

State of Assam

Vs

Horizon Union & Anr.

Civil Appeal No. 1565 of 1966

(M. Hidayatullah, Raghuvar Dayal, S. M. Sikri)

23.09.1966

JUDGMENT

BACHAWAT, J.

This appeal by special leave raises the question whether respondent No. 2, Shri B.C. Dutta was qualified for appointment as the Presiding Officer of an Industrial Tribunal under s. 7A(3) of the Industrial Disputes Act, 1947. Section 7A inserted in the Industrial Disputes Act, 1947 by Act No. 36 of 1956 with effect from March 10, 1957 read as follows :-

"7A (1) The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule.

(2) A Tribunal shall consist of one person only to be appointed by the appropriate Government.

(3) A person shall not be qualified for appointment as the presiding officer of a Tribunal unless -

(a) he is, or has been a judge of a High Court; or

(b) he has held the office of chairman or any other member of the Labour Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950, or of any Tribunal, for a period of not less than two years."

Assam Act No. 8 of 1952 which received the assent of the President on April 25, 1962 inserted in s. 7A(3) after cl. (a), the following clause :-

"(aa) he has worked as a District judge or as an Additional District judge or as both for a total period of not less than three years or is qualified for appointment as a judge of a High Court;

Provided that the appointment to a Tribunal of any person qualified under this clause shall not be made without consultation with the Assam High Court; or".

In 1964, the Parliament passed the Industrial Disputes (Amendment) Act (No. 36 of 1964). This amending Act inserted in s. 7A(3) after cl. (a) the following clause;

"(aa) he has, for a period of not less than three years, been a District judge or an Additional District judge; or".

By an order of the State Government dated December 7, 1965, Shri Dutta was appointed the Presiding Officer of the Industrial Tribunal, Assam, Gauhati. Respondent No. 1 filed a writ petition in the Assam High Court challenging this appointment. The High Court quashed the appointment on the ground that Shri Dutta lacked the qualification required s. 7A(3). Counsel for the State of Assam submitted that Shri Dutta had been an Additional District Judge for over three years, and was, therefore, qualified for appointment. This submission involves consideration of the question whether Shri Dutta, while working as Registrar of the Assam High Court, held the office of an Additional District Judge.

The Assam Judicial Service (Senior) Rules, 1952 show that the strength of the Assam Judicial Service (Senior) and of each kind of post therein is as follows :-

##Senior Grade IRegistrar 1District Judges 3Senior Grade II.Additional District Judges 3.###

The Governor has power to increase the cadre by the creation of additional permanent or temporary posts. The post of Registrar is filled up by the Chief Justice preferably from Grade I or Grade II of the Service. Other posts in the cadre are filled up by the Governor in consultation with the High Court.

On August 16, 1954, Shri Dutta, then Officiating Subordinate and Assistant Sessions Judge, was appointed a temporary Additional District & Sessions Judge. While he was officiating as an Additional District Judge, his services were lent by the State Government to the High Court, he was temporarily promoted to Senior Grade I and on March 8, 1957 was appointed by the Chief Justice as the Registrar of the Assam High Court. It is not disputed that between August 16, 1954 and March 8, 1957 Shri Dutta held the office of an Additional District Judge. The record shows that until April 24, 1958 the Government continued to retain Shri Dutta in his office of Additional District Judge. On this footing, the Government passed an order on March 26, 1958, whereby Shri Dutta, then Officiating Registrar of the High Court, was confirmed in Senior Grade II with effect from February 16, 1957.

On April 24, 1958, he was confirmed in Senior Grade I with effect from May 2, 1957. On June 30, 1959, he retired from the office of the Registrar. The High Court was right in saying that under the Assam Judicial Service (Senior) Rules, 1952 the post of the Registrar was separate from that of the District Judge and Shri Dutta never held the office of the District Judge. But the High Court omitted to consider whether he continued to hold the office of an Additional District Judge after March 8, 1957. We are satisfied that during the period from March 8, 1957 up to April 24, 1958, Shri Dutta, while officiating as a Registrar of the High Court, continued to hold the office of an Additional District Judge. The High Court was in error in thinking that in order to satisfy the conditions of s. 7A(3)(aa), Shri Dutta should have actually worked as an Additional District Judge for a period of not less than three years. For over three years Shri Dutta held the post of an Additional District Judge. Consequently, during this period he had been an Additional District Judge as required by s. 7A(3)(aa). To satisfy the requirements of s. 7A(3)(aa) it was not necessary that he must have actually worked as an Additional District Judge for this period.

The appointment of Shri Dutta as the Presiding Officer of the Industrial Tribunal was made without

consultation with the High Court. Respondent No. 1 submitted that, consequently, there was no compliance with the proviso to s. 7A(3)(aa) inserted by Assam Act No. 8 of 1962. This contention has no force. In respect of the subject-matter of the appointment of a person who has for a period of not less than three years been a District Judge or an Additional District Judge, cl. (aa) inserted by Central Act No. 36 of 1964 impliedly repealed cl. (aa) inserted by the Assam Act. Clause (aa) inserted by the Central Act is intended to be an exhaustive code in respect of this subject-matter. The Central Act now occupies this field. The provisions of cl. (aa) inserted by the Central Act and by Art. 254 of the Constitution, to the extent of this repugnancy, is void. Clause (aa) of s. 7A(3) inserted by the Central Act does not require any consultation with the High Court.

It follows that Shri Dutta was duly qualified for appointment under s. 7A(3)(aa), and the order of the High Court must be set aside.

We may add that in respect of the subject of appointment of a person who is qualified for appointment as a Judge of a High Court, clause (aa) inserted by Assam Act No. 8 of 1962 including its proviso continues to be in force. But counsel for the State of Assam did not seek to justify the appointment of Shri Dutta under cl. (aa) inserted by the Assam Act.

It appears that before December 7, 1965, Shri Dutta had been the Presiding Officer of a Labour Court for over two years. Counsel for Shri Dutta submitted that he, therefore, held the office a member of a Tribunal and was qualified for appointment under s. 7A(3)(b). There is no force in this contention. Section 2(r) defines 'Tribunal'. It reads :

"Tribunal" means an Industrial Tribunal constituted under section 7A and includes an Industrial Tribunal constituted before the 10th day of March, 1957 under this Act."

Obviously, the first part of the definition in s. 2(r) cannot be fitted in s. 7A(3)(b). The expression 'Tribunal' in s. 7A(3)(b), therefore, means "an Industrial Tribunal constituted before the 10th day of March, 1957 under this Act." Thus, a person who held the office of the Chairman or any other member of an Industrial Tribunal constituted under s. 7 as it stood before March 10, 1957 is qualified for appointment under s. 7A(3)(b), though he may not be qualified otherwise for appointment under s. 7A(3). But a Labour Court is not a Tribunal within the meaning of s. 7A(3)(b) read with s. 2(r). Shri Dutta was, therefore, not qualified for appointment under s. 7A(3)(b).

In the result, the appeal is allowed with costs against respondent No. 1, the order of the High Court is set aside, and the writ petition is dismissed.

Y.P.

Appeal allowed.

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