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CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

1480/95
ORIGINAL APPLICATION No. 199

Date of Decision: 4-12-96

Chacko Jacob

Petitioner/s

S.Natarajan

Advocate for the
Petitioner/s

V/s.

U.O.I. & Ors.

Respondent/s

B.Ranganathan

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri B.S.Hegde, Member(J)

Hon'ble Shri M.R.Kolhatkar, Member(A)

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to other Benches of the Tribunal ?

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M.R.Kolhatkar
(M.R.KOLHATKAR)
M(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A. 1480/95

Pronounced, this the 7th day of December 1996

CORAM:

HON'BLE SHRI B.S.HEGDE, MEMBER(J)

HON'BLE SHRI M.R.KOLHATKAR, MEMBER(A)

Chacko Jacob,
C-11, Takshashila,
Anushaktinagar,
Mumbai - 400 094.

(By advocate Shri S.Natarajan)

.. Applicant

-versus-

1. Union of India
through
Secretary,
Department of Atomic Energy,
Anushaktibhavan,
CSM Marg,
Mumbai - 400 039.
2. The Director of Estate Management
& Estate Officer,
Vikram Sarabhai Bhavan,
2nd Floor, North Wing,
Anushaktinagar,
Mumbai - 400 094.
3. Controller,
BARC, Central Complex,
Trombay,
Mumbai - 400 085.
4. Head Personnel Division,
BARC, Central Complex,
Trombay, Mumbai - 400 085.

(By Advocate Shri B.Ranganathan)

.. Respondents

-: O R D E R :-

(Per M.R.Kolhatkar, Member(A))

In this O.A. the applicant was dismissed from service of the respondents vide order dt. 25-8-95. He filed an appeal with the appellate authority on 13-10-95. He wanted to continue ⁱⁿ the occupation of the quarter citing before the appellate authority the Full Bench decision in D.N.Singh's case but the same was not

considered nor he was allowed to engage a lawyer for his defence in the eviction proceedings initiated against him. The order was passed on 29-11-1995 and the O.A. was filed on 18-12-1995 seeking the relief of permitting the applicant to retain the quarter on payment of rent at the rate paid by him before his dismissal during the period of appeal and to quash the order of eviction etc. Interim relief in the nature of status-quo was granted on 19-12-1995 and the same was made absolute on 15-2-1996. On 27-8-96 the counsels sought time to argue the question of jurisdiction and on 3-9-96 this Tribunal referred the matter to a division bench in terms of following order:

"Heard Shri Natarajan alongwith Shri Pillai for applicant and Shri B.Ranganathan for Shri J.P.Deodhar for respondents.

On the last occasion, the counsel had sought time to argue the question of jurisdiction. Today, I am told that one matter relating to jurisdiction to entertain applications in relation to Minimum Wage Act has been fixed for argument on 27-9-96. So far as I am aware, the question of P.F.Act was not raised in that O.A.

All the same, the learned counsel wish to argue the point since Krishna P.Gupta's case has also been cited in support of proposition that Tribunal has no jurisdiction. Put up for hearing on the point of jurisdiction before division bench on 27-9-96 along with O.A.1361/95.

It is made clear that ~~counsel~~ other than those appearing in this case can also appear as amicus-curiae subject to their intimating the Registry in advance."

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2. It is in terms of above order of reference that the division bench heard the matter. On the point of jurisdiction the counsel for the applicant argued that this Tribunal has full powers of the High Court in service matters and just as in the case of High Court this Tribunal can entertain ^{an} application challenging ^{and} eviction either directly or otherwise, ~~that~~ the remedy of district court which is provided under section 9 of the Public Premises eviction Act is not an ~~an~~ efficacious remedy. The counsel states that reliance is placed on the observations made in the Supreme Court judgment in Krishan Prasad Gupta vs. Controller, Printing & Stationery, (1996) 1 SCC 69, Those observations were in relation to payment of wages act and they have no applicability to the present case which is under PP Act. The relevant paragraphs in K.P.Gupta's case are as below :

"42. In this connection, we may refer again to Sections 29 and 29-A as under both the sections, the emphasis is on "cause of action". Under Section 29, an appeal shall stand transferred to, and under Section 29-A, an appeal can be filed before the Tribunal if the cause of action on which "suit or proceedings" were initiated would have been cognizable by the Tribunal. Since on the original cause of action, a claim under Section 15 of the Payment of Wages Act could not have been made to the Tribunal, the appeal would not stand transferred to nor can appeal contemplated under Section 17 of the Payment of Wages Act be filed before it. The appellate authority is part of the Justice Delivery System constituted under Section 17 of the Payment of Wages Act.

Its jurisdiction will not be affected by the establishment of Administrative Tribunals particularly as appeal has always been treated to be a continuation of the original proceedings. Consequently, the two-tier judicial system, original as well as appellate, constituted under the "corresponding law", like the Payment of Wages Act, are not affected by the Constitution of the Tribunals and the system shall continue to function as before, with the result that if any case is decided under section 15 of the Payment of Wages Act, it will not be obligatory to file an appeal before the Tribunal as required by Section 29-A of the Act but the appeal shall lie under Section 17 of the Payment of Wages Act before the District Judge. The pending appeals shall also, therefore, not stand transferred to the Tribunal under Section 29 of the Act. If it were a mere matter under general or common law and an appeal arising from a suit in a service matter decided by the trial court and pending in the Court of the District Judge under Section 96 CPC would have been the subject of controversy whether it would be transferred to the Tribunal or not, our answer would have been an instant 'yes' but the matter involved before us is different as it relates to the exercise of special jurisdiction by the District Judge under Payment of Wages Act, which is a protected jurisdiction.

43. Any other view will be destructive not only of the "Saving Clause" in the opening part of Section 14 but also of the exceptions carved out in Section 28 together with the "cause of Action" theory contained in Section 29 and 29-A of the Act."

3. The counsel for the respondents on the other hand relies on the judgment of this Tribunal in O.A. 800/94 decided on 20-7-94 and also R.P. 87/94 decided on 5-8-94. The R.P. decision summarised the original decision in the O.A. also. Therefore the same may be reproduced:

"This Review Petition is in respect of the order passed in O.A.800/94 on 20-7-94 by which a direction was issued to the Appellate Authority to decide the applicant's appeal according to law. The applicant contends that in view of the decision in Gangaram vs. Union of India & Ors. in O.A. No.184/90 decided by the Full Bench on 13-2-91 the Tribunal would have jurisdiction to entertain the application. It is not stated in the order passed on 20-7-94 in this case that the Tribunal has no jurisdiction to entertain the application. The direction was only to exhaust the departmental remedies before the applicant can approach the Tribunal. In view of this position there is no merit in the Review Application. It is dismissed. "

4. We first of all make it clear that the question of jurisdiction raised in this O.A. in relation to PP Act is quite distinct from the question of jurisdiction raised in relation to minimum wages Act etc. The question of jurisdiction in those cases has a bearing on interpretation of terms "corresponding law" under Section 28 of the AT Act. The judgment in K.P.Gupta's case is directly to the point in relation to industrial legislation and it is common ground that K.P.Gupta's case was not in relation to

P.P.Act. At the same time the observations made in K.P.Gupta's case regarding appellate authority is being part of Justice Delivery System and appeal being always treated to be a continuation of the original proceeding do have a great relevance in relation to proceedings under PPAct. We can only reiterate what is stated in the decision of RP 87/94 quoted above viz. that it is nobody's case that the Tribunal has no jurisdiction to entertain applications challenging eviction order under PP Act but then it is open to the Tribunal to direct the applicant to exhaust the appeal remedy in the facts and circumstance of the case.

5. In the instant case, however, the decision does not turn on the point of jurisdiction. It is not disputed that the appeal of the applicant against the penalty of dismissal has since been dismissed by the appellate authority on 16-2-96 and that the applicant has challenged the same before this Tribunal. The learned counsel for the applicant has mainly emphasised the fact that before the passing of order of eviction the respondents ought to have taken into consideration certain arguments raised by him and in particular the fact that allotment of quarter to his wife who is a staff nurse in Tata Memorial Hospital had to be refused since under the rules she is not allowed a quarter as her husband(applicant) was already in occupation of a quarter. On this point respondents have contended that the Tata Memorial Centre although administratively under the control of Department of Atomic Energy is a registered society with a separate legal existence.

11

and the respondents have nothing to do with the flats under control of the Tata Memorial Centre and secondly ~~that~~ she was never allotted a quarter in 1991 as alleged. In particular respondents have information that her priority number for allotment of quarter for the year 1995 is 48 whereas the allotments were made only upto S.No.6 by the TMC.

6. The applicant would then argue that he is entitled to relief in terms of Full Bench judgment in D.N.Singh's case. According to applicant D.N.Singh's case did not specifically relate to retention of quarter under the circumstances when the dismissal/removal was passed without enquiry but the relief ~~given~~ given was in general terms.

7. As far as ~~the~~ the applicability of D.N. Singh's case is concerned we are not required to consider the issue in this O.A. since the applicant has already filed a separate OA challenging the order in appeal confirming the order of dismissal and the applicant may seek an interim relief as part of that case. We, therefore, dismiss this O.A. with no order as to costs. We, however, direct that the applicant may not be evicted from the quarters for one month from the date of communication of the order during which time it is open to the applicant to approach the Tribunal in the separate OA filed by him for interim relief if he ^{is} so advised. There will be no order as to costs.

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M.R.Kolhatkar
(M.R.KOLHATKAR)
Member(A)

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B.S.Hegde
(B.S.HEGDE)
Member(J)