

Per Tribunal

Fixed from A.H.
on 22.12.95

MD
19.12
for Dy Registrar

Office Note

Covet No 15/95
Filed by Applicant
(Original Respondent)

MD
19.12

Dated: 22.12.95

Heard Shri V.S. Masurkar,
Counsel for the applicant.

2. Similar matter is already
posted for hearing on 15.1.96,
this matter may also be listed on
the same date, i.e. 15.1.1996.

3. Shri Masurkar prays for an
interim relief that pending the
hearing and final disposal of the
application, the judgement and order
in IDA No. 22/92 be stayed.

4. Shri Masurkar states that in
the circumstances he may be protected
till 15.1.1996. The prayer is
granted. The judgement and order
in IDA No. 22/92 is stayed till
15.1.1996.

5. Dasti.

22/12/95
Order/Judgement despatched
to Respondent(s)
on 22/12

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

B.S. Hegde
(B.S. HEGDE)
M (A)

Dated: 15-1-96 (25)

Sh. V. S. Masurkar, Counsel for the
applicant.

S.O. to 31-1-96.

Interim relief already granted
shall continue till then.

15/1/96
Order/Judgement despatched
to Applicant/Respondent(s)
on 18/1

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

B.S. Hegde
(B.S. Hegde)
M(A)

Reply of Respondent No. 1
recd. on 19.1.96

18
29.1.96

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. No. 1484/95

G.M. C. Rly, Bombay

....
V/s

Applicant

A.G. Kulkarni & Anr.

....

Respondents

CORAM : Hon'ble Shri B. S. Hegde, M(J)

Dated : 2.2.96

TRIBUNAL'S ORDER

Heard Dr. Anand Prakash along with Mr. J.P. Deodhar, counsel for the applicants and Mr. S M Dharap, counsel for the respondents.

It may be recalled when the matter came up for admission in the last occasion since the Respondent's counsel had raised the point of jurisdiction in view of the latest judgment of the Hon'ble Supreme Court of India in KRISHNA PRASAD GUPTA V. CONTROLLER, PRINTING & STATIONERY, J.T. 1995 (7) S.C. 522, as a result of which the Tribunal will not have jurisdiction to entertain the matters arising out of the Industrial Courts' orders. Similar matters, where such objection has been raised are clubbed together and listed to day for hearing only on the point of jurisdiction of the Tribunal as these matters arise out of the Industrial Disputes Act u/s. 33C or under Sections 10 / 17 of the said Act.

We have heard the arguments of the Id. Counsel for the applicant Dr. Anand Prakash along with Mr. J P Deodhar and Mr. S M Dharap. At the outset Dr. Anand Prakash submitted, that since the O.A. is not admitted, it would not be appropriate at this stage to dispose of the matter at the admission stage as the issues involved in this case are contentious one and therefore he urged that the O.A. be admitted and interim stay be granted till disposal of the O.A.

As against this the Id. Counsel for the respondents vehemently opposed the admission and interim stay. In this connection he draws our attention to Article 323 A of the Constitution

and submits that it does not provide for adjudication of orders passed by Industrial Court under Section 10 of Industrial Disputes Act as the matter has been already adjudicated and hence this Tribunal will not have any jurisdiction to entertain the same either in the way of readjudication, or as an Appellate Court or in the way of Revisional Jurisdiction. He also draws our attention to Sections 14, 19 and 28 of the Administrative Tribunals Act. It is true, that Section 28 provides for exclusion of jurisdiction of courts except the Supreme Court under Article 136 of the Constitution in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any Service or persons appointed to any Service or post. Further, he contended u/s. 19 any order passed by the executive or administrative authority of the Government can be questioned by way of filing a Original Application and not against any quasi-judicial or judicial order passed in pursuance of the statute i.e., Industrial Disputes Act. As such the order passed under the Industrial Disputes Act cannot be challenged before the Tribunal. Under section 2(b) of the Industrial Disputes Act the impugned Award does not come within section 19(a) of the A.T. Act. He further submitted, that the order that can be challenged is an order passed by the employer and not an Award passed by other Tribunal.

We have heard the Id. counsel for the parties. The main question to be seen here is whether the Tribunal has jurisdiction to entertain matters

arising out of Industrial Tribunal in view of the latest decision of the Hon'ble Supreme Court in K.P. GUPTA (supra). The Supreme Court in that decision held that the "Authority" constituted under Section 15 and the Appellate Authority under Section 17 of the Payment of Wages Act, fall within the exception indicated in Section 28 of the Administrative Tribunals Act and this Act, viz., Payment of Wages Act, is positively covered by the connotation "Corresponding law" used in that Section. Consequently, the jurisdiction of the Authority to entertain and decide claim cases under Section 15 of the Payment of Wages Act is not affected by the establishment of the Administrative Tribunals. This only means that where appeal is provided under the statute resort can be made to the appellate forum and not (approach) the Tribunal for relief. That by itself does not oust the jurisdiction of the Tribunal if an application is filed under Article 226 of the Constitution read with S.19 of the A.T.Act.

The Full Bench decision of A. PADMAVAILEY & ORS. V. CPWD & TELECOM, Full Bench Judgments of CAT (1989-1991) Vol.II 334, has not been overruled so far either by the Hon'ble Supreme Court or by any larger Bench of the Tribunal wherein it is clearly held that the expression 'service matters' cover not only matters provided for in service rules, but also in other laws and statutes including the ID Act. It is also stated that the Tribunal being substitute for all the Courts including High Court, exercise powers under arts.226 & 227 though the Tribunal is not a substitute for other authorities under I.D.Act.

The Hon'ble Supreme Court expressed the same view in UNION OF INDIA & ORS. V. DEEP CHAND PANDEY & ANOR., ATR 1992(2) S.C.559, wherein it is clearly stated that Parliament under Article 323A was authorised to exclude the jurisdiction of all courts except the jurisdiction of this Court under Article 136 with respect to the dispute and complaints referred to in clause (1) and accordingly by Section 14 of the Act, all the jurisdiction, powers and authority exercisable by all courts except the Supreme Court have been vested in the Central Administrative Tribunal. The expression all courts mentioned in section 14(1) is comprehensive enough to include the High Court.

In the light of above, in our view the contention of the Respondents that we do not have jurisdiction in the light of the recent Supreme Court judgment in KRISHAN PRASAD GUPTA is not sustainable.

O.A.No.99/96:

We hold that the Tribunal has the jurisdiction to entertain this matters arising out of Industrial dispute and accordingly we ADMIT the O.A.

Regarding interim relief on the stay of the operation of the Industrial Court's order issue notices to the parties returnable on 6.3.1996. Till the next date of hearing both the parties should not take any action pursuant to the decision of the Industrial Tribunal. Status ~~quo~~ be maintained.

O.A.No. 1107/95:

Heard Mr. P M A Nair, counsel for the applicants and Mr. S M Dharap, counsel for the respondents.

Mr. Nair has followed the arguments as advanced in O.A.No.99/96.

In the result we hold that we have jurisdiction to entertain and decide this matter arising out of the Industrial Disputes Act and accordingly we ADMIT the O.A.

Regarding interim relief issue notice to the parties returnable on 19.3.1996. Till next date of hearing both the parties should not take any action pursuant to the decision of the Industrial Tribunal. Status quo to be maintained.

O.A.Nos. 1387/95 & 1388/95:

Heard Mr. S C Dhawan, counsel for applicant and Mr. G K Masand, counsel for the respondents.

The contention of the Applicant is that the Tribunal has jurisdiction in view of the Full Bench Judgment in the case of A. PADMAVAIII and also taking into consideration the judgment in E.K.P. GUPTA'S case wherein the jurisdiction of the Tribunal has not been ousted and the aggrieved party can approach the Tribunal invoking Articles 226 or 227. Mr. Masand, ld. counsel for the respondents urged that the question here is whether the Tribunal is vested with any appellate jurisdiction. He submitted that the Tribunal cannot entertain and sit in appeal over the order passed by the Industrial Tribunal. He further urged that the balance of convenience is in favour of the respondents and the respondents were denied payment of wages w.e.f. 1980 onwards. However, during the course of hearing the ld. Counsel for the Applicant draws our attention that the respondents/petitioners had filed a petition before the Industrial Tribunal

only in 1990-91 and the Award came to be passed in 1994 and therefore the balance of convenience lies in favour of the Department.

Since we hold that we have jurisdiction to entertain these applications, O.A. Nos. 1387/95 & 1388/95 are ADMITTED.

The interim orders passed earlier were operative till to day and hence we extend the interim stay till 20.2.96.

Issue notices to the parties returnable on 20.2.96 to decide whether the interim order has to be confirmed or not.

O.A.NO.977/95:

Heard Mr. P.M. Pradhan, Id. counsel for the applicants and Mr. S M Dharap, Id. counsel for the respondents.

Id. counsel for the applicants urged that jurisdiction of this Tribunal has not been ousted by any of the courts and in view of the Full Bench decision of the ^{Tribunal and} Hon'ble Supreme Court, this Tribunal will have jurisdiction to entertain the disputes arising out of the Industrial Tribunals order. The Id. counsel for the respondents submitted that the respondent in this is out of job since 1987 and he has been ordered to be reinstated with back wages by the Industrial Tribunal and the balance of convenience also lies in favour of the respondent petitioner.

We hold that we have jurisdiction to entertain and decide this O.A. and hence the O.A. is ADMITTED.

Issue notices to the parties regarding interim relief returnable on 12.3.1996.

O.A. NO.1484/95:

Heard Mr. V S Masurkar, counsel for the applicant and Mr. Gangal, counsel for the respondents.

Id. Counsel for respondents Mr. Gangal draws our attention to Sections³ P, Q and R of the A.T. Act and according to him it applies to only Government servants and not to the Government. He also draws our attention to sections 14(a), 19, 20 and 28 of the A.T. Act. All these provisions deal with only if the 'person aggrieved' thereof could approach the Tribunal and by no stretch of imagination the Government could be treated as an aggrieved person and it is not open to the applicant, here the Government, to challenge the order of the Industrial Court before this Tribunal. Further, he has also submitted that order under S.33c is an exclusive order and it is not open to the Tribunal to reappraise the same either under Article 226 or 227 of the Constitution. In this connection he has also drawn our attention to s.20 of the A.T. Act which only gives original jurisdiction to the Tribunal and not appellate jurisdiction. He has taken a stand that this Tribunal has no jurisdiction to decide this O.A. under Section 19 of the A.T. Act as no order passed by the Government is under challenge and hence he states that the Tribunal cannot entertain the application filed by the applicant.

Id. Counsel for the applicant Mr. Masurkar draws our attention to the decisions of the Supreme Court in UNION OF INDIA & ORS. V. DEEP CHAND PANDY & ANOR., ATR 1992(2) S.C.559; UNION OF INDIA & ORS. V. RAJESHWAR SINGH, [1994] 28 ATC 77 - a Three Judge Bench decision and the Tribunal's decision

Act wherein an appeal is provided and the remedy lies in the appellate forum and not before this Tribunal. Since he failed to elaborate whether it amounts to a corresponding law, we had suggested him to verify the same and make his submissions on the next date of hearing.

In the circumstances since we hold that we have jurisdiction to adjudicate the matter, the O.A. is ADMITTED subject to limitation.

list before Registrar for completion of pleadings on 27.3.1996.

O.A.NO. 42/96:

Heard Mr. Masurkar, counsel for the applicant and Mr. Sudhir C. Halli, counsel for the respondents.

Since we hold that we have jurisdiction to adjudicate this O.A. the O.A. is ADMITTED.

Issue notice to the parties regarding interim relief returnable on 6.3.96.

O.A.NO. 102/96:

Mr. V S Masurkar, counsel for the applicant.

Notice before admission returnable on 29.3.96.

(P.P.Srivastava)
Member(A)

(B.S. Hegde)
Member(J)

(12)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
GULESTAN BLDG. NO. 6, 3RD/4TH FLOOR,
PRESCOT ROAD, FORT, BOMBAY-400 001.

ORIGINAL APPLICATION NO.: 1484/95.

Dated, this 29th the March day of , 1996.

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

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

Union Of India & Others ... Applicants
(Advocate by Shri V.S. Masurkar).

Versus

Shri Arun G. Kulkarni & Another ... Respondents
(Advocate by Shri D. V. Gangal).

: ORDER :

/ { PER.: SHRI B. S. HEGDE, MEMBER (J) }

1. Heard Shri V. S. Masurkar for the applicant and Shri D. D. Gangal for the respondents. The Tribunal vide its order dated 02.02.1996 considered the various contentions raised by the parties alongwith other O.As. who alleged to have similar cause of action and passed appropriate orders in the facts and circumstances of the case. Insofar as this O.A., the contention of the parties were noted down and held that the Tribunal has jurisdiction to deal with this O.A. and the interim order passed shall continue till 26.03.1996. The matter came up for hearing on 26.03.1996 for confirmation of the interim order passed earlier. Despite notice to the respondents, they did not file any reply so far and the Learned Counsel Shri D.V. Gangal submits that they do not wish to file any reply and the issue raised at the time of preliminary hearing holds good even now. Though the other O.As. were admitted, this O.A. was not admitted perhaps by oversight. The word "Admitted" is not mentioned in the order dated 02.02.1996. Accordingly, the O.A. is admitted.

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2. The main contention of the respondents in this O.A. is that the application is not maintainable and the Tribunal does not have jurisdiction to decide this application and under Section 19 of the Administrative Tribunals Act, no order passed by the Government is under challenge and that the Act does not provide any provision against the order passed by the Labour Court under the provisions of Industrial Disputes Act, 1947, etc.

3. In this O.A., the applicants have claimed a relief to quash and set aside the order passed by the Labour Court, Jalgaon vide dated 19.07.1995 and to declare and hold that the respondent no. 1 is not entitled for any monetary claim as passed by the Labour Court under Section 33 (c)(ii) of the Industrial Disputes Act, 1947, etc. In this connection, the Learned Counsel for the applicant, Shri V.S. Masurkar, draws our attention to the order passed by the City Civil Judge, Junior Division, Bhusaval vide dated 26.02.1982 wherein it was declared that plaintiff is in continuous service from 01.10.1975 on the same post as held by him on 30.09.1975 in the Railways and direction was given to the Applicant-respondents to reinstate him to the same post as held by him on 30.09.1975. Against this order, the Applicant-Respondents preferred an appeal to the District Judge, Jalgaon, vide Application No. 22/1992, which was pending consideration. The said application came on transfer under Section 29 of the Administrative Tribunals Act from the Court of District Judge, Jalgaon, in terms of its order dated 04.04.1986 to the Tribunal which was disposed of by the Tribunal on 13.09.1991. The Court after hearing both the parties, while agreeing with the judgement of the City Civil Judge, Junior Division,

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Bhusaval, dismissing the appeal of the Applicant-respondents, dismissed the transfer application and opposed the judgement of the Civil Judge, Junior Division, Bhusaval. When the matter was pending before the Tribunal, the respondents filed a miscellaneous petition no. 360/89 seeking amendment in the O.A. claiming monetary claim and consequential benefits arising out of the judgement of the City Civil Judge stating as follows :-

"Hold and declare that the plaintiff is entitled to monetary decree of Rs. 7200/- being the salary from 01.10.1975 till reinstatement, commensurate with his status with interest @ 18% per annum, etc."

The said miscellaneous petition was rejected by the Tribunal vide its order dated 12.07.1989 with the following observations :

"The Learned Civil Judge has passed the following order :-

- (i) It is hereby declared that plaintiff is in continuous service from 01.10.1975 on the same post as held by him on 30.09.1975 in the Railways.
- (ii) The Plaintiff is hereby ordered to be reinstated by the defendant to the same post as held by him on 30.09.1975.
- (iii) Defendants to bear their own cost and cost cost of plaintiff in the suit."

It was also observed that the suit was filed in the year 1976 and the same was pending in the Court of Civil Judge, Junior Division, Bhusaval, for about more than six years. The respondent plaintiff did not find it proper to amend the plaint for reasons best known to him. We do not think that he can be allowed to amend the plaint in the appeal preferred by the Appellant-Defendants, that too about 7 years

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after the appeal was preferred. Accordingly, the M.P. No. 360/89 for amendment of the plaint is rejected. Admittedly, the respondent was reinstated in service on 01.11.1989. The Learned Counsel for the respondents orally submitted that the applicant has not been paid salary from 1989 to 1992 but the same has been denied by the applicant's Counsel Shri V.S. Masurkar, stating that after his reinstatement in service, he has been paid salary in accordance with the rules. In this connection, when we asked the Learned Counsel for the respondents, Shri Gangal, to show us the relief clause in which he has claimed that he has not been paid consequential benefit with effect from 01.10.1975 till 1992, he was unable to show us any such pleadings nor any contention taken up by the respondents.

4. The main contention of the applicant-respondents is that, there is no such direction either by the Civil Court or by the Central Administrative Tribunal that payment of monetary benefit is due to the applicant. As such, the question of paying monetary benefit to the respondent no. 1 does not arise. Since he has failed to raise the plea before the Civil Court when he challenged the Removal Order, it is not open to him to claim it as a matter of right and seek relief from 1975 onwards. The applicant-respondents contends that this Tribunal cannot entertain such a belated petition. After his reinstatement, the respondent has been treated in duty for all purpose and he has been paid full pay & allowances for the period which he would have been entitled.

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5. It is true that proceedings under Section 33-C(2) of the Industrial Disputes Act are in the nature of execution proceedings. An application can be maintained only if the workman has a pre-existing right or a right previously adjudicated upon or recognised by the employer. In the instant case, the workman has no pre-existing right, as the same has not been adjudicated earlier before filing an application under Section 33-C(2) of the Industrial Disputes Act. In the light of the above, the only point for consideration is, whether in the fitness of things, the Tribunal is justified in staying the operation of the Labour Court judgement dated 19.07.1995. On the last date of hearing, after hearing the version of the counsel for the parties, the interim relief already granted was allowed to be continued till 26.03.1996. In the facts and circumstances of the case, the interim relief granted earlier is now made absolute.

6. Place the matter before the Registrar for completion of pleadings on June 25, 1996 and thereafter be placed in sine-die list.

M R Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A).

B. S. Hegde

(B. S. HEGDE)
MEMBER (J).

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Order/Judgement despatched
to Applicant/Respondent (s)
on 8/4/96

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8/4/96