ibrahim Khan Vs. Secretary, Municipal Administration and Urban Development Department, Secretariat, Hyderabad and Others

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Court : Andhra Pradesh

Decided On : Aug-21-2001

Reported in : 2001(5)ALD619; 2001(5)ALT400

Judge : S.B. Sinha, C.J. and ;V.V.S. Rao, J.

Acts : Administrative Tribunal Act, 1985 - Sections 19; Industrial Disputes Act - Sections 2, 10, 74 and 75; Constitution of India - Article 226; Maternity Benefit Act, 1961; Hyderabad Civil Service Rules - Rule 231; Air Force Act, 1950; Army Act, 1950; Navy Act, 1957

Appeal No. : WP No. 15622 of 2001

Appellant : ibrahim Khan

Respondent : Secretary, Municipal Administration and Urban Development Department, Secretariat, Hyderabad and Oth

Advocate for Def. : Government Pleader for Municipal Corporation of Hyderabad and ;Mr. A.V. Sesha Sai, Adv.

Advocate for Pet/Ap. : Mr. Nooty Rama Mohan Rao, Adv.

Disposition : Writ petition dismissed

Judgement :
ORDER

S.B. Sinha, C.J.

1. The question which arises for consideration in this application is as to whether the petitioner is a workman or not under the Industrial Disputes Act can be effectively decided by the Tribunal in an application under Section 19 of the Administrative Tribunals Act.

2. The petitioner worked as Vehicle Inspector in the Office of Municipal Corporation of Hyderabad. He claims that having regard to the nature of his duties viz., attending minor repairs, changing oils etc., and the Corporation being an Industry, he is a workman as envisaged in the definition under Section 2(s) of the Industrial Disputes Act and thus he ought to have continued in service till the age of 60 years.

3. The petitioner at the first instance approached the State Administrative Tribunal questioning a notice dated 15-2-2000 indicating his date of retirement at 30-6-2000 on attaining the age of 58 years. The learned Tribunal dismissed the OA following its decision in another case in OA No. 892 of 1992 and Batch. Aggrieved by the orders of the learned Tribunal, the present writ petition is filed.

4. Mr. Nooty Ramamohana Raoappearing on behalf of the writ petitioner would submit that the learned Tribunal committed a manifest error insofar as it failed to take into consideration its earlier decision involving the same question and thus, the petition ought to have been allowed. In any event, having regard to the peculiar facts and the nature of the duties performed by the petitioner, he is entitled to continue in service upto the age of 60 years and he should not be deprived of the said benefit.

5. The question as to whether a person is a workman, is essentially a question of fact and such fact has to be determined having regard to the services rendered by the concerned employee. The nomenclature of the service may not be a deciding factor.

6. It is now a well settled principle of law that the Tribunal in exercise of its jurisdiction under Section 19 of the Administrative Tribunal Act although may enter into disputed questions of fact, but normally no oral evidence is adduced nor documentary evidence is proved before it. The disputes mainly and ordinarily are determined on the basis of the statements made in the petition and counter-affidavit if any.

7. The petitioner herein is a Vehicle Inspector. What are his duties as Inspector being essentially a question of facts as envisaged by the proviso appended to Rule 231 of Hyderabad Civil Service Rules can only be determined upon going through the oral and documentary evidences.

8. Section 2(s) of the Industrial Disputes Act defines workman to mean:

Any person (including an apprentice) employed in any industry to do anymanual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal discharge or retrenchment has led to that dispute, but does not include any such person-

(i) who is subject to the Air Force Act, 1950 (45 of 1950) or the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

9. Thus, if the job of the petitioner herein predominantly is supervisory, he will not be a workman within the meaning of the said Act. The said question in our opinion can effectively be dealt by the Industrial Tribunal/Labour Court if an industrial dispute is raised.

10. The Tribunal under the Administrative Tribunals Act may refuse to exercise its jurisdiction if more effective remedy is available.

11. The Apex Court has clearly held that a writ Court should not ordinarily beconverted into an Industrial Court. In Basant Kumar v. Eagle Rolling Mills, : (1964)IILLJ105SC , the Apex Court held:

Before we part with these appeals, there is one more point to which reference must be made. We have already mentioned that after the notification was issued under Section 1(3) by respondent No. 3 appointing August, 28, 1960 as the date of which some of the provisions of the Act should come into force, in certain areas of the State of Bihar, the Chief Executive Officer of respondent No. 1 issued notices giving effect to the State Government's notification and intimating to the appellants that by reason of the said notification, the medical benefits which were being given to them in the past would be received by them under the relevant provisions of the Act. It was urged by the appellants before the High Court that these notices were invalid and should be struck down. The argument which was urged in support of this contention was that respondents No. 1 in all the three appeals were not entitled to curtail the benefits provided to the appellants by them and that the said benefits were not similar either qualitatively or quantitatively to the benefits under the scheme which had been brought into force under the Act. The High Court has held that the question as to whether the notices and circulars issued by the respondent No. 1 were invalid, could not be considered under Article 226 of the Constitution; that is a matter which can be appropriately raised in the form of a dispute by the appellants under Section 10 of the Industrial Disputes Act. It is true that the powers conferred on the High Courts under Article 226 are very wide, but it is not suggested by Mr. Chatterjee that even these powers can take in within their sweep industrial disputes of the kind which this contention seeks to raise.

Therefore, without expressing any opinion on the merits of the contention, we would confirm the finding of the High Court that the proper remedy which is available to the appellants to ventilate their grievances in respect of the said notices and circulars is to take recourse to Section 10 of the Industrial Disputes Act or seek relief, -if possible, under Sections 74 and 75 of the Act.

12. Similar aspect of the matter was considered in Gopi Lal Teli v. State of Rajasthan, 1995 LIC 1105, Tapas Mondal v. Eastern Coal Fields Limited, 1995 LIC 1433, Mohini v. G.M., Syndicate Bank, 1969 FLR 1061.

13. In Municipal Corporation of Delhi v. Female Workers (Muster Roll), : (2000)ILLJ846SC , Saghir Ahmed, J., speaking for the Division Bench held:

Taking into consideration the enunciation of law was settled by this Court as also the High Court in various decisions referred to above, the activity of the Delhi Municipal Corporation by which construction work is undertaken or roads are laid or repaired or trenches are dug would fall within the definition of 'industry'. The workmen, or, for that matter, those employed on muster roll for carrying on these activities would, therefore, be 'workmen' and the dispute between them and the Corporation would have to be tackled as an industrial dispute in the light of various statutory provisions of the Industrial Law, one of which is the Maternity Benefit Act, 1961. This is the domestic scenario, internationally, the scenario is not different.

While disposing of the Writ Petition No. 26083 of 2000 on 28-3-2001 in relation to self same petitioner, this Court held:

The question as to whether the 1st respondent herein is a workman or not isessentially a question of fact. A finding to that effect has to be arrived at by an appropriate Court or Tribunal having regard to the materials which may be placed before it. It is now a well settled principle of law that the determining factor for arriving at a conclusion as to whether an employee is a 'workman' or not depends upon the principal duties he has to perform. Nomenclature, it will be a repetition to state, is not decisive.

14. In that view of the matter, we are of the opinion that the questions involved in this application being essentially questions of fact, the matter should be determined by an appropriate Industrial Court.

15. For the reasons aforementioned, the writ petition is dismissed subject to the above observations.