

(1988) 12 CAL CK 0002
In the Calcutta High Court
Case No : F.M.A.T. No. 2100 of 1988

The District Electrical Engineers and Others

APPELLANT

Vs

Harnum Kaur and Others

RESPONDENT

Date of Decision : 19-12-1988

Acts Referred:

Administrative Tribunals Act, 1985 — Section 28(4)

Citation : 93 CWN 918

Hon'ble Judges : Pabitra Kumar Banerjee, J;G.N. Ray, J

Bench : Division Bench

Advocate : S.N. Banerjee and Sadananda Ganguly, for the Appellant; G.C. Chakraborty and Udayan Chakraborty, for the Respondent

Final Decision : Allowed

Judgement

G.N. Ray, J.—This appeal is directed against the judgment dated 17th June, 1988 passed by the learned trial judge in C.R.No. 2256(W) of 1971. By the aforesaid judgment, the learned trial judge allowed the writ petition out of which the said Civil Rule arose and directed, inter alia, that the order of removal or dismissal from service of Bachan Singh on 21st September, 1963 would be set aside and the order of suspension would stand revoked. All arrears of salaries and allowances as payable to the said Bachan Singh on and from 21st September, 1963 till the date of death on 18th March, 1977 should be paid to the heirs and legal representatives. It was also directed that increments and revision of pay and allowances payable to the said Bachan Singh should also be paid to the heirs and legal representatives and they should also be paid the gratuity and provident fund which were due to the said Bachan Singh with interest from 18th March, 1977 within six weeks from the date of communication of the said order. The learned Judge further directed that in any event, an adhoc payment of Rs. 10,000/- should be made to the widow of the deceased within two weeks from the communication of the said order. It may be noted in this connection that the said Bachan Singh initially moved the writ petition but on his death, his heirs and

legal representatives including the widow of the deceased, Sm. Harnam Kaur were substituted. Against the aforesaid judgment of the learned trial judge, the instant appeal was preferred by the District Electrical Engineers (M), Chittaranjan Locomotive Works, the General Manager of the said Locomotive Works and also Union of India through the Secretary, Ministry of Railways.

2. It appears that the said Bachan Singh was an employee of the Chittaranjan Locomotive Works and he was removed from service as a disciplinary measure on 21st September, 1963. Against such order of removal the said Bachan Singh moved a writ petition before this Court, but such writ petition was dismissed on the ground that the writ petition was not properly signed by Bachan Singh. Thereafter, a fresh writ petition was moved by the said Bachan Singh, but such writ petition was again rejected by the learned trial Judge on merits. Against such summary rejection of the writ petition, an appeal was preferred by the said Bachan Singh and the said appeal was allowed and the Appeal Court directed for issuance of a Rule "Nisi" and the learned trial Judge disposed of the said Civil Rule by the impugned judgment.

3. During the pendency of the said Rule. Bachan Singh died and his heirs and legal representatives were substituted by an order dated 18th August, 1981. In view of the death of the said Bachan Singh, the substituted heirs moulded the prayers by making an application for amendment and the Rule was ultimately assigned to the learned trial Judge on 10th October, 1985. It appears that on 11th October, 1985, the matter was taken up for hearing and the judgment was reserved by the learned trial Judge. As aforesaid, only on 17th June, 1988, the learned trial Judge finally disposed of the Rule by passing the impugned judgment.

4. It has been strenuously contended by the learned counsel appearing for the appellants that this Court lost its jurisdiction to deal with the writ petition in view of the enforcement of the Administrative Tribunals Act, 1985. The learned counsel for the appellants relied on a Bench decision of this Court made in the case of Union of India v. Virendra Prasad reported in 1988(1) Calcutta High Court Notes, page 34. In the said decision, it was held that in view of the provisions of section 28(4) of the Administrative Tribunals Act, if the writ petition was not finally disposed of, but the same was kept pending decision, the writ petition cannot be entertained any further by This Court, if the subject matter of the dispute is entertainable by the Administrative Tribunals under the said Act. The Appeal Court was of the view that when the judgment was not finally pronounced, the writ petition should be deemed to be pending and as such the Administrative Tribunal only has the jurisdiction to deal with the matter. It has been contended by the learned counsel for the appellants that the legality and validity of the order of removal or dismissal from service of the said Bachan Singh, is the subject matter of challenge in the writ petition. After the death of the said Bachan Singh, his heirs and legal representatives got themselves substituted inter alia claiming that as the said Bachan Singh was entitled to claim

arrear salaries and all benefits arising out of the employment by getting a declaration that the order of dismissal or removal from service was illegal, the heirs and legal representatives of the said Bachan Singh were entitled to maintain the writ petition filed by the said Bachan Singh after being substituted. The learned counsel has contended that in the aforesaid circumstances the subject matter of challenge in the writ petition is essentially a challenge to the order of dismissal or removal from service and such dispute is squarely a subject matter to be dealt with by the Administrative Tribunal and not by this Court. It has been contended by the learned counsel for the appellants that so long a judgment is not passed in a proceeding, the proceeding remains pending in the court or tribunal. In the instant case, the learned trial Judge passed the judgment only on 17th June, 1988 and by the said judgment he finally disposed of the writ petition on 17th June, 1988. But this Court had no jurisdiction to deal with the subject matter involved in the writ petition on 17th June, 1988. In the aforesaid circumstances, the judgment passed by the learned trial Judge must be held to be without jurisdiction and the writ petition should be directed to be transferred to the Central Administrative Tribunal, Calcutta for proper adjudication.

5. The learned counsel for the substituted writ petitioners respondents has submitted that the decision made by the court of Appeal in Virendra Prasad's case is without jurisdiction and as such the said decision should not be taken into consideration by this Court. It has been contended by the learned counsel that if according to the finding of the Appeal Court in that case no lis was pending in this court because of the provisions of the Administrative Tribunals Act, there was no scope or jurisdiction to entertain, hear or decide the appeal under Letters Patent for the purpose of declaring a judgment of the trial Court as without jurisdiction and therefore the decision in the appeal was a nullity. It has been further contended by the learned counsel for the respondents that the only remedy of an aggrieved party in such case was to challenge the propriety of the judgment of the learned trial Judge before the Hon'ble Supreme Court, but not in an appeal under Clause 15 of the Letters Patent before this Court. Hence the decision made in Virendra Prasad's case must be held to be a decision without any jurisdiction and should be left out of consideration in this appeal. It has also been contended by the learned counsel of the respondents have come to defeat a very just and fair claim of the respondents on the technical plea that this Court lost jurisdiction to entertain the writ petition in view of the enforcement of the Administrative Tribunals Act, Such plea is an ignoble plea and the Union of India must be discouraged to take such plea. In this connection, the learned counsel has relied on an observation of the Supreme Court made, in the case of Hindusthan Sugar Mills v. The State of Rajasthan & Ors. reported in AIR 1978 SC 1496 to the effect that although there was no legal liability on the Central Government to take actions as demanded by the aggrieved party, it should be remembered that we are living in a democratic society governed by the rule of law and every Government which claims to be inspired by the ethical and moral

values must do what is fair and just to the citizen regardless of legal technicalities. After all the motto of every civilised State must be "Let right be done".

6. After considering the nature of dispute involved in the writ proceeding and the arguments advanced by the learned counsels for the parties it appears to us that if a writ proceeding is not finally concluded by delivering judgment, the writ proceeding should be treated as pending in this Court and if the Administrative Tribunals Act becomes operative before final conclusion of the proceeding and by virtue of the provisions under the said Act the writ petition challenging the conditions of service require to be transferred to the Central Administrative Tribunal for adjudication, this Court loses its jurisdiction to try such dispute in the writ proceeding. Simply because the hearing was concluded and the matter was kept to be passed, it cannot be held that the lis involved in the writ proceeding was no longer pending in this Court. It may be noted that until the writ proceeding was disposed of finally by the learned trial Judge by passing the judgment on 17th June, 1988, the learned Judge before whom the matter was pending for consideration and for delivering judgment, could place the matter for further hearing if such hearing was necessary. Such step is possible only on the footing that the matter is still pending and the learned trial Judge has seisin over the matter. In the aforesaid circumstances, it must be held that until 17th June, 1988, the said writ petition was pending before this Court and the dispute involved in the writ petition is a dispute regarding propriety and legality of the order of removal or dismissal from service of the said Bachan Singh and such dispute is essentially related with the conditions of service of the said Bachan Singh. In the aforesaid circumstances, this court lost its jurisdiction to decide the dispute involved in the writ petition on 17th June, 1988 when the matter was finally disposed of by the learned trial Judge by the impugned judgment. We are unable to accept the contention of the learned counsel for the respondents that the decision made in Virendra Prasad's case was made without any jurisdiction and as such the said decision is a nullity and cannot be looked into by this court. If a single Judge of this Court passes a judgment in a pending proceeding, such judgment may fail on various grounds including the ground about the maintainability of the proceeding before the learned trial Judge. Such judgment, however, can be challenged in an appeal under Clause 15 of the Letters Patent before a Division Bench and the Court of Appeal does not lose jurisdiction to entertain the appeal and decide the same simply because the learned trial Judge lost jurisdiction to decide the matter and the judgment on that score is liable to be set aside. It may be noted in this connection that it is not the case that this court from the very inception inherently lacked the jurisdiction to entertain the writ petition.

7. We are also unable to accept the submission of the learned counsel for the respondents that although this Court had no jurisdiction (sic) to decide the said dispute because of the provisions of the Administrative tribunals Act, the Appeal Court should not interfere with the judgment of the trial court simply on the

ground that the casue espoused by the writ petitioner and thereafter by the substituted heirs is a just cause and Central Government and its agency should be discouraged to put challenge on a just cause of a Government employee on any technical lea.

8. In the aforesaid circumstances, this appeal is allowed and (sic)e judgment passed by the learned trial Judge is set aside simply on (sic)e ground that on the date the writ petition was finally disposed of by the learned trial Judge by passing the impugned judgment, the trial court ad no jurisdiction to decide the dispute involved in the writ petition and the matter was liable to be transferred to the Central Administrative tribunal for adjudication. There will, be however, no order as to costs. (sic)et the records of the Civil Rule No. 2256(W) of 1971 be transferred (sic) the Central Administrative Tribunal, Calcutta as expeditiously as practcable by this Court. By way of abundant caution we (sic)ake make it clear (sic)t we have not considered the case of the parties on merits. After the judgment was delivered in court, the learned counsel (sic)r the respondents prayed for leave to appeal to the Supreme Court, the facts of the case, the leave is, however, refused.

Pabitra Kumar Banerjee, J.

I agree.