

In the High Court of Judicature at Madras

Reserved on : 05-2-2015

Delivered on : 24-2-2015

CORAM :

The Honourable Mr.Justice V.RAMASUBRAMANIAN
and

The Honourable Mr.Justice P.R.SHIVAKUMAR

Writ Petition Nos.301, 499 and 500 of 2015 and MP.Nos.1,1 & 1 of 2015

Mohamed Sheek Alavudeen ...Petitioner in all the WPs Vs

1. The Central Administrative Tribunal,
Madras Bench, rep.by its Registrar,
Additional Civil Court Buildings,
Chennai-104. ...R1 in all the WPs
2. P.Arul Jothi ...R2 in WP.No.301/2015
3. N.Dess
4. Jayakumar
5. K.Azhagesan
6. M.Sivakumar
7. Karthikeyan
8. Muthaiyan
9. P.Ambethkar
10. K.Selvamuthu
11. G.Sankar
12. G.Ranjith
13. V.Parthibane
14. S.Krishnamurthy
15. D.Mohanraj
16. B.Rangarajan ... R2 to R15 in WP.No.499 of 2015
17. M.Vengatesan
18. P.Angappan
19. P.Singaravelu
20. R.Manokaran
21. S.Manikkam
22. P.Jaipremnath ...R2 to R7 in WP.No.500/2015
23. The Secretary to Government,
Department of Home, Puducherry 605001.

24. The Superintendent of Police (Head Quarters), Police Department, Puducherry-1.

...R3 & R4 in WP.No.301/2015;
R16 & R17 in WP.499/2015;
& R8 & R9 in WP.No.500/2015

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus after calling for the records relating to the order dated 16.12.2014 passed by the first respondent Tribunal respectively in O.A.Nos.198 and 345 of 2011 and 244 of 2012, quash the same as being illegal, arbitrary and unconstitutional and direct the first respondent to dismiss O.A.Nos.198 and 345 of 2011 and 244 of 2012 as not maintainable and to award costs.

For Petitioner : Ms.R.Vaigai for
Mr.C.K.Chandrasekaran

For R2 in WP.No.301 of 2015
R2 to R15 in WP.No.499 of 2015
& R2 to R7 in WP.No.500 of 2015 : Mr.Vijay Narayan, SC
for Mr.R.Parthiban

Common Order
V.Ramasubramanian, J

The petitioner has come up with the above writ petitions, challenging a common order passed by the Central Administrative Tribunal, holding the applications filed by the contesting respondents as maintainable.

2. We have heard Ms.R.Vaigai, learned counsel for the petitioner and Mr.Vijay Narayan, learned Senior Counsel appearing for the contesting respondents. सत्यमेव जयते

3. The Government of Puducherry invited applications for filling up 41 posts of Sub-Inspectors through a Notification dated 18.11.2010. The recruitment process comprised of three stages. In the first stage, all candidates were required to take a physical measurement test. Those, who qualified in the test, were to take a physical efficiency test and those, who qualified in the said test, were invited for a written examination.

4. Claiming that they had passed the physical measurement and physical efficiency tests and that since the written examination was conducted only in English, they could not take the exam and/or get selected, the contesting respondents herein filed applications challenging the provisional select list dated 7.2.2011. In those applications, as they were originally filed, the unselected candidates, impleaded only two respondents namely (i) the Secretary to Government, Department of Home, Puducherry; and (ii) the Superintendent of Police (Head Quarters), Police Department, Puducherry. The selected candidates were not impleaded as parties. The orders of appointment issued to the selected candidates, were also not challenged. The Tribunal admitted the original applications, but did not grant any interim orders.

5. As against the refusal of the Tribunal to grant interim orders, the unselected candidates filed a writ petition in W.P.No.3755 of 2011 on the file of this Court. In the said writ petition, an interim order was granted. Immediately, the selected candidates filed petitions for impleading themselves as parties and they also got impleaded. Thereafter, W.P.No.3755 of 2011 was disposed of on 25.2.2011 directing the Tribunal to decide the applications, after considering the contentions of the selected candidates with regard to laches, non-impleadment of necessary parties and other legal grounds.

6. Thereafter, the original applicants before the Tribunal took out miscellaneous applications in M.A.Nos.379 to 384 of 2012 (i) for amendment of the prayer made in the original applications so as to challenge the orders of appointment dated 1.3.2011 and (ii) for impleading the selected candidates. The miscellaneous applications were allowed by an order dated 12.10.2012, permitting amendment of the prayers and impleadment.

7. Therefore, the selected candidates filed writ petitions in W.P.Nos. 29234 to 29236, 31675 to 31677 and 33020 to 33022 of 2012, challenging the order of the Tribunal allowing the applications for amendment and impleadment. These writ petitions were disposed of by a Division Bench of this Court by a common order dated 1.7.2013, setting aside the orders of the Tribunal and remitting the matters back for a fresh consideration. Paragraph 18 of the order of the Division Bench in the batch of writ petitions reads as follows :

"In the result, the writ petitions are allowed and the common order passed by the Tribunal dated 12.10.2012 in the miscellaneous applications filed for amendment and impleading

respondents is set aside and the matter is remitted back to the Tribunal for fresh consideration. The Tribunal shall consider the question of limitation first, while considering the miscellaneous applications filed for amendment and impleading respondents and pass appropriate orders without being influenced by any of the findings expressed in this order. It is made clear that we have not expressed any opinion on the merits of the contentions raised by either parties."

8. Thereafter, the Tribunal took up those miscellaneous applications again for consideration and by a common order dated 13.8.2014, the Tribunal allowed the applications for amendment as well as the applications for impleadment of the selected candidates.

9. Fortunately, as against the said order of the Tribunal, the selected candidates did not initiate yet another round before this Court. Therefore, the Administrative Tribunal took up the main applications (after carrying out amendment and after impleadment) for final hearing. At that stage, the selected candidates, one of whom is the writ petitioner herein, raised an objection as to the maintainability of the main applications and demanded the Tribunal to decide the same as a preliminary issue. The objection of the selectees was that the original applications were not filed against the Union of India and the Union Territory of Puducherry, but filed only as against the Secretary to Government and that therefore, necessary parties were not there before the Tribunal. The said objection regarding maintainability was overruled by the Tribunal by a common order dated 16.12.2014 holding that the applications are maintainable. It is against these orders that the petitioner has come up with these writ petitions, in virtually what could be termed as a third round.

10. The only question that arises for consideration in these writ petitions is as to whether the long cause title in the original applications, indicated the non-impleadment of parties necessary for the adjudication of the dispute on hand or if it was merely a case of mis-description of the necessary parties.

11. It is contended by Ms.R.Vaigai, learned counsel for the petitioner that in all applications filed before the Central Administrative Tribunal challenging the direct recruitment to any post, the Union of India or the Union Territory or the State Government concerned is a necessary party and that the non-

impleadment of the Union of India/Union Territory/State Government is fatal to the case. According to the learned counsel, making the Secretary to Government, Home Department, a party to the proceeding, would not automatically make the Union of India or the Union Territory a party to the proceeding. Therefore, she contended that the original applications were not maintainable. In support of this contention, the learned counsel for the petitioner relied upon following decisions :

- (i) Ranjeet Mal Vs. G.M., Northern Railway [1977 (1) SCC 484];
- (ii) Chief Conservator of Forests Vs. Collector [2003 (3) SCC 472];

12. The learned counsel also contended that even if the original applicants impleaded the Union Territory of Puducherry as a party at this stage, the lis as against them would be barred by limitation. In support of such a contention, the learned counsel relies upon the following decisions:-

- (i) Haryana Urban Development Authority Vs. B.K.Sood [2006 (1) SCC 164]; and
- (ii) State Bank of India Vs. B.S.Agriculture Industries [2009 (5) SCC 121].

13. In order to test the correctness of the above contentions of the learned counsel for the petitioner, it is necessary to have a look at the provisions of the Administrative Tribunals Act and the Central Administrative Tribunal (Procedure) Rules, 1987.

14. It is needless to point out that the Central Administrative Tribunal is established by the Central Government, in exercise of the powers conferred by Section 4(1) of the Administrative Tribunals Act, 1985. The procedure and powers of the Tribunal are defined in Section 22 of the Act. Sub-Section (1) of Section 22 makes it clear that a Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (hereinafter referred to as the Code) and that a Tribunal shall be guided by the principles of natural justice.

15. Subject to the other provisions of the Act and any Rules made by the Central Government, the Tribunal is also empowered, by Sub-Section (1) of Section 22, to regulate its own procedure. Under Sub-Section (3) of Section 22, the Tribunal is conferred with the same powers as are vested in a civil court under the Code, in respect of certain matters such as (i) summoning and enforcing the attendance of any person and examining him on oath; (ii) requiring discovery and production of documents; (iii) receiving evidence on affidavits; (iv) requisitioning any public record; (v) issuing commissions; (vi) reviewing its decision; (vii) dismissing a representation for default

or passing an order ex parte; and (viii) any other matter, which may be prescribed by the Central Government.

16. Section 33 of the Administrative Tribunals Act, makes it clear that the provisions of the Act will have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Therefore, it is most fundamental that the provisions of the Code do not apply to the proceedings before the Tribunal and the Tribunal is to be guided by the principles of natural justice.

17. In exercise of the power conferred by relevant Clauses of Sub-Section (2) of Section 35 and Clause (c) of Section 36 of the Administrative Tribunals Act, 1985, the Central Government originally issued the Central Administrative Tribunal (Procedure) Rules 1985. Those Rules were replaced later by the Central Administrative Tribunal (Procedure) Rules, 1987. Neither the Act nor the Rules define the expression 'respondent'. However, the expression 'applicant' is defined under Section 2(c) to mean a person making an application to the Tribunal under Section 19. Though the procedure for filing the applications is prescribed in Rule 4, the presentation and scrutiny of applications are dealt with in Rule 5 and the contents of the application are indicated in Rule 8, the Rules are silent as to who should be made parties to an application before the Tribunal.

18. There is a reference in the Rules to some provisions of the Code of civil Procedure, at least in three places. In the Proviso to Rule 11(1), which deals with the modes of service of notices and processes, there is a reference to Order V Rule 19-A(2) of the Code. This is to take care of the service of notice by registered post with acknowledgement due. The second place where there is a reference to the Code is Rule 12(2) of the 1987 Rules. Rule 12 deals with the method of filing a reply along with documents by the respondent. Under Sub-Rule (2) of Rule 12, a reply filed by the respondent is required to be signed and verified as a written statement by the respondent himself or by any other person duly authorized in the same manner as provided in Order VI Rule 15 of the Code. The Tribunal is conferred with the power to order the amendment of pleadings under Rule 12(6). Therefore, in Rule 12(6), there is a reference to Order VI Rule 17 of the Code.

19. But, nowhere in the Rules, has there been any reference to the provisions of Section 79 or Order I or Order XXVII of the First Schedule to the Code. Hence, the provisions of Order I Rule 9 of the Code that deal with mis-joinder and non-joinder of parties, do not

apply to the proceedings before the Central Administrative Tribunal. In case the provisions of Order I Rule 9 of the Code are deemed to be applicable, it would follow as a corollary that the provisions of Order I Rule 10(2), under which, the Court (or the Tribunal) has a power to strike out or add parties, should also be construed as available. Similarly, the provisions of Order I Rule 13 should also be construed as available. If the provisions of Order I, rule 10 (2) are applicable, as a corollary of the application of the rule relating to misjoinder and non joinder, then the Tribunal would have suo moto power even to add necessary parties.

20. Apart from the Central Administrative Tribunal (Procedure) Rules, 1987, issued by the Central Government, the Central Administrative Tribunal itself has issued a set of rules known as the Central Administrative Tribunal Rules of Practice, 1993, in exercise of the powers conferred by Section 22 of the Act. These Rules also do not contain any prescription as to how a respondent is to be described in the long and short cause title. As between themselves, the Act, the 1987 Rules and the 1993 Rules of Practice constitute a complete code and hence, there is no scope of importing a principle born out of the rigours of the Code into the proceedings before the Administrative Tribunal.

21. Having thrashed out the contentions of the learned counsel for the petitioner born out of the rigours of the provisions of the Code of Civil Procedure, with the ammunition provided by Section 22 of the Administrative Tribunals Act, 1985 and the 1987 Rules of Procedure, we shall now look into the decisions relied upon by the learned counsel for the petitioner.

22. In *Ranjeet Mal*, an employee of the Northern Railway filed a writ petition under Article 226 on the file of the High Court of Rajasthan challenging the validity of his removal from service. A learned Judge dismissed the writ petition on the ground that the employee had failed to implead the Union of India. The Division Bench approved the same and the employee went on appeal to the Supreme Court. While dismissing the appeal, the Supreme Court held that the Union of India represented the Railway Administration and that any order passed on a petition under Article 226 may ultimately fasten the liability on the Union of India and not on any servant of the Union. Therefore, the Supreme Court held that the Union of India was a necessary party. But this was on account of the fact that the General Manager of a railway Administration is not an agent of the Union of India, which owned the Railways.

23. In *Chief Conservator of Forests*, the Supreme Court was concerned with a dispute as between the Revenue Department and the Forest Department. Interestingly, the Chief Conservator of Forests moved a writ petition on the file of the High Court challenging the order of the Commissioner of Survey, Settlement and Land Records. Simultaneously, the persons, who had obtained patta for the lands, approached the civil court and obtained a decree of declaration of title, as against which, the Government of Andhra Pradesh represented by the Collector filed an appeal before the High Court. When the matter landed up before the Supreme Court, the main objection taken by the private individuals, who were pattadars, was that the Chief Conservator of Forests or any other individual officer of the Government, was not competent to file a suit or initiate any proceeding either under the scheme of The Constitution or under the Code, in the name of the office that he was holding. It was in that context that the Supreme Court held in paragraph 13 that the State of Andhra Pradesh was a necessary party and should have been impleaded as per Article 300 of The Constitution as well as Section 79 of the Code. Incidentally, the Supreme Court took note of the provisions of Order I Rule 9, but observed towards the end of paragraph 12 that a remedy was also available under Order I Rule 10.

24. A careful look at both the above decisions of the Supreme Court would show that they would not help the petitioner to have the original applications filed by the unselected candidates to be thrown out on the ground of maintainability. In *Ranjeet Mal*, the employee was actually holding an office in the Railway Administration. The General Manager of the Northern Railway, apart from not being an agent of the Union of India, himself took an objection even in the first instance that the non-impleadment of the Union of India was fatal and that he would not be able to enforce any order as against the Union of India, of which, he was also only an employee. But, in the case on hand, the Secretary to Government, Union Territory of Puducherry has not raised an objection that the Union Territory of Puducherry was to have been impleaded. The unselected candidates, who have approached the Tribunal, are not holding any civil post or serving in the civil services of the State or the Union, so as to compare their case with that of the employee in *Ranjeet Mal*. No analogy can be drawn, in the cases on hand, on the basis of the provisions of the Code, in view of the fact that the application of the provisions of the Code is specifically excluded by the express language of Section 22(1) of the Administrative Tribunals Act, 1985.

25. Similarly, the decision of the Supreme Court in *Chief Conservator of Forests* stands on a completely different footing. In the said decision, two Departments of the Government were at

loggerheads with each other. The State was not a party. The Chief Conservator of Forests claimed before the Supreme Court that he had the authority to file an appeal and that therefore, he had the implied authority to represent the Government. This contention was rejected on the basis that the authority to file an appeal was different from the authority to initiate proceedings. The original proceedings, if initiated by or against a Government, are required under Section 79 of the Code, to be by or against the Union of India or the State Government. Section 79 of the Code is further fine-tuned by Order XXVII. Order XXVII Rule 3 itself makes a reference to Section 79. Rule 5-A of Order XXVII makes it mandatory for the plaintiff to join the Government as a party to a suit instituted against a Public Officer for damages or other reliefs in respect of any act alleged to have been done in his official capacity.

26. But, as stated earlier, the provisions of Section 79 and Order XXVII are extraneous to the procedure to be followed by an Administrative Tribunal. In so far as the writ proceedings under Article 226 are concerned, the Courts have repeatedly held that though the provisions of the Code will not per se apply to such proceedings, the courts are entitled to follow the fundamental principles, on which, such provisions of the Code are built. Therefore, the decisions arising out of the proceedings under Article 226 of The Constitution and the proceedings before the civil courts, cannot be applied to the proceedings before the Administrative Tribunals.

27. As a matter of fact, the Supreme court gave a different connotation to the very same objection, in *Secretary, Ministry of works and Housing vs. Mohinder Singh Jagdev* {J.T. 1996 (8) SC 46}. In that case, the services of a person who was appointed as Section officer in the Central Public Works Department were terminated in exercise of the power under Rule 5 of the Central Government Services (Temporary) Service Rules 1949, on the ground that he produced false certificates. However, he was acquitted in the criminal case and thereafter, he laid a suit in forma pauperis seeking a declaration that the termination of his service was wrong, unconstitutional and that he should be deemed to have continued in service. The trial Judge (single Judge of the High Court), though held that the termination order was unconstitutional, since he was terminated without compliance of Article 311(2) of the Constitution, dismissed the suit as barred by limitation. On appeal, the Division Bench held that the suit was not barred by limitation for the reason that he had laid the suit after the rejection of his application for reinstatement and consequent to the acquittal by the criminal court and that, therefore, it was within limitation. Before the Supreme

court, a preliminary objection was raised to the effect that the Secretary to Government could not have filed the appeal in his official designation without making the Union of India, as the appellant. The said contention was rejected by the Supreme court, with the following observations:-

"Having given due consideration to the contentions of the counsel and having gone through the facts and circumstances of the case, first question that arises is: whether the appeal has been competently laid? It is not disputed and cannot be disputed that the Union of India can lay the suit and be sued under Article 300 of the Constitution in relation to its affairs. Under Section 79 read with Order 27 Rule 1, Code of Civil Procedure, in a suit, by or against the Central Government, the authority to be named as plaintiff/defendant shall be Union of India. The Secretary, Ministry of Works and Housing is a limb of the Union of India transacting its functions on behalf of the Government under the concerned Department as per the business rules framed under Article 77 of the Constitution. Therefore, the appeal came to be filed by the Secretary, though wrongly described. The nomenclature given in the cause title as Secretary instead of Union of India, is not conclusive. The meat of the matter is that the Secretary representing the Government of India had filed the appeal obviously on behalf of Union of India. Accordingly, we reject the first contention."

Therefore, it is clear that in cases, where the Secretary to Government is made a party, the failure to describe him as representing the Union Government, would only tantamount to mis-description and not to non impleadment. In *Ranjeet Mal and Chief Conservator*, no reference was made to Article 77 of the Constitution.

28. As we have stated earlier, even if we assume that the principles analogous to those contained in the Code can be imported to the proceedings before the Administrative Tribunals, they have to be imported along with the principles underlying Order I Rule 10(2). Today, it is reported across the bar that the original applicants before the Tribunal have got the cause title amended to describe the first respondent as the Union Territory of Puducherry represented by the Secretary to Government (the very same Secretary who is already a party). The Tribunal itself could have done it, assuming that the principles underlying the provisions of the Code could be imported to the proceedings before the Tribunal.

29. In *Sangamesh Printing Press vs Chief Executive Officer, Taluk* [(1999) 6 SCC 44], a registered firm filed a suit against the Chief Executive Officer, Taluk Board for recovery of money representing the price of the printed forms and registers allegedly supplied to them. In the written statement, various objections were taken, including the denial of a valid contract. The trial court came to the conclusion that as the suit had been filed against a government official, the plaintiff should have complied with the provisions of Order 27 Rule 5-A C.P.C. and impleaded the State as a party. As the State had not been impleaded in the said suit, the suit was dismissed. In the appeal before the High court, an application under Order 1 Rule 10 C.P.C. was filed praying for impleadment of the State of Karnataka as one of the defendants. But without deciding the said application, the appeal was disposed of. Therefore, the Supreme court set aside the judgment of the High court and remitted the matter back with the following observations:-

"Keeping in view the facts and circumstances of the case, we are of the opinion that the High Court should have decided the appellant's application under Order 1 Rule 10 C.P.C. and, thereafter, proceeded to hear the appeal in question. Not having disposed of the application under Order 1 Rule 10 has caused serious prejudice to the appellant. We, therefore, set aside the judgment of the High Court and restore Regular First Appeal No 29 of 1987 to its file. The High Court should first deal with the application under Order 1 Rule 10 C.P.C. which is pending before it and then proceed to dispose of the appeal in accordance with law."

Therefore, it is clear that once the original applicants have carried out an amendment, making the Union Territory of Puducherry as a party, the objection regarding non impleadment, cannot hold water.

30. The Administrative tribunal is a specialised forum constituted to redress the grievances of persons falling under a special category. Therefore, their cases should not be thrown out on mere technicalities, unless they go to the root of the matter. The selected candidates did not raise this issue in the first round of litigation when they came up with a batch of writ petitions challenging the order of the Tribunal allowing applications for amendment and impleadment. Therefore, they cannot be permitted to raise such technical objections piecemeal.

31. The next contention of the learned counsel for the petitioner that since the Union of India was not impleaded in the first instance when the original applications were filed in 2011, the

impleadment of the necessary party, after the period of limitation was over, would make the applications liable to be dismissed on the ground of limitation. The decisions of the Supreme Court in *Haryana Urban Development Authority* and *State Bank of India* are relied upon by the learned counsel for the petitioner with reference to the objection regarding limitation. But once it is concluded that it is a case of mis-description, we do not think that the present impleadment of the Union Territory of Puducherry will also expose the original applicants to the risk of being non-suited on the ground of limitation. Therefore, in fine, the orders of the Tribunal holding the original applications to be maintainable, are perfectly in order and we see no ground to interfere with the same.

32. Consequently, the writ petitions are dismissed. No costs. Consequently, the above MPs are also dismissed.

Sd/-

Asst. Registrar

/true copy/

Sub Asst. Registrar.

RS

To

1. The Registrar, Central Administrative Tribunal, Madras Bench, Additional Civil Court Buildings, Chennai-104.
2. The Secretary to Government, Department of Home, Puducherry-605001.
3. The Superintendent of Police (Head Quarters), Police Department, Puducherry-1.

+1cc to Senior Advocate/Senior Govt. Pleader cum PP for Pondicherry,
S.R.No.9884

IN WP.NOS.301, 499 AND
500 OF 2015 & MP.NOS.1,
1 & 1 OF 2015

KJI (CO)
CA(05/03/2015)

WEB COPY