IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 223/90 ~~199~~

DATE OF DECISION 31-8-90

The Executive Engineer (Constn) Applicant (s)
Southern Railway, Ernakulam and
3 others.
Mr MC Cherian Advocate for the Applicant (s)

Versus

Shri L Robert D'Souza Respondent (s)
Lascar Executive Engineer Office (Constn)
Southern Railway, Ernakulam & 3 others
Mr Ashok M Cherian Advocate for the Respondent (s)-1.

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member

The Hon'ble Mr. N Dharmadan, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. To be circulated to all Benches of the Tribunal? ✓

JUDGEMENT

Shri NV Krishnan, Administrative Member

The applicants are the Union of India represented by the General Manager of the Southern Railway and three other officials of the Southern Railway, hereinafter referred to as the Railways. They have prayed that the Annexure-VII and Annexure X orders dated 26.12.89 and The former order dated 26th Dec.,89 was passed by 13.3.90 respectively be quashed. the Central Government Labour Court, Ernakulam (Respondent-2) (hereinafter referred to as the Labour Court) allowing the petition filed by Respondent-1 under Section 33 C(2) of the Industrial Disputes Act, 1947 (Act for short) for the arrears of wages etc. of Rs 1,25,930.34. The latter is a requisition dated 13.3.90 of the Regional Labour

Commissioner, Cochin (Respondent-3) addressed to the District Collector, Ernakulam (Respondent-4) requesting the latter to recover the above said amount as arrears of land revenue from the Executive Engineer(Construction) Southern Railway, Ernakulam (Applicant-1).

2 The claim petition was filed in the Labour Court by the first respondent after a long and drawn out litigation. The facts needed for the purpose of this case can be briefly stated as follows.

2.1 Respondent-1 (hereinafter referred to as the claimant) was aggrieved by the fact that though he claimed to be in continuous employment from 15.11.54 in the construction wing of the Southern Railway, he was not given by the Railways temporary status after six months and the consequential benefits, on the ground that he was working only on a project and therefore, temporary status could not be given to him.

2.2 He, therefore, filed OP 409/72 in the High Court of Kerala which was dismissed. Writ Appeal No.218/73 was then filed in the High Court of Kerala by the claimant and 3 others. While this appeal was pending, the service of the claimant was terminated from 18.9.74 and therefore, he challenged his termination in OP No.4401/74 in the High Court of Kerala.

2.3 The Writ Appeal No.218/73 was disposed of by stating that it had become infructuous in so far as it concerned all the appellants except the claimant. Therefore, while dismissing the Writ Appeal an order was passed, permitting the claimant to agitate all matters, including

the grounds taken by him in that Writ Appeal, in the OP 4401/74, he had since filed against the termination of his services and which was then pending.

2.4 The High Court of Kerala dismissed OP 4401/74 on 9.1.79. Their judgment has since been reported as L Robert D'Souza V Executive Engineer, Southern Railway 1979 Lab.IC 1399. It was contended therein by the Railways that the petitioner was throughout working only as a casual labourer in Projects and that therefore, he could not be granted temporary status and hence, his claim that he had acquired temporary status was incorrect and untenable. The High Court upheld this contention by stating that the petitioner (i.e., the claimant) could not produce any material to establish that at any time after 1962, he had worked continuously for 6 months as casual labourer on any work other than projects. Such being the position, they were made to uphold the claimant's contention that he had acquired temporary status and his further contention that therefore, his services could be terminated only by following the procedure laid down in Rule 2302 of the Manual. We are not concerned with the other important findings rendered in that judgment.

2.5 Thereupon, the claimant filed an appeal before the Supreme Court. The appeal was allowed by the judgment delivered in what has now become famous as the Robert D' Souza's case (AIR 1982-SC 854). The Supreme Court declared that having rendered continuous uninterrupted

service over 6 months, the claimant acquired the status of a temporary railway servant long before termination of his service in 1974.

2.6 It is on the basis of this judgment that the Railways reinstated the claimant on 25.1.83 and regularised his service from 1.4.73 and paid him arrears for the period from 1.4.73.

2.7 As no payment was made to the claimant for any period prior to 1.4.73 by way of arrears, representing the difference in wages between the daily rate of wage actually paid and the salary on a fixed pay scale to which he claimed to be entitled on attaining temporary status, the claimant filed a petition under Section 33(C)(2) of the Act before the Labour Court.

2.8 The Railways opposed this claim stating that the claim was not maintainable before the Labour Court under Section 33(C)(2). They also urged that the claim was baseless and the rate was exhorbitant and disproportionate to the then existing rates of pay.

2.9 Nevertheless, the claim was allowed by the Annexure VII order without any modification. As the amounts allowed by the Labour Court were not paid by the Railways, proceedings for recovery thereof as arrears of land revenue were initiated. The Annexure-IX letter is the requisition of the Regional Labour Commissioner in this behalf.

2.10 It is in these circumstances that this application has been filed impugning the order at Annexure-VII

and the Requisition at Annexure IX. It is submitted that even if the claim is valid, the amount of arrears payable will be only ₹4792.90 as shown in Annexure VI and not ₹ 1,25,930.34 as allowed by Annexure-VII order. It is submitted that the Annexure- VII order has been passed without a proper verification of the claim and hence is liable to be set aside.

3 The first respondent (i.e., the claimant) has filed a reply stating that the applicants are not entitled to the reliefs claimed by them and he has also raised two preliminary objections.

4 We have perused the records and heard the counsel.

5 The first preliminary objection of the claimant that this Tribunal cannot entertain an application under Art.227 of the Constitution from the Railways, as it should have been preferred only before the High Court of Kerala was given up by the learned counsel as we had decided this very issue recently in OAK 440/1988 holding that this Tribunal has jurisdiction in the matter.

6 The second preliminary objection raised by the learned counsel for the claimant is that the applicants cannot be allowed to challenge the order of the Labour Court, as it was passed after considering the issues on the basis of the materials as made available to it. Such an order of the Labour Court cannot be challenged

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unless it is in violation of the principles of natural justice or its finding is perverse. He further stated that a perusal of the record of the Labour Court would show that it had not trespassed the limits of its jurisdiction. That court has decided the issue presented for adjudication on the basis of whatever material was made available to it by the parties. The Railways did not produce any evidence whatsoever to rebut the claim presented for adjudication. Therefore, it cannot be said that the Labour Court has exercised any jurisdiction not available to it. It is also submitted that the finding of facts, even if erroneous, cannot be challenged under Article 227.

7 In support of this contention the learned counsel for the claimant drew our attention to the judgments of the Supreme Court in Waryam Singh Vs. Amarnath (AIR 1954 SC-215), Nagendranath Vs. Commissioner Hills Division (AIR 1958-SC 398) and MSRT Corporation Vs. BGRM Service, Warora (AIR 1970 SC 1926). The nature of the interference and the limitation thereon permissible under Article 227 of the Constitution by the High Courts in exercise of their powers of the judicial superintendance has been explained in these judgments. It has been held that the power of superintendance under Article 227 should be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority

and not for correcting mere errors. These powers are not greater than the powers under Article 226 of the Constitution. Under Article 226, the power of interference of a High Court may extend to quash the impugned order on the ground of a mistake of law apparent on the fact of the record but under Article 227 of the Constitution the power of the interference is limited to see that the Tribunals function within the limits of its authority. As the Labour Court has exercised its powers under Section 33-C(2) of the Act properly after considering the material placed before it, the learned counsel submitted that this is not a case where interference is warranted.

8. In reply, the learned counsel for the Railways has contended that the Labour Court did not care to enquire into the case properly and hence the impugned Annexure VII order could be quashed. He submitted that the scales of pay applicable to a Group D post in the railways from 1955 to 1973 is a matter which the court could have taken judicial notice of. It should have been evident to the Labour Court, even on a cursory glance of the schedules ~~xxxxxx~~ to Annexure-A of the claim before it by the claimant presented, that the rates of monthly emoluments taken as the basis for the claim are preposterous. Hence, the order of the Labour Court needs to be set aside, for which this Tribunal has the necessary powers. In this connection he drew our attention to a judgment of the High Court of Kerala

in Thenu Vs. Jose 1988(2) KLT-430 to support his plea. For, it was held therein as follows:

> "This court exercising powers under Article 227 will not arrogate to itself, the role of a fourth court on facts. Exercise of jurisdiction varies with character of jurisdiction. The jurisdiction under Article 227 will be invoked not because this court might come to a different view on the facts, [not even because it would consider the findings not satisfactory. It would only] interfere if the findings are so perverse in law that no reasonable person properly instructed in law could have come to such a finding. An error manifest on the face of the record, is much more than an error". (emphasis ours)

9. We have carefully considered the submissions made by the counsel on either side as to our powers under Article 227. The claimant filed an application under Sec.33 C(2) of the Act before the Labour Court which undoubtedly has jurisdiction to consider the application and give its award. The impugned order Annexure VII has also been passed under Section 33C(2). This by itself does not necessarily mean that the Labour Court had functioned within the limits of its authority. Unless it is further established that the Labour Court has exercised its powers judiciously, interference by the High Court under Article 227 would be warranted. This is well established by the pronouncements of the Apex Court. It has been held in Lonand Gram Panchayat Vs. Ram Giri (AIR 1968-SC 222) in a case arising out of the Minimum Wages Act 1948, as follows:

> " No appeal lies from an order of the Authotity under S 20. But the High Court is vested with the power of judicial superintendance over the tribunal under Art-227 of the Constitution. This power is not greater than the power under Art.226 and is limited to seeing that the tribunal functions within the limits of its authority, see Nagendra Nath Bora V. Commissioner of Hills Division and Appeals, Assam, 1958 SCR 1240 at p.1272 (AIR 1958 SC 398 at p.413). The High Court will not review the discretion of the Authority

> judicially exercised, but it may interfere if the discretion is capricious or perverse or ultra vires. In Sitaram Ramachandran V. MN Nagarshana, 1960-1 SCR 875 at pa.884 (AIR 1960 SC 260 at p.263) this Court held that a finding of fact by the authority under the similarly worded second proviso to S.15(2) of the payment of Wages Act 1936 could not be challenged in a petition under Art.227. The High Court may refuse to interfere under Art. 227 unless there is grave miscarriage of justice". (emphasis ours)

Similarly, if the available material is ignored and not examined by a Tribunal this will invite interference by the High Court. This is the inference that can be drawn from the judgment in Labhkuwar Vs Janardhan (AIR 1983 SC-535). That was a case under the Bombay Rents, Hotel and Lodging House Rates (Control Act) 1947 and involved a question as to the date on which the second defendant was let in as a sub-tenant. In this context, the Supreme Court observed as follows:

> "If this material had been ignored by the lower Courts, it would have been a different matter. It was on an appreciation of this very material that both the lower courts had come to a finding against the second defendant ". (emphasis ours)

It was, therefore, held that the High Court under Article 227 could not interfere with the finding recorded by the lower Courts on the point, it being purely a question of fact requiring adjudication on appreciation of evidence. Again, in a more recent decision in Chandavarkar Sita Ratna Rao Vs. Ashalata (AIR 1987 SC-117), the circumstances in which interference would be justified have been mentioned in para-16 of the judgment.

> " As mentioned hereinbefore two questions require consideration- how far and to what extent in exercise of its jurisdiction under

> Art.226 or 227 of the Constitution, and in this respect regarding power to deal with factual findings, the jurisdiction of the High Court is akin both under Arts. 226 and 227 of the Constitution - can the High Court interfere with the findings of fact? It is well-settled that the High Court can set aside or ignore the findings of fact of an appropriate Court if there was no evidence to justify such a conclusion and if no reasonable person could possibly have come to the conclusion which the Courts below have come or in other words a finding which was perverse in law. This principle is well settled. In ON Banerji V. PR Mukherjee, p.59), it was laid down by this Court that unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention, it was not for the High Court under Art.226 and Art.227 of the Constitution to interfere. If there is evidence on record on which a finding can be arrived at and if the Court has not misdirected itself either on law or on fact, then in exercise of the power under Art.226 or Art.227 of the Constitution the High Court should refrain from interfering with such findings made by the appropriate authorities". (emphasis ours).

Therefore, in certain situations the power under Art.227 can be exercised by us if warranted to issue appropriate directions.

10 Therefore, the only question is whether ~~xxxxx~~ interference under Article 227 is justified and called for in this case.

11 Obviously, that question can be considered only after examining ~~xxxxxxx~~ the facts of the case and the circumstances in which the impugned order Annexure VII was passed by the Labour Court. A perusal of the claim filed before the Labour Court under Section 33 C(2) of the Act by the claimant shows that the claimant has narrated the circumstances under which he was compelled to file the application. It is made clear that the claim is in respect of arrears for the period based on the difference between the amounts actually due and the amount already paid. In Schedule-I of

Annexure A of the application relating to arrears without increments which accounts for Rs. 1,01,050.20 of the total claim, the monthly emoluments has been taken at Rs.567.40. In Schedule-III of Annexure-A, a claim for around Rs.18,500/- has been made on account of leave on average pay and casual leave for each year in respect of 18 years from 1.1.56 to 31.12.73. No basis has been stated for this claim. The Railways had stated in their objection (though without any evidence) that the quantum claimed by the claimant was exhorbitant and disproportionate to the then existing rates of pay.

12. It is in the light of these facts that we have to examine whether the Labour Court exercised its jurisdiction in accordance with law. It is sufficient to notice three points:-

(i) The claimant had not cited any basis for claiming Rs.567.40 to be the monthly emoluments in his claim in Schedule-I. The Labour Court also did not ascertain the basis for this figure when the claimant was examined. The claim could have been justified only by production of evidence like the Annexufe-IV and Annexure-V filed by the Railways with the present application showing the pay scales before their revision in 1960 and after their revision and also the rates at which Dearness Allowance was paid from time to time.

(ii) The applicant had not explained how the claim in Schedule III was being made when for the same period he had claimed service pay in Schedule-I. For, it should have been obvious to

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the Labour Court that for the same period, one can draw pay only in one capacity, i.e., either as having been on duty or as having been on leave, but not both.

(iii) The claimant was given arrears by the Railways from 1973 to 1983. If the Labour Court had cared to enquire into the amount received by him, it could have resulted in an informed opinion whether the claims made are exhorbitant and disproportionate to the wages as cautioned by the Railway.

The fact that the Labour Court did not examine these important issues shows to say the least, that there was no serious consideration of the issues involved in this case in accordance with law, particularly after being alerted by the Railway- no doubt without any evidence - that the claim is exhorbitant and disproportionate to the then existing rate of pay. A reasonable person properly instructed in law would not have accepted the huge claim preferred by the claimant without satisfying herself that the claim is permissible and can be awarded in the interest of justice.

13 The impugned Annexure-VII order cannot also be defended as has been sought to be done by the learned counsel for the claimant, on the ground that though the Railways were given a reasonable opportunity before the Labour Court to rebut the claim, they did not produce any evidence at all for its consideration, except to file an objection. This, indeed, is true. It was easy for them to have produced before the Labour Court

the evidence now produced as Annexures IV, V and VI and question the validity of the claim, but nothing was done. The learned counsel submits that in this circumstances, the Labour Court was left with no alternative except to allow the claim preferred by the applicant.

14 We are not satisfied with this argument. In fact, even if it had been an ex-parte matter, the Labour Court ought not to have accepted the claim without examining the reasonableness of the claim after calling upon the claimant to substantiate his claim by producing the necessary evidence or other orders relating to rates of pay scale, DA, etc., during the relevant period.

15 There is another aspect also. Undoubtedly, the Railways are serious defaulters as they have not defended the case as diligently as is expected of them and the Labour Court. Nevertheless, the learned counsel for the Railways points out that the Annexure-VII order is highly unjust and it would not be proper to allow public money to be drained away in this manner, as that would be the result if that order is allowed to stand. He submitted that the Labour Court itself should have taken pains to atleast compute the amount due to the claimant after taking proper evidence.

16 We notice that this is a case where the Presiding Officer of the Labour Court was alerted by the Railways that the claim was exhorbitant and disproportionate to the scales of pay in force. This is an added reason why the Labour Court should have been

more circumspect before accepting the claim and passing order granting the relief. If the applicant is able to get away with such a preposterous claim, it is mainly due to the Railways' laches and negligence. At the same time, it cannot be denied that this is also due to the failure of the Labour Court to exercise its powers properly. This is a case where public interest is also involved for, if the unestablished claims of the claimant are allowed, it would only be unnecessary burden on the general public who contribute to the public exchequer. Therefore, it was the duty of the Labour Court to have considered the case and probed into the claim in great detail in public interest even if the Railways had not produced any evidence to rebut the claim.

17 We are, therefore, of the view that the Labour Court has not really exercised its jurisdiction properly when it allowed the claim by the Annexure-VII order. In the circumstances, we are of the view that this is a case where interference under Article 227 is justified.

19 Before we issue directions under Art.227, we have to dispose of certain submissions made by the Respondents. It is stated by them that the claimant has not attained temporary status from 15.5.1955 because there is no such finding by the Supreme Court. This matter has been considered by the Labour Court in the

Annexure-VII order and it has come to the conclusion that the claimant has established that he acquired temporary status on 15.5.1955. This is based on the observations of the Supreme Court in the appeal filed by the claimant (AIR 1982 SC 854). It has been unequivocally held by the Supreme Court that the claimant had established that he was in continuous employment from 15.11.54. It also held that since under the Executive Engineer, Construction, on a construction work cannot be equated with work on a project. Therefore, this ground, on the basis of which temporary status was not earlier allowed, is no more available to the Railways. Hence, the finding of the Labour Court on this issue cannot be assailed.

19 That takes us to the second point. The Railways have contended that this is not a matter which could have been heard under Section 33C(2) of the Act. We are of the view that having acquired temporary status, the claimant was entitled to file an application under Section 33C(2) of the Act for consequential reliefs before the Labour Court. This objection of the Railways has no force and the jurisdiction of the Labour Court cannot be challenged on this ground.

20 To conclude, we are of the view that the Annexure VII order of the Labour Court is not a well considered and judicious order in so far as it has allowed the claimed amount of Rs 1,25,930.34. It has, therefore, failed to exercise its jurisdiction properly and fairly according to law. In the circumstances Annexure IX requisition also cannot be maintained.

21 For the foregoing reasons, we allow this application with the following orders/directions:

(i) The impugned Annexure VII order of the Labour Court is quashed. The case is remitted to the second respondent to reconsider the claim petition and dispose of the same in accordance with law, in the light of the observations made herein.

(ii) The impugned Annexure-X requisition of the Regional Labour Commissioner (Central), Cochin (Respondent-3) is quashed.

22 There will be no order as to costs. The records of the Labour Court be returned to that authority alongwith a copy of this judgment.

31.8.90.

(N Dharmadan)
Judicial Member

31.8.90

(NV Krishnan)
Administrative Member

31-8-90