

(1990) 07 KL CK 0069
In the High Court Of Kerala
Case No : O.P. 8838 of 1988-B

T.K. Mani and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-07-1990

Acts Referred:

Administrative Tribunals (Amendment) Act, 1986 — Section 2
Administrative Tribunals Act, 1985 — Section 14, 14(1), 28, 29, 4
Constitution of India, 1950 — Article 136, 14, 226, 227, 323A
Industrial Disputes Act, 1947 — Section 33C(2)

Citation : (1990) 2 KLJ 231

Hon'ble Judges : Radhakrishna Menon, J

Bench : Single Bench

Advocate : N. Sukumaran, for the Appellant; Sumathi Dandapani, for the Respondent

Final Decision : Allowed

Judgement

Radhakrishna Menon, J.—For the reason that Petitioner 1 to 21 and deceased Baby, husband of 22nd Petitioner (who at the relevant time were "casual employees of the Railway, conferred with temporary status") participated in the general strike in the Railway establishment from 8th May 1974 to 24th May 1977, their services were terminated by Respondents 1 to 3 with effect from 20th May 1974. They, however, were reinstated in service by Respondents 1 to 4 with effect from 2nd May 1977. They, nonetheless, were not given backwages or continuity of service. Petitioners 4 to 21 and Baby aforesaid and Anr. filed O.P. 172/1980 seeking reliefs by way of backwages and continuity of service. By Ext. P-1 judgment, this Court disposed of the O.P. relevant portion, thereof reads:

I therefore dismiss the Original Petition recording the concession that the Petitioners will be entitled to continuity of service, and without prejudice to the Petitioners' right to move other appropriate authorities, in the matter of the claim for backwages.

2. The Petitioners thereafter filed C.P. 47/82 before the fifth Respondent u/s 33C(2) of the Industrial Disputes Act claiming the wages for the period from 8th May 1974 to 2nd May 1977. A similar petition was filed, C.P. 48/82, by Petitioners 4 to 21 and the deceased Baby. These petitions were opposed by Respondents 1 to 4. They contended that there was no termination of service but only a voluntary abandonment of work by the Petitioners and hence they were not entitled to claim backwages although continuity of service, for the broken period was recognised. The other contentions raised by the parties are not relevant here.

3. The only issue thus surviving for consideration is whether there was termination of the service of the Petitioners by Respondents or did they voluntarily abandon their service as contended for by the Respondents?

4. The order of the fifth Respondent rejecting an identical case as the one on hand was under challenge before this Court as is seen from the judgment in O.P. 65/84. A Division Bench of this Court after considering the various aspects of the case held as follows:

We are therefore inclined to proceed on the basis that whatever may be the form of termination of service that was brought about during the strike period, that termination stood cancelled or withdrawn and the employees were put back in the same position which they occupied before their termination.... But then the conduct of the Petitioners (herein the contesting Respondents) in taking back Respondents 2 to 37 (employees similarly situated) in service in pursuance of Ext. P-1 shows that whatever may be the mode of termination of the service of Respondents 2 to 37, that termination stood withdrawn or cancelled and they became entitled to reinstatement in service and they were deemed to be in continuous service from the date of termination for all purposes of service conditions except for backwages. That being the position, Respondents 2 to 37 on the Petitioners' own showing, must be deemed to have been in service during all relevant periods, including the period during which there was termination or deemed termination, whether on the ground of abandonment or on any other ground. Looked at from that point of view it is obvious that the only controversy between the parties was in regard to payment of backwages....

Regarding the question as to whether the employees similarly situated as the Petitioners abandoned their service or their service was terminated, however, was directed to be considered afresh by the labour court. I shall in this connection extract the relevant part of the judgment:

The matter has therefore to be remitted to the Labour Court for fresh disposal on the question as to whether there has been abandonment of the jobs by the contesting Respondents.

5. After the remit the fifth Respondent found that there was no abandonment of work by the Petitioners therein (Petitioners in C.P. 26/83) and hence the termination of service by the Railway was illegal. The prayer of the said1

Petitioners for backwages, calculated at the rate of Rs. 11.23 per day, was granted and that it is so can be seen from Ext. P-2.

6. The above finding in Ext. P-2 notwithstanding, the fifth Respondent rejected the claims of Petitioners except that of the sixth Petitioner (third Petitioner in C.P. 48/82) entering the finding that they are not entitled to the backwages as they had abandoned the job. As regards the claim of the sixth Petitioner; though the fifth Respondent found that he was entitled to the backwages, the same was computed as if he was drawing at the relevant time, only Rs. 5 as wages per day. Ext. P-3 order of the fifth Respondent is under challenge in this O.P.

7. Respondents 2 to 4 have filed a counter-affidavit. They have raised a preliminary objection. The averments in the affidavit in this regard are extracted hereunder:

At the outset itself I crave leave of this Hon'ble Court to submit that the Original Petition is not maintainable in so far as it is beyond the jurisdiction of this Honourable Court, apart from it being not maintainable in law or on facts. After the establishment of the Central Administrative Tribunal, it has acquired the jurisdiction to entertain the grievance of even persons governed by the provisions of the Industrial Disputes Act, provided, however such persons were covered by Section 14(1) of the Administrative Tribunals Act. Section 28 of the Act dealing with exclusion of jurisdiction of courts and authorities only saved the jurisdiction of the courts and authorities constituted under the Industrial Disputes Act but not that of the High Court. As a result of the omission of Section 2(b) by the Administrative Tribunals (Amendment) Act, 1986, w.e.f. 1st January 1985, the Central Administrative Tribunal acquired jurisdiction over matters covered by the Industrial Disputes Act and as a consequence the High Court which hitherto had jurisdiction under Articles 226 and 227 to entertain petitions against orders of the authorities constituted under the Industrial Disputes Act, is now barred u/s 28 from, entertaining the same. Thus it is clear that the Central Administrative Tribunal is an alternative mechanism for adjudication of all disputes arising out of service matters of Central Government Employees and it can provide efficacious remedies in all respects by exercising, if need be, the high prerogative writ powers of the High Court under Articles 226 and 227 of the Constitution. Hence, on the short ground of lack of jurisdiction, this Original Petition is liable to be dismissed.

As regards the merits of the case, it has been contended that the finding that the Petitioners (except the sixth Petitioner) abandoned the job, is beyond challenge. In support of this contention these Respondents rely on Ext. R-3(a), a letter of the Railway Board addressed to General Managers of the Indian Railways.

8. From the above competing contentions two questions arise for consideration. (1) Is the O.P. under Articles 226 and 227 of the Constitution maintainable in view of the exclusion of the jurisdiction of the High Court by Section 28 of The Administrative Tribunals Act, 1985, for short, The Act? (2) Is the finding of the

labour court that the Petitioners abandoned their job during the strike period and hence not entitled to backwages, sustainable in view of the judgment in Ext. P-1 and its own order, Ext. P-2?

Question 1.-The Administrative Tribunals Act is a law enacted by Parliament under Article 323A of the Constitution. This Article provides that Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government. Such law may inter alia provide for the exclusion of jurisdiction of all courts except the jurisdiction of the Supreme Court under Article 136, with respect to the disputes or complaints referred to above. This Article has an overriding effect and this is made clear by the non-obstante clause in Sub-clause 3 thereof. Section 28 of the Act speaks of the exclusion of jurisdiction of courts. It says that on and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any service or persons appointed to any service or post, no court except the Supreme Court or any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force, shall have, or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters. The jurisdiction of the Supreme Court and the Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force, to deal with the matters that come before them, therefore, is not affected by the Act. To put it differently the jurisdiction of the Supreme Court or the Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force to the extent indicated above, to adjudicate or try any disputes or complaints with respect to recruitment and conditions of service of persons of public office within the meaning of Clause (1) of Article 323A, is kept in tact. On a further analysis of the section it can be seen that so far as the Supreme Court is concerned, the appellate power vested in the Supreme Court under Article 136 of the Constitution which is plenary in nature, has fully been saved. But could that be said about the jurisdiction of the Industrial Tribunal, Labour Court or the other authority constituted under the Industrial Disputes Act or any other corresponding law for the time being in force. The answer is "No". What then are the disputes and complaints that can be adjudicated by the Industrial Tribunal or Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force? To find an answer to this question we have to construe Section 28 taking into account the

provisions contained in Article 323B of the Constitution and such laws enacted thereunder. Article 323B provides that the appropriate Legislature may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints or offences with respect to all or any of the matters specified in Clause (2) with respect to which such Legislature has power to make laws. One of the matters specified in Clause (2) of Article 323B is industrial and labour disputes. The effect of Section 28 read and understood in the light of this Article is that those disputes and complaints governed by the industrial laws enacted by either Parliament or the State Legislatures are taken out of the purview of the Act notwithstanding the fact that the employees who raise such disputes are persons appointed to any service or post made mention of in Sections 14 and 28. It can thus be inferred without fear of contradiction that those disputes and complaints that are covered by the industrial laws enacted by the appropriate legislature are excluded from the purview of the Act, enacted under Article 323A. The laws made by the appropriate legislatures in this regard under Article 323B, can provide for the establishment of a hierarchy of tribunals, specify the jurisdiction, powers and authority which may be exercised by each of the said tribunals, provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals and provide for the transfer to each such tribunal of any cases pending before any court or any other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based, had arisen after such establishment. Such law can also exclude the jurisdiction of all courts except the jurisdiction of the Supreme Court under Article 136 with respect to all or any of the matters falling within, the jurisdiction of such tribunal. These provisions have an overriding effect in view of the non-obstante clause contained in Clause 4 of Article 323B. It says that the provisions of this Article shall have effect notwithstanding anything in any other provision of the Constitution or in any other law for the time being in force, the counsel for the Petitioners submits. In view of the provisions contained in Section 28 and Article 323B I am of opinion that the counsel is well founded in his submission.

9. The counsel for the Railways, however, contended that as a result of the omission of Section 2(b) of the Act namely "any person governed by the provisions of the Industrial Disputes Act, 1947 (14 of 1947) or any corresponding law for the time being in force in regard to such matters in respect of which he is so governed" by the Administrative Tribunals (Amendment) Act, 1986, for short, the Amendment Act, from the Act, the Central Administrative Tribunal must be held to have got jurisdiction to entertain the grievance" of persons governed by the industrial laws in regard to such, matters in respect of which he is so governed. It is further argued that the High Court which hitherto had exercised jurisdiction under Article 226 and 227 of the Constitution to entertain complaints against orders of the authorities constituted under the industrial laws, was barred by Section 28 to entertain such complaints. This position is further

clarified by Section 29 of the Act which says "except the appeals pending before the High Court all other proceedings before any court including the High Court or other authority immediately before the date of establishment of a tribunal, in respect of which, cause of action based on which the proceedings are initiated, is such that it would have been, had the same been arisen after the establishment, within the jurisdiction of such tribunal, shall stand transferred to the Tribunal", the counsel submits.

10. Whether there is any substance in this argument of the counsel for the Railways, in my view, requires to be considered with reference to Sections 14 and 28 of the Act and Article 323B of the Constitution. Section 14 which recognises the jurisdiction, powers and authority of Central Administrative Tribunal starts off with the phraseology "save as otherwise expressly provided in this Act". That means the jurisdiction of the Administrative Tribunal is subject to the saving clause, if any, in the Act. After the enactment of the Act the Administrative Tribunal alone has the jurisdiction to adjudicate upon disputes in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning the members of any service or persons appointed to any service or post within the meaning of the Act, is further emphasised by Section 28 which however, saves the jurisdiction of the Supreme Court to consider such disputes. Section 28, in addition saves the jurisdiction of Industrial Tribunal/Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force to adjudicate such disputes (coming within the purview of these labour laws) which, but for the saving clause could be adjudicated upon by the administrative tribunal only. To put it differently the exception envisaged u/s 28 affirms the operation of the Act to all cases not excepted and excludes all other exceptions that means it exempts something which would otherwise come within the purview of the Act. This object could not have been achieved if the Amending Act had not engrafted the clause except

(b)any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force.

in Section 28, while deleting Clause (b) of Section 2 from the Act. It therefore follows that on account of the saving clause in Section 28, the Administrative Tribunal, it should be declared, has no jurisdiction to deal with the disputes which are governed by the industrial laws of the country although the said disputes relate to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any service or persons appointed to any service or post within the meaning of Section 14.

11. Finding it difficult to grapple with this situation the counsel made a different approach to the issue. He argued that the Administrative Tribunal, inasmuch as the same was constituted as a substitute of the High Court has the power to review the orders of the industrial courts under Articles 226 and 227 of the

Constitution. In support of this argument he relied on the decisions of the Supreme Court in *Sampath Kumar v. Gupta* AIR 1987 S.C 386, *J.B. Chopra and Others Vs. Union of India (UOI) and Others*, and *Union of India (UOI) Vs. Parma Nanda*, . The Supreme Court, no doubt, has declared that the Administrative Tribunal set up u/s 4 of the Act is a substitute of, and not supplemental to, the High Court, providing an equally efficacious alternate remedy for the adjudication of such disputes which are governed by the Act. It has also been held that the establishment of the Administrative Tribunal has taken away the jurisdiction and power of the High Court to interfere with such matters which are controlled by the Act; but it is not violative of the doctrine of judicial review which is a fundamental aspect of the basic structure of our constitution. Since the Tribunal is created as a substitute to the High Court, the jurisdiction of the High Court under Article 226 must be held to have been taken away and vested in the Administrative Tribunal to review such orders. This principle enunciated by the Supreme Court, in my view, has no application here, reasons being: The Administrative Tribunal is a creature of the statute and therefore it has to function within the four walls of the enactment which created it. The Administrative Tribunal, therefore, in exercise of the jurisdiction under Article 226, can deal with only such matters" (as noted by the Supreme Court) which fall within the purview of the Act. The jurisdiction and the power of the High Court in regard to matters that fall outside the Act however have not been vested in the Administrative Tribunal. It is relevant in this context to note that, as observed by the Supreme Court in *Election Commission v. Venkitarao* AIR 1952 S.C. 210, it was the makers of the Constitution who conferred new and wide powers under Article 226 on the High Courts and this power conferred on the High Courts is an overriding power entitling them, under certain-conditions and circumstances, to issue writs, orders and directions to subordinate courts, tribunals and authorities notwithstanding any rule or law to the contrary. [See *In re Kerala Education Bill* 1957 AIR 1958 S.C. 956]. It is also relevant in this context to note that Article 323A permits only exclusion of the jurisdiction of courts etc. It does not permit conferment of jurisdiction. The Act, as is seen from its scheme, therefore rightly has not conferred the jurisdiction and power, the High Court as a court of Record can generally exercise under Article 226 on the Administrative Tribunal. Only because it was found to be a substitute of, and not supplemental to the High Court, the Administrative Tribunal was declared by the Supreme Court to have the jurisdiction under Article 226 in respect of matters governed by the Act; and not otherwise. The Administrative Tribunal therefore cannot travel beyond the Act and interfere with matters falling outside the Act by entertaining proceedings under Article 226. Article 323A does not provide for such an enactment. It is all the more so because the tribunals and such other authorities constituted under the law enacted under Article 323B stand apart from the Administrative Tribunal constituted under the Act enacted under Article 323A. The law enacted under Article 323B, going by the observations of the Supreme Court in *Sampathkumar's case* AIR 1987 S.C. 386 can establish tribunals with the same powers and jurisdiction as that of the Administrative

Tribunal established under the Act enacted under Article 323A.

12. Yet Anr. argument of the counsel for the Railways that the Administrative Tribunal under Article 227 can interfere with the orders of the Industrial Tribunal/ Labour Court is also liable to be rejected because the decisions of the Supreme Court do not support this argument. As observed by my brother Jagannadha Raju, J. "Supreme Court did not give a precise answer as to whether the jurisdiction of the High Court under Article 227 is excluded or not". (See the judgment in O.P. 2721 of 1989). Whatever that be this power of superintendence conferred on the High Court by the founders of the Constitution has not specifically been conferred by the Act on the Administrative Tribunal as regards matters falling outside the Act. This power of superintendence conferred on the High Court involves a duty on the High Court to keep the inferior courts and tribunals within the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner. From the discussion above it is clear that the Industrial Tribunal or labour courts are not courts and tribunals constituted under the Act and therefore the Administrative Tribunal cannot be said to have any such jurisdiction.

13. The preliminary objection of the counsel for the Railways therefore is rejected.

14. Coming to the merits of the case: It can be seen from the facts stated supra that the fifth Respondent by Ext. P-2 has allowed identical claims of persons similarly situated. The same tribunal however has rejected the claims of the Petitioners. The impugned order, Ext. P-3, is highly arbitrary and as such the same is liable to be quashed being violative of Article 14 of the Constitution. The Petitioners are also entitled to the same benefit as employees similarly situated could get under Ext. P-2. A reference in this connection to the latest ruling of the Supreme Court in *Neelima Misra v. Harinder Kaur Paintal* 1990 (2) S.C.C. 746 is profitable. The fifth Respondent going by this principle must be held to have been guided by extraneous or irrelevant considerations. His action is highly illegal, irrational and arbitrary.

The fifth Respondent accordingly is directed to pass appropriate consequential orders modifying Ext. P-3 so that the Petitioners also would get the benefit given to persons similarly situated by Ext. P-2 order.

The O.P. for the reasons stated above is allowed. No costs.