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CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

—

Date of decision 24th March 92.

O.A.No. 1577/88

Dr.Ram Kumar Gupta & Another vs. Union of India

OA No. 1742/88

Dr.S.P.Singh vs. Union of India

CORAM: Hon'ble Mr. T.S.Oberoi, Member (J)
Hon'ble Mr. M.M.Mathur, Member (A)

PRESENT: Mr. K.N.R.Pillai, counsel for the applicants
Mr. P.P.Khurana, counsel for the respondents

M.M.MATHUR

Applicants in the above two cases were appointed as Junior Medical Officers on monthly wages in C.G.H.S. Dispensaries in New Delhi during February/ August, 1986 in terms of appointment letters at Annexure A-1. They continued working in that capacity, with break of one day after every 90 days service, till their services were terminated in August 1988, consequent upon joining of regular Medical Officers approved by the UPSC.

2. Applicants have filed two Applications captioned above challenging their termination under the Industrial Disputes Act and praying that they

should be treated as continuously in service, with all consequential benefits. Since the facts and circumstances of all the applicants and the reliefs sought by them are identical, we consider it appropriate and expedidnt to dispose of both the Applications by this common judgement.

3. The relevant facts of the case are not in dispute. Applicants are qualified Medical graduates and were appointed as Junior Medical Officers on monthly wages in various C.G.H.S. Dispensaries in Delhi, initially for a period of 90 days at a time which was extended, with a break of one day, from time to time. They were entitled to a fixed salary of Rs. 650/- P.M. plus Allowances as admissible to other Junior Medical Officers but were not entitled to any increment. They were also not entitled to any other benefits like Provident Fund facility or any type of Leave and conveyance allowance as is admissible to Regular Doctors. Their appointments could be terminated at any time without any notice or assigning any reason. The applicants continued working under these terms and conditions till August, 1988 when their services were terminated consequent upon joining regular Junior Medical Officers approved by the U.P.S.C. The impugned orders of termination in respect of S/Shri Dr. R.K.Gupta and Dr. Prem Lal [illegible] are at Annexures A-III dated 11-8-88 and Annexure A-IV dated 23-8-88 in OA 1577/88. Similarly, the termination order in respect of Dr. S.P.Singh is at Annexure A-IV dated 23-8-88 in OA 1742/88.

4. Applicants have challenged the impugned orders primarily on the grounds that their termination is in violation of the mandatory provision of Section 25 F of Industrial Disputes Act. It has been pleaded that Hospitals and Dispensaries come within the definition of 'Industry' as defined in Section 2(j) of the I.D.Act. is held by the Supreme Court in Bangalore Water Supply and Sewerage Board vs. R.Rajappa[1]. It has further been pleaded that a doctor is a 'workman' as defined in Section 2(s) of the I.D. ct. This has been supported by several judgements of different High Courts as cited below:-

1. AIR 1961 Assam 30 (DB); Bengal United Tea Company vs. Labhaya.
2. 1977 Lab IC 1088 (ALL) (DB); Dr.P.N.Gulati vs. Labour Court
3. 1982 (2) SLR 229 (P&H), State of Haryana vs. Dr. N.K.Goel.
4. 1986 Lab IC 1516 (ALL) (DB); Dr.Surendra Kumar Shukla vs. Union of India
5. (176) Vol. 32 FLR 323 (Guj)

On the basis of these judgements, the case put up by the applicants is that retrenchment of their services without complying with the mandatory provisions ofSection 25 F of the Industrial Disputes Act is illegal and void, thus calling for a declaration that they continued to be in service. In support of this contention, the applicants

1. 1978(2) SCC 213

have
/relied upon the judgement of the Supreme Court in the case of Mohan Lal vs. Bharat Electronics[2]

5. In the written statement filed on behalf of the respondents, the claim of the applicants has been opposed primarily on the ground that the post of Medical Officer in CGHS, Delhi is required to be filled on regular basis through the UPSC in conformity with the provisions of Recruitment Rules notified for that post. Applicants were, however, appointed through the Employment Exchange only on monthly wages purely as a temporary measure for 90 days at a time and their services were extended, with a break of one day, till the posts of Medical Officers could be filled up on regular basis through the UPSC. As such, respondents have pleaded that the applicants have no statutory right to claim regular appointments against the post. It has been further pleaded that the services of the applicants have been terminated only on joining of Regular Medical Officers approved by the UPSC and strictly by following the principle of 'Last come first go'. Respondents' case is that the employees working in the CGHS are governed by the Central Civil Service Rules and not by the Industrial Disputes Act as claimed by the applicants and therefore, the judgements cited on their behalf are not applicable to the instant case.

6. During the arguments, the learned counsel for the respondents referred to the judgement of Full Bench in the case of A.Padmavalley vs. C.P.W.D.[3]

2. 1981(2)SLR II(SC)
3. (1990) 14 ATC/914

in which it has been held that the Administrative Tribunals constituted under the Administrative Tribunals Act are not substitutes for the authorities constituted under the Industrial Disputes Act and hence all matters over which the Labour Court or the Industrial Tribunal or other authorities had jurisdiction under the Industrial Disputes Act do not automatically become vested in the Administrative Tribunal for adjudication. It has been further held that an applicant seeking a relief under the provisions of the I.D.Act must ordinarily exhaust the remedies available under that Act. Relying upon this judgement, the learned counsel for the respondents argued that since the applicants are challenging their termination only on the basis of alleged violation of Section 25 F of the I.D.Act, this Tribunal has no jurisdiction to grant any relief to the applicants unless they first exhaust the remedies available under the I.D.Act. In reply to this argument, the learned counsel for the applicants cited the judgement of the Principal Bench of this Tribunal in the case of Ram Chander vs. Union of India & Others (OA 1584/88) decided on 9-8-91 in which it was held, in a similar case, that where jurisdiction has been exercised by admitting the Application, it will not be proper to dismiss the same on the ground of want of jurisdiction. The learned counsel argued that the instant Applications already stand admitted as far back as on 16-9-88 and the pleadings of both the sides are already complete. He, therefore, urged that in such a situation, it will not be fair to reject the Applications merely on the ground of jurisdiction. He further submitted that in the case A.Padmavalley & Others (supra), the Full Bench

has not completely excluded the jurisdiction of the Tribunal in the cases falling under the I.D.Act. The Tribunal can always exercise the powers of the High Court under Article 226 of the Constitution and adjudicate in such matters, depending upon the facts and circumstances of each case.

7. We have carefully perused the pleadings and documents on record and have also heard the arguments advanced by the learned counsel for both the parties. Admittely, the entire case of the applicants is based on their assertion that they fall within the definition of 'workman' as defined in Section 2(s) of the I.D.Act and therefore, their retrenchment without complying with the mandatory pre-requirements of Section 25 F of the said Act is illegal and void. The applicants have not pleaded any violation of Articles 14 and 16 of the Constitution nor have they alleged any infringment of the principles of natural justice. During arguments, in reply to a specific query, the learned counsel for the applicants reiterated that the applicants are claiming relief only under the Industrial Disputes Act. Both the parties agree that the question relating to the jurisdiction of this Tribunal over the disputes relating to the I.D.Act stands decided by the Full Bench in the case of A.Padmavalley & others (supra). In para 41 (2) of the said judgement, it has been clearly held that an applicant seeking a relief under the provisions of the

Industrial Disputes Act must ordinarily exhaust remedies available under the Act. In sub para (3), it has been further observed that the powers of the Administrative Tribunal are the same as that of the High Court under Article 226 of the Constitution but exercising of that discretionary power would depend upon the facts and circumstances of each case as well as the principles laid down in the case of Rohtas Industries referred in the judgement. However, in para 39, it has been observed that exercise of such discretionary power shuld be resorted to only in exceptional circumstances where the competent authority irgnores any statutory provisions or acts in violation of Articles 14 of the Constitution. In the case of Ram Chander (supra) relied upon by the learned counsel for the applicants, the Tribunal has chosen to exercise the discretionary power as the applicants were daily wage mates working in the Delhi Milk Scheme and the matter had been pending for final hearing for nearly 3 years. However, the facts and circumstances before us are quite different. Applicants are not low paid daily wage workers but are professionally qualified doctors. Admittedly, they were not recruited by selection through UPSC as required under the Rules but were only appointed as a stop-gap arrangement for 89 days at a time, at a fixed monthly salary. During arguments, it transpired that the manner of their appointment has been separately challenged by the applicants through separate applications which are still pending before this Tribunal .

13.

In the instant Applications, applicants have nowhere pleaded any violation of Articles 14 and 16 of the Constitution but have only alleged violation of Section 25 F of the Industrial Disputes Act.

8. In the circumstances we are of the view that the applicants must first exhaust remedies available under the Industrial Disputes Act as laid down in Para 41(2) of the Full Bench Judgement in the case of A.Padmavalley (supra). Consequently, the present Applications are not maintainable and the same are hereby dismissed.

Both the Applications captioned above stand disposed of accordingly, but in the circumstances we make no order as to costs.

(M.M.Mathur)
Member (A)

24.3.92

(T.S.Oberoi)
Member (J)