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Controller of Telecom Stores Bsnl Vs. Sri Chintaharan Halder and ors.

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Court : Kolkata

Decided On : Oct-08-2013

Judge : Dr. Sambuddha Chakrabarti

Appellant : Controller of Telecom Stores Bsnl

Respondent : Sri Chintaharan Halder and ors.

Judgement :

IN THE HIGH COURT AT CALCUTTA CONSTITUTIONAL WRIT JURISDICTION ORIGINAL SIDE Present: The Honble Justice Sambuddha Chakrabarti W.P.No.384 of 2012 Controller of TeleCo.Stores BSNL Versus Sr.Chintaharan Halder & ORS.For the petitioner : Mr.Bhaskar Sen, Sr.Advocate For the private respondents : Mr.A.K.

Brahmachari, Advocate Heard on : 20.11.2012, 08.01.2013, 05.02.2013, 12.02.2013 and 18.09.2013 Judgement on : 08.10.2013 The Court : Aggrieved by an order dated February 27, 2012 passed by the authority under the Payment of Wages Act, Kolkata, the petitioners have filed the present writ petition inter alia praying for a writ in the nature of Mandamus commanding the respondents to rescind and cancel the said order and a writ in the nature of Prohibition restraining the respondents from giving any effect or further effect thereto.

The brief facts necessary for appreciating the crux of the problem is that the respondents Nos.1 to 87 are the employees of the department of Post and

Telegraphs, now working in the office of BSNL.

They along with 26 other employees had taken out an application in the year 1985 before the Authority under the Payment of Wages Act, Kolkata (the Authority, for short) praying for a direction to refund the deducted wages.

During the pendency of the proceeding 26 applicants had expired.

On Februarys 27, 2012 the said Authority passed the order allowing the application under Section 14 of the said Act on contest.

There was a decree for Rs.70,069.80 and also a decree for compensation of Rs.3,50,345/- against the petitioner herein i.e., for a total sum of Rs.4,20,414.

The writ petitioner was directed to pay the entire decreetal amount within two months from the date of the communication of the order.

This order has been the subject-matter of challenge in this writ petition.

According to them the service condition of the industrial employees are governed by the certified standing ordeRs.It has been assailed also on the ground that the Authority did not have the jurisdiction under the Payment of Wages Act (the Act, for short) to deal with the claim for refund of deducted wages.

The applicants were all employees of the Telegraph department and in the central government service and, therefore, Central Administrative Tribunal was the proper authority having jurisdiction and power to deal with the grievances.

The petitioner has also alleged breach of Clause VII of certified standing order.

The dispute can only be resolved by the Chief Labour Commissioner, Central, who is the appellate authority in the said standing order.

According to the petitioner the respondents should have filed an appeal in respect of their claim for refund of the deducted wages before the Chief Labour Commissioner, Central or before the Central Administrative Tribunal.

They have referred to judicial pronouncements in support of their proposition that for breach of any provision of the certified standing order special law overrides the general law.

The petitioner has relied on a judgement, dated September 1, 1009 of the Supreme Court passed in General Manager, TeleCo.-Vs.- M.

Krishnan and Others (Civil Appeal No.7687 of 2004) as also a judgement, dated December 13, 2011 of this court in Accounts Officer, TR III office of Area Manager, Bharat Sanchar Nigam Limited -Vs.- District Consumer Disputes Redressal Forum (MAT No.1224 of 2011) and urged that in view of the special remedy provided in Section 7B of the Indian Telegraph Act the consumer forum and different courts constituted under the Consumer Protection Act had been specifically excluded.

Stretching this submission the petitioner argued that since in view of the special remedy provided in Section 7B of the Telegraph Act the Supreme Court did not permit entertaining a remedy under the Consumer Protection Act, the jurisdiction of the Authority under the Act is also totally barred.

According to the petitioner if for the redressal of the grievance the statute has provided the Central Administrative Tribunal as the appropriate forum the special provision pertaining to jurisdiction will have precedence over the general law.

From this the petitioner argued that the Authority under the Payment of Wages Act had no jurisdiction to deal with the present dispute.

The respondents in their turn have argued that they are the industrial workers borne on the industrial establishment of the Controller of TeleCo.Stores, Kolkata whose service conditions are regulated by the certified standing orders under the Industrial Employment (Standing Order) Act, 1946.

Rule 7 of the certified standing order provides that the workman concerned shall be entitled to overtime wages at double the ordinary rate of his work by which his work exceeds 48 hours in a week or 9 hours a day.

Contrary to the aforesaid provision of the standing order the hourly rate of wages was determined by the writ petitioner herein arbitrarily.

According to the respondents the writ petition is not maintainable as in terms of Section 17 of the Payment of Wages Act an appeal lies against an order passed under Section 15 of the Act.

Since there is a specific provision of appeal the writ petitioner should have invoked that provision instead of filing the writ petition.

The respondents further submitted that the Court, Tribunal and the authorities under the Industrial Disputes Act shall continue to exercise jurisdiction in spite of the Administrative Tribunals Act.

The recovery of deducted wages has been specifically given to the Authority under the Act.

This can also be heard under the Industrial Disputes Act and as such both the authorities have concurrent jurisdiction.

To combat the submission of the petitioner the respondents have referred to Section 28 of the Administrative Tribunals Act which inter alia provides that on and from the date from which any jurisdiction, power or authority becomes exercisable under the Administrative Tribunals Act, 1985 by a Tribunal 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 no court except the Supreme Court or any Industrial Tribunal, Labour Court or any other authority constituted under the Industrial Disputes Act or any other corresponding law for the time being in force shall have or be entitled to exercise any jurisdiction in relation to such recruitment or matters concerning the same.

The respondents argued that section 28 of the Administrative Tribunals Act thus saves the jurisdiction of an industrial establishment or an authority constituted under an industrial legislation.

There is no doubt that the concerned respondents are workmen and the dispute raised in the application relate to an industrial dispute.

The writ petitioners therein in their written statement before the Authority under the Act had specifically taken the point that service condition of the industrial workers working in the industrial establishment of the office of the Controller of TeleCo.Stores are governed by the certified standing orders for the Post and Telegraph Stores organization.

It may further be mentioned that although detailed statement regarding the calculation of overtime wages and the method of calculating the same had been advanced there was no specific denial about the statement regarding the want of jurisdiction of the said authority under the Act.

The learned advocate for the respondents referred to the case of Sr.Jatindra Nath Brahamachari -Vs.- the Learned Judge, Small Causes Court, Calcutta and Others (CO3026of 1988) wherein a division bench of this court by a judgement and order dated April 4, 1994, had held that the application under Article 227 of the Constitution of India would be perfectly maintainable.

The division bench had further held that in view of section 28 of the Administrative Tribunals Act the authorities under the Payment of Wages Act are not deprived of their jurisdiction.

But the question that cropped up in that case was different from the facts of the present case.

There the question was whether an application under Article 227 of the Constitution of India was maintainable in view of Section 28 of the Administrative Tribunals Act which is certainly not the question here.

Again the observation that after the enactmetn of the Administrative Tribunal Act the authorities under Payment of Wages Act did not lose their authority has not been questioned by the petitioner.

The petitioner says that in the facts of this case the Authority under the Act lacked authority to decide the issue.

After hearing the learned advocates for the parties and after going through the materials this court finds sufficient justification in the submission of the petitioner that for the breach of the provisions of the certified standing order the Central Administrative Tribunal is the appropriate forum for agitating the grievances.

Section 14 of the Administrative Tribunal Act confers jurisdiction upon the Tribunal to deal with all matters pertaining to service of an employee working in the central government.

Mr.Sen has rightly pointed out that a special law always overrides the general law.

By a judgement and order, dated December 13, 2011 a division bench of this court, to which I was a party, in the case of the Accounts Officer, T.R.-III, Bharat Sanchar Nigam Limited -Vs.- The District Consumer Disputes Redressal Forum and OtheRs.(MAT1224of 2011).relying on a Supreme Court judgement had held that in the matter relating to any dispute arising under the Indian Telegraph Act it had to be resolved by the mechanism provided under Section 7B of the Act and the jurisdiction of the consumer forum has been ousted.

The submission of the respondents that Section 17 of the Payment of Wages Act provides for an appeal and as such the writ petition should be dismissed does not appear to be a convincing one, particularly when Section 17 of the Act provides for an appeal against an order dismissing an application made under Section 15(2).In the present case, the order under challenge is not one dismissing either wholly or in part the application filed by the respondent.

They got a decree, hence the appeal is clearly not maintainable.

As such the question of availing the alternative remedy does not arise.

That apart it is also a settled principle of law that when the jurisdiction of an authority passing an impugned order is challenged the availability of alternative remedy is no bar.

The petitioner relied on the case of Whirlpool -Vs.- Registrar of Trade marks, Mumbai, reported in AIR 1999 SC22 That apart once the writ petition has been admitted and direction for affidavits have been given it should not be appropriate at this stage to dismiss this on the ground of availability of alternative remedy.

This court finds sufficient merit in the submission of the writ petitioner.

The writ petition is accordingly allowed.

The order impugned in the writ petition passed by the leaned Authority under the Payment of Wages Act is cancelled and set aside.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(SAMBUDDHA CHAKRABARTI, J.) S.

Banerjee

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