

SUPREME COURT OF INDIA

Union of India

Vs.

Gobinda Prasad Mula

C.A.No.8772 of 2012

(H.L.Dattu and Chandramauli Kr.Prasad JJ.)

05.12.2012

ORDER

1. Leave granted.

2. The Union of India and its functionaries, viz. the Squadron Leader, Wing Commander and Station Commander are the appellants before us in this appeal by special leave. The appellants call in question the correctness or otherwise of the judgment and order passed by the High Court of Calcutta in WPCT No. 788 of 2004, dated 22.07.2008. By the impugned judgment and order, the High Court has confirmed the order passed by the Central Administrative Tribunal, Calcutta Bench (for brevity “the Tribunal”) in Original Application No. 789 of 2002, dated 07.07.2004.

3. It is essential to briefly outlay the facts that led to this appeal before us. The respondent herein was employed as Manager in a Unit Run Canteen (for brevity “the URC”) of Air Force Station in Kumbhigram, Assam. On 06.03.2000, he was served with a notice by the appellants to show-cause as to why he should not be terminated from service for certain acts and commissions said to have been committed by him during the course of his employment at the URC. The said show-cause notice was replied by the Respondent-herein on 09.03.2000, denying the charges alleged against him. Thereafter, the appellants have passed an order terminating the service of the Respondent with effect from 31.08.2000.

4. Being aggrieved, the respondent had filed a representation on 24.05.2002 before the Competent Authority and thus Conciliation Proceedings were drawn up.

However, the Competent Authority reached the conclusion that the Respondent is not a workman under the provisions of the Industrial Disputes Act, 1947 and, therefore, did not adjudicate upon the claim of the applicant.

5. The Respondent, after failure of the aforesaid Conciliation Proceedings, had called in question the order of his termination, dated 31.08.2000, passed by the appellants by filing Original Application No. 789 of 2002 before the Tribunal. After service of notice, the Appellants-herein had filed their detailed objections and resisted the claim of the Respondent. By way of preliminary objection, they had raised contentions, inter alia, that the Tribunal lacks jurisdiction to entertain the application on the grounds that neither the Respondent is a resident of Calcutta nor does the cause of action arise in Calcutta and also that the Respondent is neither a public servant nor does he hold a civil post within the meaning of Article 311 of the Constitution of India, 1950. Various other grounds were raised which, in our opinion, need not be noticed by us.

6. The Tribunal, while deciding the specific issue in respect of the Respondent of not being a public servant, has relied upon a decision of this Court in *Union of India v. M. Aslam*, (2001) 1 SCC 720 and has concluded that an employee of a URC holds a civil post and, therefore, the application of the Respondent before the Tribunal is maintainable. In the words of the Tribunal:

“As regards the other objection that the applicant is not a public servant, this Bench of the Tribunal does not have any jurisdiction over the service matters otherwise also. This objection of the learned counsel for the respondents cannot be sustained since the issue relating to the territorial jurisdiction of this Bench of the Tribunal in the case of employees of URCs has already been adjudicated upon by the Supreme Court in the case of the *Mod. Aslam Khan* (Supra) wherein their lordships have categorically held that CAT would have jurisdiction in respect of the service matter of canteen employees and also those employees of URC. Thus this objection of the respondents also has no locus standi and the same stands repelled. We find that the other preliminary objections are also just an objection and ancillary to the objection which we have already dealt with. Thus the same would not obstruct us to proceed further in the matter on merits.”

Accordingly, it had answered the aforesaid issue in favour of the Respondent. Thereafter, on merits of the matter, it came to the conclusion that the appellants, without holding an inquiry, could not have terminated the

services of the Respondent and therefore, quashed the order of termination, dated 31.08.2000.

7. Being aggrieved by the order passed by the Tribunal, the Appellants had filed Writ Petition before the High Court of Calcutta in WPCT No. 788 of 2004. The High Court has decided the writ petition on merits and rejected the Writ Petition by confirming the orders passed by the Tribunal.

8. The appellants are now calling in question the correctness or otherwise of the impugned judgment and order passed by the High Court.

9. Shri Rakesh Khanna, learned Additional Solicitor General appearing for the appellants, submits that as the Respondent-herein does not hold a civil post, he could not have approached the Tribunal for redressal of his grievances, if any. In support of his submissions, the learned Addl. Solicitor General relies on the observations made by a three Judge Bench of this Court in R. R. Pillai (Dead) through LRs. v. Commanding Officer, Headquarters Southern Air Command (U) and Others, (2009) 13 SCC 311, wherein this Court has specifically over-ruled the observations made in Aslam's case (supra) and held that the employees of URCs run by Army, Navy and Air Force are not government servants.

10. Shri S.K. Bhattacharya, learned counsel appearing for the Respondent submits that the Tribunal and the High Court have not committed any error which would call for an interference of this Court. Further, he submits that the Tribunal was justified in entertaining the application filed by the Respondent and answering the claim of the Respondent affirmatively.

11. The bone of contention so canvassed before us relates to the question of Respondent holding a civil post and thus being subject to the jurisdiction of the Tribunal. However, from the discussions in the impugned judgment and order of the High Court no indication could be gathered as to whether the Appellants-herein had canvassed the issue pertaining to the jurisdiction of the Tribunal to entertain the application filed by an employee working in a URC or not. However, we are informed, by learned Additional Solicitor General, of such issue being canvassed before the High Court but not considered. Be that as it may.

12. We have perused the observations made by the Tribunal insofar as the answer to the preliminary objection raised by the Appellants, i.e., to hold that the Respondent-herein holds a civil post relying upon the observations made in

Aslam's case (supra), is concerned. The said decision has now been over-ruled by the decision of three Judge Bench of this Court in R.R. Pillai's case (supra), wherein this Court has specifically observed that an employee working in a URC canteen is not the holder of a civil post. The relevant paragraphs are extracted below:

“12. The factors highlighted to distinguish Chotelal case ((1999) 1 SCC 554) in our considered opinion are without any material. There was no scope for making any distinction factually between Aslam case and Chotelal case. In our view, therefore, Aslam case was not correctly decided.

15. It is to be noted that financial assistance is given, but interest and penal interest are charged. URCs can also borrow from financial institutions. The reference is answered by holding that employees of URCs are not government servants.”

13. In view of the observations made in the above-said decision, in our view, the Tribunal was not justified in entertaining the application filed by the Respondent and should not have answered the prayer in the application in favour of the Respondent.

14. Resultantly, while allowing this appeal, we set aside the orders passed by the Tribunal and the High Court in Original Application No.789 of 2008, dated 07.07.2004 and Writ Petition No.788 of 2004, dated 22.07.2008, respectively. We further reserve liberty to the respondent, if he so desires, to approach the appropriate forum for redressal of all his grievances. No order as to costs.

Ordered accordingly.