(1997) 09 AHC CK 0182

In the Allahabad High Court

Case No : Spl. Appeal No. 255 of 1995

Shyam Singh and Others APPELLANT

Vs

Meerut Mandal Vikas Nigam and Others RESPONDENT

Date of Decision : 22-09-1997

Acts Referred:
Allahabad High Court Rules, 1952 — Rule 5, 6

Citation : AIR 1998 All 127 : (1997) AWC 516

Hon'ble Judges : D.P. Mohapatra, C.J;R.R.K. Trivedi, J

Bench : Division Bench

Advocate : Arvind Kumar, for the Appellant; Rakesh Tewari, for the Respondent

Final Decision : Dismissed

Judgement

R.R.K. Trivedi, J.—This special appeal from the order dated 29th January, 1993, passed by learned single Judge in Civil Misc. Writ Petition No. 2743 of 1993, has been preferred by petitioners of the writ petition questioning the legality of the order by which decision of the Taxing Officer requiring petitioners to pay deficient Court-fee has been maintained. .

2. The facts giving rise to this appeal are that the appellants were employed under the Meerut Mandal Vikas Nigam, hereinafter referred to as ''Nigam''. The orders were served separately on all petitioners for retrenchment of their services. The reason for the retrenchment stated in the order was resolution No. 2 dated 4th September, 1992 of the Board of Directors of the Nigam directing to close the activities of Nigam and to retrench employees, as their services are not required and the services of the petitioners shall come to an end on expiry of one month i.e. on 30th November, 1992. There is no dispute about the fact that the appointment letters were separately issued to each of the petitioners and their services have also been terminated by separate orders. Petitioners joined in this writ petition and have challenged the orders of termination passed against them which have been filed as Annexures 2 to 16 to the writ petition. Stamp Reporter by his report dated 18th January, 1993 found deficiency in payment of Court-fee

to the extent of Rs. 1785/-. Against the report of the Stamp Reporter, petitioners filed an objection before the Taxing Officer. The Taxing Officer by his order dated 19th January, 1993 rejected the objection. The order is being reproduced below :--

"The petitioners have filed objection against the deficiency report of Rs. 1785/-.

The petitioners have challenged the order of their respective termination (Annexures 2 to 16).

Separate order in respect of the each petitioner who has been terminated from their service.

Thus the cause of action to the each petitioner arises from separate orders and not from common orders.

In view of this, the right to relief does not arise from single and common order, rather it arises from separate orders.

In these circumstances, each petitioner has to pay the separate Court-fee.

In view of the above, Court-fee paid is insufficient and Stamp Reporter''s report is upheld. Let the deficiency be made good.

Taxing Officer 19-1-93".

3. It appears that the question regarding the deficiency of the Court-fee was also raised by petitioners before the learned single Judge who by the impugned order upheld the order of the. Taxing Officer aggrieved by which, this special appeal has been filed.

4. Learned counsel for the appellants has submitted that the view taken by the Taxing Officer and the learned single Judge cannot be sustained in view of the fact that for giving relief to appellants common questions of law and facts were required to be determined and the reason for passing of the order of termination against all petitioners was closure of the Nigam. In support of the contention reliance has been placed in cases of Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others, ; Umesh Chand Vinod Kumar and Others Vs. Krishi Utpadan Mandi Samiti and Another, ; A.N. Pathak and Others Vs. Secretary to the Government, Ministry of Defence and Another, ; Saroja Nand Jha v. Hari Fertilizers, Sahupuri, 1994 FLRP. 1095 (DB).

5. Learned counsel for the respondents, on the other hand, submitted that the view taken by the Stamp Reporter is justified as the cause of action for each petitioner is separate and they are liable to pay separate Court-fee. Reliance has been placed in cases of P. Radhakrishna Naidu and Others Vs. Government of Andhra Pradesh and Others, and Mohammad Azaz and others Vs. Madhyamik Shiksha Parishad, Uttar Pradesh, Allahabad and another, .

6. During the course of the hearing of the appeal, serious doubt about

maintainability of the appeal was noticed in view of the provisions contained in Section 5 of the Court-fees Act, 1870. On this question also, we heard learned counsel for the appellants and learned standing counsel. Learned counsel for the appellants placed reliance in the order of the Division Bench in case of Saroja Nand Jha (1994 FLR 1095) (supra) and has submitted that the appeal is maintainable under Chap. VIII, Rule 5 of the Rules of the Court. In our opinion, before examining merits of the appeal, it would be appropriate to decide as to whether this appeal is maintainable or not? Rule 40 of Ch. VIII of the Rules of the Court provides that the Court-fee to be paid in cases coming up before the Court shall be under the provisions of Section 4 of the Court-fees Act, 1870, hereinafter referred to as ''Act''. Rule 40 is being reproduced below :--

"Court-fees shall be payable in cases coming before the Court in the exercise of its ordinary original civil jurisdiction or in the exercise of its jurisdiction as regards appeals from judgment passed by it in the exercise of its ordinary civil jurisdiction to the extent to, and the manner in which they are payable in similar classes of cases coming before it, under the provisions of Section 4 of the Court-fees Act, 1870."

Chapter XI of the Rules of the Court contains provisions for presentation of appeals and applications. Rules 4, 5 and 6 deal with the payment of Court-fee. Rule 6 is relevant for the controversy in hand which is being reproduced below :--

"6.(1) Procedure in case of insufficiently stamped documents--. Whenever on an examination of the record under the last preceding Rule, or otherwise the Stamp Reporter or any other officer appointed in this behalf, finds that a document has been filed without being properly stamped, he shall make a report to that effect indicating the precise amount of deficiency and such report shall be shown to the Advocate of the party concerned.

(2) Such Advocate shall at once initial the report and note thereon whether or not he contests the accuracy thereof. If he contests it, he shall within three weeks or such further time as the Taxing Officer may allow, file his grounds of objection. If no such note is made or no such objection is filed within time, he shall be deemed to have accepted the report.

(3) Where the deficiency relates to a document received in Court, the Taxing Officer shall decide such objection.

(4) Where the deficiency related to a document received in a lower Court, the report together with the objection shall after notice to the Standing Counsel be laid before the Court for orders."

7. From Rule 40 Ch. 8 and the provisions contained in Rules 4, 5 and 6 of Ch. XI of the Rules of Court it is clear that the Court-fee is paid on the documents filed in this Court under the provisions of the Court-fees Act, 1870, Section 4 provides that no document of any of the kinds specified in the first or second Schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited or recorded in,

or shall be received or furnished by the High Court of Judicature at Allahabad in any case coming before such Court in the exercise of its ordinary or extraordinary original Civil Jurisdiction, or in the exercise of its ordinary or extraordinary original criminal jurisdiction; unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said Schedules as the proper fee for such document. Section 4 further refers to various other jurisdictions exercised by this Court. Clause (e) of Article 1 of Schedule II of the Act prescribes the Court-fee for various documents which are presented before the High Court. Clause (e) is being reproduced below :--

"When presented to a High Court-

(1) xxxxxxxxx (2) Under Article 226 or (One hundred Article 227 of the Constitution rupees) or by way of special appeal against a judgment or order including a judgment or order passed on a petition filed before the commencement of the Court-fees (Uttar Pradesh Amendment) Act, 1970 passed by a single Judge of the High Court thereon. (3) to (5) x x x x x x Provided that-

(i) no Court-fee shall be payable under clause (e) on an application or petition u/s 491 of the Code of Criminal Procedure, 1898, or under Article 226 of the Constitution for writs in the nature of habeas corpus or in relation to any proceeding relating thereto;

(ii) xxxxxxxxxxxxxxxxxxxxxxx xxx x."

8. Thus from perusal of the provisions contained in Section 4 and Schedule II it is clear that on the writ petitions Court-fee is paid under the provisions of the Act. Section 5 of the Act provides procedure in case of difference as to necessity or amount of fee. Section 5 is being reproduced below :--

"When any difference arises between the officer whose duty it is to see that any fee is paid under this chapter and any suitor or attorney, as to the necessity of paying a fee or the amount thereof, the question shall, when the difference arises in any of the said High Courts, be referred to the Taxing Officer whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the Chief Justice of such High Court, or of such Judge of the High Court as the Chief Justice shall appoint either generally or specially in this behalf.

When any such difference arises in any of the said Courts of Small Causes, the question shall be referred to the Clerk of the Court, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the first Judge of such Court.

The Chief Justice shall declare who shall be Taxing Officer within the meaning of the first paragraph of this section."

9. From perusal of Section 5 of the Act it is clear that the decision given by Taxing Officer u/s 5 of the Act shall be final which is only subject to one

exception that the Taxing Officer himself forms opinion that the question is one of general importance and he refers the question for the final decision of the Chief Justice of the High Court. On such reference, question may be decided by the Chief Justice or it may be decided by a Judge of such Court appointed by the Chief Justice by a general or special order in that behalf.

10. In the present case, the Taxing Officer by his order dated 19th January, 1993, rejected the objection of the appellants and upheld the report of the office showing deficiency of Rs. 1785/- in the writ petition in terms of Section 5. This order of the Taxing Officer was final and could not be questioned either in the Court or by filing special appeal. The question has been examined by learned single Judge and he also argued with the report of the Taxing Officer. However, in our opinion, as the decision of the Taxing Officer was final it could not be subjected to scrutiny of the Court. Since incidentally in this case the learned Judge has not reversed the order of the Taxing Officer and the learned Judge has simply upheld the same, no order is required to be passed by this Bench in this behalf. The legal position about the maintainability of the special appeal against the decision of the Taxing Officer or Taxing Judge u/s 5 of the Act arose for consideration before the Division Bench of this Court in case of Om Prakash and Another Vs. State of U.P. and Another, . The Division Bench has held that the decision of the Taxing Officer or the Taxing Judge u/s 5 of the Court-fees Act shall be final and conclusive for all purposes and the decision shall not be open to revision or appeal. The Division Bench has placed reliance in the judgment of the Full Bench of this Court in Balkaran Rai v. Gobind Nath Tiwary, (1890) ILR 12 All 129, Kunwar Karan Singh v. Gopal Rai, (1910) ILR 32 All 59, Lurkhur Chaube v. Ram Bhajan Chaube, 1903 All WC 214 and S.Rm.Ar.S.Sp. Sathappa Chettiar Vs. S.Rm.Ar.Rm. Ramanathan Chettiar, .

11. There is another reason for which this special appeal under Chapter VIII, Rule 5 of the Rules of the Court is not maintainable. It is established principle of law that if the statute, which has conferred jurisdiction on the Court, lays down procedure and provides for appeal from its decision, the appeal can be filed only under and in accordance with the procedure provided in such statute. In such a case the ordinary/ general right of appeal from the decision of the Court stands taken away or excluded by the statute which has conferred the jurisdiction on the Court. Chapter II of the Act contains provisions for fees in the High Courts and in the Courts of Small Causes at the presidency towns. Section 5 of the Act falls in this chapter under which whenever difference arises in payment of Court-fee, it is referred to Taxing Officer or Taxing Judge as the case may be and their decision on such difference has been given finality by the statute itself as is clear from the language used in Section 5. No right of appeal has been provided to any person under this Chapter, who is called upon to make good the deficiency in Court-fee, by order of Taxing Officer or the Taxing Judge. Contrary to it, Chapter III of the Act which provides for fees in other Courts and in public offices confers right of appeal, u/s 6-N of the Act, on the person who is called upon to make good the deficiency. The difference in the provisions contained in Chapter II and

Chapter III of the Act fully demonstrate legislative intent that so far High Court is concerned the decision of Taxing Officer u/s 5, or on reference made by him the order of the Chief Justice or of a Judge nominated by him by general or special order, shall be final, and cannot be questioned either in Court or in appeal under Chapter VIII, Rule 5 of the Rules of the Court. A Division Bench of this Court in case of Sheo Charan v. Nawal, reported in (1997) 2 All Rent Cas 263 : (1997 All LJ 1820), has discussed this legal position in detail, while deciding the maintainability of appeal under Chapter VIII, Rule 5 of Rules, from an order discharging the notice under Contempt of Courts Act, paragraphs Nos. 9 and 10 of the judgment may be gainfully quoted, which are being reproduced below :--

"9. The settled position is that the ordinary/ general right of appeal can be taken away/excluded expressly or by necessary implication by the statute, which has conferred jurisdiction on the Court. Ordinary right of appeal from a decision stands taken away if the Court''s decision has been made final by the statute or when the statute is a self contained Code. The same will be the position if the statute expressly bars the appeal in South Asia Industries Private Ltd. Vs. S.B. Sarup Singh and Others, it was held that when the statute makes the decision of the Court final, it imposes total bar against the appeal from such a decision. Accordingly, appeal under Letters Patent from a decision of a single Judge given under Delhi Rent Control Act was declared as not maintainable. In Upadhyaya Hargovind Devshanker Vs. Dhirendrasinh Virbhadrasinhji Solanki and Others, Supreme Court held that no appeal under Letters Patent against the decision of a single Judge given under Representation of the People Act is maintainable, because the said Act is a self-contained Code regarding the matters relating to settlement of election disputes. The decisions by this Court in Siya Ram v. Nathuram, 1968 All LJ 576 , and by the High Court of Rajasthan in Ramdhan Vs. Bhanwarlal, , which have taken the similar views were approved by the Supreme Court in the said case. In Union of India (UOI) Vs. Mohindra Supply Company, one of the grounds on which the Supreme Court rejected the claim of appeal under the Letters Patent against the decision of a single Judge u/s 39(1) of the Arbitration Act was and Sub-section (2) of Section 39 of the said Act by which the further appeal from such a decision was barred.

10. The right of appeal under any other law against a decision of a Court is also taken away if the statute, which has conferred the jurisdiction on the Court, has itself provided for an appeal from such a decision, the reason is that the rule when a jurisdiction is conferred on a Court, it imports the ordinary incidents of the procedure of that Court including the right of appeal from its decision will not apply if the statute which has conferred the jurisdiction its decision will not apply if the statute which has conferred the jurisdiction has itself made provision for appeal from the decision of such Court. As the Act has provided for appeal from order/decision given thereunder, an appeal under Rule 5 of Chapter VIII of the Rules from such a decision is barred. A Division Bench of this Court in Ved Prakash Kapoor v. Kamla Prasad Rai (Special Appeal No. 316 of 1995, decided on 23-4-1997 (reported in 1997 AIHC 3836) has also held that an appeal filed

against an order passed under the Act is not maintainable under Rule 5 of Chapter VIII."

12. In our opinion, the views expressed by the aforesaid Division Benches are squarely applicable to the present case also as the finality is attached to the decision of the Taxing Officer u/s 5 of the Act, We are in respectful agreement with the view taken by the Division Benches.

13. For the reasons stated above, in our opinion, this special appeal is not legally maintainable and is liable to be dismissed as such. In the circumstances, it is not necessary for us to examine other questions raised by the learned counsel for the parties on merits of the appeal. The appeal is, accordingly, dismissed as not maintainable.