

Ranjit Chakravarty Vs. State of Assam and ors.

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Court : Guwahati

Decided On : Jun-14-1979

Judge : Baharul Islam, Ag. C.J., D. Pathak and B.L. Hansaria, JJ.

Acts : Assam Administrative Tribunal Act, 1977 - Sections 4(1), 9(3) and 11

Appeal No. : L.P.A. No. 3 of 1975

Appellant : Ranjit Chakravarty

Respondent : State of Assam and ors.

Advocate for Def. : B.M. Goswami, Govt. Adv.

Advocate for Pet/Ap. : N.M. Lahiri and S.K. Senapati, Advs.

Judgement :

Baharul Islam, Ag. C.J.

1. This appeal is by the plaintiff. The facts, relevant for the purpose of disposal of this appeal, may be stated thus:

The plaintiff was appointed as Driver by the Deputy Director of Health Services, Assam, in 1959. He had to drive an International Van. Subsequently his service was terminated on 11-7-67 by the Civil Surgeon, Cachar to whom he was attached. His case is that the Civil Surgeon had no jurisdiction to terminate his service and that the Director of Health Services was the only competent authority

to do so. He brought the suit for a declaration that he should be deemed to be in service according to the terms of employment. He also claimed for a decree of Rs. 3,925 being his salary up to 31-1-69 in addition to the costs of the suit and other reliefs that might appear fit and proper to the Court,

2. Defendant No. 1 is the State of Assam and defendant No. 2 is the Director of Health Services, Assam. Defendant No. 3 is the Civil Surgeon, Cachar. Defendants Nos. 1, 2 and 3 have filed a joint written statement. They have denied the claims of the plaintiff.

3. The Assistant District Judge, who tried the suit, dismissed the suit. On appeal by the plaintiff, the District Judge decreed it. The defendants then filed Second Appeal No. 50 of 1973 out of which the present Letters Patent Appeal arises. The Second Appeal was heard and disposed by a single Judge. The learned single Judge set aside the judgment and decree of the District Judge and dismissed the plaintiff's suit. On leave being granted by the learned single Judge, the plaintiff preferred the present Letters Patent Appeal, which came up for hearing before a Division Bench. Before the Division Bench a preliminary objection was raised on behalf of the respondents, The objection was that in view of Section 9 of the Assam Administrative Tribunal Act, 1977 (hereinafter 'the Administrative Tribunal Act'), the jurisdiction of the civil court has been barred and the appeal stands transferred to the Administrative Tribunal. The Division Bench then directed the matter to be placed before the Chief Justice for placing it before a larger Bench for decision 'on the preliminary objection as well as on merits'. This is how the matter has come before this Special Bench.

4. Shri B. M. Goswami, learned counsel appearing for the respondents repeats the preliminary objection as was raised before the Division Bench. In reply, Shri N. M. Lahiri, learned Advocate-General, Meghalaya, appearing for the appellant, submits, first, that a Letters Patent Appeal cannot be construed to be a suit within the meaning of Section 9 of the Administrative Tribunal Act; secondly, that the Administrative Tribunal has no jurisdiction to entertain an appeal by the plaintiff for the grant of the reliefs prayed for by him.

5. The bar of the Civil Court, pointed out by learned counsel for the respondents, is the bar as laid down in Section 9 (2) of the Administrative Tribunal Act. The relevant portion of Section 9 may be set out.

'9. (1)

(2) Notwithstanding anything contained in any law, no Civil Court or other authority shall entertain any civil suit or other proceedings with respect to any of the matters which fall within the jurisdiction of the Tribunal or question in any form any order passed by the Tribunal in any appeal or review with respect to any matter when an appeal could have been preferred under the provisions of this Act or with respect to any other matter which arises out of the exercise of powers under this Act.

(3) Notwithstanding anything contained in any law, all suits or other proceedings in respect of any matter over which the Tribunal has jurisdiction and which are pending before any Civil Court or other authority on the date of coming into force of this Act shall stand transferred to the Tribunal and the civil court or other authority before whom such a suit or proceeding is pending shall transfer all relevant and connected papers and records to the Tribunal and thereupon the Tribunal shall decide the suit and proceedings in the same manner as if they were appeals preferred under the provisions of this Act.

(4) The decision of the Tribunal shall be implemented within such reasonable time as may be specified by the Tribunal.'

6. Section 4 of the Administrative Tribunal Act mentions the subject matters, appeals from which can be filed before the Administrative Tribunal. Sub-section (1) of Section 4, which is material, is in the following terms:

'4. (1) Save as otherwise expressly provided in Sub-section (2) below the Tribunal shall have jurisdiction to entertain and dispose of appeals preferred by civil servants against any order passed by a competent authority in respect of any condition of service.'

The purpose of the constitution of the Administrative Tribunal, as disclosed by the Preamble is 'to adjudicate disputes in respect of certain conditions of service of

certain classes of civil servants of the State'.

A perusal of Sub-section (1) of Section 4 together with the preamble of the Act, shows that the Administrative Tribunal has jurisdiction to entertain and dispose of appeals preferred by civil servants against any order passed by a competent authority only in respect of any conditions of service. A declaration that a public servant was in service in the eye of law, although actually he was not in service, is not a condition of service. As such no appeal could have been filed by the plaintiff before the Administrative Tribunal. Compensation, albeit equivalent to arrears of salary for the period during which a civil servant is actually not in service is also not a condition of service,

7. The learned Advocate General also submits that even if the appeal were entertained by the Administrative Tribunal and the reliefs claimed were granted, the plaintiff could not have executed the decree or order passed by the Administrative Tribunal in the appeal, as no machinery has been created by the Administrative Tribunal Act for execution of the decree or order passed by the Administrative Tribunal. The submission has force. Sub-section (4) of Section 9 enjoins that the decision of the Tribunal shall be implemented within such reasonable time as may be specified by the Tribunal; but if it is not implemented there is no further remedy for the aggrieved civil servant.

Shri Goswami submits that if the reliefs granted by the Administrative Tribunal is not implemented, the aggrieved civil servant can file an application for contempt of court under the Contempt of Courts Act, 1971, under Section 11 of the Administrative Tribunal Act. Punishment for contempt is no relief to any aggrieved civil servant. He wants his condition of service alleged to have been violated fulfilled in material terms. Punishment for contempt of court is for a public purpose, namely, to preserve the dignity of the Court. In our opinion the Administrative Tribunal does not have the jurisdiction to entertain the plaintiff's appeal and the jurisdiction of the Civil Court to entertain the suit is not ousted.

8. As a result of the foregoing discussions, we overrule the preliminary objection and hold that the appeal has not stood transferred to the Administrative Tribunal under Section 9 (3) of the Act and that Division Bench is competent to dispose of

the Letters Patent Appeal.

9. In view of our finding in favour of the appellant on the above grounds, we need not examine the broader question raised by the learned Advocate General on behalf of the appellant that the Letters Patent Appeal is not continuation of the suit.

10. We refer back the Letters Patent Appeal to a Division Bench for disposal on merit.

11. Learned counsel of the parties submit that there is a possibility of compromise between the parties, if they get some time. The matter is an old one and needs expeditious disposal. In the circumstances we direct that the Letters Patent Appeal be posted for hearing before a Division Bench after two months, during which the parties may try for an amicable settlement, if any.

12. We leave the parties to bear their own costs.

D. Pathak, J.

12-A. I agree.

Hansaria, J.

13. While agreeing with the conclusion reached by My Lord the Chief Justice, I propose to give my own reasons.

14. On the facts as mentioned in the leading judgment, the main prayer of the plaintiff was that the order passed by the Civil Surgeon, Cachar be declared void, inoperative, ultra vires and without jurisdiction. I would think that the Assam Administrative Tribunal (the Tribunal hereafter) has jurisdiction to give such a declaration because this would be a matter squarely covered by Section 2 (e) of the Assam Administrative Tribunal Act, 1977 (hereinafter the Act), which has defined 'conditions of service' to include inter alia all matters relating to termination of service. When a civil servant approaches the Tribunal with the grievance that his termination was void, inoperative, etc., the Tribunal would be within its jurisdiction to say so. The further prayer of the plaintiff for declaration that he is still

in service has to be viewed in this context. Once a termination order is set aside by the Tribunal, the civil servant who was in service prior to his wrongful termination is put back in service almost automatically. The order of reinstatement which is within the jurisdiction of the Tribunal to pass in such cases would mean that the civil servant in question has continued in service. I would therefore regard that it is within the jurisdiction of the Tribunal not only to declare the termination as void and inoperative but also to further declare that the civil servant must be deemed to be in service.

15. As to the salary the civil servant would have earned but for the termination of his service, that also may automatically ensue if the termination order is set aside and direction is given by the Tribunal to reinstate the civil servant. If the termination order goes, there would be no authority of law to debar the civil servant from his emoluments and as such, according to me, the Tribunal would be within its jurisdiction even to direct payment of salary from the day the service of the civil servant had been terminated wrongfully. The definition of 'conditions of service' which cover all matters relating to appointment also, would authorise the Tribunal to pass order for granting pay to the incumbent for the period he was illegally kept out of employment.

15-A. The non-providing of any machinery for executing orders of the Tribunal is an important point which has been raised; but this too has no connection with the ambit of jurisdiction of the Tribunal. The most that can be conceded on this point is that a civil servant would not be relegated to a forum whose orders are carried out either because of respect for law or fear of contempt, unless the Act leaves no choice. I do not read any such compulsion in the Act for the reason given below.

16. As has been noted by the learned Chief Justice, a single Judge of this court has dismissed the plaintiff's suit, which judgment and decree are valid and binding on all concerned. If even such a case is transferred to the Tribunal at this stage and if the Tribunal were to come to the same conclusion on its own to which the learned single Judge of this court had come, the appellant would have every reason to believe that the Tribunal was prejudiced by the finding of this court. An attack on the ground of legal bias will be difficult to rule out in such cases. As has

very often been said, it is not enough that justice is done, it must be seen to be done. A provision of law has to be interpreted in such a way which is in consonance with justice and not one which may be regarded as against the basic principles of justice. If a very wide meaning were to be given to the expression 'all suits or other proceedings' in Section 9 (3) of the Act, one could perhaps even contend that a matter which has been once disposed of by the Supreme Court but relating to which a review petition has been admitted, and which is in respect of a matter over which the Tribunal had jurisdiction, would also stand transferred to the Tribunal for fresh decision by it. Apparently it would be difficult to agree to such a contention. The same can well be said about cases decided by the High Court. The Tribunal being subject to the judicial superintendence of this court under re-amended Article 227 of the Constitution, it cannot be held that the legislature had envisaged scrutiny of the judgment of this court by the Tribunal.

17. Because of the above, I am of the opinion that cases of the above type are not covered by Section 9 (3) of the Act and accordingly I agree with the conclusion reached by the learned Chief Justice in overruling the preliminary objection raised by the State.

18. Being of this view, it has not been felt necessary to examine the point raised by the learned Advocate General that Letters Patent Appeal is not continuation of a suit and does not come within the expression 'other proceedings' finding place in Section 9 (3); nor is it necessary to examine if Section 9 (3) is only prospective and not retrospective.

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