

(2016) 12 CAL CK 0004
In the Calcutta High Court
Case No : C.O. 2266 of 2016

Smt. Rebati Mondal

APPELLANT

Vs

Smt. Usha Mondal

RESPONDENT

Date of Decision : 01-12-2016

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, Section 28, Section 3(q)
Specific Relief Act, 1963 — Section 34

Citation : (2017) 1 LLN 379 : (2017) 1 WBLR 677

Hon'ble Judges : Harish Tandon, J.

Bench : Single Bench

Advocate : Mr. Sudeep Sanyal, Mr. Sukanta Das and Ms. Lopamudra Maitra, Advocates, for the Petitioner; Mr. Rabindranath Mahato, Advocate, for the Opposite Parties

Final Decision : Allowed

Judgement

Harish Tandon, J.—The order of reversal is challenged in this revisional application.

2. In a suit for declaration that the plaintiff/opposite party is entitled to family pension and pensionary benefits of the deceased employee, an application for temporary injunction was filed for an order restraining the defendant no. 1 from withdrawing the family pension and pensionary benefits from the office of the defendant no. 3.

3. The dispute appears to have arisen between the plaintiff and the defendant no. 1 relating to their status as legally wedded wife. Prior to the institution of the instant suit, a title suit relating to declaration of status was filed by the plaintiff during the lifetime of the deceased employee, which was ultimately dismissed for default. The deceased employee initially contested the suit by filing the written statement denying the status of the plaintiff/opposite party in such capacity.

4. The trial court rejected the application for temporary injunction as the plaintiff/

opposite party has miserably failed to establish prima facie case. The said order was challenged before the learned District Judge, Paschim Medinipur in Miscellaneous Appeal No. 15 of 2014. The appellate court reversed the order of the trial court relying on the Voters Identity Card issued to her and her two sons and restrained the defendant no. 3 from disbursing the family pension and other pensionary benefits to the defendant no. 1 till the disposal of the suit.

5. The learned advocate appearing on behalf of the defendant no. 1/petitioner raises a legal point that the suit is hit by the provisions of the Administrative Tribunals Act, 1985 (hereinafter referred to as "said Act") and, therefore, the order of the court of appeal below is not sustainable. According to the learned advocate, the definition of "service matters" under Section 3(q) of the said Act includes the matter relating to pension and other retiral benefits and in view of Section 28 of the said Act, the jurisdiction of the Civil Court has been expressly barred. He further submits that though such point was raised but had not been considered by the court of appeal below. Alternatively he submits that even though such point is not taken, since it is a pure question of law, it can be agitated at any stage of the proceeding.

6. Mr. Rabindranath Mahato, learned advocate appearing on behalf of the plaintiff/opposite party, submits that the expressions appearing in the definition of "service matters" is relatable to a condition of service as well as affairs of the Union and, therefore, the Tribunal can only be approached by an employee and not by a third party. Mr. Mahato audaciously submits that had there been a dispute between the employee or the persons claiming under him against the Union or the State or the other local authorities, the Tribunal is competent to decide the same but not when there is no dispute relating the affairs of the Union. The dispute appears to be between the plaintiff and the defendant no. 1 over their respective status. The bar created under Section 28 of the said Act cannot apply in the instant circumstances. He placed reliance upon a judgment of the Supreme Court rendered in case of Dr. Duryodhan Sahu and others v. Jitendra Kumar Mishra and others, reported in (1998) 7 Supreme Court Cases 273 in support of the aforesaid contention.

7. Before proceeding to deal with the submissions advanced at the Bar by the respective advocates it would be apt and profitable to quote the relevant sections of the said Act, which are reproduced herein below:

"3(q). "service matters", in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation [or society] owned or controlled by the Government, as respects-

(i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;

- (iii) leave of any kind;
- (iv) disciplinary matters; or
- (v) any other matter whatsoever.

14. Jurisdiction, powers and authority of the Central Administrative Tribunal—(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court in relation ?

(a) recruitment, and matters concerning recruitment, to any All- India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerned-

(i) a member of any All-India Service, or

(ii) a person [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union, or

(iii) a civilian [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any defence services or a post connected with defence, and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation [or society] owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerned a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) or clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation [or society] or other body, at the disposal of the Central Government for such appointment.

[Explanation.- For the removal of doubts, it is hereby declared that references to "Union" in this sub-section shall be construed as including references also to a Union territory.]

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations [or societies] owned or controlled by Government, not being a local or other authority or corporation [or society] controlled or owned by a State Government:

Provided that if the Central government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of or different categories under any class of, local or other authorities or corporations [or societies].

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation [or society], all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court) in relation to-

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation [or society]; and

(b) all service matters concerning a person [other than a person referred to in clause (a) or clause (b) of sub-section (1)] appointed to any service or post in connection with the affairs of such local or other authority or corporation [or society] and pertaining to the service of such person in connection with such affairs.

28. Exclusion of jurisdiction of Court except the Supreme Court.- On and from the date from which any jurisdiction, powers and authority becomes 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 matters."

8. On conjoint reading of the aforesaid provisions it is aptly clear that the Tribunal is vested with the power and jurisdiction to entertain all disputes pertaining to service matters in connection with affairs of the Union or State or any local or other authorities within the territory of India or under the control of Government of India or any society or corporation owned and controlled by the Government. The definition of "service matters" cannot be squeezed and circumscribed, which is evident from the word "all matters" relating to the condition of service with the affairs of Union in relation to remuneration, pension and other retiral benefits, confirmation, seniority, promotion, reversion, premature retirement and superannuation, leave, disciplinary matters and any other matters whatsoever.

9. By virtue of Section 14 of the said Act, the jurisdiction of all courts except the

Supreme Court has been expressly excluded and/or barred in relation to the jurisdiction, powers and authority exercisable by the Tribunal. What can be gathered from the aforesaid provisions is that any dispute, which falls within the four corners of the definition of service matters, the Tribunal is competent to decide such dispute and the jurisdiction of all courts except the Supreme Court has been expressly barred.

10. The point, which hinges for consideration before this Court, is whether the dispute of the instant kind can be brought within the periphery of the definition of a service matters enshrined under Section 3(q) of the said Act.

11. It admits no ambiguity to say that the dispute pertaining to pension and other retiral benefits are included within such definition and, therefore, such dispute is amenable to be determined by the Tribunal in view of Section 14 of the said Act.

12. Mr. Mahato is very much vocal in his submission that the expression "condition of service in connection with affairs of the Union" is a relative term and assume importance concerning the service disputes. Mr. Mahato is of the opinion that any matter relating to condition of service in connection with the affairs of the Union gives a sufficient indication that such dispute can only be raised if the Union has declined and/or rejected and/or deprived the employee to such benefits. He further submits that the person claiming right, title and interest under the employer can also be brought within the periphery of the said definition and there is no difficulty in approaching the Tribunal in such circumstances.

13. Such submission does not appear to be against the spirit and object behind bringing such enactment and conferring the jurisdiction upon the Tribunal to ease out the burden of the courts concerning service matters. There appears to be anomaly to such submission to the extent that when a person claiming through the deceased employee did not claim the declaration of her status and claims the pensionary as well as the retiral benefits of the deceased, the court shall normally uphold its jurisdiction conferred under Section 9 of the Code of Civil Procedure unless expressly barred or by necessary implication. In case of an express bar of jurisdiction, the Civil Court should scrupulously examine the exclusion provision and shall interpret the same in the context of upholding the jurisdiction unless the legislative intention is explicit clear and brings no ambiguity over the exclusion of jurisdiction of the Civil Court.

14. Section 28 of the said Act contains a negative word and, therefore, the court should give weightage to the legislative mandate if the dispute can be brought within the four corners of the definition of service matters.

15. If the contention of Mr. Mahato is accepted, it would renders the provisions contained under Section 14 of the said Act unworkable, redundant and otios. By the said provision, the matter in relation to a recruitment or concerning recruitment can be raised before the Tribunal and the Tribunal is vested with

powers and jurisdiction to decide such disputes. It would be unnecessary to delve upon whether a person, who accrued right to participate in the recruitment whether can approach the Tribunal to ventilate his grievance relating to preparation of panel, method of recruitment so on so forth.

16. In the instant case, the petitioner claimed through the deceased employee as a legally wedded wife the pension and the other retiral benefits before the Civil Court. There appears to be a serious dispute over her status but unfortunately there is no declaration sought for such status.

17. According to Mr. Mahato, though the relief claimed in the plaint does not expressly indicate that a declaration as to the status of the plaintiff is sought for, yet such dispute is eminent and the court's power has not been bridled and/or fettered in extending the relief under the omnibus prayer made in the plaint. In other words, he also tried to impress the court that the prayers in the plaint cannot be averred in clear terms yet the status of the parties are involved therein and such informal defect may be cured subsequently. The court should consider the application for temporary injunction on the basis of the pleading as it stood on the said date.

18. The relief claimed in the plaint is restricted to a declaration concerning the family pension and other retiral benefits of the deceased employee and there is no whisper by which one could get from the prayer portion of the plaint that the declaration as to the status is included therein. The application for temporary injunction is not only decided on three golden parameters, namely, prima facie case, balance of convenience and inconvenience and irreparable loss and injury but also it is imperative on the part of the court to satisfy whether it has jurisdiction to entertain the suit or to grant relief claimed therein. It is trite law that the order of the court having inherent lack of jurisdiction is a nullity and, therefore, the court should not embark its journey to an illegal and void order.

19. Section 34 of the Specific Relief Act provides that any person entitled to any legal character or any right to a property may institute a suit against any person denying or interested to deny such character or right may seek for a declaration in this regard. The proviso inserted to the said provision expressly takes away the powers of the court to grant such declaration, which the plaintiff was otherwise entitled to seek but omits to do so.

20. There is no hesitation in my mind that the entire relief claimed in the plaint pertains to the pension and the other retiral benefits and, therefore, squarely comes within the definition of the service matters. In view of the bar having created under Section 28 of the said Act, the jurisdiction of all courts, except the Supreme Court, has been taken away and, therefore, the court should not pass the order of temporary injunction in such suit.

21. I would be failing in discharge of duty if I do not notice the judgment cited by Mr. Mahato in case of Dr. Duryodhan Sahu and others (supra). The moot questions framed by the Supreme Court in the said decision whether the

Administrative Tribunal can entertain a public interest litigation or whether the Tribunal has exceeded its jurisdiction in passing the impugned order. The Apex Court noticed the various provisions of the Act including Section 14 therein, which contains the extensive provisions relating to jurisdiction, powers and the authority exercised by the Tribunal. The appellant in the said report challenges the order of the Government dated 25th August 1993, whereby and where-under one additional post of Lecturer was created. A public interest litigation was filed before the Tribunal and in conspectus thereof the Apex Court held that the power of the Tribunal to entertain the matters is restricted to service matters defined under Section 3(q) of the said Act. Section 19 of the said Act gives right to any person aggrieved by an order passed by the authority to approach the Tribunal but certainly it does not imbibe the disinterested or a total stranger to an order to ventilate his grievance as public in public interest litigation. The expression "person aggrieved" has been interpreted in the said decision to include a person, may not be connected with the employee or the employee himself, if he is aggrieved by any order passed by the authority in relation thereto. It is succinctly observed that a person aggrieved must be a man who has suffered a legal grievance or a man against whom a decision has been pronounced wrongly depriving him of something affecting his title or some other rights. The Apex Court further took note of the word "his" appearing in a definition clause and held that it must be attributable to a person aggrieved by an action of the authority but cannot be extended to a private citizen or a stranger having no existing right or not intrinsically concern with any service matters.

22. The decision of the Apex Court lends support to the proposition of law that a person claiming through the deceased employee, if aggrieved by an action of the authority or inaction thereof, has the right to approach the Tribunal if the dispute pertains to the circumstances covered under the definition clause. The Tribunal is not vested with the powers conferred upon the courts relating to declaration of status of a person.

23. In the instant case, there is no express relief claimed by the petitioner and the relief is restricted to pension and pensionary benefits and, therefore, squarely comes within the ambit of service matters. There is no impediment on the part of the plaintiff/opposite party to approach the Tribunal.

24. The support can further be lend to a judgment of this Court in case of Surabala Saha v. Collector of Customs, reported in (1995) ILR 1 Calcutta 292 in the following:

"17. Section 14 of the aforesaid Act provides that the Central Administrative Tribunal shall on and from the appointed day exercise all powers and authority exercisable by all Courts, except the Supreme Court under Article 136 of the Constitution in support of all service matters, concerning a person appointed to any Civil Service of the Union or any civil post under the Union, "Service matters" have been defined in Section 3(q) of the Act to include matters relating to remuneration, pension and other benefits.

18. Since payment of the pensioner and other monetary benefits of a former employee of the Union of India is the subject-matter of the instant case, there is no doubt in my mind that the provisions of the Administrative Tribunals Act, 1985, are squarely attracted, and the petitioner's remedy in respect thereof would be before the Central Administrative Tribunal, having regard to the provisions of Sections 14, 28 and 29 of the said Act.

19. The writ application is not, therefore, maintainable and cannot be entertained by this Court."

25. In view of my findings recorded herein above, the impugned order cannot be sustained and the same is hereby set aside. The order of the trial court is restored.

26. For abandon precaution, this Court makes it clear that the observations/ findings recorded herein above shall be restricted to an application for temporary injunction and are mere tentative. The court shall not be swayed by such observations at the time of deciding the suit after full-fledged trial.

27. The revisional application is, thus, disposed of.

28. However, there shall be no order as to costs.