

(2005) 11 AHC CK 0034

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 71578 of 2005

Union of India (UOI) and General Manager, North Central
Railway

APPELLANT

Vs

Central Administrative Tribunal, Additional Bench and
Subhash Chandra Saxena

RESPONDENT

Date of Decision : 22-11-2005

Acts Referred:

Administrative Tribunals Act, 1985 — Section 20
Constitution of India, 1950 — Article 226, 227

Citation : (2006) 2 AWC 1559 : (2006) 1 UPLBEC 225

Hon'ble Judges : Dilip Gupta, J; B.S. Chauhan, J

Bench : Division Bench

Advocate : B.B. Paul, for the Appellant;

Judgement

B.S. Chauhan, J.—This writ petition has been filed against the judgment and order dated 21.10.2005 (Annex. 19), passed by the Central Administrative Tribunal, Allahabad, by which the learned Tribunal refused to entertain the Application in view of the provisions of Section 20 of the Central Administrative Tribunal Act, which provides that the Tribunal shall not entertain the Application unless the statutory remedies are exhausted, and thus, the respondent-employee has been asked to exhaust the statutory remedy of appeal. However, while disposing of the said application, the learned Tribunal has granted interim relief till the appeal is decided by the statutory authority.

2. Hence, this writ petition is only against raising the grievance that the Tribunal has exceeded its jurisdiction and granted the interim relief till the appeal is decided.

3. We have heard Shri B.B. Paul, learned Counsel for the petitioners. It has been urged by him that the Tribunal could not have granted the interim relief, for the period the appeal was decided by the statutory authority, and therefore, the impugned judgment and order is liable to be set aside to that extent.

4. The purpose of granting any interlocutory injunction is to preserve or restore the status quo of the last non-contested status which preceded the pending controversy, until the final hearing, when full relief may be granted. But, since the granting of such an injunction to a party, who avails or would avail to establish his rights at the trial, may cause great injustice or irreparable harm to the opposite party, or alternatively, not granting of it to a party, which succeeds or would succeed, would equally cause injustice or irreparable harms. (Vide *Dorab Cawasji Warden Vs. Coomi Sorab Warden and others*, Thus, it is apparent that interim relief is granted by the Court during the pendency of the proceedings till the matter is adjudicated upon finally and rights of the parties are determined.

5. The question does arise as to whether the Court is competent to grant an interim relief when it has decided the petition, on the ground that party must avail and exhaust the statutory remedies provided under the Statutes, as in such a fact-situation, the case does not remain pending before the Court?

6. The issue involved herein was examined by the Constitution Bench of the Hon'ble Supreme Court in *The State of Orissa Vs. Madan Gopal Rungta*, wherein it was ruled out that an interim relief can be granted only in aid of, and as an axillary to, the main relief which may be available to the party on final determination of his rights in a suit or proceedings. The Court held that when the parties are relegated to avail the remedy before some other forum, it is not permissible for the Court to grant any interim relief. The said view has been approved, affirmed and followed by another Constitution Bench judgment in *Amarsarjit Singh Vs. The State of Punjab*, *State of Orissa Vs. Ram Chandra Dev and Mohan Prasad Singh Deo*, *The State of Bihar Vs. Rambalak Singh and Others*, *In re: under Article 143 of the Constitution of India*, *In the matter of: Under Article 143 of the Constitution of India*, and *Mohan Lal Magan Lal Thacker Vs. State of Gujarat*,

7. However, a Constitution Bench of the Supreme Court in *Maharaj Umeg Singh and Others Vs. The State of Bombay and Others*, took a different stand. There, the petitioner had challenged the constitutionality of *Bombay Moral Territories and Areas (Jagir Abolition) Act, 1953*. In one of the petitions, points were taken that a particular State was not a "jagir" within the definition of the Act. The Hon'ble Apex Court came to the conclusion that the said question was required to be adjudicated upon by a proper Tribunal and referred to petitioner to the civil Court. But, the Hon'ble Court granted three months' time for the said purpose, extending the said order, passed by it earlier, to cover this period and decided to further hear the matter after final disposal of the suit.

8. However, a Division Bench of the Supreme Court in *Danda Rajeshwari Vs. Bodavula Hanumayamma and others*, held that a writ Court has a power to entertain a writ petition even if the party has not exhausted the statutory remedy, or alternative forum has not been approached, as in such circumstances, there cannot be any obviously bar in exercise of the writ

jurisdiction. Thus, when the party is relegated to the alternative forum, in exercise of the self-restraint of exercise of its power to Article 226, and relegated the party to seek appropriate remedy before the appropriate forum, the Court may pass an appropriate order which is expedient in the facts and circumstances of the case, even for not examining the issue of limitation. The Court while deciding the said case made a distinction from its earlier judgment in *Union of India v. Kirlosker Pneumatic Company Limited* (1996) 4 SCC 353, wherein it had been held that the Court lacks competence to pass an order in contravention of law, nor a direction can be issued to any statutory authority to act contrary to the statutory provisions, for the reason that the powers conferred upon the High Court under Article 226/227 is designed to effectuate the law, to enforce the rule of law and to ensure that State instrumentalities act in accordance with law. The distinction was made observing that the ratio of the said decision had no bearing to the facts of the case.

9. In view of the above, the law can be summarised that generally if the Court in self-restraint does not want to exercise its power and relegates a party to approach the other alternative/statutory forum, it should not issue a direction or grant interim relief. But, if certain orders had been passed in order to do justice, such an order should not be interfered with.

10. In the instant case, as the matter is pending before the learned Tribunal for about a year, and an interim order had been continuing, the order passed by the Tribunal that interim order shall continue till the statutory appeal is decided, does not require any interference, though it appears to be outside the scope of exercise of the discretionary jurisdiction by the Tribunal.

11. The learned Tribunal has passed the following order:-

The applicant has not preferred any appeal so far. At the very beginning itself, he has chosen a wrong forum. He is, therefore, legitimately entitled to exclusion of the time spent in the wrong forum. If the applicant files an appeal, within 15 days from today, or if he requests the Appellate Authority within next 15 days to treat the very O.A. As an appeal, the Appellate Authority (Railway Board) shall consider the same as if it has been filed within time and on the basis of merits pass a reasoned order.

This Tribunal on the very first day of admission of this case granted an ex parte stay, I staying the operation of the impugned order. Such a stay is granted only on being satisfied that the applicant has made out a prima facie case and that the balance of convenience and interest of justice are in favour of grant of such stay, as otherwise it would result in an irreparable loss to the applicant. As the case is not decided on merit and the matter is only referred to the Appellate Authority, interest of justice demands that interest of the applicant is protected till the appeal is disposed of. Accordingly, it is directed that the respondents shall not execute the order dated 20.10.2004 during the pendency of the appeal. The applicant shall be at his liberty to move appropriate forum, should he be

aggrieved by the decision of the Appellate Authority.

12. It is evident that the learned Tribunal has directed the said applicant to file an appeal within 15 days from the date of judgment and order, i.e., 21.10.2005, and even the Appellate Authority has been given the competence to extend further 15 days" time to file the appeal. Thus, the period given by the Tribunal is already over. In case appeal has not been filed by the said employee, the question of entertaining the same does not arise, and in case it has been filed, the appellate authority is requested to dispose of the same as early as possible.

13. The petition stands disposed of with the direction that the appeal may be decided as early as possible.