

Prem Narayan Sharma Vs. State of Rajasthan and anr.

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Court : Rajasthan

Decided On : Jul-22-2005

Reported in : RLW2005(4)Raj2916; 2005(4)WLC684

Judge : Shiv Kumar Sharma, J.

Acts : [Constitution of India](#) (42nd Amendment) Act, 1976; Code of Civil Procedure (CPC) ; Rajasthan Civil Services (Service Matters Appellate Tribunals) Act, 1976 - Sections 2; [Constitution of India](#) - Articles 14, 16(1) and 323A

Appeal No. : S.B. Civil Writ Petition No. 312 of 2004

Appellant : Prem Narayan Sharma

Respondent : State of Rajasthan and anr.

Advocate for Pet/Ap. : Kailash Chandra Sharma, Adv.

Disposition : Petition allowed

Judgement :

Shiv Kumar Sharma, J.

1. The defects pointed out by Registry are over ruled.
2. The petitioner in this writ petition impugns the order of the Rajasthan Civil Services Appellate Tribunal (for short 'RCSAT') whereby the appeal preferred by

the petitioner has been dismissed on the ground that there was no impugned written order against the petitioner. Core question therefore emerges for consideration is as to whether appeal before the RCSAT is maintainable without the impugned written order

3. A radical change was made in the Constitutional law relating to the services by the 42nd Constitution Amendment Act, 1976, which inserted into the Constitution Article 323A to take out the adjudication of disputes relating to the recruitment and conditions of service of the public services of the Union and of the State from the hands of the civil courts and the High Courts and to place it before an Administrative Tribunal for the Union or of a State (as the case may be). Their Lordships of the Supreme Court in *Vatticherukuru Village Panchayat v. Nori V. Dockshithulu*, 1991 (Supp. (2) SCC 228, indicated in para 18 thus:-

'The Constitution intends to herald an egalitarian social order by implementing the goals of socio-economic justice set down in the preamble of the Constitution. In that regard the Constitution created positive duties on the state in Para IV towards individuals. The Parliament and the State legislatures made diverse laws to restructure the social order; created rights in favour of the citizens; conferred power and jurisdiction on the hierarchy of tribunals or the authorities constituted thereunder and gave finality to their orders or decisions and divested the jurisdiction of the established civil courts expressly or by necessary implication.... We have to consider, when questioned, why the legislature made this departure. The reason is obvious. The tradition bound Civil Courts gripped with rules of pleading and strict rules of evidence and tardy trial, four tier appeals, endless revisions and reviews under CPC are not suited to the needed expeditious dispensation. The adjudicatory system provided in the new forum is cheap and rapid. The procedure before the tribunal is simple and not hide-bound by the intricate procedure of pleadings, trial, admissibility of the evidence and proof of facts according to law. Therefore, there is abundant flexibility in the discharge of the function with greater expedition and inexpensiveness.'

4. In *J.B. Chopra v. Union of India*, : (1987)ILLJ255SC , the Hon'ble Supreme Court observed that the Administrative Tribunal had the necessary jurisdiction,

power and authority to adjudicate upon all disputes relating to service matters including the power to deal with all questions pertaining to the constitutional validity or otherwise of such laws as offending Articles 14 and 16(1) of the Constitution.

5. After insertion of Article 323A, the State of Rajasthan enacted the Rajasthan Civil Services (Service Matters Appellate Tribunals) Act 1976 (for short '1976 Act') to provide for the constitution of Appellate Tribunal for service matters and matters incidental thereto. In the statement of objects and reasons it was indicated that the Tribunal would provide an independent forum for decision in service matter and would be more economical both to the Government servant and the Government. It will also lessen the burden of judicial courts and enable them to concentrate on other judicial matters.

6. 'Service Matter' has been defined in Section 2(f) of 1976 Act which means any one or more than one of the following matters relating to a Government Servant:-

(i) Seniority, (ii) Promotion, (iii) Confirmation, (iv) Fixation of pay, (v) An order denying or varying pay, allowances, pension and other service conditions to the disadvantage of a Government Servant, otherwise than a penalty, (vi) Cases of reversion while officiating in a higher service, grade or post to lower service, grade or post others than as a penalty, (vii) Withholding the pension or denying the maximum pension otherwise than as a penalty, (viii) any other matter notified by the Government.

7. It accordingly follows that in exercise of appellate jurisdiction the RCSAT has jurisdiction and competence to examine those matters of the Government Servant which relate to withholding of their pension. Is any written order required to be passed for withholding the pension? The answer to this question would always be in negative. The State Government in more than one modes, may without passing the written order, put the Government Servant in a disadvantageous position. If a government servant demands 'equal pay for equal work' and 'regular pay scale' and submits representation but the grievance voiced by the government servant turns into deaf ears and no written order is passed then what remedy is available to the govern servant? Can the Government, by its conduct render the government

servant remediless? The answer would be big 'NO'.

8. The Division Bench of this Court in Jeewan Das v. State of Rajasthan 1999(1) Rajasthan Law Reporter 718, held that where an employee demanded 'equal pay for equal work' and also 'regular pay scale' and served a notice for demand of justice but no relief was given, the appeal filed by him without any impugned written order, is maintainable.

9. Dr. Mansoor v. State of Rajasthan, 2003(3) WLC (Raj.) 68, was the case wherein the ratio indicated by Division Bench of this Court Jeewan Das v. State of Rajasthan (supra) escaped notice of the learned Single Judge while making observation that the orders passed by the Tribunal' were nullity for want of jurisdiction as no order had even been passed by the Statutory Authority rejecting the application for retiral benefits on the basis of deemed retirement. The RCSAT is bound to follow the ratio indicated in Jeewan Das case by the Division Bench.

10. The law is a dynamic science, it is not static. The purpose of law is to serve the needs of life. In following the law the RCSAT should respond to the clarion call of social imperatives and evolve in that process functional approach as means to subserve 'social promises' set out in the Preamble Directive Principles and the Fundamental Rights of the [Constitution of India](#). The RCSAT is expected to adopt the purposive approach to consider scheme of 1976 Act. Meticulous lexicographic analysis of words and phrases and sentences should be subordinate to their purposive approach. The dynamics of the interpretative functioning of the RCSAT is to reflect the contemporary needs and the prevailing values consistent with the legislative declaration of the scheme envisaged in 1976 Act.

11. In my considered opinion the RCSAT has committed illegality in holding that the appeal is not maintainable without the impugned written orders. While arriving at conclusion neither the definition of 'service matter' was properly considered nor the law laid down by two Judge Bench of this Court in Jeewan Das v. State of Rajasthan was noticed wherein it was held that an appeal before the RCSAT may be filed after serving notice for demand of justice even without the impugned written order. The RCSAT has the necessary jurisdiction, power and authority to adjudicate upon all disputes relating to service matters including the power to deal

with all questions pertaining to Constitutional validity or otherwise of such law as offending Articles 14 and 16(1) of the constitution and it can not refuse to exercise its power on the pretext of procedural technicalities. When the issues of 'substantial justice' and 'technicalities' are pitted against each other, the Tribunal should come forward to impart substantial justice, leaving aside the technicalities.

12. For these reasons, I allow the writ petition and set aside the impugned order of the RCSAT. The case stands remitted to the RCSAT with the direction that it will decide the appeal on merits in accordance with law. This judgment shall bind all those appeals also which have been filed without the impugned written order and pending before the RCSAT. The parties are directed to appear before the RCSAT on August 05, 2005 for seeking further instructions. Deputy Registrar (Judicial) is directed to forward a copy of this judgment to RCSAT.

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