

Andhra Pradesh State Electricity Board and others

Vs

M. A. Hai Azami and others

Civil Appeal No. 99 of 1981

(K. Jagannatha Shetty, V. Ramaswami, Yogeshwar Dayal JJ)

10.12.1991

JUDGEMENT

K. JAGANNATHA SHETTY, J.

1. The main question raised in this appeal relates to the Jurisdiction of the Andhra Pradesh Administrative Tribunal ('Tribunal') to entertain the claims of Government servants who are on deputation to the State Electricity Board. The answer to the question turns on the scope of paragraph (6) of the Andhra Pradesh Administrative Tribunal Order, 1975 ('The Order'). Relevant portion of paragraph (6) reads as under:

"Para 6. Jurisdiction, powers, and authority of the Tribunal :- (1) Save as otherwise expressly provided in this Order, the Tribunal shall exercise all the jurisdiction, powers and authority which immediately before the commencement of this Order were exercisable by all Courts (except the Supreme Court) with respect to appointment, allotment or promotion to any public post, seniority of persons appointed, allotted or promoted to such post and all other conditions of service of such persons.

(2) Nothing in sub-paragraph (1) of this paragraph shall apply to, or in relation to,-

(a) persons appointed on contract for a specified term or purpose;

(b) members of the All-India services;

(c) persons on deputation with the State Government or any local authority within the State being persons in the service of the Central or any other State Government or other authority;

(d) persons employed on a part- time basis; and-

(e) village officers."

2. The 'public post' referred to above has been defined under Explanation to paragraph (6) as:

"(a) all classes of posts in all civil services of the State;

(b) all classes of civil posts under the State; and

(c) all classes of posts under the control of any local authority within the State; .

(d)'local authority' does not include any local authority which is not subject to the control of the State Government".

3. The facts may briefly be stated : M.A. Hai Azami-respondent was an Upper Division Clerk in one of the Government departments. He was sent on deputation to the State Electricity Board. He continued in the Board as a Government servant on deputation. In the Board, he was placed in charge of the Accountant post. He was only given the pay and allowances of Upper Division Clerk, the cadre in which he was deputed to the Board. The respondent protested and claimed that he was entitled to be promoted as Accountant with the pay admissible to that post. The Board refused his demand. The respondent filed a suit for damages for the loss of regular pay of the Accountant post during the period when he worked as Accountant in charge. Upon the constitution of the Andhra Pradesh Service Tribunal, the suit was transferred to the Tribunal for disposal. The Board raised a preliminary objection as to the jurisdiction of the Tribunal to entertain the suit. It was contended that the respondent was not holding a public post under the Board, and the Tribunal has no jurisdiction to entertain any proceeding against the Board with regard to the condition of service of persons on deputation. The Tribunal rejected the preliminary objection. It has pointed out that the jurisdiction of the Tribunal extends inter alia, to a public post and the conditions of service of a person holding the public post. The jurisdiction of the Tribunal does not depend upon the character of the party against which the relief is claimed. Once it is established that the person is holding a public post and that the relief claimed is in respect of his service conditions, then the question whether he is seeking a remedy against the Government or against any other authority or both is immaterial. The Tribunal has further observed that since the respondent was a Government servant, it has jurisdiction to consider the respondent's claim even though he was working on deputation in the Board. The Tribunal then examined the merits of the matter and decreed the respondent's claim.

4. We cannot accept the reasoning of the Tribunal. Nor can it be sustained by the terms of paragraph (6) of the Order. Paragraph (6) of the Order could conveniently be dissected into two parts. The first part deals with the exclusive jurisdiction, power and authority of the Tribunal. It provides that the Tribunal shall exercise the jurisdiction, powers and authority which immediately before the commencement of the Order, were exercisable by all Courts (except the Supreme Court) with respect to appointment, allotment or promotion to any public post and all other conditions of service of such persons, The second part excludes the jurisdiction of the Tribunal in relation to persons specified under (a) to (e) mentioned thereunder.

5. The first question for consideration is whether the respondent stands excluded under clause (c) of sub-paragraph (2). Clause (c) refers to persons in the service of the Central Government or any other State Government or other authority serving on deputation with the State Government or any local authority. It does not cover a Government servant of the local State on deputation with any other authority in the same State. The respondent being a Government servant of the same State is, therefore, not covered by clause (c).

6. The next question for consideration is whether the respondent falls within the first part of the paragraph (6). There are two requirements for the Tribunal to have the jurisdiction: (i) the relief sought must be with respect to appointment, allotment or promotion to any public post, (ii) seniority of persons appointed, allotted or promoted to the public post and all other conditions of the service

of such persons. It is essential that the relief must be in relation to entitlement to any public post or to the conditions of service of persons occupying the public post. If the relief claimed is unconnected with the public post and independent of service conditions thereof, the Tribunal will have no jurisdiction to deal with such claim.

7. In the instant case, the respondent no doubt occupied a public post in his parent department, but he did not seek relief relatable to that post. He claimed salary admissible to the promotional post of the Accountant in the Board. He claimed damages representing the loss accrued to him by denial of salary of the post of Accountant in the Board. He was not entitled to the post of Accountant nor the salary admissible to him by the conditions of service available to him in his parent department. His promotion as Accountant or put it more appropriately as Accountant-in-charge was not given to him on the basis that he was entitled to that post on the next below rule in his parent department. The Tribunal, therefore, has no jurisdiction to entertain his claim.

8. In this view of the matter, the order of the Tribunal cannot be sustained. The respondent, however, will be entitled to the benefits of the decision of the Tribunal as per the order of this Court dated December 10, 1980. This Court while granting leave has made it very clear that irrespective of the decision in this appeal, the direction of the Tribunal will be implemented by the petitioners.

9. The appeal is accordingly disposed of. No costs. Order accordingly.

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