

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 329 OF 2006

Union of India and ors. ... Petitioners.
V/s.
Israrul – Haque Khan and anr. ... Respondents.

Ms S.I. Shah I/b M/s. S.I. Shah and Co. for the Petitioners.
Mr. S.P. Saxena a/w. Mr. Abdul Razzak I Bhatkar for the
Respondent No.1.

CORAM : A.S. OKA AND M.S. SONAK, JJ.

DATE OF RESERVING THE JUDGMENT : 14th September 2018.
DATE OF PRONOUNCING THE JUDGMENT : 26th September 2018.

JUDGMENT: (Per M.S. SONAK, J.)

- 1] Heard the learned counsel for the parties.
- 2] The challenge in this petition is to the judgment and order dated 12.3.2004 made by the Central Administrative Tribunal (CAT), Mumbai allowing O.A. No. 867 of 2003 instituted by the respondent No.1 (the respondent) seeking benefit of F.R. 22(1) (a)(i) in the fixation of his pay on his promotion from Divisional Engineer to the post of Deputy General Manager.

3] Ms Shah, the learned counsel for the petitioners, makes the following two submissions in support of this petition:-

(a) That the very institution and disposal of O.A. No. 867 of 2003 by the CAT was before the Central Government issued the Notification dated 31.10.2008 under section 14(2) of the Administrative Tribunals Act, 1985 (the said Act) applying the provision of section 14(3) of the said Act to Mahanagar Telephone Nigam Limited (MTNL). This means that on the date of institution of O.A. No. 867 of 2003 and its disposal on 12.3.2004, the CAT had no jurisdiction to entertain and dispose of O.A. No. 867 of 2003 seeking reliefs mainly against MTNL. The impugned judgment and order dated 12.3.2004 is therefore, a product of an exercise without jurisdiction. The impugned judgment and order is, therefore, a nullity and ought to be declared as such;

(b) In any case, and without prejudice to the aforesaid contentions, the CAT clearly erred in relying upon the Full Bench judgment in **Shri. Bhagwan Dass vs. Union of**

India and ors - 2004 (1) ATJ 12, when admittedly the applicant before the Full Bench was an employee of the Department of Telecom (DOT) over which the CAT had jurisdiction in terms of section 14(1) of the said Act. However, the respondent who was the applicant before the CAT in the present matter, was an employee of MTNL, over which the CAT had no jurisdiction whatsoever at least until 10.11.2008. The CAT, therefore, exceeded jurisdiction in granting relief to the respondent by relying upon *Bhagwan Dass (supra)*

4] Mr.S.P. Saxena, the learned counsel for the respondent, submits that the respondent was basically an employee of Union of India though on deputation with the MTNL. He submits that both Union of India as well as MTNL had been impleaded as respondents to O.A. No. 867 of 2003. The objection as to jurisdiction, now sought to be raised, was quite correctly not even raised before the CAT. The impugned judgment and order is based upon the ruling of the Full Bench of the CAT in O.A. No. 2286 of 2002, which was in fact challenged before the Delhi

High Court, but such challenge was rejected on 8.5.2009. The review petition against the order dated 8.5.2009 was also dismissed on 14.5.2010. Thereafter, the judgment in O.A. No.2286 of 2002 has in fact been implemented by the petitioners. In these circumstances, Mr.Saxena submits that this petition may be dismissed.

5] The rival contentions now fall for our determination.

6] O.A. No. 867 of 2003 was instituted by the respondent by impleading both the Union of India as well as MTNL as respondents. At least from the reading of the impugned judgment and order, it does not appear that the objection that the CAT lacked jurisdiction to entertain the O.A against MTNL was ever raised before the CAT.

7] However, we do not propose to non-suit the petitioner on the aforesaid ground. This is because it is possible to urge that if the Tribunal inherently lacks jurisdiction over a subject matter, then, such jurisdiction cannot be conferred even by consent of parties.

8] Sub-section (1) of section 14 of the said Act demarcates the scope and ambit of jurisdiction, powers and authority to be exercised by the Administrative Tribunals. This sub-section mainly vests in the Tribunal jurisdiction to deal with the service matters concerning, *inter alia* members of the All-India Service or all service matters pertaining to service in connection with the affairs of the Union. This would *ipso facto* not include local or other authorities under the control of of the Government of India or corporation, societies owned or controlled by the Government of India.

9] Therefore, sub-section (2) of section 14 of the said Act provides that the Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations or societies owned or controlled by Government, not being a local or other authority or corporation or society controlled or owned by the State Government.

10] Sub-section (3) of section 14 of the said Act goes on to provide that save as otherwise the CAT shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation or society, all the jurisdiction, powers and authority exercisable immediately before that date by all Courts except the Supreme Court in relation to *inter alia* all service matters concerning a person other than a person referred to in clause (a) or clause (b) of sub-section (1) appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs.

11] Ms Shah has placed on record the Notification dated 31.10.2008 issued by the Central Government in exercise of powers conferred by section 14(2) of the said Act, by which, the Central Government has specified the 10th day of November 2008 as the date on and from which the provisions of section 14(3) of the said Act shall apply to the organisations listed in the said notification, being the societies and statutory organisations

owned or controlled by the Government. At sr. No. 153, there is reference to MTNL, which is described as Central Public Sector Undertaking under the Ministry of Communications and Information Technology (Department of Telecommunications). On the basis of the provisions contained in section 14(2) and 14(3) of the said Act read with Notification dated 31.10.2008, Ms. Shah submits that the CAT had no jurisdiction to entertain or dispose of O.A. No. 867 of 2003 on any date prior to 10.11.2008. She submits that the main relief in O.A. No. 867 of 2003 was in fact directed against the MTNL where the respondent was working.

12] Even if we were to accept Ms Shah's contention based upon the provisions of section 14 of the said Act read with the Notification dated 31.10.2008, in our judgement, this is really not a fit case to exercise our extraordinary jurisdiction and to set aside the impugned judgment and order made by the CAT, particularly when the same promotes substantial justice.

13] The CAT's impugned judgment and order is based upon the Full Bench judgment of the CAT in *Shri. Bhagwan Dass (supra)* concerning the interpretation of the provisions of F.R. 22(1)(a)(i). In the case before the Full Bench, the applicant who was promoted to Senior Time Scale (STS) on ad-hoc basis, was further promoted to Junior Administrative Grade (JAG) and the dispute was about the fixation of his pay which was found to be lesser than the pay of his juniors. The Full Bench of the CAT held that it is not necessary for a person to hold a post in the feeder cadre in the substantive capacity for availing the benefit of F.R. 22(1)(a)(i) in the matter of fixation of pay. The Full Bench of the CAT, however, clarified that such benefit will be for the purpose of pay fixation only and not for other purposes like determination of seniority etc.

14] In the present case as well, the respondent was promoted on ad-hoc basis in the STS on 29.8.1997. However, thereafter, he was promoted as Deputy General Manager on 13.11.2002. In fixing his pay to the post of Deputy General Manager, the petitioners denied the respondent the benefit of F.R. 22(1)(a)(i)

on the ground that the respondent had not held the post in the feeder category on substantive basis. The CAT, following the ruling of its Full Bench in *Bhagwan Dass (supra)* negated the contention of the appellant and directed that the benefit of F.R. 22(1) (a)(i) be extended to the respondent.

15] The petitioner, i.e., Union of India, had in fact challenged the Full Bench judgment in *Bhagwan Dass (supra)* before the Delhi High Court by instituting Writ Petition (C) No. 1403 of 2004. This was however, dismissed by order dated 8.5.2009, *inter alia* by relying upon the ruling of the Apex Court in ***M.R. Gupta Vs. Union of India and ors. - 1995 (5) SCALE 29***, in which, it is held that the matters of the pay fixation afford a continuous cause of action.

16] The petitioner, i.e., Union of India, then instituted a review petition bearing Review Petition No. 366 of 2009 before the Delhi High Court, which was dismissed by detailed order dated 14.5.2010. The Delhi High Court in fact ruled that the Tribunal has rightly interpreted the F.R. 22 and there was no merit in the challenge to the Full Bench Judgment of the CAT.

17] Ms Shah's second contention seeking to distinguish *Bhagwan Dass (supra)*, warrants no acceptance. Though, it may be correct that *Bhagwan Dass (supra)* (the applicant before the Full Bench) was an employee of DoT over which the CAT had jurisdiction in terms of section 14(1) of the said Act and the present respondent was an employee of the MTNL, which is a Central Public Sector Undertaking under the DoT, nevertheless, there is no dispute whatsoever that the provisions of FR 22 apply to both, the employees of the DOT and the employees of the MTNL. In *Bhagwan Dass (supra)*, the Full Bench of the CAT has basically interpreted the provisions of FR 22 (1)(a) (i) and it is such interpretation, which was certainly binding upon the Division Bench of the CAT, which decided the respondent's original application. The Division Bench of the CAT was thus right in following the Full Bench in *Bhagwan Dass (supra)* and there is no merit in the second contention as urged.

18] This means that even if we were to uphold Ms Shah's objection based upon the provisions of section 14 of the said Act read with the Notification dated 31.10.2008, the matter would have to perhaps go back to the CAT since, admittedly, by now,

the CAT has jurisdiction to entertain the respondent's O.A. On remand, the CAT, would again, have to follow the Full Bench judgment in *Bhagwan Dass (supra)*, particularly now that the challenge against the same has already failed before the Delhi High Court. Mr. Saxena in fact placed on record the communication dated 8.12.2010 indicates that the petitioner, i.e., Union of India has accepted the decision of the Delhi High Court and even ordered implementation of the Full Bench judgment in O.A. No. 2286 of 2002. The remand in such circumstances, would amount to nothing but afford of primacy to form over substance.

19] Ms Shah accepted that the judgments and orders of the Delhi High Court confirming the Full Bench judgment in *Bhagwan Dass (surpa)* were never challenged before the Apex Court. The communication dated 8th December 2010 placed on by Mr. Saxena, not only confirms this position but indicates that the Full Bench judgment in *Bhagwan Dass (surpa)* has in fact been ordered to be implemented by the DoT.

20] Ms Shah, faced with such a situation, did not even contend that the Full Bench judgment in *Bhagwan Dass (supra)* or the judgements and orders of the Delhi High Court, confirming the same do not state the position of law on the interpretation FR 22 correctly or are otherwise vulnerable on merits. In fact, having accepted and even ordered the implementation of such judgments and orders, it may have not been open to Ms Shah to contend so. In such a situation, therefore, remand of the matter before the CAT will not enable the petitioner to deny the respondent the benefit of FR 22 (1)(a)(i), but it might only enable the petitioner to prolong the receipt of such benefit. Then, possibly, on account of such unjustified prolongation, the petitioners may be held liable for payment of interest on the amounts due and payable to the respondent. Such prolongation, therefore, will only contribute to delay in granting relief to the respondent, without any corresponding benefits whatsoever to the petitioner-MTNL. The extraordinary and equitable jurisdiction under Article 226 and 227 of the Constitution of India, cannot be invoked by the petitioner - MTNL to deny to its employee, the benefit which is otherwise due to him.

21] The Apex Court, in *M.R. Gupta (supra)*, has held that matters of pay fixation afford continuous cause of action. Therefore, even if the respondent were to invoke our extraordinary jurisdiction under Article 226/227 of the Constitution of India, to seek the relief which he had applied for before the CAT, at least the MTNL, would not be in a position to oppose the grant of such relief, taking into consideration the Full Bench judgment in *Bhagwan Dass (supra)*, which, as noted above, has attained finality, after challenge to the same before the Delhi High Court, failed. The extraordinary jurisdiction of this Court under Article 226/227 of the Constitution of India is to promote substantial justice and since the impugned judgment and order made by the CAT promotes substantial justice, we are not persuaded to interfere with the same on the grounds urged by Ms Shah.

22] It is well settled that interference in exercise of extraordinary jurisdiction under Article 226/227 of the Constitution of India is discretionary and not mandatory upon the petitioner making out some legal point in support of the

petition. (**See: *Rajasthan State Industrial Development and Investment Corporation vs. Subhash Sindhi Cooperative Housing Society, Jaipur and ors. (2013)5 SCC 427***).

23] In ***Mohammad Swalleh and ors vs. Third Addl. District Judge, Meerut and anr. - (1988) 1 SCC 40***, the District Judge entertained and set aside an order made by the prescribed authority under the U.P. Urban Buildings (Regulations of Letting, Rent and Eviction) Act, 1972. In a petition under Article 226/227 of the Constitution of India challenging the District Court's order, the High Court in fact accepted the petitioners' contention that no appeal lay before the District Judge against the order of prescribed authority. However, the High Court declined to interfere with the order of the District Judge upon noticing that the order of prescribed authority which had been interfered with by the High Court was patently invalid order. The Apex Court approved the view and approach of the High Court by observing thus:

“7. It is true that there has been some technical breach because if there is no appeal maintainable before

*the learned District Judge, in the appeal before the learned District Judge, the same could not be set aside. **But the High Court was exercising its jurisdiction under Article 226 of the Constitution. The High Court had come to the conclusion that the order of the Prescribed Authority was invalid and improper. The High Court itself could have set it aside. Therefore in the facts and circumstances of the case justice has been done though, as mentioned hereinbefore, technically the appellant had a point that the order of the District Judge was illegal and improper.** If we reiterate the order of the High Court as it is setting aside the order of the Prescribed Authority in exercise of the jurisdiction under Article 226 of the Constitution then no exception can be taken. As mentioned hereinbefore, justice has been done and as the improper order of the Prescribed Authority has been set aside, no objection can be taken.*

(emphasis supplied)

24] In **Roshan Deen vs. Preeti Lal - (2002) 1 SCC 100**, the Commissioner for Workmen's compensation had set aside/reviewed his own order and the High Court set aside the fresh order and on the ground that the Commissioner had no powers of review vested in him. The Apex Court set aside the High Court's order and restored the Commissioner's order which had promoted substantial justice. The Apex Court observed thus:

“Time and again this Court has reminded that the power conferred on the High Court under Articles 226 and 227 of the Constitution is to advance justice and not to thwart it. The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The look out of

*the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. **If justice became the by-product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law.***"

(emphasis supplied)

25] In ***Municipal Board, Pratabgarh and anr. vs. Mahendra Singh Chawla and ors. - (1982) 3 SCC 331***, the Apex Court has held that the laws cannot be interpreted and enforced divorced from their effect on human beings for whom the laws are meant. Undoubtedly, rule of law must prevail but as is often said, rule of law must run akin to rule of life. And life of law is not logic but experience. The Apex Court further held that while administering law it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations not to take it to the logical end, the Court would be failing in its duty if it does not notice equitable considerations and mould the final order in exercise of its *extraordinary jurisdiction*. Any other approach would render this Court a normal Court of appeal which it is not.

26] For all the aforesaid reasons, we dismiss this petition. Rule is discharged. There shall, however, be no order as to costs.

(M. S. SONAK, J.)

(A.S.OKA, J.)

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Sadanand
Sherla

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