IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 502 of 1990
T. A. No.

DATE OF DECISION 5-3-1992

The Divisional Personnel Officer, Southern Railway, Trivandrum — Applicant (s)

Mr TPM Ibrahimkhan — Advocate for the Applicant (s)

Versus.

PJ Varghese & another — Respondent (s)

M/s M Ramachandran & P Ramakrishhan — Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. SP MUKERJI, VICE CHAIRMAN

&

The Hon'ble Mr. AV HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? No
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. To be circulated to all Benches of the Tribunal ? No

JUDGEMENT

(Mr AV Haridasan, Judicial Member)

The Divisional Personnel Officer, Southern Railway, Trivandrum has filed this application under Section 19 of the Administrative Tribunals Act challenging the legality, propriety and correctness of the order of the second respondent, the Central Government Labour Court, Ernakulam in C.P-25/88 and for a declaration that the first respondent is not entitled to release the amount awarded by the Labour Court as per the impugned order at Annexure-A1. The factual matrix is thus.

2. The services of the first respondent who was a casual mazdoor and who had attained temporary status was terminated by the applicant on 5.6.1981 on the ground that he was found medically

..2...

unfit by a Railway Medical Board. The first respondent challenged this action before the Hon'ble High Court of Kerala in O.P.No. 4582/81. The High Court of Kerala allowed the Writ Petition and directed the Railway Administration to re-consider the first respondent's claim in the light of its judgement and the relevant provisions of Chapter 13 of the Railway Establishment Manual. Thereafter, after considering a representation made by the first respondent, the Railway Administration issued another order on 29.4.1982 confirming the earlier order and terminating the services of the applicant with retrospective effect from 5.6.1981. This order was challenged by the first respondent in O.P-7349/82 which was transferred to this Tribunal after commencement of the Administrative Tribunals Act. This Writ Petition re-numbered as TA-36/87 was disposed of by this Tribunal by order dated 18.3.1988. The Tribunal held that the order dated 29.4.1982 terminating the services of the first respondent with retrospective effect from 5.6.1981 was invalid. Therefore the termination of the services of the applicant was set aside. However, it was observed in the order by the Tribunal that it was open for the Railway Administration to take such action as was warranted on the basis of the Medical Report after giving due notice to the first respondent and after hearing his objection in that regard. Pursuant to the above direction, the Railway Administration issued a notice to the applicant and after giving him an opportunity to be heard, terminated his services. Since the Railway Administration did not pay the applicant the back wages for the period between 5.6.1981 and 31.3.1988, the first respondent filed C.P-25/88

..3...

before the second respondent, the Central Government Labour Court, Ernakulam under Section 33(C)(2) of the Industrial Disputes Act for computation of the benefits due to him from the applicant as errears of pay, D.A. etc. This application was resisted by the applicant contending that as the services of the applicant was terminated on the ground of medical unfitness and as the applicant had not worked during the period, he was not entitled to any back wages. It was also contended that as the Hon'ble High Court and the Central Administrative Tribunal have set aside the order of termination of the services of the applicant on the technical ground that a notice was not given to the first respondent before termination and as the High Court and the Tribunal did not direct payment of back wages during the period when the applicant was kept out of service, the applicant has no right to claim back wages. It was further contended that the quantum of back wages, namely, Rs.52,868.75 claimed in the petition was excessive. The first respondent got himself examined before the second respondent. The applicant on the other hand, did not adduce any evidence at all. The second respondent held that in view of the fact that the orders of termination of the services of the 1st respondent were set aside by the High Court and the Central Administrative Tribunal, the 1st respondent (the petitioner before it) was entitled to get salary and other benefits till his services were legally terminated after issuing a notice as directed by the Tribunal. The second respondent found that as pay and allowances during the period from 5.6.1981 and 31.3.1988, the

..4...

1st respondent was entitled to get a sum of Rs.52,868.75, but taking note of the fact that a sum of Rs.3,982.00 had since been paid, an order was passed directing the applicant to pay to the first respondent a sum of Rs.48,886.75 with interest @ 10% from the date of the order. It is this order a copy of which is at Annexure-A1 that is under challenge in this application. The main ground on which the order is challenged are (i) the order of the second respondent is one passed without jurisdiction, (ii) as the first respondent has not worked during the period between 5.6.1981 and 31.3.1988, he has no right to get back wages and (iii) as the orders of the Hon'ble High Court as well as that of the Tribunal do not direct payment of back wages, the decision of the second respondent directing the applicant to pay back wages is unsustainable.

3. The first respondent has filed a reply statement contending that there is no reason or justification for interference in the impugned order.

4. We have gone through the pleadings and documents very carefully and have also heard the arguments of the learned counsel on either side. The learned counsel for the applicant argued that as the entitlement of the first respondent to get back wages was disputed by the applicant in a proceedings under Section 33(C)(2) of the I.D.Act, the second respondent has no jurisdiction to decide the disputed question of entitlement. The learned counsel submits that as the scope of enquiry under Section 33(C)(2) is limited to computation of the monetary benefits, the disputed

..5...

question of entitlement can be determined only on a reference under Section 10(1)(C) of the I.D.Act. The question of jurisdiction was not raised by the applicant before the second respondent. It is not the case of the applicant that there is inherent lack of jurisdiction for the Labour Court for determining the disputed question of entitlement, but the argument is that the Labour Court could embark upon an inquiry in regard to the disputed question of entitlement only if such a dispute was referred to it by the appropriate Government under Section 10(1)(C) of the I.D.Act. So in effect the case of the applicant is that the second respondent Labour Court has exceeded its jurisdiction in a proceedings under Section 33(C)(2) of the I.D.Act. Though submission to jurisdiction by the parties will not confer upon a Court or Tribunal jurisdiction, the objection regarding the limit of jurisdiction should be raised at the earliest opportunity. Further, in a proceedings under Section 33(C)(2) of the I.D.Act, for the purpose of computing the monetary benefits claimed by the applicant, the Labour Court has got the jurisdiction to decide all questions incidental to such a computation. It cannot be said that the question of entitlement of the first respondent to get back wages was really a question to be determined by the second respondent in this case because as the High Court and this Tribunal had declared that the orders of termination of the services of the applicant were illegal and invalid, the natural and legal consequence of the declaration was that the orders of

....6...

of termination did not take effect and that it should be deemed that the first respondent continued in service despite the illegal orders of termination. If the legal consequence is as aforesaid, then, it goes without saying that the right of the first respondent to get back wages cannot be disputed. What remained for determination by the second respondent was the computation of the amount due to the first respondent. Therefore we find that there is no merit in the contention of the applicant that the second respondent has acted without jurisdiction in determining the quantum of back wages due to the first respondent.

5. The argument of the learned counsel for the applicant that in the absence of a direction by the Hon'ble High Court and by the Tribunal to pay back wages to the first respondent though the orders of termination of services of the first respondent had been set aside, the finding of the second respondent that the first respondent was entitled to back wages is unsustainable also has no force because as observed by us earlier, the legal consequence of declaring the orders of termination of services is that the impugned orders have become nonest. In such circumstances, the second respondent was perfectly justified in holding that the first respondent was entitled to have the monetary benefits computed. The learned counsel for the applicant argued that the second respondent should have accepted the principle of no work no wages rejected the claim of the first respondent. We are

..7...

not in a position to accept this argument of the learned counsel either. As observed by us, since the termination of the services of the first respondent has been quashed and set aside as illegal, the first respondent was eligible to get the wages for the period during which he was kept out of employment, because it is not the case where the first respondent was not prepared to work but were the applicant did not allow the first respondent to work. After keeping the first respondent away from work, the applicant cannot get away from the liability to pay him the wages.

6. The learned counsel for the applicant lastly argued that the second respondent has arrived at the quantum of back wages without any basis and that for this reason the impugned order at Annexure-A1 is liable to be quashed. We are not impressed with this argument at all. Regarding the quantum of back wages, apart from a stray sentence in the statement filed by the applicant before the second respondent that the back wages claimed was excessive, it wasnot stated as to how the claim was excessive. Further, it is seen that as against the evidence adduced by the first respondent before the second respondent, in support of his claim of back wages, no evidence at all was adduced by the applicant. In these circumstances, the second respondent was left with no alternative but to accept the evidence tendered by the first respondent in support of his claim.

7. On an anxious consideration of the facts and circumstances of the case, we do not find any infirmity in the impugned order

of the second respondent and therefore, we do not find any reason or justification to interfere with the same. In the result, the application fails and the same is hereby dismissed. As a sum of Rs.8,000/- was paid to the first respondent, pursuant to the interim order issued in this application, the applicant will be liable to pay only the balance.

8. There is no order as to costs.

(AV HARIDASAN)
JUDICIAL MEMBER

5.3.92

(SP MUKERJI)
VICE CHAIRMAN

5-3-1992

trs