

(2016) 01 JH CK 0213
In the Jharkhand High Court
Case No : W.P.(L) No. 2204 of 2014

St. Xavier's School

APPELLANT

Vs

Kunjal Kumar

RESPONDENT

Date of Decision : 21-01-2016

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, Section 2-A
Jharkhand Education Tribunal Act, 2005 — Section 8

Citation : (2017) 1 JLJR 607

Hon'ble Judges : Mr. Shree Chandrashekhar, J.

Bench : Single Bench

Advocate : Mr. Nipun Bakshi, Advocate, for the Petitioner; Mr. P. K. Sinha, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Shree Chandrashekhar, J.—Aggrieved by order dated 04.03.2014 whereby, the application questioning the jurisdiction of the Labour Court to adjudicate the dispute has been rejected, the present writ petition has been filed.

2. Briefly stated, the respondent was employed as Lab Assistant. A charge memo was issued to the respondent on 04.10.2008 on the allegation of habitual unauthorized absentism and other misconduct. After conducting a domestic enquiry, the respondent was dismissed from service on 30.08.2011. The dispute raised by the respondent culminated into Reference Case No. 03 of 2012. The petitioner came to this Court in W.P.(L) No. 225 of 2013 which was disposed of on the undertaking of the respondent to withdraw Reference Case No. 03 of 2012 however, with liberty to the respondent to agitate his grievance in a duly constituted proceeding before the Labour Court. The workman thereafter, filed a fresh application under Section 2 A of the Industrial Disputes Act, 1947 which was registered as Reference Case No. 08 of 2013. The petitioner filed an application dated 28.11.2013 questioning the maintainability of the Reference Case before the Labour Court.

3. Heard the learned counsel for the petitioner and perused the documents on record.

4. Mr. Nipun Bakshi, the learned counsel for the petitioner submits that considering the jurisdiction, power and authority of the Jharkhand Education Tribunal under Section 8 of the Jharkhand Education Tribunal Act, 2005 and the overriding effect of the Jharkhand Education Tribunal Act, the jurisdiction of the Labour Court to adjudicate the dispute raised by the workman is barred. Referring to decision in "General Manager, Telecom v. M. Krishnan and Another" (2009) 8 SCC 481, the learned counsel submits that the Jharkhand Education Tribunal Act being a special law would override the provisions of the Industrial Disputes Act, 1947.

5. The relevant provisions under Jharkhand Education Tribunal Act, 2005 are extracted below:

"8. Jurisdiction, power and authority of the Jharkhand Education Tribunal. - Save as otherwise expressly provided in this Act, the Jharkhand Education Tribunal shall exercise on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all the courts (Except the Jharkhand High Court and Supreme Court of India) regarding:

(a) Matter concerning recruitment to any post or posts and the matters related therewith in connection with the affairs of the education institution;

(b) All matters concerning the service, conditions of employees of the educational institutions;

(c) Grievances of the employees against the management of the educational institutions;

(d) Grievances of the guardians and parents of students against the management of the educational institutions regarding teaching standards, fee structure, infrastructural facilities, development works and allied matters related thereto;

(e) Such matters relating to educational institutions as may be referred to the Tribunal by the State Government by notification from time to time.

Section 19. Act to have overriding effect: The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force or an instrument having effect by virtue of any law other than this Act."

6. Section 8 bars the jurisdiction, power and authority exercisable by all the Courts except, the Jharkhand High Court and the Hon"ble Supreme Court of India in respect of the matters enumerated thereunder. Sub-section (a) to Section 8 refers to matters concerning recruitment to any post or posts. A bare reading of subsection (a) discloses that it is intended to cover disputes prior to appointment. Subsections (b) and (c) would encompass matters relating to

service conditions and the grievance of the employees against the management. The dispute questioning the termination of service, in my opinion, is not covered under the matters for which Section 8 confers exclusive jurisdiction, power and authority upon the Jharkhand Education Tribunal. The scheme of the Jharkhand Education Tribunal Act is self evident. The Tribunal has been conferred special jurisdiction however, only to the extent Section 8 provides. Section 8 does not bar the jurisdiction of other Courts in so far as, matters not covered under Section 8 are concerned. Referring to the contention raised based on Section 19, I may point out that while interpreting a provision conferring overriding effect on a statute, the extent to which the Legislature intended to give overriding effect to the statute has to be ascertained. It is thus necessary to determine the object for which the Jharkhand Education Tribunal Act was enacted. The preamble to Jharkhand Education Tribunal Act, 2005 indicates that the Jharkhand Education Tribunal is a statutory forum, to be known as Appellate Tribunal for looking into the grievances of the teachers of aided, affiliated and Private Educational Institutions and that of the parents/guardians of the students and to comply with order passed by the Hon''ble Supreme Court and the Jharkhand High Court. Though the proceeding before the Tribunal shall be deemed a judicial proceeding, the expression "constitution of a statutory forum" discloses the object and the extent of jurisdiction of the Tribunal intended by the Legislature. Section 2A of the Industrial Disputes Act, 1947 provides that any dispute or difference between an individual employee and his employer connected with, or arising out of discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute. Subsection 2 to Section 2A provides that after the expiry of 45 days from the date of the application to the Conciliation Officer of the Appropriate Government for Conciliation of the dispute, the workman may make an application to the Labour Court or Tribunal for adjudication of the dispute. I am of the definite opinion that the adjudication of legality of a termination order is beyond the purview of Section 8 of the Jharkhand Education Tribunal Act, 2005. Considering the ambit and scope of Section 8 of the Jharkhand Education Tribunal Act, 2005, I hold that the Labour Court has jurisdiction to adjudicate Reference Case No. 08 of 2013.

7. The writ petition stands dismissed.