

(2002) 11 AP CK 0093

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 10472 of 2002 and Batch

S. Ramesh Babu

APPELLANT

Vs

Government of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 25-11-2002

Acts Referred:

Administrative Tribunals Act, 1985 — Section 5(6)

Citation : (2003) 1 ALD 421 : (2003) 1 ALT 244

Hon'ble Judges : Ghulam Mohammed, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : Nooty Rama Mohana Rao, M. Pandu Ranga Rao, M. Surender Rao, C. Srinivasa Baba, Posani Venkateswarlu and Ramesh Ranganathan, A.A.G, for the Appellant;

Judgement

B. Sudershan Reddy, J.—This batch of writ petitions may be disposed of by a common order since the question that falls for consideration is one and the same in all of them. In fact, all these writ petitions are directed against the common order made in O.A. Nos. 1854, 6314, 6334, 6335 of 1997 and 4278 of 1999, dated 15-5-2002 by the Andhra Pradesh Administrative Tribunal, Hyderabad.

2. The respondents-applicants in this batch of writ petitions have invoked the jurisdiction of the Tribunal challenging the constitutional validity of the rules issued in G.O. Ms. No. 14, Labour, Employment and Training (Lab.IV) Department, dated 26-11-1994 as amended in G.O. Ms. No. 22, Labour, Employment, Training and Factories (Lab.IV) Department, dated 9-5-1996. According to them, the said rules are unconstitutional being violative of the Presidential Order. The respondents-applicants have accordingly prayed the Tribunal to set aside the orders issued in favour of the writ petitioners in W.P. Nos. 10472,22158,22160 and 22435 of 2002 appointing them, by transfer, as Assistant Labour Officers.

3. The Tribunal after an elaborate consideration of the matter allowed all the original applications filed by the respondents-applicants. The Tribunal placed

reliance upon the judgment of the Supreme Court in *V. Jagannadha Rao and Others Vs. State of A.P. and Others*, .

4. It is not necessary for us to go into the details as to how and under what circumstances; the respondents-applicants challenged the constitutional validity of the said rules.

5. In this batch of writ petitions, the learned Counsel appearing on behalf of the petitioners inter alia submitted that the impugned order passed by a learned single Member of the Tribunal is not in conformity with the law laid down by the Supreme Court in *L. Chandra Kumar Vs. Union of India and others*, . It is contended that the impugned order suffers from jurisdictional errors. According to the learned Counsel for the petitioners, the matter is required to be heard by a Bench consisting of at least not less than two Members of the Tribunal, of which one must be a judicial member. Since the Original Applications are disposed of by a common order by a learned single Member of the Tribunal, the same suffers from jurisdictional errors, is the submission.

6. Section 5 of the Administrative Tribunals Act, 1985 (for short "the Act") provides for composition of Tribunals and Benches thereof. Section 5(6) of the Act says that "notwithstanding anything contained in the foregoing provisions of this Section, it shall be competent for the Chairman or any other Member authorised by the Chairman in this behalf to function as a Bench consisting of a single Member and exercise the jurisdiction, powers and authority of the Tribunal in respect of such classes of cases or such matters pertaining to such classes of cases as the Chairman may by general or special order specify."

7. It is true that the Chairman is clothed with the jurisdiction to constitute a Bench consisting of even a single Member to discharge the functions of the Tribunal in respect of such classes of cases or such matters pertaining to such classes of cases as the Chairman may by general or special order specify.

8. The question that falls for consideration is as to whether a Member of the Tribunal sitting single can go into the questions involving the vires of the statutory provisions or rules?

9. The issue raised is not *res Integra*. In *L. Chandra Kumar (supra)*, the Supreme Court after an elaborate consideration of the matter observed:

"Since we have analysed the issue of the constitutional validity of Section 5(6) of the Act at length, we may now pronounce our opinion on this aspect. Though the vires of the provision was not in question in, *Dr Mahabal Ram Vs. Indian Council of Agricultural Research and Others*, , we believe that the approach adopted in that case, the relevant portion of which has been extracted in the first part of this judgment, is correct since it harmoniously resolves the manner in which Section 5(2) and 5(6) can operate together. We wish to make it clear that where a question involving the interpretation of a statutory provision or rule in relation to the Constitution arises for the consideration of a single Member Bench of the

Administrative Tribunal, proviso to Section 5(6) will automatically apply and the Chairman or the Member concerned shall refer the matter to a Bench consisting of at least two Members, one of whom must be a Judicial Member. This will ensure that questions involving the vires of a statutory provision or rule will never arise for adjudication before a single Member Bench or a Bench which does not consist of a Judicial Member. So construed, Section 5(6) will no longer be susceptible to charges of unconstitutionality." (Emphasis is supplied).

10. It is thus clear that whenever a question involving the vires of a statutory provision or rule in relation to the Constitution arises for consideration, the same is required to be referred by the Chairman to a Bench consisting of at least two Members, one of whom must be a Judicial Member. It is further clear that if such questions fell for consideration before a single Member Bench of the Administrative Tribunal, he is required to refer the matter to a Bench consisting of two Members, one of whom must be a Judicial Member. The question involving the vires of a statutory provision or rule can never be adjudicated by a single Member Bench or a Bench which does not consist of a Judicial Member. The Chairman in exercise of the power as provided for u/s 5(6) of the Act may, or otherwise any of the Members of the Tribunal may function as a Bench and exercise powers of the Tribunal in respect of only those matters where the vires of any statute or rules and constitutional validity are not involved.

11. The Supreme Court read down Section 5(6) of the Act in such a manner in order to save the same from the vice of unconstitutionality. Any other construction, perhaps, would have made Section 5(6) of the Act susceptible to charges of unconstitutionality.

12. In the circumstances, in all fairness, the learned single Member who disposed of the Original Applications filed by the respondents-applicants ought to have referred the matter to a Bench consisting of at least two Members, one of whom must be a Judicial Member. But the learned Member disposed of the batch of Original Applications filed by the respondents-applicants without referring them to a Bench consisting of two Members. Even if the learned single Member was constituted as a Bench to discharge the functions of a Division Bench, the same would not be of any consequence in cases where the constitutional validity of a statutory provision is involved. The requirement in law as laid down by the Supreme Court in *L.Chandra Kumar* (supra) is that a Bench of at least two Members, one of whom must be a Judicial Member, is to be constituted in order to consider the issues relating to the constitutional validity of the statutory provisions.

13. In such view of the matter, we find it very difficult to sustain the order passed by a learned Member of the Tribunal sitting single.

14. For the aforesaid reasons, the impugned order is set aside. The matter is remitted for fresh consideration by a properly constituted Bench. It is needless to observe that we have not expressed any opinion whatsoever with regard to the

merits of the case and about the constitutional validity of the impugned rules. It shall be open to the Tribunal to consider the issues raised in the Original Applications filed by the respondents-applicants afresh in accordance with law.

15. In view of the urgency involved, we request the Chairman of the Tribunal to constitute a Bench consisting of at least two Members, one of whom must be a Judicial Member, for the disposal of the batch of Original Applications filed by the respondents-applicants. The Original Applications themselves may be disposed of within ten weeks from the date of receipt of a copy of this order.

16. Having regard to the peculiar facts and circumstances on hand, we consider it appropriate to direct the Government of Andhra Pradesh and other respondents to maintain status quo existing as on today in all respects. There shall be no further appointments, by transfer, to the post of Assistant Labour Officers, until disposal of the Original Applications filed by the respondents-applicants.

17. The writ petitions are accordingly disposed of. No order as to costs.