respondent's vehement opposition to petitioner's prayer for writ against them necessitated hearing a senior counsel as amicus curiae. Thereafter, we heard Shri R.D. Jain Advocate, on 23.10.1990; and also today. We place on record our appreciation of Shri Jain's valuable assistance.

Relying wholly, solely and emphatically on Sections 28 and 29 of the Administrative Tribunal Act, 1985 (for short, A.T. Act), Shri H.D. Gupta urged strenuously on behalf of the respondents that the petitioner has no case. We are not persuaded by the arguments advanced because the legal position in our view is clear on the interpretation of those provisions and also of Sections 15, 17 and other provisions of P.W. Act. However, we extract first in Extenso, Section 28 and Section 29(1) of A.T. Act :-

"28. (Exclusion) of jurisdiction of Courts except the Supreme Court under Article 136 of the Constitution. - On and from the date from which any jurisdiction, powers and authority become 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 matter.

Transfer of pending cases.

(1) Every suit or other proceeding pending before any Court or other authority immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding, the cause of action whereon it is based is such that it would have been if it had arisen after such establishment within the jurisdiction of such tribunal stands transferred on the date to such Tribunal:- (proviso omitted, as not relevant)"".

In our view the crux of the matter in the wider context, is the meaning to be ascribed to the emphasized portions in the aforequoted Section 28(b). In other words, whether the term "District Court" of unamended Section 17, P.W. Act, or for that matter "Industrial Court" of State amendment of that provision comes within the mischief of the expression "authority constituted under I.D. Act, 1947 or any other corresponding law for the time being in force". What, of course, is undisputable is that "Industrial Court", would be such an authority. Because, that Court is constituted under M.P. Industrial Relations Act and that is a "Corresponding law" vis-a-vis I.D. Act. But the question is, whether "District Court"" would also be such an authority. Another question is, whether P.W. Act is "corresponding law" for the time being in force in Madhya Pradesh. Those questions are indeed to be decided with reference to the scope, object and purport of the P.W. Act, specifically of Sections 15 and 17. Thus, we extract also relevant portions of Sections 15(1) and 17(1)(a)-

"15. Claims arising out of deductions from wages or delay in payment of wages and penalty for malicious or vexatious claims -(1) The state Government may, by Notification in the Official Gazette, appoint a Presiding Officer of any Labour Court or Industrial Tribunal, constituted under the Industrial Disputes Act, 1947 (14 of 1947) or under any corresponding law relating to the investigation and settlement of industrial disputes in force in the State or any Commissioner for Workmen's Compensation or other officer with experience as a Judge of a Civil Court or as a stipendiary Magistrate to be the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages, of persons employed or paid in that area, including all matters incidental to such claims:"

xxx xxx xxx xxx

Appeal-(1) An appeal against an order dismissing either wholly or in part an application made under Sub-section (2) of Section 15, or against a direction made under Sub-section (3) or Sub-section (4) of that Section may be preferred, within thirty days of the date on which the order or direction was made, in a Presidency-town before the Court of Small Causes and elsewhere before the District Court - (a) by the employer or other person responsible for the payment of wages u/s 3, if the total sum directed to be paid by way of wages and compensation exceeds three hundred rupees or such direction has the effect of imposing on the employer or the other person a financial liability exceeding one

thousand rupees".

In the same Act, the terms "employed person", "employer" and "industrial or other establishment" are defined in Section 2; Clause (h) includes establishment of Central and State Government also, generally, other than those categorically specified in other clauses of Section 2. Any person employed in any establishment of Central Government being apparently entitled to prefer an application u/s 15, the petitioner invoked that provision successfully for appropriate relief. The jurisdiction of Labour Court No. 1, Gwalior, in granting relief claimed, was not challenged before that Court when the respondents participated in that proceeding initiated by the petitioner. The right and remedy contemplated under P.W. Act being *uno flatu* the provisions of the special law enacted excluded impliedly application of any other law. See in this connection *Raja Ram Kumar v. Union of India* AIR 1980 SC 752.

Although Shri H.D. Gupta has urged strenuously further, that Section 15(1), or for that matter Section 17(1), P.W. Act, should be deemed repealed not only by Sections 28 and 29 but also Section 3(q), A.T. Act relying for that matter on Section 33 as well of that Act, even that argument has failed to cut any ice. The question to which we are immediately required to address ourselves is of exclusion of jurisdiction of "authority constituted" under the Payment of Wages Act to deal with the dispute which may even be a dispute covered by Section 3(q). We do not think, counsel's reliance on Section 33 will bale out the respondents and salvage their case because the decision of that question contemplates subordination of Section 3(q) to Sections 28 and 29. That part, Section 33 is attracted in the event only of inconsistency between the competing enactments A.T. Act to impart overriding effect to any specific provisions of A.T. Act. It can have no application when two enactments have different scopes and operate in different fields. As Maxwell states, Courts disfavour implied repeal: "If earlier and later Statutes can reasonably be construed in such a way that both can be given effect to, this must be done", (12th Edition, page 191). See also, in this connection, *Municipal Corporation of Delhi Vs. Shiv Shanker*, Suffice to say this much only to reject the contention based on the doctrine of implied repeal that Section 28(b) itself effectively rebuffs that; moreover, P.W. Act has a limited and different field of operation unlike that of A.T. Act. That is a general Act, embracing in Section 3(q) comprehensively many matters though its operation is not extended to the field occupied by Section 15(1) of the P.W. Act under which the matter to be dealt with is categorised and exhaustively specified.

This Court had an occasion to delineate the parameters of Sections 28 and 29 in the context of Article 323A of the Constitution in two *Vijay Singh Jadon Vs. State of Madhya Pradesh and Others*, Shri H.D. Gupta relied on para 8 of the report in *Jadon No. 1* but it has to be pointed out that the context of jurisdiction in that case was between "different authorities". This Court on one hand; and the State Administrative Tribunal, on the other hand. This Court was not required to examine the scope of Section 28(b) of the Act in that case. It was, however, still

held at para 9 that the jurisdictional competence of the State Administrative Tribunal was subjected primarily to Article 323A of the Constitution and secondarily to Sections 28 and 29, A.T. Act. That view was buttressed in Jadon No. 2 more expressly and categorically. Indeed, in the later case, this Court was directly enquired to pronounce on the specific contention that "not all types of "service matters" and cases of all classes of petitions are to be dealt with by the Tribunal". That was upheld taking the view that the scope of authority conferred on the Tribunal was circumscribed by Section 15, A.T. Act. Thus, in our view, in a case like present one, in which Section 28(b); A.T. Act has clearly excluded Tribunal's jurisdiction, the dispute raised by the instant petition u/s 15(1), P.W. Act cannot be entertained in any form whether in original or appellate form to be dealt with and decided by CAT.

Learned Amicus Curiae, Shri Jain, has adopted as part of his arguments a decision of Madras Bench of Central Administrative Tribunal in the case of G.M. Southern Railway v. Presiding Officer, Labour Court 1988 II ALT 226 to press the contention that the Tribunal has itself taken a view in regard to its own jurisdictional parameters which conforms to this Court's holding in the two Jadon's cases above= referred. Further, he rightly submitted, the decision being rendered in express terms of the scope of the provisions of Section 28(b), A.T. Act, neither the respondent nor the Tribunal can have any valid reason to assert Tribunal's competence to entertain the appeal against the impugned order dated 11.10.1989 passed by the Labour Court No. 1, Gwalior. We fully agree with him because the State Amendment of Section 17(1), P.W. Act has left no room for any doubt to be entertained in regard to the forum where appeal had to be lodged to the forum where appeal had to be lodged against the impugned order. Unfortunately, without going to the Industrial Court, Gwalior, as contemplated under amended Section 17(1), respondents moved the Central Administrative Tribunal (Jabalpur Bench) causing unnecessary harassment to the petitioner.

10-A. It may be also noted that "District Court" specified in Section 17(1), P.W. Act is not a "Civil Court", for the purpose of that Act or even A.T. Act. That term is not defined in either Act and must take its meaning from the reason or object of Section 17(1), P.W. Act and Section 28(b), A.T. Act. See in this connection, Utkal Contractors and Joinery Pvt. Ltd. and Others Vs. State of Orissa and Others, In the appeal u/s 17(1), "District Court" is finally deciding the dispute raised before Labour Court and the nature of that dispute is evidently akin to one raised u/s 2(K), I.D. Act. Thus, "District Court" being vested with jurisdiction thereunder to deal with a matter "corresponding" to Section 2(k) of I.D. Act, shall be deemed to be an "authority constituted" under such "law for time being in force" as corresponds to I.D. Act. In other words, P.W. Act is to be regarded as law "corresponding" to I.D. Act. In any case, the "appeal" to be heard u/s 17(1), P.W. Act by "District Court" cannot be, and is not, a "suit" so as to attract Section 29, A.T. Act. CAT's jurisdiction is not attracted, therefore, to that appeal.

For the aforesaid reasons we are fully convinced that the proceedings which the

respondents are continuing before the Central Administrative Tribunal (Jabalpur Bench) are void, being wholly without jurisdiction. However, that Tribunal has neither been impleaded nor noticed to enable us to issue a writ of prohibition to it though a case for writ of prohibition/mandamus against the respondents is established beyond doubt. They cannot be allowed to violate basic constitutional injunction which prohibits any Court/Tribunal acting without jurisdiction at the instance of any litigant who shall not be allowed to defeat the Rule of law by encouraging usurpation of statutory authority to the detriment of the aggrieved. Respondents were obligated, having decided to appeal against the order passed by the Labour Court, to pursue the remedy contemplated u/s 17(1), P.W. Act. They suffered a public duty u/s 17(1) not to lodge that "appeal" or raise the matter of that "appeal" before any other forum. They, however, acted otherwise. Prohibition issues, as Wade has observed "to forbid some act or decision which would have been ultra vires", (HWR Wade Administrative Law, 5th Edn., Page 546). We are duty bound, therefore, to injunct the respondents suitably so that they are restrained from pursuing the proceedings instituted in Central Administrative Tribunal, Jabalpur Bench, against the order passed by the Labour Court No. 1, Gwalior, on 11.10.1989, u/s 15(1), P.W. Act in respect of petitioner's grievance aforenoted.

The petition accordingly stands allowed and the writs prayed are accordingly issued against respondents. They are prohibited from pursuing further the impugned proceedings.