THE TELEPHONE DISTRICT MANAGER & ORS. A

v.

KESHAB DEB

(Civil Appeal No. 3324 of 2008)

MAY 6, 2008

B

[S.B. SINHA AND V.S. SIRPURKAR, JJ.]

Industrial Disputes Act, 1947:

Casual labour – Termination – Right of election in the matter of choice of forum –- Where an employee maintains a writ petition not only on the ground of violation of equality clause enshrined under Art.14 of the Constitution but also on ground of violation of the provisions of Industrial Disputes Act, 1947, he has an option to choose his own forum – Constitution of India, 1950 – Art.14. C

Termination of casual worker – Grant of compensation – Tribunal as well as the High Court held that the termination of Respondent-workman was illegal – Correctness of – Held: On facts, correct – However, automatic direction for reinstatement of Respondent with full back wages was not contemplated – Even if provisions of s.25-F of the Industrial Disputes Act had not been complied with, Respondent-workman was only entitled to be paid a just compensation – In peculiar facts and circumstances of the case, Respondent directed to be paid compensation of Rs.1,50,000/-.

Administrative Tribunals Act, 1985 – s.28 – Held: Does not bar the jurisdiction of the Central Administrative Tribunal – It saves the jurisdiction of the Industrial Tribunal.

Respondent had been appointed as a casual labour on daily wages. He was terminated from service pursuant to an alleged misconduct on his part. He filed writ petition before the High Court contending that his services were terminated without meeting the statutory requirements as

A contained in s.25-F of the Industrial Disputes Act, 1947. He furthermore alleged arbitrariness on the part of the appellants in passing the said order of termination and prayed for regularization of his services in terms of a scheme known as the Casual Labours (Grant of B Temporary Status in Regularization) Scheme. A Single Judge of the High Court transferred the petition to the Central Administrative Tribunal, holding that in view of the provision contained under s.14 of the Administrative Tribunals Act, 1985 the writ petition was not maintainable. C Before the Administrative Tribunal, the appellants in their written statement *inter alia* raised a contention that the respondent being a casual employee was not entitled to the benefit of the said Scheme. It was furthermore stated that the Respondent's attitude, behaviour and conduct as a casual labour was not at all satisfactory. The D Administrative Tribunal, however held that the order of termination passed by the appellant was illegal. Direction was accordingly given for re-instatement of Respondent with back wages along with all the service benefits including the benefit of regularization of service. The E judgment passed by the Tribunal was upheld by the High Court by reason of the impugned judgment.

In appeal to this Court, it was contended on behalf of the appellants that the claim of Respondent being based on the provisions of the Industrial Disputes Act, F the Administrative Tribunal had no jurisdiction to entertain the matter; that Respondent having not claimed any back wages in the writ petition, he was not entitled thereto; that he having been appointed only as casual labour on a daily rated basis, the scheme for regularization was not G applicable; that he having no right to continue in the service, the impugned judgment is wholly erroneous and the High Court committed a serious error in upholding the order of the Administrative Tribunal and further that having regard to s.28 of the Administrative Tribunals Act, H 1985 the only remedy of the respondent was to file an

appropriate application before an Industrial Court. A

Respondent, on the other hand, submitted that the Appellants themselves having contended that the Central Administrative Tribunal had the requisite jurisdiction, cannot now turn around and contend that it did not have any jurisdiction; that Respondent being a government B servant, the Central Administrative Tribunal in terms of s.14 of the Administrative Tribunals Act, 1985 had the requisite jurisdiction to entertain the application and that the order of termination having been issued arbitrarily, the impugned judgment is unassailable. C

Disposing of the appeal, the Court

HELD:1.1. S.28 of the Administrative Tribunals Act, 1985 is of no consequence in the present case. In a case of the present nature where inter alia an employee D maintains a writ petition not only on the ground of violation of equality clause enshrined under Article 14 of the Constitution but also on the ground of violation of the provisions of the Industrial Disputes Act, 1947, he has an option to choose his own forum. S.28 does not bar the E jurisdiction of the Central Administrative Tribunal. It saves the jurisdiction of the Industrial Tribunal. An employee who claims himself to be a workman, therefore, will have a right of election in the matter of choice of forum. It is, therefore, not correct to contend that the Central Administrative F Tribunal had no jurisdiction to pass the impugned judgment. Furthermore the respondent claimed regularization in services. Such an application was maintainable. As to whether he would be entitled to such a relief or not, however, is a different question. The Tribunal G indisputably was entitled to exercise its jurisdiction for enforcement of a fundamental right. [Paras 14, 15] [848-B-D]

1.2. The Tribunal and consequently the High Court were correct that the termination of the services of the H

A respondent was illegal. He, according to the appellants, committed a misconduct. His services had been terminated on that ground. But therefor he was entitled to an opportunity of being heard. A regular departmental proceedings should have been initiated against him; the B order of termination being stigmatic in nature. While, however, granting a relief, the superior courts should take into consideration the factors relevant therefor, which in the instant case are :-a) recruitment of the respondent was ex-facie illegal as prior thereto neither any advertisement C was issued nor the employment exchange was notified in regard to the vacancy; b) it does not appear that the respondent had even got himself registered with the Local Employment Exchange and c) he being a daily rated casual employee did not have any right to continue in D service. [Paras 17, 18] [848-G-H and 849-A-C]

1.3. Even in a case where an order of termination is illegal, an automatic direction for reinstatement with full back wages is not contemplated. Respondent was at best entitled to one month's pay in lieu of one month's notice E and wages of 15 days of each completed years of service as envisaged under s.25-F of the Industrial Disputes Act. He could not have been directed to be regularized in service or granted a temporary status. Such a scheme has been held to be unconstitutional by this Court. F Therefore grant of compensation instead of a direction of reinstatement with back wages would meet the ends of justice. [Paras 19, 20] [849-D-F]

1.4. Even if the provisions of s.25-F of the Industrial Disputes Act had not been complied with, Respondent G was only entitled to be paid a just compensation. While, however, determining the amount of compensation one must also take into consideration the stand taken by the appellants. They took not only an unreasonable stand but raised a contention in regard to absence of jurisdiction in H the Tribunal. They admittedly did not comply with the order

passed by the Tribunal for a long time and had raised contention which are not otherwise tenable. Therefore, in the peculiar facts and circumstances of the case, interest of justice shall be subserved if respondent is directed to be paid a compensation of Rs.1,50,000/- (Rupees one lakh fifty thousand only). [Paras 23, 24] [851-C-E]

A.Umarani vs. Registrar, Cooperative Societies and others, **(2004) 7 SCC 112** *and Secretary, State of Karnataka and Ors. vs. Umadevi and Ors.* **(2006) 4 SCC 1- relied on.**

Shankar Dass vs. Union of India and another, **(1985) 2 SC 358;** *Atyant Pichhara Barg Chhatra Sangh and another vs. Jharkhand State Vaishya Federation and others,* **2006 (6) SCC718;** *Indra Sawhney vs.Union of India,* **1992 Supp (3) SCC 217** *and Ajoy Kumar Banerjee vs. Union of India,* **(1984) 3 SCC 127 – referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3324 of 2008

From the final Judgment and Order dated 21.8.2003 of the Gauhati High Court in Writ Petition (c) No. 8321 of 2002

N.M. Sharma, Shweta Gupta and Anil Kumar Tandale for the Appellants.

K. Sarada Devi for the Respondent.

The Judgment of the Court was delivered by

S.B. SINHA, J. Leave granted.

1. Respondent is a driver. He sought for his recruitment in the Directorate of Telecommunications, Dimapur. He filed an application therefor on 30th January, 1984. Appellant herein in response thereto by its letter dated 30th January, 1984 stated :-

> " With reference to your application dated 30.1.984, it is to intimate you that recruitment of Driver etc. is banned at present. Your case will be considered after the ban on

A recruitment is lifted.

Moreover you are directed to submit the employment exchange particulars, age, certificate etc. for consideration in due course of time."

B 2. Respondent, however, was appointed as a casual labour on daily wages. It was said to be on a need based one. He purported to have worked in that capacity from 11th March, 1989.

3. Respondent, however, was arrested by the police C authorities in a case arising out of sub-section (6) of Section 34 of the Police Act. In connection therewith he had to undergo simple imprisonment for 8 days. He was also sentenced to pay fine of Rs.30/-.

D He was not allowed to join back his duties.

He filed a writ petition before the Guwahati High Court, paragraph 7 whereof reads as under :-

"7. That the Petitioner respectfully states that in view of this he was a workman as defined under Section 2(s) of E the Industrial Disputes Act, 1947. He was not holding any civil post nor belonging to any civil service and therefore his case does not fall within the jurisdiction of the Central Administrative Tribunal although he served under the Government of India."

F

4. He inter alia raised a contention that his services were terminated without meeting the statutory requirements as contained in Section 25-F of the Industrial Disputes Act, 1947. Furthermore he prayed for regularization of his services G purported to be in terms of a scheme known as "Casual Labours (Grant of Temporary Status in Regularization) Scheme".

The prayer in his writ petition was as under :-

"In the premises aforesaid, the Petitioner respectfully prays that your Lordships may graciously be pleased to call for H

the records and issue Rule calling upon the Respondents to show cause as to why an appropriate Writ and or Direction shall not be issued declaring and adjudging the impugned action of termination of services of the Petitioner by the Respondents No. 2 and 3 as illegal, unconstitutional, null and void and/or why a Writ in the nature of Certiorari and/or Mandamus and/or any other appropriate Writ shall not be issued setting aside the impugned actions of Respondents and directing and commanding the Respondents to allow the Petitioner to continue in service as Muster Roll Labour (Driver) on daily rated wages and also consider case for regularization to be appointed against a regular post of Driver under the "Casual Labours (Grant of Temporary Status in Regularization) Scheme" with effect from 1.10.1989 and cause or causes being shown and upon hearing the parties be pleased to make the Rule absolute and/or pass any other or further orders as Your Lordships may deem fit and proper."

5. It, however, appears that a contention was raised on behalf of the appellants in the said proceedings that having regard to the provisions contained in Section 14 of the Administrative Tribunals Act, 1985 the writ petition was not maintainable. A learned Single Judge of the High Court while transferring the petition to the Central Administrative Tribunal, Guwahati Bench, noticed the said submission in the following terms :-

"4. At the outset, Mr. S.N. Chetia raised a preliminary objection regarding maintainability of this writ petition in view of the provision of Section 14 of the Administrative Tribunals Act, 1985. Mr. Bedi fairly concede to the submission of Mr. S.N. Chetia in view of the decision of the Apex Court rendered in Union of India & Ors...Appellant vs. Deep Chand Pandey and Anr. .... Respondents (1992) 4 SCC 432, it has been held by the Apex Court; "Casual Railway employees engaged on daily wages basis, on termination of his service, the remedies lies before the

A Tribunal and not before the High Court." In view of the decision of the Apex Court, and in view of the provision contained under Section 14 of the Act, this writ petition is not maintainable before the High Court."

6. Before the Central Administrative Tribunal the appellants B in their written statement inter alia raised a contention that the respondent being a casual employee was not entitled to the benefit of the said scheme. It was furthermore stated:-

"5. That with regard to the contents made in paragraph C 5 that the applicant's attitude behaviour and conduct as a casual labour in the Department was not at all satisfactory. He was arrested by the Mokokchung Police on 12.3.1989 for such offence. The application was prosecuted and found guilty by the Court of Law and he was fined on 13.3.1989 by the ADC (J)/Mokokchung (FM-21/89 dated 13.3.1989), D copy of which is annexed herewith and marked as Annexure R-1."

7. By reason of the judgment and order dated 11th April, 2002 the Guwahati Bench of the Administrative Tribunal, E however, opined that the order of termination passed by the appellant was illegal, relying on and on the basis of the decision of this Court in *Shankar Dass Vs. Union of India and another* : (1985) 2 SC 358 opining as under:-

"In our view the respondents while resorting to the F impugned action acted in a most casual fashion. The order not allowing the applicant to continue in his duty is also cannot be sustained on the ground pleaded by the respondents in the written statement, wherein it is clearly indicated that they also took some of the alleged G misconduct without giving him any opportunity to rebut. In the circumstances, the order also appears to be punitive in nature."

It was directed:

H "4. For all the reasons stated above we are of the opinion

that the impugned order of termination is not sustainable in law and the action of the respondents are therefore held to be illegal and ultra vires. The respondents are accordingly directed to reinstate the applicant to the post forthwith. Since the order of termination is found to illegal (sic) illegal the applicant shall be entitled for all the back wages till 27.3.1997 i.e. the date on which the transfer application was dismissed for default along with all the services benefits including the benefit of regularization of service."

8. As the said order was not complied with, a contempt proceeding was initiated against the appellants. A writ petition was thereafter filed before the Guwahati High Court, aggrieved by and dissatisifed with the said judgment and order of the Tribunal. A Division Bench of the said High Court by reason of the impugned judgment and order dated 21st August, 2003, however, dismissed the same opining :-

"A bare reading of the written statement clearly indicates that the order of termination of service of the respondent is not on account of the fact that his service could not have been continued and that he does not have any right over that post. The termination of that (sic) he had misbehaved with his senior officers and he misused the vehicle and caused damage to the vehicle.

When the termination of the employee is on account of misconduct then he is entitled to be heard and given proper opportunity to explain his conduct. In absence of any enquiry being conducted by the appellants the order of termination could not have been issued as a measure of punishment of fine of Rs.30/- cannot be taken to be a misconduct for dismissal of the respondent from his employment. Under the aforesaid circumstances we do not find any good or sufficient reason to interfere with the order passed by the Central Administrative Tribunal, Guwahati."

9. Mr. N.M. Sharma, learned counsel appearing on behalf

A of the appellants would submit :

i) Claim of the respondent being based on the provisions of the Industrial Disputes Act, the Central Administrative Tribunal had no jurisdiction to entertain the matter.

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ii) Respondent having not claimed any back wages in the writ petition, he was not entitled thereto.

iii) He having been appointed only as casual labour on a daily rated basis, the scheme for regularization C was not applicable.

iv) He having no right to continue in the service, the impugned judgment is wholly erroneous.

v) The High Court committed a serious error in upholding D the order of the Central Administrative Tribunal.

vi) Having regard to Section 28 of the Administrative Tribunals Act, 1985 the only remedy of the respondent was to file an appropriate application before an Industrial Court.

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10. Mrs. K. Sarada Devi, learned counsel appearing on behalf of the respondent, on the other hand, submitted :-

i) Appellants themselves having contended that the Central Administrative Tribunal had the requisite F jurisdiction, cannot now turn around and contend that it did not have any jurisdiction.

ii) Respondent being a government servant, the Central Administrative Tribunal in terms of Section 14 of the G Act had the requisite jurisdiction to entertain the application.

iii) The order of termination having been issued arbitrarily, the impugned judgment is unassailable.

H 11. Respondent claimed himself to be a government

servant. He prayed for his recruitment as an employee of the Central Government. He filed a writ petition questioning the order of termination. He alleged arbitrariness on the part of the appellants in passing the said order of termination. In the said writ petition a contention was raised on behalf of the appellants that the respondent having an alternative remedy to move the Central Administrative Tribunal, the writ petition was not maintainable. The said contention was allowed. The application was transmitted to the Central Administrative Tribunal. If the writ petition was maintainable there cannot be any doubt whatsoever that the Central Administrative Tribunal had the jurisdiction to entertain the matter.

12. Section 14 of the Act reads as under :-

"Section 14 - Jurisdiction, powers and authority of the Central Administrative Tribunal. -(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to -

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning-

(i) a member of any All-India Service; or

(ii) a person not being a member of an All-India Service or a person referred to in clause (c) appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian not being a member of an All-India Service or a person referred to in clause (c) appointed to any

A defence services or a post connected with defence,

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of
B any corporation or society owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed
C to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation or society or other body, at the disposal of the Central Government for such
D appointment.

Explanation.-For the removal of doubts, it is hereby declared that references to "Union" in this sub-section shall be construed as including references also to a Union territory.

E (2) 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
F societies owned or controlled by Government, not being a local or other authority or corporation or society controlled or owned by a State Government:

Provided that if the Central Government considers it
G expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dated may be so specified under this sub-section in respect of different classes of or different categories under any class of, local or other authorities or corporations or societies.

H (3) Save as otherwise expressly provided in this Act, the

Central Administrative Tribunal 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 dale by all courts (except the Supreme Court) in relation to-

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation

(b) 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."

13. Reliance placed by Mr. Sharma on Section 28 of the said Act, in our opinion, is of no consequence. It reads :-

Section 28 - Exclusion of jurisdiction of courts except the Supreme Court

On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or post or service matters concerning members of any Service or persons appointed to any Service or post,[1] [no court except-

(a) the Supreme Court; or

(b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 (14 of 1947) or any other corresponding law for the time being in force,

shall have], or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or

A matters concerning such recruitment or such service matters.

14. In a case of the present nature where inter alia an employee maintains a writ petition not only on the ground of violation of equality clause enshrines under Article 14 of the B Constitution of India but also on the ground of violation of the provisions of the Industrial Disputes Act, 1947, he has an option to choose his own forum. Section 28 does not bar the jurisdiction of the Central Administrative Tribunal. It saves the jurisdiction of the Industrial Tribunal. An employee who claims himself to be a C workman, therefore, will have a right of election in the matter of choice of forum. It is, therefore, not correct to contend that the Central Administrative Tribunal had no jurisdiction to pass the impugned judgment. Furthermore the respondent claimed regularization in services. Such an application was D maintainable. As to whether he would be entitled to such a relief or not, however, is a different question.

15. A Tribunal indisputably was entitled to exercise its jurisdiction for enforcement of a fundamental right.

E 16. In any event the appellants themselves raised the contention as regards the jurisdiction of the Tribunal. It may be true that no jurisdiction can be conferred by consent but this Court while exercising a discretionary jurisdiction under Article 136 of the Constitution of India is entitled to take note thereof. It F may not allow a party to raise such a contention before it, having regard to its conduct..

17. The Tribunal and consequently the High Court were correct that the termination of the services of the respondent was illegal.

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18. He, according to the appellants, has committed a misconduct. His services had been terminated on that ground. But therefor he was entitled to an opportunity of being heard. A regular departmental proceedings should have been initiated against him; the order of termination being stigmatic in nature.

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While, however, granting a relief, the superior courts should take into consideration the factors relevant therefor, which, in our opinion, in the instant case are :-

a) Recruitment of the respondent was ex-facie illegal as prior thereto neither any advertisement was issued nor the employment exchange was notified in regard to the vacancy.

b) It does not appear that the respondent had even got himself registered with the Local Employment Exchange.

c) He being a daily rated casual employee did not have any right to continue in service.

19. Even in a case where an order of termination is illegal, an automatic direction for reinstatement with full back wages is not contemplated. He was at best entitled to one month's pay in lieu of one month's notice and wages of 15 days of each completed years of service as envisaged under Section 25-F of the Industrial Disputes Act. He could not have been directed to be regularized in service or granted any temporary status. Such a scheme has been held to be unconstitutional by this Court in *A. Umarani vs. Registrar, Cooperative Societies and others* : (2004) 7 SCC 112 and *Secretary, State of Karnataka and Ors. vs. Umadevi and Ors.* (2006) 4 SCC 1.

20. We are, therefore, of the opinion that grant of compensation in stead of a direction of reinstatement with back wages would meet the ends of justice.

21. In *Atyant Pichhara Barg Chhatra Sangh and another vs. Jharkhand State Vaishya Federation and others* : 2006 (6) SCC718 this Court while opining that affirmative action is subject to judicial review and while stating that unequals cannot be treated as equals upon noticing the decision of this Court in *Indra Sawhney vs. Union of India* : 1992 Supp (3) SCC 217, stated the law in the following terms :—

A "**23.** *Mandal Commission case* has specifically noted that there is no constitutional bar to a State categorising the Backward Classes as backward and more Backward Class. The State of Jharkhand by its actions seeks to disempower communities that have been extended the B benefits of reservation after a conscious adoption of the Bihar Act. What GO No. 5800 seeks to do by combining the Extremely Backward Class and Backward Class into one group is to treat unequals as equals thus violating the notion of substantive equality and Article 14 of the C Constitution of India bringing it within the purview of judicial review by the Court."

22. This Court in *Ajoy Kumar Banerjee vs. Union of India* : (1984) 3 SCC 127 has held as under :-

D "**50.** Differentiation is not always discriminatory. If there is a rational nexus on the basis of which differentiation has been made with the object sought to be achieved by particular provision, then such differentiation is not discriminatory and does not violate the principles of Article 14 of the Constitution. This principle is too well-settled E now to be reiterated by reference to cases. There is intelligible basis for differentiation. Whether the same result or better result could have been achieved and better basis of differentiation evolved is within the domain of legislature and must be left to the wisdom of the legislature. Had it F been held that the scheme of 1980 was within the authority given by the Act, we would have rejected the challenge to the Act and the scheme under Article 14 of the Constitution."

G It was further held :-

" **52.** It was further submitted on behalf of the respondents that the rationale, justification and the genesis of the law of nationalisation being the creation of economic instrumentalities to subserve the constitutional and H administrative goals of governance in a social welfare

society, the running of public sector undertakings is neither for profit earnings of the management nor for sharing such profits with the workmen alone but to utilise the investible funds available as a result of such ventures and undertakings for socially-oriented goals laid down by the governmental policies operating on the said sectors. In this connection reference was made before us to the decision in the case of *State of Karnataka* v. *Ranganatha Reddy."*

23. Even if the provisions of Section 25-F of the Industrial Disputes Act had not been complied with, respondent was only entitled to be paid a just compensation. While, however, determining the amount of compensation we must also take into consideration the stand taken by the appellants. They took not only an unreasonable stand but raised a contention in regard to absence of jurisdiction in the Tribunal. They admittedly did not comply with the order passed by the Tribunal for a long time. It had raised contention which are not otherwise tenable.

24. We, therefore, are of the opinion that in the peculiar facts and facts and circumstances of the case interest of justice shall be subserved if respondent is directed to be paid a compensation of Rs.1,50,000/- (Rupees one lakh fifty thousand only). The said sum should be paid to him within four weeks failing which it will carry interest @ 9% per annum.

25. The appeal is disposed of in the aforesaid terms with no order as to costs.

B.B.B. Appeal disposed of.