
(2006) 02 AHC CK 0035
In the Allahabad High Court
Case No : Second Appeal No. 2305 of 1985

Union of India (UOI)

APPELLANT

Vs

Dr. Vishwabir Singh

RESPONDENT

Date of Decision : 07-02-2006

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 14(3), 15(3), 19, 28
Constitution of India, 1950 — Article 136, 226, 227, 32, 323A

Citation : (2006) 4 AWC 3480

Hon'ble Judges : S.P. Mehrotra, J

Bench : Single Bench

Advocate : K.C. Sinha and D.S. Shukla and Addl. S.C, for the Appellant; R.K. Asthana, B.N. Rai, Vijai Bahadur, B.K. Singh Raghubanshi and Chaudhary Subhash Kumar, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Mehrotra, J.—It appears that Dr. Vishwa Vir Singh (plaintiff-respondent in the present Second Appeal) was appointed as Assistant Surgeon, Grade I, in the Ordnance Equipment Factory, Kanpur, as per the appointment letter dated 27.6.1969.

2. It further appears that the services of the said Dr. Vishwa Veer Singh (plaintiff-respondent) were terminated by the order dated 5.4.1982.

3. It further appears that the said Dr. Vishwa Veer Singh (plaintiff-respondent) filed a Suit , interalia, praying for declaration that the termination of his services was illegal, invalid and void , and that he continued to be in service and was entitled to all wages, emoluments and other benefits from the date of order of termination.

4. The said Suit was registered as Suit No. 561 of 1982.

5. It further appears that by the Judgment and Order dated 16.7.1984, the Trial Court (XIth Additional Munsif, Kanpur) decreed the said Suit , declaring the said

termination order dated 5.4.1982 as illegal, and further declaring the plaintiff-respondent , as entitled to all wages, emoluments and other benefits, as claimed for by the plaintiff-respondent.

6. Thereupon, the defendant- appellant (Union of India) filed an Appeal, being Civil Appeal No. 288 of 1984.

7. It further appears that Cross Objections were filed by the said Dr. Vishwa Veer Singh (plaintiff -respondent) in the said Civil Appeal No. 288 of 1984.

8. By the Judgment and Order dated 3.9.1985, the Lower Appellate Court (learned IIIrd Additional District Judge, Kanpur) dismissed the said Civil Appeal No. 288 of 1984 filed by the defendant-appellant (Union of India) as well as the said Cross Objections filed by the plaintiff-respondent (Dr. Vishwa Veer Singh).

9. Thereafter, it appears that on 20.12.1985, the Union of India (defendant - appellant) filed the present Second Appeal before this Court.

10. It may be mentioned that in the array of parties in the present Second Appeal, the Union of India has been incorrectly described as the plaintiff-appellant, and the said Dr. Vishwa Veer Singh has been incorrectly described as the defendant -respondent.

11. As noted above, the Union of India is the defendant -appellant in the present Second Appeal, while the said Dr. Vishwa Veer Singh is the plaintiff- respondent in the present Second Appeal.

12. I have heard Sri Devi Shankar Shukla, learned Additional Standing Counsel for the Union of India (defendant -appellant) , and Sri Chaudhary Subhash Kumar, learned Counsel for the plaintiff-respondent, and perused the record.

13. Sri Chaudhary Subhash Kumar , learned Counsel for the plaintiff-respondent has raised a preliminary objection that in view of the provisions of the Administrative Tribunals Act, 1985, the present Second Appeal was not maintainable before this Court on 20.12.1985 (that is, the date of filing of the present Second Appeal) , and as such, the present Second Appeal is liable to be dismissed.

14. Reliance in this regard has been placed on a decision of this Court in Second Appeal No. 386 of 1986, The Post Master General U.P. Lucknow and Anr. v. Manzoor Alam Khan, decided on 5.12.2003.

15. Sri Devi Shankar Shukla , learned Additional Standing Counsel appearing for the Union of India, submits that the preliminary objection raised on behalf of the plaintiff-respondent cannot be accepted.

16. In order to decide the validity of the preliminary objection raised on behalf of the plaintiff-respondent, it is necessary to refer to the provisions of Section 14, Section 28, Section 29 and Section 29A of the Administrative Tribunals Act, 1985, which are reproduced below:

Section 14. Jurisdiction , Powers and Authority of the Central Administrative Tribunal - (1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) [...]in relation to -

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning-

(i) a member of any All-India Service; or

(ii) a person [not being a member of an All-India Service or a person referred to in Clause (c)] appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian [not being a member of an All-India Service or a person referred to in Clause (c)] appointed to any defence services or a post connected with defence,

and pertaining to the service of such member, person or civil/an , in connection with the affairs of the Union or 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 [or society] owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in Sub-clause (ii) or Sub-clause (iii) of Clause (b) , being a person whose services have been placed by a State Government or any local or other authority or any corporation [or society] or other body, at the disposal of the Central Government for such appointment.

[Explanation. - For the removal of doubts, it is hereby declared that references to " Union" in this sub-section shall be construed as including references also to a Union Territory.]

(2) The Central Government may, by notification apply with effect from such date as may be specified in the notification the provisions of Sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations [or society] owned or controlled by Government, not being a local or other authority or corporation [or society] controlled or owned by a State Government.

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged in this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of local or other authorities or

corporations.

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation[or society], all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court) [....] in relation to-

(a) recruitment , and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation [or society]; and

(b) all service matters concerning a person [other than a person referred to in Clause (a) or Clause (b) of Sub-section (1)] appointed to any service or post in connection with the affairs of such local or other authority or corporation [or society] and pertaining to the service of such person in connection with such affairs.

Section 28. Exclusion of jurisdiction of Courts except the Supreme Court under Article 136 of the Constitution - On and from the date from which any jurisdiction, power and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matter 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-

(a) the Supreme Court; or

(b) any Industrial Tribunal , Labour Court or other authority constituted under the Industrial Disputes Act, 1947 (14 of 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 such service matters".

Section 29. Transfer of pending cases - (1) Every suit or other proceeding pending before any court or other authority immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal:

Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before a High Court[...].

(2) Every suit or other proceeding pending before a court or other authority immediately before the date with effect from which jurisdiction is conferred on a Tribunal in relation to any local or other authority or corporation [or society], being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after the said date, within the jurisdiction of

such Tribunal, shall stand transferred on that date to such Tribunal:

Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before a High Court[...].

Explanation. - For the purposes of this sub-section " date with effect from which jurisdiction is conferred on a Tribunal", in relation to any local or other authority or corporation [or society], means the date with effect from which the provisions of Sub-section (3) of Section 14 or, as the case may be, Sub-section (3) of Section 15 are applied to such local or other authority or corporation [or society].

(3) Where immediately before the date of establishment of a Joint Administrative Tribunal any one or more of the States for which it is established, has or have a State Tribunal or State Tribunals, all cases pending before such State Tribunal or State Tribunals immediately before the said date together with the records thereof shall stand transferred on that date to such Joint Administrative Tribunal.

Explanation.- For the purposes of this sub-section, "State Tribunal" means a Tribunal established under Sub-section (2) of Section 4.

(4) Where any suit, appeal or other proceeding stands transferred from any Court or other authority to a Tribunal under Sub-section (1) or Sub-section (2), -

(a) the Court or other authority shall, as soon as may be after such transfer, forward the records of such suit, appeal or other proceeding to the Tribunal; and

(b) the Tribunal may, on receipt of such records, proceed to deal with such suit, appeal or other proceeding, so far as may be , in the same manner as in the case of an application u/s 19 from the stage which was reached before such transfer or from any earlier stage or de -novo as the Tribunal may deem fit.

(5) Where any case stands transferred to a Joint Administrative Tribunal under Sub-section (3) , the Joint Administrative Tribunal may proceed to deal with such case from the stage which was reached before it stood so transferred.

(6) Every case pending before a Tribunal immediately before the commencement of the Administrative Tribunals (Amendment) Act, 1987, being a case the cause of action whereon it is based is such that it would have been, if it had arisen after such commencement, within the jurisdiction of any Court, shall, together with the records thereof, stand transferred, on such commencement to such Court.

(7) Where any case stands transferred to a Court under Sub-section (6) , that Court may proceed to deal with such case from the stage which was reached before it stood so transferred].

[29-A. Provision for filing of certain appeals.-Where any decree or order has been made or passed by any Court (other than a High Court) in any suit or proceeding before the establishment of a Tribunal, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after

such establishment, within the jurisdiction of such Tribunal, and no appeal has been preferred against such decree or order before such establishment and the time for preferring such appeal under any law-for the time being in force had not expired before such establishment, such appeal shall lie-

(a) to the Central Administrative Tribunal, within ninety days from the date on which the Administrative Tribunals (Amendment) Bill, 1986 receives the assent of the President, or within ninety days from the date of receipt of the copy of such decree or order, whichever is later, or

(b) to any other Tribunal, within ninety days from its establishment or within ninety days from the date of receipt of the copy of such decree or order , whichever is later].

17. From a perusal of Section 14 of the Administrative Tribunals Act, 1985, quoted above, it is evident that the Central Administrative Tribunal has been given all the jurisdiction, powers and authority exercisable immediately before the appointed day by all courts (except the Supreme Court), interalia, in relation to recruitment/matters concerning recruitment to Service /Post, as also in relation to all service matters concerning member/person /civilian and pertaining to the service of such member/person/civilian, as mentioned in Section 14 of the Administrative Tribunals Act, 1985.

18. Section 28 of the Administrative Tribunals Act, 1985, reproduced above, shows that in relation to recruitment and matters concerning recruitment as also service matters, covered u/s 14 of the said Act, the Central Administrative Tribunal will have exclusive jurisdiction, and no Court [except (a) the Supreme Court , or (b) any Industrial Tribunal , Labour Court , or other authority constituted under the Industrial Disputes Act, 1947(14 of 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 such service matters.

19. It may be mentioned that the Administrative Tribunals Act, 1985 has been enacted by Parliament in pursuance of Article 323A of the Constitution of India , which has been added to the Constitution by 42nd Constitutional Amendment, 1976.

20. Clause (1) of Article 323A of the Constitution of India empowers Parliament to make law setting- up Tribunals for adjudicating upon service matters pertaining to government servants.

21. Clause (2)(d) of Article 323A lays down that a law made by Parliament under Clause (1) may " exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under Article 136, with respect to the disputes or complaints" assigned for decision to the Tribunal set-up under Clause (1).

22. In L. Chandra Kumar Vs. Union of India and others, the Supreme Court , interalia, has considered the constitutional validity of Clause (2)(d) of Article

323A of the Constitution of India and that of Section 28 of the Administrative Tribunals Act, 1985, in so far as the said provisions exclude the jurisdiction of the High Courts under Articles 226/227 of the Constitution of India and that of the Supreme Court under Article 32 of the Constitution of India.

23. The Supreme Court has held that power of judicial review vested in the High Court under Article 226 and in the Supreme Court under Article 32 of the Constitution of India is an integral and essential feature of the Constitution , constituting part of its basic structure.

24. It has been further held that the power vested in the High Courts under Article 227 of the Constitution of India to exercise judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdictions is also part of the basic structure of the Constitution.

25. Accordingly, it is concluded that Clause (2) (d) of Article 323A of the Constitution of India, to the extent it excludes the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution of India , are unconstitutional. Section 28 of the Administrative Tribunals Act, 1985 would, to the same extent, be unconstitutional.

26. Reverting to the provisions of the Administrative Tribunals Act, 1985, Section 29 of the said Act deals with the transfer to the Central Administrative Tribunal, of all cases pertaining to service matters pending in any Court or other authority immediately before the date of establishment of such Tribunal.

27. Sub-section (1) Section 29, inter alia, provides that every suit or other proceeding pending before any Court or other authority immediately before the date of establishment of any Central Administrative Tribunal under the Administrative Tribunals Act, 1985 in regard to matters falling within the jurisdiction of such Tribunal, would stand transferred to such Tribunal on the date of establishment of such Tribunal.

28. Proviso to Sub-section (1) of Section 29 of the Administrative Tribunals Act, 1985 provides that nothing in Sub-section (1) shall apply to any appeal pending as aforesaid before the High Court.

29. Similar provision has been made in Sub-section (2) of Section 29 of the Administrative Tribunals Act, 1985. The said Sub-section (2) , inter alia, lays down that every suit or other proceeding pending before a Court or other authority immediately before the date of conferment of jurisdiction on a Central Administrative Tribunal in relation to any local or other authority or corporation or society, would stand transferred to such Tribunal on the date of conferment of jurisdiction on such Tribunal in case where such suit or proceeding is in regard to matters falling within the jurisdiction of such Tribunal.

30. Proviso to Sub-section (2) of Section 29 of the Administrative Tribunals Act, 1985 provides that nothing in Sub-section (2) shall apply to any appeal pending as aforesaid before a High Court.

31. It will, thus, be noticed that while every suit or other proceeding (including appeal), mentioned in Sub-section (1) and Sub-section (2) of Section 29, pending before any Court or other authority, would stand transferred to a Central Administrative Tribunal, any appeal pending before a High Court shall not be so transferred.

32. Section 29A of the Administrative Tribunals Act, 1985 makes provision for filing appeal after the establishment of a Central Administrative Tribunal against decree or order passed by any Court (other than a High Court) in any suit or proceeding before the establishment of such Tribunal, where such suit or proceeding is in regard to matters falling within the jurisdiction of such Tribunal. Accordingly, such appeal would lie to the said Tribunal, and may be filed within the period mentioned in Section 29A.

33. Reading Sections 28, 29 and 29A, together, it is evident that in case, an appeal is pending before a High Court immediately before the date of establishment of Central Administrative Tribunal under the Administrative Tribunals Act, 1985, such appeal would not stand transferred to the Tribunal.

34. In case, an appeal is pending before any Court (other than a High Court) immediately before the date of establishment of Central Administrative Tribunal, under the Administrative Tribunals Act, 1985, such appeal would stand transferred to the Tribunal on the said date.

35. In case, no such appeal is pending before a High Court or before any other Court immediately before the date of establishment of Central Administrative Tribunal, Section 29A of the Administrative Tribunals Act, 1985 entitles a person to file an appeal before the Central Administrative Tribunal within the period mentioned in the said provision.

36. In the present case, the Second Appeal was filed on 20.12.1985.

37. By the order dated 20.12.1985, the Second Appeal was admitted on the substantial question of law, as mentioned in the said order dated 20.12.1985.

38. It is brought to the notice of this Court that the Tribunal under the Administrative Tribunals Act, 1985, was established on 1.11.1985.

39. In the circumstances, it was not open to the Union of India (defendant - appellant) to file the present Second Appeal before the High Court on 20.12.1985, that is, much after the establishment of Tribunal on 1.11.1985.

40. The present Second Appeal filed before this Court on 20.12.1985 was evidently not maintainable.

41. In the circumstances, the present Second Appeal is liable to be dismissed as not maintainable in view of the provisions of the Administrative Tribunals Act, 1985, particularly, Sections 28, 29, and 29A thereof.

42. In The Post Master General case (supra), a learned Single Judge of this Court

was dealing with a Second Appeal admitted by this Court on 4.2.1986.

43. After referring to the provisions of Sections 28 and 29 of the Administrative Tribunals Act, 1985, the learned Single Judge opined as follows:

A bare reading of the aforesaid provisions of Section 28 and Section 29 goes to show that this Court has no jurisdiction to entertain the appeal in view of the establishment of the Tribunal under the Act, nor it could be transferred to the Tribunal, as the appeal before the High Court was not pending on the date of the constitution of Tribunal under the " Act. The learned Counsel for the respondent could not show anything to rebut the submission made by the learned Counsel for the appellants In this respect. The position is quite clear. Since the appeal has been preferred much after the enforcement of the Act, it could not be preferred before the Court. This being so, the appeal is liable to be dismissed.

The appeal is, accordingly, dismissed being barred by Section 28 of the Administrative Tribunal Act, 1985.

44. In view of the above, the Second Appeal is dismissed as not maintainable.

45. The stay order granted in the Second Appeal stands vacated.

46. However, in the facts and circumstances of the case, there will be no order as to costs.