

(2000) 06 MAD CK 0030

In the Madras High Court

Case No : Writ Petition No. 6446 of 1998

S. Kanthasamy

APPELLANT

Vs

Tamil Nadu Rural Development Panchayat Union Employees
Association and 41 others

RESPONDENT

Date of Decision : 27-06-2000

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 15, 19, 24, 4
Constitution of India, 1950 — Article 226, 227, 323(A)

Citation : (2000) 3 CTC 1 : (2000) 2 LLJ 1027

Hon'ble Judges : N.K. Jain, Acting C.J.; N.V. Balasubramanian, J; K. Raviraja Pandian, J

Bench : Full Bench

Advocate : Mr. A.L. Somayaji, for Mr. V. Suthakar, for the Appellant; Mr. T.R. Rajagopalan, Additional Advocate General, assisted by Mr. R. Thirugnanasambandam, Special Government Pleader and Mr. V. Srikanth, Government Advocate, for the Respondent

Judgement

Judgement pronounced by N.K. Jain, ACJ.

1. The question as to whether an interim and interlocutory order/s passed in the Original application/s by the Tribunal below pending disposal of

the main Original Application itself by it and final determination of the case, could be the subject matter of a writ petition under Article 226 of the

Constitution of India, has been referred to before us in this case.

2. The learned Senior Counsel for the petitioner submits that this reference has arisen on the following facts:

On 9.11.1995, a Seniority List of Assistant/Rural Welfare Officer Grade-1 was drawn by the District Collector, Tirunelveli. Challenging the same,

Tirunelveli Rural Welfare Officers Association filed an appeal on 5.3.1996 to the

Director of Rural Development. Thereafter, the seniority was set aside by order dated 2.8.1996. The District Collector revised the Seniority List vide order dated 18.10.1996 and consequently 22 persons were promoted. But after one year, an application in O.A.No.8298 of 1997 was filed, praying to quash the Seniority List. The learned Tribunal granted interim order on 21.10.1997, and thereafter, without considering the counter filed by the contesting party and the Government, further extended it by order dated 25.3.1998. At this stage, challenging the interim ""order granted on 25.3.1998 the matter has come up before a Division Bench of this Court in W.P.No.6446 of 1998. The Division Bench referred the above question vide its order dated 15.6.1998 for an authenticated pronouncement on the subject. The matter has come up before us today.

3. The main contention of the learned Senior Counsel is that the High Court has power to entertain writ petitions against the final order of the

Tribunal, so also against the interim orders/ex parte orders. Therefore, if any interim order/ex parte order is passed and extended further, pending

decision of the main O.A., the same can be challenged before this court, and it cannot be said that the writ petition is not maintainable due to the

pendency of the main O.A. To substantiate the said contention the learned counsel relied and referred to paragraphs 90 and 91 in L. Chandra

Kumar Vs. Union of India and others, and also in State of Orissa Vs. Bimal Kumar Mohanty, . The learned Senior Counsel further submits that

this Court has got wide power to weigh and correct the errors committed by the Tribunals, and can also see that the orders have not been passed

without following the procedure of law. The learned Senior Counsel also submits that the Tribunal has been constituted under Article 323 (A) of

the Constitution of India to adjudicate the disputes and complaints with respect to recruitment and conditions of service of the persons appointed

to the public services. Section 4 of the Administrative Tribunals act, 1985 (herein after referred to as the Act) deals with the establishment of

Administrative Tribunals and Benches thereof. Section 5 deals with the composition of Tribunals and Benches thereof. Section 6 deals with the

qualifications for appointment of Chairman, Vice-Chairman or other Members. Section 14 deals with the jurisdiction, powers and authority of the

Central Administrative Tribunal and Section 15 deals with the jurisdiction, powers

and authority of State Administrative Tribunals. Section 19 deals with the making out of applications before the Tribunals. The learned Senior Counsel further submits that the Tribunal has got powers to grant interim orders subject to the conditions imposed u/s 24 of the Act, which runs as under:

Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or in any other manner) shall be made on, or in any proceedings relating to, an application unless -- (a) copies of such application and of all documents in support of the plea for such interim order are furnished to the party against whom such application is made or proposed to be made; and (b) opportunity is given to such party to be heard in the matters provided that a Tribunal may dispense with the requirements of clauses (a) and (b) and make an interim order as an exceptional measure if it is satisfied, for reasons to be recorded in writing, that it is necessary so to do for preventing any loss being caused to the applicant which cannot be adequately compensated in money but any such interim order shall, if it is not sooner vacated, cease to have effect on the expiry of a period of fourteen days from the date on which it is made unless the said requirements have been complied with before the expiry of that period and the Tribunal has continued the operation of the interim order"". The learned Senior Counsel submits that in the facts of the given case the writ petition cannot be thrown as not maintainable, as the interim order passed by the Tribunal has been extended without following the requirements u/s 24. Learned counsel further submits that no exceptional circumstance has been shown, nor the factual position has been ascertained by affording an opportunity of hearing to the other side, meaning thereby, in the instant case the main relief itself has been granted, on an interlocutory petition filed after one year, revising the Seniority List on 18.10.1996 and promoting 22 persons. He further submitted that the interim order of stay was extended. Thus, by this extended interim order the main relief itself has been granted pending the original application, which will disturb the entire administration. He submitted that as on date there was nothing to implement in the order and the prayer has become infructuous. Under these circumstances, certainly the order can be challenged

before the High Court and the High Court can entertain the writ petition pending the main application before the Tribunal.

4. The learned Additional Advocate General also supports the contention, made by the learned Senior Counsel, and submits that passing of the interlocutory ex parte orders granting the main relief has been deprecated by the Apex Court, In such a fact situation, this court can entertain writ petition/s against the interim order/s, as the Tribunal is granting the main relief at the initial stage itself, that too, even without verifying the factual aspects and without affording an opportunity of being heard to otherside.

5. We have heard the learned counsel for the parties and perused the materials on record. No doubt, the Tribunal has power to grant interim orders, depending upon the facts and circumstances of the case on hand. But at the same time before granting the interim orders the Tribunal has to satisfy itself regarding the factual aspects which warrant interim orders. It should also satisfy if such interim order is not granted whether it will defeat the object. It is also to be seen whether the order impugned before it, has already been complied with or not and if nothing survives to implement the order pending appeal, then what will be the effect of passing interim orders. Under such fact situation, passing of interim orders and extending them till final disposal is nothing but creating complications and harassment to the parties concerned. It is also to be while granting ex parte interim orders of stay whether any procedure as required by law has to be followed. It is further to be seen that the principles of natural justice to be followed and no orders should be passed without giving an opportunity of being heard to the affected party. The Tribunal though has power to pass any appropriate order but being the highest forum for the redressal of the disputes pertaining to service matters, to our mind, it will be appropriate for the Tribunal to note and verify the correctness of the existing facts of each case since each case depends upon its own facts and circumstances and also follow the procedures as required under law, before passing such orders. Considering the question referred to us, generally this Court will not interfere with the interim orders passed by the Tribunal, unless there are some exceptional circumstances to interfere with it, as the controversy has not been finally decided and the main application is pending decision. But in the fact situation as discussed above, on our

anxious consideration, we find that without there being any exceptional circumstances, if an ex parte order granting stay or continuation of stay till

the final disposal of the main O.A. is passed, pending the main application, the interim order can be challenged before this Court, as the High Court

has power to weigh and correct the decisions rendered by the Tribunal under Art. 226 and also exercising the power of superintendence under

Article 227 of the Constitution. In view of this and in overall consideration, we are of the firm view that under such circumstances, writ petition filed

against the interim order passed by the Tribunal is maintainable.

6. In the result the question referred to above is answered in the affirmative.