
(2003) 06 MP CK 0008
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2479 of 2000

State of M.P. and another

APPELLANT

Vs

N.K. Vaidya and another

RESPONDENT

Date of Decision : 30-06-2003

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Consumer Protection Act, 1986 — Section 16(2), 30(2)

Citation : (2004) 3 MPLJ 641

Hon'ble Judges : Dipak Misra, J; A.K. Shrivastava, J

Bench : Division Bench

Advocate : S.K. Yadav, for the Appellant; Ashish Vaidya, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

Invoking the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, the State of M. P. along with the Registrar, M. P. State Consumer Disputes Redressal Commission have called in question the legal propriety of the Order dated 22-1-2000 passed by M. P. Administrative Tribunal, Bhopal (in short "the Tribunal") in O. A. No. 138/1998.

The facts which are essential to be stated for disposal of the present writ petition are that the respondent No. 1 (hereinafter referred to as "the applicant") preferred an application u/s 19 of the Administrative Tribunals Act, 1985 (hereinafter referred to as "the 1985 Act") before the Tribunal for grant of Rs. 3000/- as honorarium, which is being given to the other members of the M. P. State Consumer Disputes Redressal Commission (in short the "Commission").

The applicant was appointed as a member of the Commission under the provisions of Consumer Protection Act, 1986 (for brevity the "1986 Act") by the State of M. P. in its Food and Supplies Department. He took over the charge of his office on 2-6-1995. The State Government, as averred, in exercise of powers

conferred on it by sub-section (2) of section 30 of the 1986 Act has framed M. P. Consumer Protection Rules, 1987 (in short the "Rules") which provides for grant of honorarium to its members. It is put forth that as per the practice of the State Government, the senior member starts as a full time member and a junior member as a part time member and honorarium is paid accordingly. To elaborate the senior member is paid Rs. 3,000/- per month if the commission is sitting on whole time basis and Rs. 150/- per day for sitting. By the time the applicant joined, one Smt. Saroj Rajwade was working as a member and she was senior to him. A proposal was sent to treat the applicant as a full time member of the Commission, but, it was rejected by the State Government vide order dated 1-3-1997. Being aggrieved, the applicant knocked at the doors of the Tribunal seeking declaration that he is entitled to get fixed honorarium Rs. 3000/- per month and conveyance allowance Rs. 500/- per month from the date of his appointment, which is admissible to a full time member.

The claim of the applicant was resisted by the State Government and its functionaries contending, inter alia, that the applicant is not a civil servant and, therefore, is not entitled to be paid an allowance which is payable to a government servant. It was also put forth that he was not holding a civil post and hence, the Tribunal has no jurisdiction to entertain the lis in question. The Tribunal adverted to the preliminary objection raised by the respondents therein, but rejected on the ground that the applicant was appointed by the State of M. P.; that he was drawing the remuneration from the State Government; and that he was subjected to other conditions laid down by the State Government. Thereafter the Tribunal adverted itself to the merits and arrived at the conclusion that the applicant was appointed as a member and if the scheme of the constitution of the Commission is scrutinised, it becomes graphically clear that there has to be parity in the post and remuneration and no discrimination was permissible. Being of this view, the Tribunal directed to make payment as provided in the scheme of Rs. 3000/- per month and Rs. 500/- as conveyance allowance to the applicant at par with that of the other lady member. The Tribunal fixed a period of 3 months from the date of communication of the order for its compliance.

A return has been filed by the respondent No. 1, the applicant before the Tribunal justifying the order passed by the Tribunal. Emphasis has been laid on the concept of discrimination between the two members. Absence of any full time or part time member under the Act, the distinction between the terminology "if sitting" and "if appointed"; and the absence the logicity for creating a distinction in regard to conveyance allowance and various other factors have been highlighted. While replying to the concept of holding of civil post under the Act, it has been stated that it has nexus inasmuch as the applicant has been appointed in connection with the affairs of the State under the control of the State Government and if section 16(2) of the 1986 Act is understood in proper perspective, it would be quite clear that the applicant holds a civil post and, therefore, the Tribunal had jurisdiction to hear the matter and has correctly

decided the lis in question.

We have heard Mr. S.K. Yadav, learned Government Advocate for the State and Mr. Ashish Vaidya, learned counsel for the respondent No. 1.

Questioning the printability of the order passed by the Tribunal, Mr. Yadav has raised a singular contention that by no stretch of imagination, it can be held that the applicant was holding a civil post or was seeking recruitment to a civil post and in the absence of such basic infrastructure the Tribunal could not have entertained the lis. It is contended by him that the Tribunal has wholly erred in law by expressing an opinion that the applicant was engaged in the affairs of the State and drawing salary and, therefore, he was holding the civil post though the applicant was working in a different capacity and his functioning cannot be regarded as having nexus with the affairs of the State. It is also urged by him that the applicant was receiving honorarium, which has a different connotation than salary, but, the Tribunal has failed to understand and appreciate the same. To bolster the submission, he has placed reliance on the decisions rendered in various cases.

Mr. Ashish Vaidya, learned counsel appearing for the applicant/respondent No. 1, sounding a contra note, has contended that if the 1986 Act is appreciated in a proper manner, it would become graphically clear that the applicant was holding the civil post and, therefore, the Tribunal has jurisdiction to decide the controversy and when it noticed that there was hostile discrimination in existence it has directed and such direction has the support of law and hence, should not be disallowed on the ground of hyper technical plea put forth by the learned counsel for the State. To buttress his submission, he has placed reliance on certain citations.

To appreciate the rival submissions raised at the Bar, it is appropriate to refer to section 16 of the 1986 Act, which deals with the composition of the State Commission. The aforesaid provision reads as under:-

Section 16. Composition of the State Commission. - (1) Each State Commission shall consist of -

(a) a person who is or has been a judge of a High Court, appointed by the State Government, who shall be its President (Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of the High Court;)

(b) two other members, who shall be persons of ability, integrity and standing and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman. (Provided that every appointment made under this clause shall be made by the State Government on the recommendation of a selection committee consisting of the following namely :-

- (i) President of the State Commission Chairman,
- (ii) Secretary of the Law Department of the State - Member,
- (iii) Secretary incharge of the Department dealing with consumer affairs in the State-Member)

(2) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of the members of the State Commission shall be such as may be prescribed by the State Government.

(3) Every member of the State Commission shall hold office for a term of five years or up to the age of sixty-seven years, whichever is earlier and shall not be eligible for reappointment.

(4) Notwithstanding anything contained in sub-section (3), a person appointed as a President or as a member before the commencement of the Consumer Protection (Amendment) Act, 1993, shall continue to hold such office as President or member, as the case may be, till the completion of his term.

Section 30(2) of the 1986 Act empowers the State Government by notification, to make rules for carrying out the provisions contained in clause (b) of sub-section (2) and sub-section (4) of section 7, sub-section (3) of section 10 clause (c) of sub-section (1) of section 13, sub-section (3) of section 14, section 15 and sub-section (2) of section 16. In pursuance of the aforesaid provisions, the State Government has framed the 1987 rules.

The sub-rule (1) of Rule 6 reads as under:-

6. Salary and other allowance and terms and conditions of the President and Member of the State Commission. - (i) President of the State Commission shall receive the salary of the Judge of the High Court, if appointed on whole-time basis or a consolidated honorarium of Rs. 200/- per day for sitting if appointed on part-time basis. Other members, if sitting on whole time basis shall receive a consolidated honorarium of Rs. 3000/- per month and if sitting on part-time basis, a consolidated honorarium of Rs. 150/- per day for the sitting.

On a perusal of the aforesaid rule, it is absolutely vivid that members if sitting on whole time basis are entitled to receive a consolidated honorarium of Rs. 3000/- per month and if sitting on part time basis are entitled to receive Rs. 150/- per day for sitting.

This being the scheme of the Rule we really have to advert whether a member who is appointed under the provisions of the 1986 Act and is governed by the rules, can be regarded as a person holding a civil post. Before we enter into that arena it is apposite to refer to section 15(1) of the 1985 Act.

Jurisdiction, powers and authority of the State Administrative Tribunals. - (1) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State 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 to -

(a) Recruitment, and matters concerning recruitment, to any civil service of the State or to any civil post under the State;

(b) all service matters concerning a person (not being a person referred to in clause (c) of this sub-section or a member, person or civilian referred to in clause (b) of sub-section (1) of section 14) appointed to any civil service of the State or any civil post under the State and pertaining to the service of such persons in connection with the affairs of the State or of any local or other authority under the control of the State Government or of any corporation (or society) owned or controlled by the State Government;

(c) all service matters pertaining to service in connection with the affairs of the State concerning a person appointed to any service or post referred to in clause (b), being a person whose services have been placed by any such local or other authority or corporation (or society) or other body as is controlled or owned by the State Government, at the disposal of the State Government for such appointment.

If the aforesaid provision is understood in proper perspective, there remains no scintilla of doubt that unless a person holds a civil post under the State, controversy relating to his service condition cannot be adjudicated by the Tribunal. What exceptions have been carved out are totally different and depends upon notifications issued u/s 14 of the 1985 Act in that regard. We are not presently concerned with that. We are required to see whether the applicant has held a civil post for attracting the jurisdiction of the Tribunal. In this context, we may profitably refer to the decision rendered in the case of Raja Bahadur K.C. Deo Bhanj Vs. Raghunath Misra and Others, wherein it has been held as under :

11. In our opinion, there is a distinction between "serving under the Government" and "in the service of the Government", because while one may serve under a Government, one may not necessarily be in the service of the Government; under the latter expression one not only serves under the Government and it imports the relationship of master and servant.

Thereafter, their lordships referred to the book by Batt (On the Law of Master and Servant) and enumerated two essential aspects to this relationship; namely, the servant must be under the duty of rendering the personal services to the master or to others in this behalf and the master must have right to control the servant's work either personally or by another servant or agent. It is noteworthy to state here that their Lordships quoted a portion from the said book and came to the conclusion as under :

It is this right of control or interference, of being entitled to tell the servant when to work (within the hours of service) or when not to work, and what work to do and how to do it (within the terms of such service), which is the dominant

characteristic in this relation and marks off the servant from an independent contractor, or from one employed merely to give to his employer the fruits or results of his labour. In the latter case the contractor or performer is not under his employer's control in doing the work or effecting the service; he has to shape and manage his work so as to give the result he has contracted to effect. Consequently, a jobbing gardener is no more the servant of the person employing him than the doctor employed by a local authority to act as visiting physician to its fever hospital.

After so holding their Lordships adverted to the factum whether the Sarpanch was having a master servant relationship under the State Government.

In this context we may profitably refer to the decision rendered by the Constitution Bench in the case of State of Assam and Others Vs. Shri Kanak Chandra Dutta, wherein the Apex Court has held as under :

There is no formal definition of "post" and "civil post". The sense in which they are used in the Services Chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Art. 310 from a post connected with defence; it is a post on the civil as distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State. See marginal note to Art. 311. In Art. 311, a member of a civil service of the Union or an all-India service or a civil service of a State is mentioned separately and a civil post means a post not connected with defence outside the regular civil services. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State. See the marginal notes to Arts. 309, 310 and 311. The heading and the sub-heading of Part XIV and Chapter I emphasise the element of service. There is a relationship of master and servant between the State and a person holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia in conjunction with other of fact in each case whether there is such a relation between the State and the alleged holder of a post.

In this regard we may profitably refer to the decision rendered by the Constitution Bench in the case of State of Gujarat and Others Vs. Raman Lal Keshav Lal and Others, wherein it has been held as under:-

The true test for determination of the question whether a person is holding a civil post or is a member of the civil service is the existence of a relationship of master and servant between the State and the person holding a post under it and that the existence of such relationship was dependent upon the right of the State to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work

and the payment by it of his wages and remuneration. The relationship of master and servant may be established by the presence of all or some of the factors referred to above in conjunction with other circumstances.

In the case of R.N.A. Britto Vs. Chief Executive Officer and others, in paragraph 14, the Apex Court ruled thus :-

The provisions in the Act to which we have adverted, clearly show that several functions which were required to be performed by the State are entrusted to the Panchayats. They also show that the properties vested in the Panchayats and the funds of the Panchayat are that of the Government and those collected by way of tax or fee by exercising the power of taxation vested in the Panchayat by the Government. Above all, the provisions of the Act make it abundantly clear that the Panchayats have to function under the ultimate control of the State Government. When it comes to the Secretaries of the Panchayats appointed under the Act, their selection for appointment, their termination from service, their liability for transfer and all other conditions of their services are as provided for under the Rules made under the Act or other rules made under Article 309 of the Constitution in respect of services of the State Government servants. When sub-section (2) of section 80 of the Act to which we have adverted states that subject to the provisions of Rules made under the proviso of Article 309 of the Constitution, the qualifications, powers, duties, remuneration and conditions of service including disciplinary matters of such Secretary shall be such as may be prescribed, it leaves no room for doubt that the Secretaries of the Panchayats are government servants, like other government servants, who are subjected to the Rules to be made under the proviso to Article 309 of the Constitution as regards their service conditions.

In this context we may profitably refer to the decision rendered in the case of Karbhari Bhimaji Rohamare v. Shanker Rao Genuji Kolhe and Others 1975 SCC 252 wherein in paragraph 4, the Apex Court held as under :-

The first question to be decided, is whether the membership of the Wage Board is an office under the State Government. In Maulana Abdul Shakur v. Rikhabchand this Court held :-

The power of the Government to appoint a person to an office of profit or to continue him in that office or revoke his appointment at their discretion and payment from out of Government revenues are important factors in determining whether that person is holding an office of profit under the Government.

Leaving aside for the present the question of payment, as the first respondent was appointed by the Government the Government could either continue him, in that office or revoke his appointment at their discretion. In Ramappa v. Sangappa this Court pointed out that:

An office has to be held under someone for it is impossible to conceive of an office held under no one. The appointment being by the Government, the office

to which it is made must be held under it, for there is no one else under whom it can be held.

There is no doubt that in this case the office of the membership of the Wage Board should be deemed to have been held by the first respondent under the Government of Maharashtra. In *Gurugobinda Basu v. Sankari Prasad Ghosal* it was held that:

For holding an office of profit under the Government a person need not be in the service of the Government and there need not be any relationship of master and servant between them.

In that view even the comptroller and Auditor General, being appointed by the President and his administrative powers being such as may be prescribed by rules made by the President subject to the provisions of the Constitution and of any law made by Parliament, was held to be a holder of an office of profit under the Government of India. In *Shivamurthy Swami v. Agadi Sanganna Andanappa* the indicia of an office held under the Government were put thus:

..the office in question must have been held under a Government and to that some pay, salary, emoluments or allowance is attached.... This Court in several decisions had laid down the tests for finding out whether an office in question is an office under a Government and whether it is an office of profit. Those tests are : (1) Whether the Government makes the appointment; (2) Whether the Government has the right to remove or dismiss the holder; (3) Whether the Government pays the remuneration; (4) What are the functions of the holder? Does he perform them for the Government, and (5) Does the Government exercises any control over the performance of those functions?

Again leaving aside for the present the question of payment of remuneration, the office of the membership of the Wage Board satisfies all the tests here laid down. The power exercised by the Wage Board is essentially a part of the judicial power of the State and the Wage Board is appointed to exercise that power. There can, therefore, be no doubt that the first respondent did hold an office under the Government. This proposition was not seriously disputed by the first respondent. The only serious dispute is whether that office was an office of profit.

In this regard we may also refer profitably to the decision rendered in the case of *Indian National Congress (I) Vs. Institute of Social Welfare and Others*, wherein the Apex Court has drawn a distinction between the administrative action and quasi-judicial function. It is necessary to understand the concept of civil post.

In this context we may also profitably refer to the decision in the case of *Dr. A.K. Doshi Vs. Union of India*, wherein in paragraphs 15 and 16, their Lordships stated that the Apex Court did not hold whether a member technical of Company Law Member was holder of a civil post. Their Lordship expressed their reservation while expressing the view.

However, on appreciation of the aforesaid decisions, it is graphically clear that if

the present factual scenario is appreciated keeping in view the scheme of the 1986 Act and 1987 Rules two concepts clearly emerge, namely, that the forum has been constituted to adjudicate adversial controversies between the parties and the State Government does not have any kind of control of the master that ordinarily it has when there is the relationship between the person (servant) and the State Government. Thus it cannot be equated with master and servant and when other relevant and associate factors are absent he cannot be treated as a member or holder of civil post. Once it is held that he is not holder of a civil post and he does not seek recruitment to the civil post, we have no hesitation in our mind that the Tribunal did not have jurisdiction to entertain the lis. The finding recorded by the Tribunal that the appointment is made by the State Government and the honorarium is paid by the State Government really does not convert the post and no way assist to come to the conclusion that he is holder of a civil post.

In view of the aforesaid premised reasons we are of the considered opinion, that the order of the Tribunal is absolutely vulnerable and deserves to be lanced and accordingly we do so. However, we have so done on the ground of lack of jurisdiction. Needless to emphasise it is open to the applicant to seek Redressal of his grievances before the appropriate forum of law, if so advised.

Resultantly, the writ petition is allowed without any order as to costs.