(1989) 01 MP CK 0017

Madhya Pradesh High Court (Gwalior Bench)

Case No: Miscellaneous Petition No. 8 of 1988

Vijay Singh Jadon		APPELLANT
	Vs	
State of Madhya Pradesh and Others		RESPONDENT

Date of Decision: Jan. 6, 1989

Acts Referred:

- Administrative Tribunals Act, 1985 - Section 15, 19, 20, 28
- Constitution of India, 1950 - Article 14, 16, 21, 226, 309

Citation: (1990) 1 LLJ 583 : (1989) MPJR 442 : (1988) MPLJ 640

Hon'ble Judges: T.N. Singh, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

T.N. Singh, J.

In this matter, we had passed an interim order on 5th September 1988, since reported in 1988 MPLJ 640. By that order, we decided the general question as to whether all petitions concerning "service matters" filed in this Court at this Bench under Article 226 of the Constitution would stand automatically "transferred" to the M.P. State Administrative Tribunal, for short, the ''Tribunal'', established on and from 2nd August 1988. We took the view that Benches of the said Tribunal not being established at the existing "seats" of this Court such as this Bench, there would be no automatic transfer of those cases to the "principal seat" of the Tribunal established at Jabalpur under State Government Notification dated 28th August 1988.

Accordingly, the instant petition as also other petitions involving "service matters" have been retained at this Bench''s Registry, to be dealt with in accordance with the directions made by us in the order passed on 5th September 1988. In this petition,

as also in several other petitions, another question of jurisdiction remained to be determined which we are deciding today. It is contended that not all types of "service matters" and cases of not all classes of petitioners are to be dealt with by the Tribunal, Only in those cases in which the Tribunal has been expressly vested with jurisdiction under Sections 15 and 19 of the Administrative Tribunals Act, 1985, for short, the ''Act'', this Court has no jurisdiction with respect to pending cases as also cases instituted after establishment of the Tribunal. It is further contended that Section 28 of the Act does not contemplate total exclusion thereunder of this Court''s jurisdiction with respect to "service matters"", under Article 226 of the Constitution, as all classes of persons in the employment of the State are not required to go to the Tribunal.

In this petition, as also in M.P.Nos. 1266 and 1300 of 1988, listed for analogous hearing on the preliminary question, the petitioners had been employed on daily wages. We would, therefore, confine our decision in this matter to the case of petitioners only of that class. This decision shall apply to all other pending petitions of the same type though those have not been listed for analogous hearing with these three matters and indeed, also to all future cases, to be instituted in this Court by the petitioners of same class.

Before we refer to the provisions of the Act, we consider it appropriate to refer first to its Preamble. In the long title of the Act, it is said that the Act is meant to "provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State...". Although the term "post" is defined in Section 3, it has little conceptual content and indeed, the term "services" too, unfortunately, is similarly defined therein. The two terms respectively mean, post/service "within or outside India". Neither the term "public service", nor "civil service" used in Section 15 are defined; though the term "service matter" is elaborately defined under Clause (q) to mean, in relation to a person, "all matters relating to the conditions of his service in connection with the affairs of the Union or of any State..." Sub-clauses (i) etc. of Section 3(q) particularise the matters, though the residuary Sub-clause (v) speaks of "any other matter whatsoever". Clause (r) of the same Section defines the term "service rules as to redressal of grievances" to mean, "the rules, regulations, orders or other instruments or arrangments as in force for the time being with respect to redressal, otherwise than under this Act, of any grievance in relation to such matters".

Chapter II of the Act contemplates establishment of Tribunals and Benches thereof and of that Chapter, Section 4(2) provides for establishment of a State Administrative Tribunal "to exercise the jurisdiction, powers and authority'' conferred on the Administrative Tribunal for the State by or under this Act." Chapter III deals with jurisdiction, powers and authority of Tribunals and of that Chapter, we propose to quote a portion of Section 15(1) having primal relevance to the question

mooted for our decision in these matters:

"15. Jurisdiction, power and authority of State Administrative Tribunals.- (1) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State 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 civil service of the State or to any civil post under the State;

(b) all service matters concerning a person (not being a person referred to in Clause (c) of subsection (1) of Section 14), appointed to any civil service of the State or any civil post under the State and pertaining to the service of such person in connection with the affairs of the State..."

Chapter IV is captioned "procedure" of which Section 19 provided that "Subject to the other provisions of this Act, a person aggrived by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance". In the same Chapter, Section 21 speaks of the bar of limitation, in case of an application made to the Tribunal as per Section 19. But, importantly, as per Section 20, the Tribunal is not to "ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redresal of greivances". As per Section 22(2), the Tribunal is required to decide every application made to it as "expeditiously" as possible. Section 28 provides for "exclusion of jurisdiction of courts" but saves expressly the jurisdiction of the Supreme Court as also of an Industrial Tribunal, Labour Court, or other authority constituted under the Industrial Disputes Act or under any corresponding law. The exclusion is meant to be effective 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,...." .

Counsel for the petitioners, Shri H.N. Upadhyaya, has submitted, rightly indeed, that the provisions of the Act are to be construed strictly as indicated by the language used in the afore-extracted provisions and indeed, in the light of judicial dicta of their Lordships of Apex Court in S.P. Sampath Kumar and Others Vs. Union of India (UOI) and Others, and other decisions of that Court. Indeed, this contention is based on what we had observed in our order passed on 5th September, 1988 in this matter which appear at paras 7-A, 14, 15 and 20 of the Reports to the effect that the Act survives today on the Statute Book by the force and effect of Article 141. The constitution of Tribunals, in virtue of entitlement created under Article 323A, it has been judicially said at the highest level, is meant to provide for an "alternative institutional mechanism" for judicial review. Evidently, an existing mechanism,

though affected, is not abrogated. This position is manifested indeed in the language of Clause (3) of Article 323A under which the parameters of the derogation are clearly drawn in terms of Clauses (1) and (2) themselves. As per Clause (1) of Article 323A, Parliament is enabled to provide by law enacted for that purpose "for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State...". As per Sub-clause (b) of Clause (2), such a law when enacted, has to "specify the jurisdiction, power and authority which may be exercised" by the Tribunals and according to Sub-clause (d), exclusion of jurisdiction of courts "with respect to dispute or complaints referred to in Clause (1)" has also to be provided in such a law.

We have no doubt, therefore, that the afore-quoted provisions of Sections 15, 19 and 28 of the Act, in particular, are to be read conjointly and construed in a manner that would conform to the parameters of the entitlement evisaged under Article 323A. Indeed, when the Act was amended, by Section 2 of Central Act No. 19 of 1986, among other provisions, the Preamble of the Act was amended and the expression "in pursuance of Article 323A of the Constitution" was inserted therein. If this exercise had any meaning, according to us, it was so done to indicate clearly that powers of High Courts under Articles 226 and 227 of the Constitution to deal with such matters and such cases as were not expressly contemplated under Article 323A had to remain untouched and that the Tribunals had to act as "alternative mechanism" of judicial review within specified parameters. The amendment came in the wake of the view that was expressed by the Apex Court in Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, ; Kamal Kanti Dutta and Others Vs. Union of India (UOI) and Others, and of what transpired immediately in the case of S.P. Sampath Kumar (supra) in which the interim order was passed on 31st October, 1985, as reported in S.P. Sampath Kumar and Others Vs. Union of India (UOI) and Others, .

For a period of over 31/2 decades, High Courts had been exercising powers under Article 226 of the Constitution of issuing, inter alia, writs of mandamus and making directions of the like nature to enforce Fundamental Rights of all classes of citizens as also their statutory rights, to give full effect and meaning to the provisions of Part III of the Constitution. When the Act was brought on the Statute Book in 1985, that position was kept in view and the Parliament was not unmindful of the fact that a citizen qua citizen, even if he had taken, or aspired for an employment, under the State, was not to be denied access to the High Court to enforce his Fundamental Rights under Articles 14, 16 and 21, except to the extent provided otherwise in the Act. In this context, relevance of what was observed in State of Maharashtra Vs. Chandrabhan Tale, comes into focus. The Republican era waited too long for that pronouncement, made at the highest judicial level in that case, that "public employment opportunity is national wealth" (p.261) in the absence of which perceptions of those required to deal with citizens in public employment in

accordance with the constitutional provisions, under the constitutional set-up of the Socialist Democratic Republic, had remained rooted in colonial values and ethics, For far too long, stress had been laid on "Master-Servant" relationship even while considering any grievance of a citizen in public employment after the Constitution has been ordained, forgetting that the colonial "Master" had packed off and left for good the shores of this country yielding the place to an impersonal and autochthonous Constitutional authority.

9A. Under the Republican set-up, the instrumentalities and functionaries of the State have to act within defined authority to project the State as a benevolent patriarch; and all citizens in the employment of the State are required to so conduct themselves that the "national wealth" is not squandered, but is turned productive and socially benefical. A State functionary managing the wealth in any manner is forbidden to look upon it as his personal domain or private property and he is required to discharge his special trust in the manner conducive to the welfare of each and every soul, living within the territorial domain of the State. In our Socialist Democratic Republic, there is no privileged class of "masters", unaccountable to anybody. Any citizen in public employment wronged by his "Boss" is entitled to complain of infraction of any one or more right enshrined in Part III and complain also of failure by the State to discharge its duty, in respect of the provisions of Part IV of the Constitution. This change in persecution is brought home to bureaucrats and administrators by judicial activity undertaken at the highest level, which is amply reflected in recent decisions of the Apex Court. (See- Dhirendra Chamoli and Another Vs. State of U.P., ; Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others, ; Daily Rated Casual Labour Employed under P and T Department Vs. Union of India (UOI) and Others, . The same view is manifested also in decisions deprecating "hire and fire" policy of State and its undertakings. See- Deshbandhu''s case (AIR)1985 SC 700 , Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, ; Bhagwan Dass and Others Vs. State of Haryana and Others, ; L. Robert D''souza Vs. Executive Engineer, Southern Railway and Another, ; Ratanlal, (1986-I-LLJ- 23). By now, it is well-settled that "right to continue" in public employment of a citizen cannot be lightly tinkered with and that any grievance concerning infraction of the right has to be tested with reference to Articles 14, 16, 21, 37, 38, 39, 41, 42 and 43 of the Constitution.
The Parliament must be supposed to have kept in view the interaction and inter-relation of the provisions of Parts III, IV, XIV and the newly-enacted Part XIV-A of the Constitution when it decided to make a new law in terms of the Act with a limited object. Though protection against bureaucratic peril provided by High Courts was appreciated and regarded indispenable, an "altenative mechanism" to speed up the process was considered necessary. The legislative history of the Act has been elaborately stressed in para 19 of the Report in Sampath Kumar (supra). If Article 323A is juxtaposed with Article 309, something more, however, becomes clear. Under our Constitutional dispensation when a person is employed by the State, his

recruitment and conditions of service are required ordinarily to be governed by statutory Rules so that he is not subjected to the whim or caprice of his "boss" who is not informed of constitutional values and imperatives and may like to act as a "Master" or a private employer. The security of tenure of a person in the service of the State is evidently regulated by Article 309, but he is also provided with special safeguards contemplated under Article 311 so that even when statutory Rules are made with respect to his conditions of service, no derogation thereunder is possible of safeguards constitutionally granted under Article 311. No doubt, therefore, the Parliament had in view the fact that the largest segment of citizens in public employment would be of such persons who would be holding a "post" mentioned in Articles 310 and 311. The Tribunals created under the Act can be resonably supposed to deal with the grievance of such persons, namely, of only such persons employed "in connection with the affairs of the Union or of any State" as are "appointed to public service and posts". That is the clear intent of the language of Article 323A(1) and in terms of the provisions of Clauses 2(a), 2(d) and 3, the Act has to operate within those constraints. No wonder, therefore, that in its long title and also in the provisions of Clauses (a) and (b) of Section 15(1) of the Act is manifested compliance with the Constitutional requirement of Article 323A.

The jurisdiction exercisable by the Tribunal u/s 15 is expressly circumscribed in terms of Article 323A(2)(b) to deal with matters which concern a person who stakes claim to recruitment to "any civil service of the State or to any civil post under the State" or is "appointed to any civil service of the State or to any civil post under the State". It is indeed only such a person who is entitled to make an "application" to the Tribunal for the redressal of his grievance. We have no doubt that Sections 15 and 19 are to be read together and that view is supported by what is to be read in Section 20. The Act presupposes that those persons who are to come to the Tribunal are governed by some "Service Rules" and, therefore, as per Section 20, they are required to exhaust first the remedies available to them under those Rules. Indeed, it is for that matter that the term "Service Rules as to redressal of grievance" is defined in Section 3(r). True, the definition of the term "service matter" does not speak of "civil service of the State" or even of "civil post under the State", but Section 15(1)(b) clearly circumsribes Tribunal''s jurisdiction with reference, primarily, to the class of persons mentioned therein, indicated by the crucial and imputable requirement of his being duly ''appointed to any civil service of the State or to any civil post under the State", which is common in its essential part to Articles 309-311 323A of the Constitution as also Clauses (a) and (b) of Section 15(1) of the Act. That position is made further clear by the conjunction "and" which appears before the words ''pertaining to the service of such person" in Clause (b) and indeed also by the word "such" herein underlined in this sentence.

11A. Evidently, the key-words are "appointed", "civil service" and "civil post". If the context and setting of these words and expressions must match the object and purpose of the relevant provisions of the Constitution and the Act, the conclusion

which is inevitable is that the class of persons for which the Act cares is not that class as is composed of casually employed persons who have no statutory right to seek, or continue in, employment under the State. According to the Shorter Oxford Dictionary, the word "appoint", at legal parlance, means to declare an appointment under a power; and even ordinarily it means, to determine authoritatively. The term evidently connotes vesting in the person appointed some manner of right providing security to his tenure, under statutory contract or statutory provisions. Much difference lies between an appointment made and an employment provided, as indicated by meaning of the term "employ" given in the same dictionary. A person is said to be employed when he finds in any manner, for any period, any work or occupation. Indeed, as indicated in Banarsi Das and Others Vs. The State of Uttar Pradesh and Others, by the Constitution Bench, in an "appointment" in Government service, there is an element of "selection", to be made according to prescribed procedure, of person conforming to prescribed standards.

Like the word "appointed", the other two key expressions "civil service" and "civil post" also carry technical meaning. No doubt, the word "civil" is merely of qualitative content to identify the character of "service" and "post" as a person may be employed by the State not only in a civilian, but also in a defence establishment. According to the Shorter Oxford Dictionary, the term "service" means, inter alia, "the condition or employment of a public servant of a sovereign or State". In the same dictionary, the term "post" is said to mean, inter alia, "employment"; "appointed placed"; "place of duty". In construing the expression "civil post" occurring in Articles 309-311, in State of Assam v. Kanak Chandra (1968-I-LLJ-288) the Constitution Bench observed that the term denoted "an office or a position to which a person is appointed and which may exist apart from and independently of the holder of the post". They also held that the post may be created, and also abolished by the State; the conditions of service of persons appointed to a post may also be regulated by the State. Although Shri Govind Singh, Government Advocate, relied on the decision because it was observed further in that case that there existed "relationship of Master and Servant between him and the State" to decide the question if a Mouzadar in Assam was holder of a "civil post" entitled to the protection of Article 311, we do not think if on that observation turns the interpretation of the key expressions above referred. Indeed, what was decisive of the question mooted for their Lordships'' decision also, it was held, was the consideration bearing on "the existing system of his recruitment, employment and function" and interpretation of the expression "civil post" did not turn mainly on the meaning attached to the words "Master" and "Servant". Relying on Kanak Chandra (supra), a Division Bench of Himachal Pradesh High Court, in Jagdev Singh 1988 Lab. I.C. 1288, has held that in regard to disputes concerning recruitment etc. of daily rated workmen, the High Court retains jurisdiction to the exclusion of the State Administrative Tribunal. On that decision, indeed, implicit reliance is placed by Shri Upadhyaya as the same view is reiterated by that Court in another case, Premchand v. State of H.P., reported in

the same volume at page 1094.

Our attention is drawn by Shri Upadhyaya to certain State enactments to press the contention that persons employed by the State on daily wages are not eligible in terms of Sections 15 and 19 of the Act, to invoke the jurisdiction of the State Administrative Tribunal and, therefore, in terms of Section 28 of the Act, jurisdiction of this Court to deal with their grievance is not ousted. Indeed, the view we have expressed in the preceding paragraphs is borne out by the Rules catalogued below:

i. M.P. Government Servants (Temporary and Quasi- Permanent) Service Rules, 1960, for short, ''1960 Rules''.

ii. M.P. Civil Services (General Conditions of Service) Rules, 1961, for short, ''1961 Rules''.

iii. M.P. Civil Service (Classification, Control and Appeal) Rules, 1966, for short, ''1966 Rules'' and

iv. M.P. Civil Services (Pension) Rules, 1976, for short, ''1976 Rules''.

Rule 1(2) of 1960 Rules, makes the said Rule applicable to "a person who holds a civil post under the State Government...", while Rule 1(3) of the said Rules provides further expressly that those Rules shall not apply, among others, to "Government servants paid out of contingencies" and "persons employed in work-charged establishment". According to Rule 2(e) of 1961 Rules which has defined the term "post", a person in the whole-time employment of Government is meant to hold a "post", but such employment "does not include any employment where the worker is paid from contingencies". According to Rule 3 of the said Rules, those Rules apply to a person "who holds a post or is a member of a service in the State" and not to a person "whose appointment and conditions of service" are regulated by an "agreement" or by "special provision" under Rules. "Public services" of the State are classified exhaustively as of Class I, Class II, Class III (Non-ministerial), Class III (Ministrial) and Class IV, Rules 5 and 6 thereof lay down eligibility and disqualification respectively of persons seeking "appointment to a service or post" under the State. Candidates are required to be "selected" for appointment to a service or post as per Rule 7, and Proviso thereof envisages further that if so required under M.P, Public Service Commission (Limitation of Functions) Regulations, 1967, requisite "consulation" contemplated under Article 320 of the Constitution would be required before a person is "appointed to service or post". The term "Government Servant" is defined in Rule 2(f) of 1966 Rules to mean, inter alia, "a member of a service or of a holder of a civil post" under State Government or Union Government. Of those Rules, Rule 3 makes the same inapplicable, among others, to, "any person in casual employment".. Classification is made exhaustively under these Rules of "civil services" and "civil posts", such as Class I, Class II, Class III and Class IV. In the matter of appointment to "services" and "posts" specific provisions are made in Rules 7 and 8, Rule 2 of 1976 Rules defines the scope and

applicability of those Rules and contemplates that the same shall be applicable to a Government servant "appointed to civil service and posts" and that they shall not apply, among others, to persons in work- charged establishments, persons in casual and daily rated employment and persons paid from contingencies. It may be recalled in this connection that the Constitution Bench, in Roshan Lal Tandon Vs. Union of India (UOI), : observed that "once appointed to his post or office, the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government" (p.582). We, therefore, consider it appropriate and legitimate to examine the position in that regard obtaining in this State. Sections 3(r) and 20 of the Act also made it necessary to do so.

In the premises aforesaid, we have no hesitation to reject the contention of State Counsel that merely because relationship of Master and Servant exists between a daily rated employee and the State, he is to be regarded as a person who is entitled to invoke the powers and jurisdiction of State Administrative Tribunal for making an application to the said Tribunal for redressal of his grievances. We have extracted above the several provisions of the Act as also of the Constitution, but we have failed to read therein the test of "Master-Servant relationship" as decisive of vesting jurisdiction in the Tribunal, to the exclusion of the High Court, for considering any grievance made by a daily-rated worker. In clear and specific terms, the scope and ambit of Tribunal''s jurisdiction is defined constitutionally as also statutorily and the extent of exclusion of High Court''s jurisdiction is also similarly defined in clear and unambiguous terms. An application u/s 19 of the Act can be entertained by the Tribunal to deal with grievances of only such a person in the employment of the State with respect to whom the Tribunal is vested jurisdiction guardedly in terms of Section 15 and in that regard, the crucial and immutable requirement aforestated must be satisfied. In respect of such persons or matters as jurisdiction is not "exercisable under the Act" by the Tribunal, jurisdiction of this Court to deal therewith in terms of Section 28 is not ousted. Indeed, the term "exercisable" has been advisedly used therein to denote justiciability of constitutional and legal competence of Tribunal to deal with any particular application made to it u/s 19. It is difficult to ignore this position and accept the contention pressed by State Counsel on the archaic and unconstitutional concept which has ceased to be valid under the present constitutional dispensation.

It is clear that Article 372, which continues in force pre-Constitutional laws, is "subject to the other provisions of the Constitution" including Article 13(1); and it is also equally clear that the later provision unambiguously voids pre-Constitutional laws "inconsistent with, the provisions of (Part III)" namely, Articles 16-35. The concept of "public employment" envisaged in Article 16 confers on a citizen employed by the State right to a "status", which Roshanlal (supra) has mentioned. And, indeed, when that status is conferred, he, as a "public servant", cannot be

denied work and other rights such as salary etc. See P.K. Chinnasamy Vs. Government of Tamil Nadu and Others, . The citizen-employee ("public servant") is regarded as a "trustee" and as their Lordships observed, he is obliged to render appropriate service to the State. The impact of 42nd Constitution Amendment has been considered in Randhir Singh Vs. Union of India (UOI) and Others, wherein their Lordships observed that the word "socialist" introduced in the Preamble must mean something and referred accordingly to the socialist systems of law of socialist countries (p.348). There is no doubt that the Master-Servant Doctrine is a product mainly of Roman Law and indeed also of English Common Law imported into India by the Colonial Rulers. Under Roman Law, the slave performed all duties of a servant and he was not a citizen. He was rightless and could be treated as a chattel. At Common Law, the Doctrine has a triune aspect. Indeed, in Terrell''s case, (1953) 2.Q.B. 482, at p. 497, Lord Goddard, C.J., observed that as a Rule of Law, it was firmly established that Crown had the right to dismiss its servants at its plearure. (See also, Shentun v. Smith, (1985) A.C. 229; Dunn v. Queen (1896) 1 Q.B. 116. Also noteworthy is the position that "status" of a citizen in public employment in England can be changed to relieve him of the operation of Pleasure Doctrine, or even of contractual obligation, by statutory provision. (See Vine v. National Dock labour Board (1957) A.C. 488, Per Lord Keith at p. 507; Francis v. Municipal Councillors (1962) 3 All, E.R. 633). In India, on the other hand, right to "status" in similar circumstances is constitutionally created under Article 16, as also Articles 309-311. Thirdly, the position that obtains in the uncodified Law of Contract in England has also to be noted, and in that regard, reference may be made to Section 29 of Corpus Juris Secundum. In is stated therein that "at Common Law, the right of employer to terminate the employment is unconditional and absolute." In this connection, it may be rewarding to reiterate what this Court had observed in Nihal Singh''s (AIR) 1987 MP 126. This Court refused to enforce the contractual obligations pressed in that case in view of the provisions of Articles 13(1), 21 and 23 of the Constitution holding that a court set up under the Constitution cannot be party to violation of Constitutional injunctions. Indeed, the Apex Court in Deshbandhu (supra) and Brojo Nath (supra) deprecated "hire and fire policy" which obviously had its origin in the archaic Doctrine of Master and Servant and the contractual obligations to that effect were held unenforceable.

We have already analysed the various statutory rules in vogue in this State pertaining to employment of persons in Government service in this State and it has become clear to us that the case of daily-rated workers, like the petitioners, is rather excluded in specific terms, from operation of those Rules. That being the position, on the authority of Roshanlal (supra) and Banarasi Das (supra) and indeed also of Kanak Chandra (supra), our options are closed. Indeed, if we have to say anything in categorical terms to make the constitutional and legal position clear, we have to add that the acid test for determination of Tribunal''s jurisdiction is to address primarily to the question if in the case before it, this Court is satisfied about what we have

called, the crucial and immutable requirement. This Court shall not have jurisdiction to entertain a petition under Article 226 of the Constitution and to deal with grievances made by the petitioner therein if the petitioner is "appointed to any civil service of the State or to any civil post under the State" and for that matter, it has to be seen if there are any statutory rules regulating his recruitment and conditions of service. But, it has also to be seen if the petitioner could have, even otherwise, made "application" u/s 19 of the Act to the Tribunal, for he is not to be left remedyless. We reiterate in this context that High Court''s residuary jurisdiction stands unaffected and refusal to exercise the same to render a citizen remedyless would be breach of Constitutional trust. The Tribunal has no jurisdiction u/s 19 when no "order" is passed though the applicant may be still "aggrieved" or when the application made is time-barred according to Section 20 and is not entertained by the Tribunal on that account. High Court''s jurisdiction to act is not ousted u/s 28 in such cases.

We have read clear indication in the constitutional and statutory provisions, discussed above, of the fact that the State Administrative Tribunal has not been vested with "jurisdiction, powers and authority" to entertain and deal with an "application" by a person in public employment whose conditions of service and recruitment are not governed by statutory Rules because he is not a person "appointed to any civil service of the State or to any civil post under the State". Indeed, as held in Roshanlal (supra), the status of a citizen, after he is employed by the State, can be changed only by statutory rules and not by any other instrumentality and not by any individual officer or employer even if acting in connection with affairs of the State, because sovereign functions in that regard vest in the State, to be discharged in accordance with the provisions of the Constitution. It has also appeared to us very clear, as indicated in the preceding paragraph, that even in cases of such a citizen in public employment (answering to the test formulted), if he is not eligible to make "application" '' to the Tribunal in terms of Section 19, this Court''s jurisdiction to entertain his petition under Article 226 of the Constitution is not ousted u/s 28 of the Act. Indeed, in case of daily-rated workers, there is no "order" passed generally when they are employed or when the employment is terminated. Even if any order is passed, that has no statutory character as that is not passed in exercise of powers conferred under statutory provisions. The contract of employment in their case, evidently, does not have statutory sanction.

The question of jurisdiction being decided in favour of the petitioners, in these three matters, these petitions shall now be listed for hearing and disposal on merit. Indeed, similar other pending petitions, we hold, have to be dealt with similarly and, therefore, those cases shall not be transferred to the State Administrative Tribunal, but listed for hearing on merits in due course.