

IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision : January 22nd, 2008

WP(C) No.19258/2006

Devender Kumar PETITIONER
! Through: Ms.Anu Mehta, Advocate.

Versus

\$ Union of India & Others RESPONDENTS
^ Through : Mr.Rekha Palli, Advocate.

CORAM :-

*** HON'BLE MR. JUSTICE ANIL KUMAR**

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| 1. Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. To be referred to the reporter or not? | NO |
| 3. Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J. (Oral)

1. The petitioner claims that he was granted temporary status under the OM No. 51016/2/90-Estt.(C) dated 10th September, 1993 of Ministry of Personnel, P.G. And Pensions (Department of Personnel and Training) regarding the scheme qua casual labourers (Grant of Temporary Status and Regularization) Scheme of Government of India and on that basis the petitioner seeks regularization of his services and direction to the respondents to comply with their own rules (14.6.2 Archaeological Works Code, Rule 1.03) with regard to creation of posts for the temporary work charge employees by holding annual review for converting temporary work charged posts into permanent

ones and clarify their existing policy for regularization of temporary employees in terms of order dated 17th February, 2006 passed in WPC No.138/2005.

2. The petitioner contended that he was appointed by the respondent in 1980 in Class IV post. It is pleaded that though regular posts were not sanctioned by the respondents in terms of their office needs, the petitioner was made to work in regular capacity and the nature of work performed by him was similar to that of regular employees.

3. According to the petitioner, he made various representations to the respondents against the make-shift arrangement of their work and sought looking into their service conditions and for redressal of their grievances and on account of respondents failure to do the needful, a writ petition being WPC No.138 of 2005 was filed.

4. The writ petition filed by the Union of workers was disposed of by order dated 17th February, 2006. During the course of hearing of the writ petition filed by the workers' Union, it was pointed out that the Principal Bench of Central Administrative Tribunal has quashed the notification leading to dis-continuation of the deductions arising out of new Pension Policy. While disposing of the said petition, it was

held that as far as various other claims were concerned, they were the subject matter of jurisdiction of Central Administrative Tribunal, however, liberty was granted to the workers' Union to approach the respondents with a comprehensive representation which should also contain a request for disclosing the relevant information on the regularization policy which was to be disposed of within the time granted by the Court.

5. The petitioner has contended that the respondents have not examined the contentions/submissions of the petitioner in the representation made to them and the representation has been rejected cryptically without dealing with the right of the petitioner for regularization under the Scheme of Department of Personnel under which the temporary status was granted to the petitioner. Learned counsel for the respondent who is present on advance notice has contended that the petition cannot be entertained in view of Section 14 of the Administrative Tribunals Act, 1985. Learned counsel for the petitioner has relied on (2003) 6 SCC 581, T.K. Rangarajan vs. Government of Tamil Nadu and others to contend that under Article 226 of the Constitution of India, the High court is empowered to exercise its extraordinary jurisdiction to meet unprecedented extraordinary situations having no parallel though such extraordinary powers are to be used sparingly. In that case, the State Government

had dismissed about two lakh employees for going on strike and the Administrative Tribunal was manned only by one person. In the circumstances, it was held by the Supreme Court that the judgment of the larger Bench in L. Chandra Kumar case, (1997) 3 SCC 271 was binding, however, if thousands of employees are directed to approach the Administrative Tribunal, the Tribunal would not be in a position to render justice to the cause and consequently, it was held that because of “very very exceptional circumstances” there is sufficient and justifiable reason for the High Court to entertain the petition despite an alternative remedy provided under the Administrative Tribunals Act, 1985.

6. Learned counsel for the petitioner has also relied on (2004) 7 SCC 166, S.J.S. Business Enterprises (P) Ltd. Vs. State of Bihar and Others to contend that existence of alternative remedy does not impinge on the jurisdiction of the High court to hear the matter if it is otherwise possible. In this case the Writ Petition filed under Article 226 of the Constitution of India was dismissed by the Single bench of the High Court on the ground of suppression of the fact of the pendency of another suit which was filed by the said petitioner prior to the institution of the Writ petition. The appeal against the order of the single bench was also dismissed by the division bench on the ground of suppression of material fact. Thereafter SLP was filed and

the Supreme Court had set aside the order of the High Court and had observed that the filing of the suit was not such a fact, the suppression of which could have affected the disposal of the writ petition on merits. The Apex Court had further held that where party has initiated an alternative remedy but not pursued it, the High Court can call upon the party to elect either the alternative remedy or the writ petition and, consequently, if the party has withdrawn the alternative remedy, by the time the writ petition was heard, the writ petition should not be rejected on the ground that the party had not disclosed the pendency of alternative remedy already taken by such a party. The petitioner has also relied on (2004) 1 SCC 605, Radha Raman Samanta Vs Bank of India & ors where the Apex Court had held that the claim of alternative remedy not having been raised before the single judge, could not be raised before the Division Bench and could not be gone into. Reliance has also been place on 1952 SCR 583, G Veerappa Pillai, Proprietor Sathi Vilas Bus Service Porayar, Tanjor District, Madras Vs Raman and Raman Limited, Kumbakonam, Tanjore District and others where it was held by the Supreme Court that erroneous exercise of discretion cannot be treated as acting without jurisdiction, therefore, remedy should be sought under the statute from the administrative bodies and in such case the writ of Mandamus does not lie.

7. Apparently the cases relied on by the petitioner do not support the plea of the petitioner that though the petitioner has remedy under Administrative Tribunals Act, 1985, this Court should entertain the writ petition. In *Ambica Quarry Works v. State of Gujarat and Ors.* MANU/SC/0049/1986 the Supreme Court had observed:-

"The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."

Similarly in *Bhavnagar University v. Palitana Sugar Mills Pvt Ltd* (2003) 2 SC 111 (vide para 59), the Supreme observed:-

" It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

A case is only an authority for what it decides. As observed by the Supreme Court in *State of Orissa v. Sudhansu Sekhar Misra* MANU/SC/0047/1967:-

"A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it.

8. Learned counsel for the respondent, on the other hand, relied on (2002) 4 SCC 145, *Kendriya Vidyalaya Sangathan and another vs. Subhas Sharma*, that under the Administrative Tribunals Act, 1985, the Central Administrative Tribunals has exclusive jurisdiction as

court of first instance in relation to service matters concerning the employees of Kendriya Vidyalaya despite the fact that the jurisdiction of High Court under Article 226/227 of the Constitution of India under corresponding provisions, was not excluded but the High Court should not and cannot directly entertain a writ petition concerning service matters of such employees of such organizations in respect of which there is a notification under Section 14(2) of the Administrative Tribunals Act, 1985. It was held that the Administrative Tribunals Act, 1985, Section 1(2)(a) applies to all Central Government servants.

9. This is not disputed by the petitioner that the provisions of Administrative Tribunals Act, 1985 are applicable to the case of the petitioner, as he is claiming to be an employee who has been granted temporary status and who is seeking regularization of his service. In Kendriya Vidyalaya Sangathan (supra), it was held by the Apex Court relying on L. Chandra Kumar case that it is not open for a litigant to directly approach the High Court even in cases where they question the vires of statutory legislation by overlooking the jurisdiction of the Tribunal concerned. The relevant observation of the Apex Court in the case of Kendriya Vidyalaya Sangathan page 151 are as under:-

“ 99. it will not, therefore, be open for litigants to directly approach the High courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid

and constitutional and is to be interpreted in the manner we have indicated.”

10. This petition has been filed by the petitioner after coming into the force of the Administrative Tribunals Act, 1985. The petitioner, therefore, ought to have filed the petition before the Central Administrative Tribunal. In terms of the decision of this court, Mr.T.K. Rangarajan (supra), there are no such “very very exceptional circumstances” which will entail interference by this Court under Article 226 of the Constitution of India.

10. For the foregoing reasons, even if this Court has jurisdiction, I do not find it to be a fit case to exercise the writ jurisdiction ignoring and overlooking the jurisdiction of Central Administrative Tribunal under the Administrative Tribunals Act, 1985 which Tribunal is a court of first instance in relation to service matters. Consequently, the writ petition is dismissed. The petitioner shall, however, be at liberty to avail the other remedy available to him, if he so desires. Parties to bear their own costs.

January 22nd, 2008.
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ANIL KUMAR, J.