
(2007) 05 DEL CK 0221

In the Delhi High Court

Case No : LPA No.: 1049 of 2004 and 1070 of 2004

The Director General Doordarshan/All India Radio

APPELLANT

Vs

Pratap Singh and Another

RESPONDENT

Date of Decision : 08-05-2007

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14

Industrial Disputes Act, 1947 — Section 33C(1), 33C(2)

Citation : (2007) 2 ILR Delhi 726

Hon'ble Judges : Dr. M.K. Sharma, C.J.; Sanjiv Khanna, J

Bench : Division Bench

Advocate : Vikrant Yadav with Mr. Pawan Upadhyay and Mr. Punit Parihar, for the Appellant; Sanjay Ghose, for the Respondent

Final Decision : Allowed

Judgement

Mukundakam Sharma, C.J.—Since the issue involved in both the appeals is similar, we propose to dispose of these appeals by this common judgment and order. In these appeals, the primary issue, which is raised by the appellant is whether a reference made by the appropriate Government to the Central Government Industrial Tribunal was barred in view of the provisions of the statutory remedy provided to the respondents under the provisions of the Administrative Tribunals Act.

2. The respondent-workman was employed with the appellant against the post of Fitter. On the ground that his services were terminated illegally by the appellant, he raised an industrial dispute, which was referred for adjudication to the Central Government Industrial Tribunal under the following terms:

Whether the action of the Management of AIR, New Delhi in terminating the services of Shri Pratap Singh, Fitter on daily rated/muster roll w.e.f. 26.12.87 is justified ? If not, to what relief the concerned workman is entitled and from what date ?

3. On the basis of the aforesaid reference, an ID case No. 3/1996 was registered with the Central Government Industrial Tribunal, New Delhi. The appellant, however, defaulted in making appearance in the said reference case and, therefore, an order was passed on 16th June, 2000 by the Tribunal for proceeding the matter ex parte as against the appellant. The application filed by the appellant for recalling the said ex parte order was also dismissed by the Tribunal on 5th January, 2001. The appellant did not proceed further in respect of the aforesaid order passed by the Tribunal for proceeding ex parte. Consequently, the Tribunal proceeded to pass an award on the reference holding that the termination of the workman was void and inoperative. It was declared by the Tribunal that the workman would be in continuous service with all consequential benefits and with full back wages.

4. The aforesaid award passed by the Tribunal was not challenged further and no effective steps were taken by the appellant to get the said award set aside. Therefore, the said award passed by the Tribunal became final and binding.

5. The respondent workman thereafter moved an application u/s 33-C(1) of the Industrial Disputes Act for payment of back wages, but under the impugned order dated 12th July, "2001, the respondent was told to have the amount computed u/s 33-C(2) of the Act.

6. Being aggrieved by the aforesaid order, the respondent-workman filed a writ petition in this Court, which was registered as WP(C) No. 328/2002.

7. The learned Single Judge considered the writ petition and examined Section 33-C(1) and (2) of the Act. Section 33-C(1) applies when there is a settlement or an award in favour of a workman. It also applies when under Chapter VA or VB of the Act, some amount is payable to the workman or his heirs or assignees. In such circumstances the workman can move an application to the appropriate Government for recovery of the dues and appropriate Government on being satisfied that money is due to the workman, is under an obligation to issue a certificate for the amount due to the Collector, who shall then proceed to recover the same as arrears of land revenue. Section 33-C(2) does not apply in cases where there is an award or settlement, unlike Section 33-C(1) of the Act. The said sub-section would come into play if the workman claims an amount over and above the amount determined by the appropriate Government u/s 33-C(1) of the Act. Therefore, in case of an award or settlement as in the present case, the appropriate Government first determines the amount u/s 33-C(1) of the Act and if any dispute remains thereafter, the workman can resort to Section 33-C(2) of the Act for adjudication of the balance amount and recovery. A direction was accordingly issued to the appropriate Government to exercise their power u/s 33C(1) of the Act and quantify the amount due to the respondent-workman under the Award dated 27th February. 2001. The writ petition was disposed of in terms of the aforesaid observations and directions.

8. The aforesaid order and the findings recorded by the learned Single Judge in

the said order are under challenge in these appeals on which we have heard the learned counsel appearing for the parties.

9. Counsel appearing for the appellant has raised an objection regarding maintainability of the reference made to the Central Government Industrial Tribunal contending, inter alia, that in the light of the Section 14 of the Administrative Tribunals Act, 1985, only Central Administrative Tribunal is empowered to try and adjudicate upon the disputes relating to the services of the employees of the Union. Therefore, the reference itself made by the appropriate Government to the Central Government Industrial Tribunal was illegal, barred and without jurisdiction. Consequently the Central Government Industrial Tribunal was not competent to try and entertain the dispute inter se parties and also to render an award which is sought to be enforced by filing the aforesaid application u/s 33C(1) of the Industrial Disputes Act.

10. We considered the aforesaid submissions on behalf of appellant in the light of the submissions made by the counsel appearing for the respondents. In terms of the award passed by the Central Government industrial Tribunal, the respondent workman has been reinstated in service and he has also been given consequential relief in the nature of continuity of service. However, the appellant has not paid back wages for which the aforesaid application was filed.

11. The learned Single Judge directed for quantification of the amount payable in terms of the award to the respondent workman.

12. During the course of arguments before us, we found that on the own showing of the respondent-workman, the order of termination was passed on 26th December, 1987, and later he sent a notice/demand on 8th December, 1993 on the basis of which a reference was made by the appropriate Government under order dated 27/28.12.1995.

13. At that stage the counsel appearing for the respondent-workman, on instructions received from the respondent-workman, submitted before us that the respondent-workman is ready and willing to forgo the wages for the period between 26th December, 1987 and 8th December, 1993. Ex facie there was delay on the part of the respondent-workman in raising the demand claim and also in sending the notice seeking reference of the dispute regarding termination of his services. This was done after a period of about six years. The respondent-workman was fair in foregoing the payment of wages for the aforesaid period as there was delay on his part in raising the dispute because of which he has given up his claim for the benefit of back wages for the period 26th December, 1987 to 8th December, 1993.

14. Therefore, there has to be a modification in the order of the learned Single Judge to the aforesaid extent. In terms of the statement made, the back wages for the period between 26th December, 1987 and 8th December, 1993 shall not be paid to the respondent and would not be paid to him, which is agreed to and consented by the counsel for the respondent-workman, on instructions received

from the workman.

15. So far as the contention that the reference was barred under the provisions of Section 14 of the Administrative Tribunals Act is concerned the said issue is no longer *res integra* in view of the decision of the Supreme Court in *Council of Scientific and Industrial Research and Another v. Padma Ravinder Nath (Smt) and Others*, (2001) 9 SCC 526 . In the said decision, the Supreme Court has held that the Administrative Tribunals are not substitutes for the authorities constituted under the Industrial Disputes Act. It was also held that matters over which authorities under the Industrial Disputes Act have jurisdiction do not automatically become vested in the Administrative Tribunals for adjudication. The respondent herein was appointed as a Fitter and, therefore, he could have invoked the provisions of the statutory Rules and also the provisions of the Administrative Tribunals Act. But availability of the aforesaid remedies could not have stood in his way of invoking the jurisdiction of the authorities prescribed under the Industrial Disputes Act, as the subject matter of dispute raised by the respondent workman was within the Industrial Disputes Act and his rights and the appellant's obligations under the said Act.

16. In that view of the matter, the contention raised by the appellant regarding the jurisdiction is found to be without any merit and is dismissed. In terms of the aforesaid order, the appeals are allowed in part to the extent indicated above regarding non-payment of wages to the respondent-workman for the period from 26th December, 1987 to 8th December, 1993. The arrear back wages for the remaining period shall be quantified and paid within three months in terms of the order of the learned Single Judge, failing which it would carry an interest of 9% from the date of the order of the learned Single Judge.