
(1990) MPJR 298 : (1990) 35 MPLJ 536 : (1990) MPLJ 536

Madhya Pradesh High Court (Gwalior Bench)

Case No: M.P. No. 752 of 1989

Brajendra Singh
Bhadoria

APPELLANT

Vs

State of Madhya
Pradesh and Others

RESPONDENT

Date of Decision: Sept. 14, 1989

Acts Referred:

- Administrative Tribunals Act, 1985 - Section 14(1), 15(1)
- Constitution of India, 1950 - Article 226
- Madhya Pradesh Vishesh Sashastra Bal (Sanshodhan) Adhiniyam, 1987 - Section 27(2)

Citation: (1990) MPJR 298 : (1990) 35 MPLJ 536 : (1990) MPLJ 536

Hon'ble Judges: T.N. Singh, J; S.K. Dubey, J

Bench: Division Bench

Advocate: N.P. Dwivedi, for the Appellant; Arvind Dudhawat, A.G.A. and R.K. Sharma, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Shri N. P. Dwivedi, Counsel for the petitioner.

Shri Arvind Dudhawat, Additional Government Advocate, for the State.

Shri R. K. Sharma, Counsel for Respondent No. 4.

Heard counsel. From respondents 1 to 3, return had come in this matter long ago, but from respondent No. 4 yesterday only, return was filed.

We had been proceeding with this matter on the assumption that this Court had jurisdiction to deal with the grievance which is of refusal of employment as constable in 13th Bn. of Special Armed Forces, Gwalior. It is seriously contended today that this Court

does not have jurisdiction to deal with the matter in view of the provisions of section 15(1)(b) Administrative Tribunals Act, 1985. It is contended that M.P. State Administrative Tribunal having come into being, only that Tribunal can deal with the grievance as "service matters" is defined in section 3(q) of that Act and petitioner's grievance pertains to "service matters".

Shri Dwivedi, petitioner's counsel has, however, contended that the petitioner "not being a person referred to in clause (c) of section 15(1) or a member, person or civilian referred to in clause (b) of sub-section (1) of section 14", the preliminary objection as to this Court's jurisdiction is invalid. We have examined carefully petitioner's counsel's contention, but are unable to agree with him. Admittedly, Shri Dwivedi's reliance is on clause (iii) of section 14(1)(b) and of that we quote the material part:

"(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 owned or controlled by the Government;"

In our view, persons who are excepted from the jurisdiction of the Tribunal under the Act are those who are "appointed to any defence service or a post connected with defence". The short question, therefore, is whether the petitioner is a person of that category. For that, we examined carefully the provisions of the Madhya Pradesh Vishesh Sashastra Bal Adhiniyam, 1986. The preamble refers to the need for "constitution and regulation of the Special Armed Force in the State of Madhya Pradesh". The several provisions of the enactment refer to the powers of the State Government to deal with constitution and organisation of the force. As per sections 4 and 5, State Government has to appoint not only top functionaries such as Inspector General of Police, but even the Commandant whose rank is equal to that of a Police Officer under the Police Act, 1861. More importantly, section 27(2) empowers State Government to frame rules to provide among others, matters regarding recruitment, organisation, classification and discipline of members of subordinate ranks. It is conceded today that such rules have been duly framed.

We have no doubt, therefore, that the enactment being a special enactment and there being no reference under the enactment to duties of members of the force constituted thereunder to be performed for the "defence of the country", reliance on section 14(1)(b)(iii) of Shri Dwivedi is of no avail. It is trite law that legislative competence under the Constitution in the matter of enacting law relating to "defence" being vested exclusively in the Union Government and in this case the Union having not exercised its legislative power in regard to the members of S. A. F. and that power being exercised only by the State Government no case for exception can be said to be made out to

exclude the petitioner from the purview of section 15(1)(b) of the Act. The term "defence" imports the concept of defending the frontiers of the country against external aggression and it has nothing to do with the question of maintaining internal security or law and order. Reading the provisions of the M.P. enactment aforesaid, we have no doubt that the force constituted under the said enactment has nothing to do with the defence of the country and it is meant to serve problems of the State of Madhya Pradesh connected with internal security and law and order.

Taking another view, we also hold that to the petitioner's case, Statutory Service Rules enacted by the State Government being applicable, the holding of this Court in Vijay Singh Jadon's case, 1989 MPLJ 255 ousts this Court's jurisdiction.

For the several reasons aforesaid, we are fully satisfied that this Court does not have jurisdiction to deal with this petition. But, Shri Dwivedi has submitted that as per holding in Vijay Singh Jadon's case, 1988 MPLJ 640. this matter need not be sent to the Tribunal, but retained in the Registry and when the Tribunal holds its sitting at Gwalior, the matter may go there for decision. That prayer is reasonable and is allowed.

In the result, we hold this petition to be not maintainable and it is disposed of as such. Registry will do the needful to transmit the records to the M.P. State Administrative Tribunal during its circuit sitting at Gwalior, as prayed.