
(2005) 05 MP CK 0019

Madhya Pradesh High Court

Case No: Writ Petition No. 11916 of 2004

Champalal Pachore
and Others

APPELLANT

Vs

Union of India (UOI)
and Others

RESPONDENT

Date of Decision: May 5, 2005

Acts Referred:

- Administrative Tribunals Act, 1985 - Section 14, 14(1), 28, 29, 3
- Constitution of India, 1950 - Article 136, 226, 311
- Factories Act, 1948 - Section 59, 59(1)
- Payment of Wages Act, 1936 - Section 17

Citation: (2005) 4 MPHT 407 : (2006) 1 MPLJ 27

Hon'ble Judges: R.V. Raveendran, C.J; Shantanu Kemkar, J

Bench: Division Bench

Advocate: S.K. Rao, for the Appellant; Anjali Banerjee, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

R.V. Raveendran, C.J.

The petitioners are para-medical staff of the Ordnance Factory, Itarsi (which is a Unit of Ordnance Factory Board) run by the Ministry of Defence, Government of India, registered as a "Factory" under the Factories Act, 1948. According to the petitioners, the prescribed working hours of the Factory was 44-3/4th hours in a week. The Ordnance Factory issued an order/circular granting employees who work beyond 44-3/4th hours in a week, over-time allowance at single rate, up to 48 hours a week. The petitioners were paid overtime (single rate) as per the said order upto March, 1991. However, it was stopped between April 1991 to April, 1998. It was again paid from May, 1998. Being aggrieved by

the non-payment between April, 1991 to April, 1998, petitioners approached the Central Administrative Tribunal, Jabalpur Bench in O.A. No. 725 of 1999 seeking a direction to the respondents to pay them overtime allowance for the said period at single rate for the overtime work beyond 44-3/4th hours.

The Tribunal dismissed the petition by order dated 2-12-2003 holding that it had no jurisdiction to adjudicate upon that issue. It did not assign any reason for its decision but stated that the matter was covered by the order of the Full Bench dated 9-8-2002 rendered in O.A. No. 192 of 1995 (A.C. Choube v. Union of India). The said order of the Tribunal is challenged in this petition on the following grounds:

(a) Having regard to the definition "Service Matters" in Section 3(q) read with Section 14 of the Administrative Tribunals Act, the Tribunal has jurisdiction to decide a matter relating to overtime allowance. The decision of the Tribunal that it had no jurisdiction to decide matters relating to overtime, amounts to refusal to exercise a jurisdiction vested in it.

(b) The decision in A. C. Choube related to a question whether the Tribunal has jurisdiction to entertain a grievance for grant of over-time allowance payable u/s 59 of the Factories Act, 1948. The said decision has no relevance as the petitioners' claim was not u/s 59 of the Factories Act but in pursuance of a circular issued by the employer extending the benefit of overtime at single rate for the period of work beyond 44-3/4th hours.

To find an answer to these questions, reference to some of the provisions of the Administrative Tribunals Act, 1985 ("Act" for short) is necessary.

1. Section 3(q) defines "Service Matter" as follows:

""Service matters", in relation to a person, means all matters relating to the conditions of his service 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, as the case may be, of any corporation or society owned or controlled by the Government, as respects--

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
- (iii) leave of any kind;
- (iv) disciplinary matters; or
- (v) any other matter whatsoever."

2. Section 14 of the Act relates to jurisdiction, power, authority of the Tribunal. Relevant portion of Sub-section (1) thereof is extracted below:

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

(a) recruitment, and matters concerned 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 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 any corporation or society owned or controlled by the Government; The appointed day in relation to establishment of Central Administrative Tribunal is 1-11-1985."

3. Section 28 relates to exclusion of jurisdiction of Courts. It is extracted below:

"Exclusion of Jurisdiction of Courts except the Supreme Court under Article 136 of the Constitution.-- On and from the date from which any jurisdiction, power 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, no Court except--

(a) the Supreme Court; or

(b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force, shall have, or be entitled to exercise any jurisdiction, power or authority in relation to such recruitment or matters concerning such recruitment or such service matters."

On and from the appointed day (1-11-1985), having regard to Section 14 of the Act, the Central Administrative Tribunals are empowered to exercise the jurisdiction, power and authority in regard to recruitment and all service matters, which were exercisable by all

Courts (except Supreme Court) immediately before that date. Section 28 provided that on and from the day from which any jurisdiction, power or authority becomes exercisable by the Administrative Tribunals under the Act in relation to recruitment and service matters, no Court (except the Supreme Court or any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any corresponding law for the time being in force), shall exercise any jurisdiction, power or authority in regard to such matters. On a combined reading of Section 14 and Section 28, it is clear that the jurisdiction vested in Tribunals u/s 14 is the jurisdiction that was being exercised prior to 1-11-1985 by the High Courts under Article 226 of Constitution, and by the Civil Courts, with reference to recruitment and service matters. On and from the appointed day, High Court and Civil Courts, ceased to exercise jurisdiction in regard to recruitment and service matters of Government servants. If any service matter was triable by an Industrial Tribunal, or Labour Court or other authority under the Industrial Disputes Act, 1947, or corresponding law before 1-11-1985, the constitution of the Administrative Tribunal did not affect their jurisdiction to continue to try such service matters after 1-11-1985 by virtue of the jurisdiction vested in them under the Industrial Disputes Act or any corresponding law.

Prior to the constitution of Administrative Tribunals, Government servants and employees of statutory Corporations having a grievance in a service matter could seek redressal either:

(a) by approaching the High Court with a petition under Article 226 if there was violation of his fundamental rights or statutory rights, or contravention of Article 311;

(b) by approaching the Labour Court/Industrial Tribunal/other authority constituted under the Industrial Disputes Act, 1947 or any corresponding law (if the employee fell under the definition of "Workman" for purposes of Industrial Disputes Act or "employee" who was entitled to benefits under the corresponding laws); or

(c) by approaching Civil Courts where its jurisdiction was not expressly or impliedly barred.

After the constitution of the Administrative Tribunals, a Government servant instead of approaching the High Court or Civil Court, has to approach the Administrative Tribunal in regard to all service matters. The Scheme of the Act shows that Administrative Tribunals were to become the substitute forum (in place of writ petitions in High Court and suits in Civil Courts) for resolution of all disputes relating service matters of Government servants and notified Authorities. The scheme of the Act also shows that Administrative Tribunals were not intended to take over service matters which fell within the jurisdiction of Labour Courts/Industrial Tribunals/other Authorities constituted under Industrial Disputes Act or any other corresponding law. But even in regard to a service matter falling within the jurisdiction of Industrial Tribunal/Labour Court/other authorities constituted under the Industrial Disputes Act or other corresponding law, if the High Court would or could have

entertained petitions for judicial review under Art. 226, in view of any alleged violation of fundamental or statutory right before the appointed day, Tribunals will, and in fact should, entertain such matters after the appointed day.

Prior to 1-11-1985, a writ petition under Article 226 of the Constitution would have been entertained if it was alleged that an allowance payable under a circular issued by a Government Department was arbitrarily denied to a section of employees and that affected the fundamental right or statutory right or a legal right of such employees in an arbitrary manner, such a writ petition would have been entertained though the issue was one that could have been agitated before the Industrial Tribunal or Labour Court constituted under the Industrial Disputes Act. The High Court would have refused to entertain such writ petition only if there was a serious dispute in regard to material facts which could not conveniently be decided in a writ proceeding. If the High Court would have entertained a petition under Article 226 in regard to arbitrary denial of overtime allowance in accordance with a prevalent circular to a section of employees, it follows that on and from the appointed day (1-11-1985), the Tribunal constituted under the Act would also be competent to entertain such a matter. The mere fact that there was scope for the employees to raise a dispute in the matter under the Industrial Disputes Act, by itself is not sufficient to deny the jurisdiction of the Tribunal to decide such disputes. What determines the jurisdiction of the Tribunal is Section 14 and not Section 28. It should be noticed that Section 28 is not a provision relating to exclusion of the jurisdiction of the Administrative Tribunal, but it is a provision relating to exclusion of jurisdiction of Courts. It makes it clear that even after the appointed day, when the Tribunal got jurisdiction in regard to matters relating to recruitment or service matters, the existing jurisdiction of any Labour Court or Industrial Tribunal to deal with the service matters under the provisions of the Industrial Disputes Act will not be taken away.

The word "remuneration" used in the definition of "Service matters" is the consideration paid or payable to the employees for the services rendered by him, including overtime allowance and other allowances. Any dispute relating to overtime allowance would therefore squarely fall under the definition of the term "Service matter". A claim for overtime allowance based on a departmental circular would have been entertained by the High Court under Article 226 prior to 1-11-1985. Therefore, the Tribunal will have jurisdiction to try the said matter u/s 14 of the Act, on and from 1-11-1985.

At this juncture, we may refer to A.C. Choube, decided by a Full Bench of the Tribunal and relied on by the Tribunal in this case. That case related to the question whether the Administrative Tribunal had jurisdiction to entertain any grievance of the employees of Bank Note Press, for grant of "overtime" as provided u/s 59 of the Factories Act, 1948. Section 59 of the Factories Act provides that where a worker works in a factory for more than 9 hours in a day or for more than 48 hours in any week, he will, in respect of the overtime work, be entitled to wages at the rate of twice his ordinary rate of wages. The Full Bench of the Tribunal held that Factories Act, 1948 being a corresponding law referred to in Section 28(b) of the Act, Tribunal had no jurisdiction to entertain an

application for grant of overtime allowance u/s 59 of the Factories Act, 1948. The claim for overtime allowance in this case, is not for twice the ordinary rate provided u/s 59(1) of the Factories Act, which deals with work beyond 48 hours in a week or beyond 9 hours in a day. In this case, overtime is not claimed in regard to any period in excess of 48 hours in any week or 9 hours in a day but in regard to the period in excess of 44-3/4th hours in pursuance of the circular issued by the employer providing for grant of overtime allowance at single rate. Therefore, decision in A.C. Choube was not of assistance and the Tribunal erred in relying on that decision. We however agree with the view expressed in A.C. Choube, that Administrative Tribunals are not substitutes for the Labour Courts/Industrial Tribunals or other authorities constituted under the Industrial Disputes Act or any corresponding law, nor do the Administrative Tribunals exercise concurrent jurisdiction in regard to all matters over which Labour Courts/Industrial Tribunals constituted under the Industrial Disputes Act, 1947 have jurisdiction. But whatever matters were amenable to writ jurisdiction prior to 1-11-1985, became amenable to the jurisdiction of the Administrative Tribunals with effect from 1-11-1985.

The decision of the Supreme Court in [Krishan Prasad Gupta Vs. Controller, Printing and Stationery](#), is also not applicable. In that case, the question considered was whether the appeals pending in the Court of District Judge u/s 17 of the Payment of Wages Act were liable to be transferred to the Administrative Tribunal u/s 29 of the Administrative Tribunals Act, 1985 for disposal on merits, or whether the jurisdiction of the District Judge to hear and decide the appeals u/s 17 of the Payment of Wages Act remains undisturbed. The Supreme Court examined the question whether Payment of Wages Act was a "corresponding law" with reference to Industrial Disputes Act, 1947, for the purposes of Section 28 of the Act and therefore whether the jurisdiction of the District Courts as Appellate Authorities under the Payment of Wages Act remained undisturbed by the establishment of Administrative Tribunals. It answered the question in the affirmative and held that the jurisdiction of an Authority established under the Payment of Wages Act to entertain and decide claims under the Payment of Wages Act was not affected by the establishment of Administrative Tribunals.

We are therefore of the view that the Administrative Tribunals have jurisdiction to decide the question relating to overtime allowance payable by a Government Department in terms of its circular. We therefore allow this petition, set aside the order of the Tribunal dated 2-12-2003 in O.A. No. 725 of 1999 and remand the matter to Central Administrative Tribunal, Bench Jabalpur to entertain and consider the matter and dispose of the matter on merits.