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Court : Andhra Pradesh

Decided On : Dec-28-1994

Reported in : (1995)IILLJ1107AP

Judge : S.S. Ahmad, C.J. and ;P. Venkatarama Reddi, J.

Acts : [Constitution of India](#) - Articles 226, 309 and 323A; [Administrative Tribunals Act, 1985](#) - Sections 4 and 28; [Industrial Disputes Act, 1947](#) - Sections 14; [Constitution of India](#) (42nd Amendment) Act, 1976

Appeal No. : W.A. No. 1442/1994

Appellant : B. Narsimha and ors.

Respondent : Commanding Officer, Station Workshop and ors.

Advocate for Def. : R.S. Murthy, ASC for Central Govt. and ;A.T.M. Rangaramanujam, Adv.

Advocate for Pet/Ap. : G.M. Anjaiah and ;G. Vijaya Kumar, Adv.

Disposition : Appeal dismissed

Judgement :

S.S. Ahmad, C.J.

1. This Writ Appeal is directed against the judgment and order, dated October 28, 1994, passed by Mr. Justice A. Gopala Rao, dismissing the writ petition on the ground that the writ petitioners, who are the appellants before us, have their remedy before the Central Administrative Tribunal and the Writ Petition is not maintainable in this Court under Article 226 of the [Constitution of India](#).

2. The appellants have filed the Writ Petition for the following relief.

'It is therefore, prayed that this Hon'ble Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 1st respondent in deducting amounts from the salaries of the petitioners herein on behalf of the third respondent herein for the alleged financing for purchase of consumer durable goods from the second respondent as illegal, arbitrary and without jurisdiction and consequently direct the first respondent to refund the amounts which were already deducted from the salaries of the petitioners and pass such other order or orders as this Hon'ble Court may deem fit and proper in the interests of justice.

It is also prayed that this Hon'ble Court may be pleased to direct the respondent No. 1 not to deduct any amount from the salaries of the petitioners from July 1994 onwards on behalf of the third respondent herein for the alleged financing for purchase of consumer durable goods from the second respondent, pending disposal of the writ petition and pass such other order or orders in the interests of justice.

3. This relief was claimed on the basis of the facts set out in the affidavit to the effect that the appellants were civilian employees of the Central Government working in Station Work Shop, E.M.E. Type 'L', Secunderabad-15. They came to know in 1992 that the second respondent, namely, Tirmulal Music Centre, Malaket, Hyderabad, was giving loans to the needy people and therefore, the writ petitioners approached the second respondent for loan, who gave them loan of different amounts on August 28, 1992. It is stated in the affidavit that at the time of disbursing loans to each of the petitioners on August 28, 1992, the second respondent had obtained signature of all the petitioners on a number of documents, without reading out the contents of the documents to the writ

petitioners.

4. It was further pleaded in the Writ petition that the first respondent, namely, Commanding Officer, Station Workshop, E.M.E., Type 'L' Secunderbad, had been deducting loan instalments from the salary of the appellants every month for about 20 months in spite of the oral protest made by them. The appellants were informed that the amounts which were deducted from their salary were being paid to a Leasing Company of India at 76 - Luz Church Road, Mylapur, Madras, who had allegedly provided the necessary finance to each of the appellants for purchasing goods from the second respondent. On May 11, 1994 the appellants issued a notice to the Commanding officer that they have taken loan from the second respondent and therefore, the instalment for the repayment of loan could not be legally deducted from their salary. However, on June 1, 1994 full salary was disbursed to the appellants, as they had refused to take salary from which the deductions were made, with the threat that although full salary was being paid to them on compassionate grounds on June 1, 1994, deductions as usual shall be made again from the salary of the appellants from July, 1994 onwards. It was then pleaded that there was further exchange of letter/notices between the first respondent and the appellants through their counsel in which the fact that the appellants had taken loans in cash from the second respondent, was not denied by the first respondent in his reply, dated June 7, 1994. Therefore, there was no occasion for making any deductions from the monthly salary of the appellants on the allegation that they had purchased consumer goods from the second respondent after necessary finance was provided by the Leasing Company of India or the third respondent. It was on this basis contended that the deduction from their salary of certain monthly instalments was illegal and without jurisdiction.

5. The Commanding Officer, who is the first respondent in this appeal, filed a counter affidavit in the writ petition in which it was set out that there was a tripartite agreement between the appellants, the second respondent and the third respondent (financier) wherein the appellants had authorised the second and the third respondents to collect the instalments directly from the first respondent and it was in pursuance of this agreement that each of the appellants had addressed a separate letter under their signature to the first respondent authorising him to

deduct the instalment amount every month from their salary and to pay the same to the second respondent till the entire amount contemplated by the agreement was paid off. It was in pursuance of the above arrangement that the first respondent had been making deduction from the salary of the appellants. It Was also pleaded in the counter affidavit that the appellants being the employees of the Central Government, could not file a Writ Petition in this Court and that they had to approach the Central Administrative Tribunal.

6. A separate counter affidavit was filed on behalf of the third respondent in which also a mention was made of the tripartite hire purchase agreement between the appellants, the second respondent and the third respondent in pursuance of which the appellants obtained consumer goods from the second respondent by utilising the finance advanced by the third respondent. It was also pleaded that each of the appellants had issued letters to the first respondent authorising him to deduct from their monthly salary the monthly instalment amount payable to the second and third respondents. The third respondent pleaded that a civil suit and not a Writ Petition was the appropriate remedy for the appellants.

7. The learned single Judge, on a consideration of the arguments advanced before him, held that the deduction of instalments from the monthly salary payable to each of the appellants by the respondent was a matter touching the service conditions of the appellants and therefore, their remedy was only to agitate the matter before the Central Administrative Tribunal instead of filing the writ petition, which, as pointed out earlier, was dismissed as misconceived.

8. The contention of the learned counsel for the appellants is that the learned single Judge was not justified in dismissing the writ petition on the ground that the remedy lay before the Central Administrative Tribunal and not in this Court as deduction of loan amount from the salary of the appellants could not be treated to be a service matter.

9. Central Administrative Tribunals have been created under the [Administrative Tribunals Act, 1985](#) (for shout 'the Act') enacted by the Parliament under Article 323-A of the [Constitution of India](#) which stipulates that the Parliament may, by law, provide for the adjudication or trial by Administrative Tribunals of disputes and

complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union, etc.

10. It will be noticed that Part XIV-A, containing Article 323-A and 323-B, was introduced in the Constitution by the Constitution (42nd Amendment) Act, 1976.

11. It was in exercise of the power conferred by Article 323-A that the Parliament proceeded to enact the [Administrative Tribunals Act, 1985](#). Section 4 of the Act provides for the establishment of Administrative Tribunals. Section 14 of the Act specifies the jurisdiction, powers and authority of the Central Administrative Tribunals. It provides that the Central Administrative Tribunals shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all Courts (except the Supreme Court) in relation to all service matters concerning, inter alia.

'(i) a member of any All-India Service: or

(ii) a person not being a member of an All India service or a person referred to in Clause(c) appointed to any civil service of the Union or any civil post under the Union: or

(iii) a civilian not being a member of an All India Service or a person referred to in Clause (c) appointed to any defence service or a post connected with defence:

and pertaining to the service of such member person or civilian, in connection with the affairs of the Union or any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government.'

Section 28 of the Act provides as under:

'28. Exclusion of jurisdiction of courts except the Supreme Court under Article 136 of the Constitution:-On and from the date from which any jurisdiction, power and authority becomes exercisable under this Act 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-

(a) the Supreme Court; or

(b) any Industrial, Tribunal Labour Court or other authority constituted under the [Industrial Disputes Act, 1947](#) or any other correspondent law for the time being in force, shall have, or be entitled to exercise any jurisdiction, power or authority in relation to such recruitment or matters concerning such recruitment or such service matters.'

12. A perusal of the provisions quoted above would indicate that on the establishment and constitution of Administrative Tribunals, this Court would cease to have any jurisdiction in relation to service matters concerning the members of any service covered by the provisions of Section 14 of the Act.

13. 'Service Matters' have been defined in Section 3(q) of the Act as under:

'(q) 'Service matters' in relation to a person means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any Corporation or society owned or controlled by the Government, as respects-

(i) remuneration (including allowances) pension and other retirement benefits;

(ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;

(iii) leave of any kind;

(iv) disciplinary matters, or

(v) any other matter whatsoever'

14. The definition also speaks of 'conditions of service.' It is thus obvious that if deduction from salary is held to be a service matter or a matter affecting the

conditions of service of the appellants, this Court would not have any jurisdiction in the matter and the appellants would have to approach the Central Administrative Tribunal Constituted under the [Administrative Tribunals Act, 1985](#).

15. The learned counsel for the appellants has contended that the appellants had taken loan from the second respondent, which was their private affair, and therefore, the first respondent was not competent to make any deduction from the salary of the appellants for making payment of the loan instalments to the second respondent. Since the loan instalments were being deducted from the salary of the appellants, it would not amount to any service matter nor will it be covered by the phrase 'conditions of service.' The learned counsel for the appellants has vehemently contended that the so called tripartite agreement was in fact obtained fraudulently as the contents of the documents on which the signatures of the appellants were obtained, were not read out to the appellants nor were they informed that the documents on which their signatures had been obtained was an agreement in which it was stipulated that the amount of loan advanced by the second respondent would be recoverable from their salary in easy instalments.

16. If the contention of the learned counsel for the appellants is accepted at least for the sake of argument, it would mean that there was no agreement as between the appellants, the second respondent and the third respondent and there was no stipulation as between them that the amount of loan advanced by the second respondent to each of the appellants separately and individually would be recoverable from their salary in instalments, which may deducted every month by the first respondent from the amount of salary payable to the appellants.

17. Article 309 of the Constitution has also used the phrase 'conditions of service.' It provides that the appropriate Legislature may, by an Act, regulate the recruitment, and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State. Article 309 provides a distinct legislative field to the appropriate legislature for making laws in regard to conditions of service. This power is in addition to the power available to a Legislature under Entry - 70 of List 1, Entry-41 of List-II, of the 7th Schedule to the [Constitution of India](#).

18. 'Conditions of Service' is a term of wide amplitude and would include, after recruitment to service, pay, seniority, promotion, termination, transfer, deputation, disciplinary proceedings, superannuation, pension, etc.

19. In *Accountant General v. N. Bakshi* : AIR 1962 SC505 the Supreme Court considered the meaning of the word 'remuneration' and laid down that the expression 'remuneration' in its ordinary connotation means reward, recompense, pay, wages or salary for the service rendered. Their Lordships relied on the decision in *R. v. Postmaster General (1876) 1 QBD 658* in which it was pointed out that the word 'remuneration' means a quid pro quo. It was also observed that if a man gives his services whatever consideration he gets for his services seems to be a 'remuneration' for them.

20. In *Chandra Mohan v. State* : AIR1969 All230 it was held that 'conditions of service' is a phrase of wide import and means all those conditions which regulate the holding of a post by a person from the time of appointment till his retirement and even beyond it in matters like pension etc. In *State of U.P. v. Babu Ram (1970-I-LLJ-670)* it was held that the Provident Fund Rules applicable to Railway servants framed by the Governor-General-in-Council are conditions of service.

21. Salary or remuneration is an essential part of consideration on which an appointment to a post is made. The tenure is regulated by periodical payments for the services rendered by the persons who were appointed and therefore would be an essential component of the service conditions. A Government servant appointed to a post is entitled to be paid his salary in the scale of pay in which he was appointed. The scales of pay are determined either by the Rules made under Article 309 of the [Constitution of India](#), or by the executive instructions which may be issued from time to time. The service rules may also provide for deduction from salary as for example where the monetary loss caused to the Government is sought to be recovered from the salary of the Government servants, after disciplinary proceedings, if so provided by the rules. The employer or for that matter the State or the Central Government have no right to make any deductions from salary contrary to the contract of service, the terms of appointment or conditions of service prescribed by Rules made either by the Legislature or by the

President or the Governor, as the case may be, in exercise of the powers available under Article 309 of the Constitution. That being so, the deduction from salary, irrespective of whether there was any tripartite agreement as pleaded by the respondents or not, (as pleaded by the appellants) would be an act affecting the conditions of service of the appellants and therefore, the learned single Judge was quite justified in holding that the matter can be agitated only before the Central Administrative Tribunal constituted under the Administrative Tribunals Act 1985, as the jurisdiction of this Court under Article 226 of the [Constitution of India](#) in entertaining writ petitions in respect of service matters of the employees of the Central Government is barred under Section 28 of the Act read with Article 323-A of the Constitution.

22. It is no doubt true that a Full bench of this Court in *S. Hari Nath v. State of Andhra Pradesh* (1993) 3 Andh LT 471 (FB) held that Clause 2(d) of Article 323-A of the Constitution and Section 28 of Administrative Tribunals Act as ultra-vires the Constitution and therefore the High Court retains the jurisdiction to deal with service matters falling within purview of the Act but it appears that the operation of this judgment has been stayed by the Supreme Court. Be that as it may, the Full bench itself observed in the concluding part of the judgment that the petitioners before them should first approach the Administrative Tribunal for redressal of their grievances. In this case also, we are not inclined to entertain the writ petition when there is an effective alternative remedy available as per the view taken by us.

23. We do not, therefore, find any merit in this Writ Appeal, which is dismissed with the observation that the appellants may approach the Central Administrative Tribunal for the grievances raised by them in the Writ Petition filed in this Court under Article 226 of the Constitution. No costs.