
(1986) 09 AHC CK 0081
In the Allahabad High Court
Case No : Second Appeal No. 1361 of 1986

Union of India (UOI)

APPELLANT

Vs

Ram Sagar

RESPONDENT

Date of Decision : 23-09-1986

Acts Referred:

Administrative Tribunals (Amendment) Act, 1986 — Section 29, 29A
Constitution of India, 1950 — Article 311

Citation : (1986) 09 AHC CK 0081

Hon'ble Judges : N.N. Mithal, J

Bench : Single Bench

Advocate : Sidheshwari Prasad, for the Appellant;

Final Decision : Dismissed

Judgement

N.N. Mithal, J.—The present appeal arises out of a suit which had been filed by the Plaintiff-Respondent seeking a declaration that orders dated 27th April, 1983 and 4th June, 1983 were illegal and violative of Article 311 of the Constitution. The suit was decreed after contest and the Appellant's appeal in the lower appellate court was also dismissed on 26th October, 1985 where after the present Second Appeal was presented on 28th April 1986.

2. A preliminary objection has been taken that in view of the enforcement of Central Administrative Tribunal Act, 1985 and the constitution of a Tribunal for U.P. with effect from 1st November 1985, the second appeal before the High Court was not maintainable as the Administrative Tribunal had exclusive jurisdiction to entertain such appeals. The Administrative Tribunal Act, was drastically amended by the Administrative Tribunal (Amendment) Act, being Central Act 19 of 1986 and several new provisions were added therein including Section 29A. This Amending Act received the assent of the President on 25th March 1986 and was published in Gazette of India Extra Ordinary on 27th March 1986. According to Section 1 Sub-clause 2 of the Amending Act, the provisions of this Act have been made effective retrospectively from 22nd January, 1986, the

day on which the Ordinance in this respect had been promulgated by the President of India. Thus the provisions of this Amending Act, unless otherwise indicated, became applicable with effect from 22nd January 1986.

3. Section 29A is relevant for the purposes of resolving the dispute that is before me at the moment. It reads as under:

29A. 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

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 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.

4. The above provision, therefore, envisages the following pre-conditions for its applicability

(a) that a decree or order has been passed by any court other than the High Court.

(b) the order has been passed before the establishment of the Tribunal.

(c) that the suit or proceeding in which decree or order has been passed is based on a cause of action which would be entertain able by Tribunal after its establishment.

(d) that no appeal has been preferred before the establishment of the Tribunal and

(e) that time for filing such appeal under the law had not expired before the establishment of the Tribunal.

5. If these conditions are fulfilled, then in that case the appeal against decree or order shall lie either to the Central Administrative Tribunal under Sub-clause (a) or to any other Tribunal under Sub-clause (b) within such time as is indicated in the respective Sub-sections.

6. A valiant effort was made by Sri Sidheshwari Prasad, learned Counsel appearing for the Appellant, to contend that Section 29A would not apply in the present case as the appeal had not been filed by the time the Amending Act had come into force. It is difficult for me to agree with this submission for the

provision of Section 29A has been specifically introduced to take care of such cases in which although a right of appeal had accrued but no appeal had in fact been filed. Such a kind of case was not covered under the provision of Section 29 as occurring in Original Act and, therefore, the Parliament had intervened to fill in the lacuna which was staring into the eyes. As a matter of fact, barring those cases in which a decree has been passed by the High Court in a service matter, any appeal or order that may have been passed by any subordinate court or a Tribunal would be appeal able before the Administrative Tribunal which alone has exclusive jurisdiction in the matter if the other conditions set out earlier are satisfied. In the present case, we find that the decree in appeal was passed on 26-10-1985 and the present appeal was presented in the High Court on 28-4-1986. In the intervening period, Tribunal had been established from 1-11-1985 and Section 29A introduced by Act 19 of 1986 also became effective from 22nd January, 1986. Thus the present case is fully covered by the provisions of Section 29A and the appeal to the High Court does not lie. As no appeal had been preferred by the Appellant till as late as 28-4-1986 under the circumstances, I have no hesitation in holding that the present appeal does not lie before this Court and the Appellant ought to seek his remedy before the Administrative Tribunal.

7. Learned Counsel for the Appellant has prayed for the return of the memo of appeal for being presented before the Tribunal. Let the memo of appeal be returned to him subject to compliance by him of the Rules of the Court in this respect within a week for the purposes of being presented before the Administrative Tribunal, U.P. at Allahabad. A certified copy of this order may be supplied to the counsel for the parties on payment of usual charges within 7 days.