

(1985) 11 KL CK 0015
In the High Court Of Kerala

Subramaniam

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 14-11-1985

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 2, 28, 29, 3
Constitution of India, 1950 — Article 136, 226, 32

Citation : (1986) 2 LLJ 466

Hon'ble Judges : M.P. Menon, J

Bench : Single Bench

Judgement

M.P. Menon, J.—These writ petitions are directed against two separate communications issued by the Trivandrum Railway Divisional Manager on 5th November, 1985 informing the petitioners, two drivers of the Railways, that they would be "deemed to have been removed from service with effect from 6th February, 1981." On the facts and circumstances set out in the petitions, the action may seem to be somewhat outrageous, but the question still remains whether the petitions under Article 226 are themselves entertainable after the 1st of November, 1985 in view of the Administrative Tribunals Act, 1985 and the establishment of a Central Administrative Tribunal, as per notification issued u/s 4 of the Act.

2. u/s 14(1) of the Act all the jurisdiction, powers and authority exercised by all courts (except the Supreme Court under Article 136 of the constitution) immediately before the "appointed day," in relation to "service matters" of Central government servants, are to be exercised by the Central Administrative Tribunal, on and from the appointed day. Section 28 of the Act provides that

On and from the date from which any jurisdiction, power and authority becomes exercisable under this Act by a Tribunal.

in relation to service matters, no court (except the Supreme Court under Article 136) shall have jurisdiction, power or authority in relation to such service matters. Section 29 stipulates that all proceedings pending before any court

immediately before the date of establishment of a Tribunal "shall stand transferred on that date to such Tribunal" if the cause of action on which they are based are such as would have been within the jurisdiction of such Tribunal after its establishment. Shorn of details, therefore, the legislative intention seems to be that all service matters relating to Central Government servants should be exclusively dealt with by the Central Administrative Tribunal, when once such a Tribunal is established, and that no court, including the High Court, shall have thereafter original jurisdiction to deal with such matters. Even pending cases relating to such matters cannot be proceeded with, in view of the statutory transfer ordained by Section 29.

3. Now, the petitioners are Central Government servants and what are involved are "service matters" within the meaning of Section 3(q) of the Act. Admittedly, a Central Administrative Tribunal has been established by notification u/s 4, with effect from 1st November, 1985. So far as I could see, the combined effect of all these is to deprive this Court of its power to entertain and decide Central "service matters," even in exercise of its power under Article 226, from 1st November 1985.

4. Mr. Ramkumar contends that such ouster of jurisdiction will take place u/s 28 only when the Central Tribunal actually and effectively starts functioning. The Section as already noticed, speaks of the date from which the jurisdiction of the Tribunal "becomes exercisable under this Act." In view of the clear language of Section 14(1), it has to be held that the Tribunal's power becomes exercisable from the "appointed day" itself; and appointed day is defined as the date with effect from which Tribunal is established by notification u/s 4. At the risk of repetition, therefore, it should be said that with effect from 1st November, 1985 (which is the appointed day for the Central Administrative Tribunal), the power of the Tribunal became exercisable and that from that point of time, this Court's jurisdiction stood ousted.

5. Reliance is then placed on the following direction contained in the interlocutory order passed by the Supreme Court on 31st October, 1985 in connection with challenges made to the validity of the Administrative Tribunals Act:

So far as the application for interim relief is concerned, there will be stay of transfer of writ petitions under Article 32 of the Constitution pending in this Court and the Registry of this Court will continue to receive writ petitions under Article 32 which may be filed hereafter. This Court will be entitled to deal with the writ petitions, under Article 32 and pass orders in those writ petitions.

So far as the Writ petitions under Article 226 of the Constitution pending in the High Courts as also suits or appeals pending in the Subordinate Courts are concerned, there will be no order of stay, subject to the following conditions:

1...

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3. Where no Bench of the Tribunal is located at the place where there is seat of the High Court, any application or petition in regard to the matters covered by the Act will be filed in the Registry of the High Court, and as soon as such application or petition is filed, intimation shall immediately be sent to the Bench of the Tribunal having jurisdiction over that area and if there is an application, for interim relief made in such petition or application, a member of the Bench will make himself available at the seat of the High Court for hearing the application for interim relief within one week from the receipt of the intimation and until then, status quo as on the date of the filing of the application for interim relief shall be maintained.

The contention that the above direction read along with the provisions of the Act, enables this Court to continue to exercise its powers under Article 226 in relation to Central service matters, despite the establishment of a Central Tribunal cannot also be sustained. The direction amounts to the making of some temporary arrangement for the functioning of the Tribunal and its Registry; it is not intended to stop the operation of Section 28 and 29 of the Act. The Supreme Court's reluctance to stay transfer of pending Article 226 petitions, in the same manner as Article 32 petitions itself shows what the true position is.

6. It may be that the Act does not apply to persons governed by the Industrial Disputes Act in " regard to such matters in respect of which they are so governed, in view of Section 2(b). Assuming that the above provision can be construed as retaining the powers of the High Court under Article 226, in respect of matters governed by the I.D. Act (I must say I have considerable doubt about the construction), it is difficult to see how such an approach would fit in with the facts of the two writ petitions on hand. The impugned orders dated 5th November, 1985 show that the terminations are at least purported to be the consequence of a Supreme Court decision; that cannot be a matter in respect of which the petitioners are governed by the Industrial Disputes Act, even if drivers like them are workmen as defined in that Act.

7. The conclusion therefore is that the writ petitions cannot now be entertained by this Court. Dismissed.