

(1995) 01 CAL CK 0009
In the Calcutta High Court
Case No : Matter No. 2905 of 1993

Surabala Saha

APPELLANT

Vs

Collector of Customs

RESPONDENT

Date of Decision : 13-01-1995

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 28, 29, 3
Constitution of India, 1950 — Article 136, 226, 323A

Citation : (1995) 1 ILR (Cal) 292

Hon'ble Judges : Altamas Kabir, J

Bench : Single Bench

Advocate : Prasad Bagchi and Nivedita Mukherji, for the Appellant; Rathindra Nath Das, Pranab Dutta and Arati Dutta for Union of India, for the Respondent

Final Decision : Dismissed

Judgement

Altamas Kabir, J.—While functioning as Preventive Officer of Customs, the Petitioner's elder son Tarun Bahdhu Saha became afflicted by a neurological disease in 1981 and was allowed to retire from service on April 30, 1985, on ground of permanent disablement order the relevant provisions of the Central Civil Service Pension Rules, 1979, and the Civil Service Regulations. It appears that the said Tarun Bandhu Saha, thereafter, expired on October 27, 1985, and on his death, the Petitioner made several - representations to the concerned authorities to provide employment to her younger son. Shri Kamal Bandhu Saha, on compassionate grounds.

2. The grievance of the Petitioner is that her younger son's claim for appointment on compassionate grounds in place of his elder brother, has been disallowed by the Respondents, and that she has not been paid her elder son's retirement benefits, including group insurance and pension.

3. When the writ application was taken up for hearing, Mr. Rathindra Nath Das, learned Advocate for the Union of India, informed the Court that during the pendency of the writ petition, the Petitioner's younger son, Shri Kamal Bandhu

Saha, had been provided with employment by the Collector of Customs, Calcutta, so that the first part of the Petitioner's grievances had been set at rest.

4. Mr. Das, however, submitted that the instant writ application was not maintainable in view of the provisions of the Administrative Tribunals Act, 1985, and was liable to be dismissed for want of jurisdiction. Mr. Das urged that having regard to the provisions of Section 14 of above Act, the writ Petitioner's claim for payment of her deceased son's retirement benefits, including group insurance and pension, should have been made before the Central Administrative Tribunal, which had jurisdiction to decide all questions relating to service matters concerning a person appointed to any Civil Service of the Union or of any civil post under the Union.

5. It was then urged that "service matters" had been defined in Section 3(q) to mean all matters relating, inter alia, to the conditions of service of a person in connection with the affairs of the Union or of any State, and concerning remuneration (including allowances), pension and other* retirement benefits.

6. Reference was then made to Sections 28 and 29 of the above Act which provides for exclusion of the jurisdiction of all Courts, save and except the Supreme Court under Article 136 of the Constitution in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any service or post, and also provides for transfer of all pending cases to the Central Administrative Tribunal.

7. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of S.P. Sampath Kumar v. Union of India and Ors. AIR 1987 S.C. 386 wherein the vires of the Administrative Tribunals Act, 1985, was under challenge. While upholding the validity of the Act the Hon'ble Supreme Court observed that the exclusion of the jurisdiction of the High Court did not totally bar judicial review and that it was possible for Parliament in view of Article 323A of the Constitution to set up an alternative institution in place of the High Court for providing judicial review, in this case the Central Administrative Tribunal.

8. In this connection, reference was also made to the decision of the Supreme Court in the case of J.B. Chopra and Others Vs. Union of India (UOI) and Others, where referring to the decision in S. P. Sampath Kumar's case much the same sentiments were expressed.

9. Reliance was also placed on another decision of the Supreme Court in the case of Union of India and others Vs. Deep Chand Pandey and another, emphasised that the Central Administrative Tribunal had jurisdiction to consider the claim of the parties against the Union of India and its officers in the Railway department. .

10. In conclusion it was submitted on behalf of the Respondents that as indicated in Section 3(q) of the Administrative Tribunals Act, 1985, "service matters" in relation to a person meant all matters relating to the conditions of his service in connection with the affairs of the Union or of any State, including pension and

other retirement benefits.

11. It was urged that notwithstanding the appointment given to the Petitioner's younger son, this Court had no jurisdiction to entertain the Petitioner's prayer with regard to release of the retirement benefits of the Petitioner's deceased elder son, including group insurance and pension.

12. Replying to the submissions made on behalf of the Respondents, Mr. Prasad Bagchi firstly contended" that the relief being sought for by the Petitioner did not come within the ambit of the Administrative Tribunals Act, 1985, as it did not involve any service matter in. respect of a civil post under the Union.

13. Mr. Bagchi urged that the mother of the deceased employee was merely asking for payment of her son's retirement dues, which relief this Court in the exercise of its writ jurisdiction was entitled to entertain and adjudicate upon.

14. From the submissions of the respective parties, apart from the Petitioner's claim for employment of her younger son in place of her elder son who was declared to be permanently disabled and died subsequently, which has been set at rest by such appointment being given, the other claim which has surfaced relates to payment of the dues of the deceased by way of retirement benefits, including the group insurance and pension.

15. What falls for decision, therefore, is whether a prayer for payment of retirement benefits of a deceased employee who had been holding a post under the Union Government, can be entertained by the High Court in exercise of its powers under Article 226 of the Constitution in view of the provisions of the Administrative Tribunals Act, 1985.

16. The answer to the above query is, in my view, not for to seek after the decision in S. P. Sampath Kumar's case (Supra) upholding the constitutional validity Of the Administrative Tribunals Act, 1985.

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.

20. However, instead of relegating the Petitioner to the Tribunal, the concerned Respondents may look into the Petitioner's grievances and give her such relief as she may be entitled to under the law.

21. The writ application is dismissed on the point of jurisdiction with the above observations.

22. There will be no order as to costs.

23. All parties to act on a signed copy of the operative portion of the order on usual undertaking.