

(1991) 10 BOM CK 0050

In the Bombay High Court

Case No : W. P. No. 4867 of 1984 with W. P. No. 5030 of 1984

State of Maharashtra

APPELLANT

Vs

M. V. Ghalge and another

RESPONDENT

Date of Decision : 18-10-1991

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 15, 19, 2, 2(b)
Constitution of India, 1950 — Article 136, 226, 227
Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (1991) MhLj 1557

Hon'ble Judges : B. N. Srikrishna, J

Bench : Single Bench

Advocate : W. S. Devnani with V. P. Malvankar, Assistant Government Pleader, for the Appellant; S. M. Dharap with Ms. Seema Saraik, for the Respondent

Final Decision : Dismissed

Judgement

B. N. Srikrishna, J.—These are two writ petitions, under Article 227 of the Constitution of India, which impugn the two orders dated 21st April, 1984, made by the Second Labour Court, Pune, in Applications (IDA/LCP) Nos. 641 of 1981 and 639 of 1981, under the provisions of section 33C(2) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act").

2. The first Respondents in both the petitions were working in the Baramati Sub-Division of Pune Division in Irrigation Department as casual labourers on daily rated wages. The first Respondent in Writ Petition No. 4867 of 1984 was working from 1-5-1974 to 1-5-1979 on daily wages and was carried on the daily rated establishment. Similarly, the first Respondent in Writ Petition No. 5030 of 1984 was working on daily rated wages from 1-7-1974 to 1-7-1979 and was carried on the daily rated establishment. Both filed applications before the Labour Court claiming that under the rules applicable to the workmen on the daily rated, work charged, and converted permanent/temporary establishment of the Public Works and Housing Department (popularly called as the Kalelkar Award), they were

entitled to be converted as regular temporary workmen on completion of five years on the daily rated establishment and that they were eligible to the benefits flowing from the Kalelkar Award. They alleged that they had been deprived of the benefits of Kalelkar Award and that each of them was entitled to difference in salary amounting to Rs. 3,876-90 Ps.

3. The Petitioner opposed both the applications and contended that the Workmen were not entitled to the benefits under the Kalelkar Award. Though it was admitted by the Petitioner that each of the workmen was employed as a casual labour on daily wages, it was contended that their service for five years was not continuous and consequently the benefits under the Kalelkar Award were not available to them. The Petitioner filed an extract of the service record before the Labour Court in each of the cases. From the service record it is seen that the first Respondent in Writ Petition No. 4867 of 1984 had worked from 5-6-1976 to 16-10-1978 continuously and thereafter upto 24th December, 1981, with intermittent gaps. The number of actual working days in the case of the two workmen are as under:

The Labour Court, upon a scrutiny of the evidence before it and the admissions made in the written statement filed by the Petitioner, took the view that each of the applicants had completed more than five years" service on the daily rated establishment and was entitled to the benefits of conversion to the temporary establishment under the rules applicable to such employees (known as Kalelkar Award). The Labour Court, therefore, allowed the claim of each of the applicants. The State of Maharashtra being aggrieved, has come up there against under Article 227 of the Constitution of India.

4. Mr. Devnani, learned counsel appearing for the Petitioner, contended at the outset that, with effect from 8th July, 1991, the Government of Maharashtra has, by a Notification in the Official Gazette, brought into existence the State Administrative Tribunal which has become functional from the said date. Consequently, under the provisions of the Administrative Tribunals Act, 1985, the two writ petitions pending before this Court were required to be transferred to the State Administrative Tribunal for hearing, according to the learned counsel. Mr. Devnani laid great emphasis on section 15 of the Administrative Tribunals Act and pointed out that as a consequence of the said provision of law, the jurisdiction of this Court to entertain a writ petition under Article 227 of the Constitution of India, in respect, inter alia of "service matters" as defined in section 3(q) of the said Act has been barred. His further contention was that u/s 29 of the Administrative Tribunals Act, 1985 all pending proceedings, even in the High Court, barring appeals, shall stand transferred to the State Administrative Tribunal for hearing and disposal in accordance with law. In short, his submission was that in view of the State Tribunal having become functional from 8th July, 1991, the State Tribunal would be the appropriate forum for hearing challenges even to the orders made u/s 33C(2) of the Industrial Disputes Act, 1947. On merits, he contended that though the two workmen concerned had been borne

on the daily rated establishment for a period of five years or more, they had not continuously worked for five years and therefore the benefit of clause 28 of the Kalelkar Award was not available to them. In the submission of the learned counsel, clause 28 envisages conversion of posts only in the case of persons who have rendered continuous service of five years or more on the daily rated establishment. Since the said expression has not been defined, either in the said clause or with reference thereto, the Court has to put an equitable construction on the said expression "Continuous Service" would therefore mean service for larger part of the year without there being a substantial gap in the service. In the case of two concerned workmen, Mr. Devnani submits that the gaps were, at least in the last three years, ranging from three months to fifteen months and, therefore, their service was discontinuous so as to make them ineligible for benefits under clause 28 of the Kalelkar Award.

5. The contention based on the provisions of the Administrative Tribunals Act, 1985, is easily disposed of. Though Mr. Devnani relied upon the judgment of the Supreme Court in *S. P. Sampat Kumar vs. Union of India and others*, AIR 1987 SC 386, I find nothing said therein which could be of assistance to the learned counsel in his submission. The Supreme Court, in the said case, was merely concerned with the challenge to the provisions of the Act based on an alleged violation of the basic structure of the constitution pertaining to the power of the judicial review vested in the High Court under Articles 226 and 227 of the Constitution of India. Though there were several contentions canvassed and considered therein, the judgment need not detain us as the contention canvassed before me was neither canvassed before the Supreme Court, nor considered by it in *Sampat Kumar's* case (*supra*). A close look at the language in section 29 of the Administrative Tribunals Act, which prescribes the transfer of pending cases, shows the contention to be without substance.

6. The cause of action in these cases arose in 1978-80. At the relevant time section 2(b) of the Administrative Tribunals Act provided that the provisions of the Act shall not apply, inter alia, to any person governed by the provisions of the Industrial Disputes Act, 1947 (Act No. 14 of 1947) in regard to such matters in respect of which he was so governed. It is thus clear that, on the date of arising the cause of action, the cause of action was not within the jurisdiction of the Administrative Tribunals Act as the Petitioner was exempt from the operation of the Administrative Tribunals Act. Hence, there was no impediment to the jurisdiction of the Labour Court to try the applications u/s 33C(2) of the Industrial Disputes Act. It remains to be considered whether the amendment made by the Act No. 19 of 1986, with effect from 22nd of January 1986, makes any difference. Act No. 19 of 1986 deleted sub-section (b) of section 2 of the Administrative Tribunals Act and simultaneously amended section 28 of the Act. The amended sections 28 and 29 which are relevant for our purpose read as under:

"28. Exclusion of jurisdiction of courts except the Supreme Court under Article

136 of the Constitution. On and from the date from which any jurisdiction, powers and authority become 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.

29. Transfer of pending cases. (1) Every suit or other proceeding pending before any court or other authority immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding, the cause of action whereon it is based is such that it would have been if it had arisen after such establishment within the jurisdiction of such Tribunal stand transferred on that date to such Tribunal :

Provided that nothing in this sub section shall apply to any appeal pending as aforesaid before a High Court.

(2) Every suit or other proceeding pending before a Court or other authority immediately before the date with effect from which jurisdiction is conferred on a Tribunal in relation to any local or other authority or corporation (or society) being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after the said date, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal:

Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before a High Court.

Explanation For the purpose of this sub-section "date with effect from which jurisdiction is conferred on a Tribunal", in relation to any local or other authority or corporation, means the date with effect from which the provisions of sub-section (3) (or society) of section 14 or, as the case may be, sub-section (3) of section 15 are applied to such local or other authority or corporation (or society).

(3) Where immediately before the date of establishment of a Joint Administrative Tribunal any one or more of the States for which it is established, has or have a State Tribunal or State Tribunals, all cases pending before such State Tribunal or State Tribunals immediately before the said date together with the records thereof shall stand transferred on that date to such Joint Administrative Tribunal.

Explanation For the purpose of this sub-section, "State Tribunal" means a Tribunal established under sub-section (2) of section 4.

(4) Where any suit, appeal or other proceeding stands transferred from any

Court or other authority to a Tribunal under sub-section (1) or subsection (2)

(a) the Court or other authority shall, as soon as may be, after such transfer, forward the records of such suit, appeal or other proceeding to the Tribunal; and

(b) the Tribunal may, on receipt of such records, proceed to deal with such suit, appeal or other proceeding, so far as may be, in the same manner as in the case of an application u/s 19 from the stage which was reached before such transfer or from any earlier stage or de novo as the Tribunal may deem fit.

(5) Where any case stands transferred to a Joint Administrative Tribunal under sub-section (3), the Joint Administrative Tribunal may proceed to deal with such case from the stage which was reached before it stood so transferred".

7. It is true that section 15 of the Act was intended to oust, inter alia, the writ jurisdiction of this Court in service matters. That section provides that on and from appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all Courts (except the Supreme Court) in relation, inter alia, to service matters shall be exercised by the State Administrative Tribunal. But, as the section itself indicates, this provision is "save as otherwise expressly provided in this Act". The exception contemplated by section 15 is expressly provided in section 28 of the said Act. Section 28 provides that on and from the date the Tribunal becomes functional and starts exercising jurisdiction in relation, inter alia, to service matters, no Court shall have or be entitled to exercise any powers or authority in relation thereto. There are, however, two exceptions to this general rule postulated in section 28 and they are: (a) the Supreme Court and (b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947, or any other corresponding law for the time being in force. The jurisdiction of these two fora is specifically kept intact. In other words, notwithstanding what is provided by section 15 and the general postulation in section 28, even if the State Administrative Tribunal has become functional and operative, the Supreme Court and the Labour Court under the Industrial Disputes Act have their jurisdiction left intact.

8. Section 29, which provides for transfer of pending matters to the Administrative Tribunal, operates only in that sphere where the cause of action is such that it would have been exclusively triable by the Administrative Tribunal. Every suit or other proceeding pending before any Court or other authority immediately prior to the Administrative Tribunal became functional, provided such proceeding arose out of a cause of action which would have been exclusively triable by the Administrative Tribunal, would stand transferred to the Tribunal upon the constitution and functioning of the Administrative Tribunal. The only exception is an appeal pending before the High Court. This section also does not lay down what is canvassed by the learned counsel. In the case of the two Petitioners, the causes of action were triable by the Labour Court by virtue of the exception carved out in section 28(b). Therefore, the causes of action were not

such as were exclusively triable by the Administrative Tribunal so as to result in the automatic transfer by virtue of section 29(1) of the Administrative Tribunals Act. There is also substance in the contention of Mr. Dharap, learned Advocate for the first Respondent in both the petitions, that the jurisdiction of the Administrative Tribunal contemplated thereunder is original jurisdiction. Section 19, in Chapter IV which deals with the "procedure", does support this contention to some extent. However, it is not necessary to pronounce upon the correctness of this argument as the language used in sections 28 and 29 is clear and decisive.

Looked at from any point of view, in my judgment, the two petitions cannot be transferred to the State Administrative Tribunal, nor is the jurisdiction of this Court under Article 227 of the Constitution of India, to hear these petitions, is not ousted by any provision of the State Administrative Tribunals Act, 1985.

9. Turning next to the merits of the case, I find it difficult to accede to the argument made by the Petitioners. The claim of the two workmen was based on clause 28 of the Rules applicable to the daily rated, work charged and converted permanent/temporary establishment workmen of the Public Works and Housing Department. These Rules appear to have been arrived at by agreement between the Government of Maharashtra and the Union representing such workmen. The agreement, I am told, was arrived at on the lines of an Award of one Kalelkar and therefore the parties popularly refer to these Rules as Kalelkar Award. I shall also use the same terminology hereinafter. Clause 28 of Kalelkar Award deals with the benefit available to the daily rated workmen. The Rule, when freely translated into English, would read as under :

"28. The benefits available to the daily rated employees under the Kalelkar Agreement (regarding availability of definite appointments on definite establishments) Such of the workmen on daily wages who have been working continuously for five years on such establishment shall be entitled, upon completion of five years, to have the posts held by them converted into posts on temporary establishment and such daily rated workmen shall be appointed on such converted posts. The post created on the converted establishment shall be personal to the incumbent and if the incumbent, for any reason leaves service, such post shall come to an end. Upon appointment on the converted temporary establishment, the workmen shall be covered by the Bombay Civil Service Rules."

10. I am unable to accept the contention of Mr. Devnani that this rule would become applicable only after the workman has rendered continuous service of five years on the daily rated establishment. The expression "continuous service" has not been defined in the Rules in connection with this rule, though in connection with lay off and retrenchment, it has been defined to mean rendering of 240 days actual work in a year. In the absence of any definition of the expression "continuous service", for the purpose of Rule 28, a reasonable construction will have to be put on this expression. In my view, the rule contemplates continuation of a workman on the daily rated establishment for a period of at least five years, consecutively and without interruption. The Rule

does not contemplate actual working on the part of the daily rated employee for any specified number of days in any of the requisite five years. In other words, if the employee is on the daily rated establishment, in five consecutive years, irrespective of number of days of actual work rendered in each of the said five years, the employee would be entitled to the benefit of Rule 28 of having his post converted to the post of converted temporary establishment.

11. Mr. Devnani placed reliance on Rule 1 in Part III which applies to converted employees to regular temporary establishment and contended that this Rule indicates that the workmen should have continuously worked for five years. In my view, the interpretation of Rule 28 is not governed by Rule 1 in Part ID as the entire Part III contemplates a situation which would come into play only after there has been conversion in accordance with Rule 28.

12. This is the only reasonable construction that can be put upon Rule 28. I am not prepared to accede to the argument of the Petitioners that continuous service as contemplated in this Rule means working for greater part of the year or for any specific number of days. There is no such indication in the Rule. Thus read, there is no difficulty in agreeing with the orders of the Labour Court impugned in the petitions. The Labour Court has correctly assessed the material before it and come to the conclusion that the cases of the two workmen fell within the purview of Rule 28 and that they were entitled to the benefits flowing therefrom. There is no infirmity in the reasoning of the Labour Court, nor is there any other reason to interfere with the two impugned orders.

13. In the result, the two writ petitions are dismissed and the rule issued in each of them is discharged. However, there will be no order as to costs.

14. It is hoped that the Petitioner would pay the small amounts which are payable to the two workmen instead of forcing them to spend further time, energy and money in further litigation.