UMESH KORGA BHANDARI

v.

MAHANAGAR TELEPHONE NIGAM LTD. AND ANR.

AUGUST 8, 2005

[ARIJIT PASAYAT AND H.K. SEMA, JJ.]

Industrial Disputes Act, 1947—Section 19(1)—Termination of Services—According to Office Memorandum and Notification post was civil and did not fall in the purview of Industrial Disputes Act—Dispute—Reference to Industrial Tribunal—Propriety of reference—Plea that in view of decision of Supreme Court reference was justified—Held : The decision of Supreme Court did not adjudicate that the appropriate forum for the holder of civil post was whether Tribunal of Administrative Tribunal—And the effect of the Office Memorandum and Notification was not considered in the case—Matter referred to three Judges Bench—Administrative Tribunals Act, 1985.

Appellant-emoloyees of departmental canteen run by respondent, challenged their termination from service. The matter was referred to Central Government Industrial Tribunal. The Tribunal as well as Single Judge of High Court in Writ Petition held that the case was maintainable by the Tribunal under Industrial Disputes Act, 1947 and held the termination not justified. Division Bench of High Court held that reference under the Act was not maintainable as the appellants were holding civil post and the appropriate forum was Central Administrative Tribunal.

In appeal to this Court, appellant-employees contended that since a three Judge Bench of Supreme Court, had held that Telephone Nigam is an industry, the reference to the Tribunal was not without jurisdiction.

Respondent employer contended that the Tribunal had no jurisdiction to deal with the matter as it was not decided by decision of three judges that whether the appellants could have moved the Tribunal and not the Administrative Tribunal; and since the effect of Office Memorandum and a Notification, wherein it was indicated that posts in the canteen were civil posts and hence do not come under the purview of ID Act, were not considered.

Referring the matter for hearing by three-Judges Bench, the Court

A **HELD : In *General Manager, Telecom** there was no adjudication by a three Judge Bench, of the question whether the holder of civil posts could move the Central Government Industrial Tribunal or the only forum to seek relief was the Administrative Tribunal. Further, the effect of the Notifications and Office Memorandums were not considered in the said case. It cannot be said that the said decision has concluded the matter against the present respondents. Hence the matter is remitted for hearing by a three-Judge Bench. The basic issue to be considered would be whether a person holding civil post can seek relief under the ID Act on the basis that he was a workman. [446-E-F; 447-E-F]**

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C ***General Manager, Telecom* v. *Srinivasa Rao and Ors.*, [1997] 8 SCC 767; *Bombay Canteen Employee's Association* v. *Union of India*, [1997] 6 SCC 723 and *Sub-Divisional Inspector of Post Vaikam and Ors.* v. *Theyyam Joseph and Ors.*, [1996] 8 SCC 489, referred to.**

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6462 of 2003.

From the Judgment and Order dated 9.3.2001 of the Bombay High Court in L.P.A. 90 of 1998 in W.P. No.6337 of 1996.

WITH

E

C.A. Nos. 6463 and 6464 of 2003.

Ajay Majithia, Manish Jain and Yash Pal Dhingrafor the Appellant.

M.N. Krishnamani, Sr. Adv., V.P. Sharma and Vasudevan Raghavan for
F the Respondents.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. : Challenge in these appeals is to the correctness of the judgment rendered by a Division Bench of the Bombay High
G allowing the Letters Patent Appeal filed by the Mahanagar Telephone Nigam Limited (in short 'MTNL'), the respondent no. 1. The appellants were working in the Canteens maintained by the Departmental Canteen Committee. Appellants questioned the legality of termination of their services. The Government of India, Ministry of Labour, referred the matter for adjudication
H by the Central Government Industrial Tribunal No.II, Bombay (in short

'CGIT'). Preliminary objection was raised by the present respondents on the ground that the concerned workmen were holding civil posts of the Central Government and, therefore, Industrial Disputes Act, 1947 (in short 'ID Act') has no application. The CGIT did not accept this stand and held that the action of the Departmental Canteen Committee in terminating the services of the appellants was not justified. Direction was given to reinstate the appellants in service in the same capacity from the date of retrenchment. The respondents were also directed to treat them in continuous service and to pay back wages. The CGIT's orders were questioned before the Bombay High Court by filing writ petitions. Learned Single Judge dismissed the writ petitions holding that the respondent no. 1 MTNL had been held to be an industry and, therefore, without following the provisions of the ID Act termination could not have been directed. Letters Patent Appeals were filed before the Bombay High Court. By the impugned judgment, the High Court held that the reference under Section 10(1) of the ID Act was not maintainable. It was noted that the present appellants were holding civil post. Reference was made to the notification dated 11.12.1979 which, *inter alia*, stated that all posts in the canteens and tiffin rooms run departmentally in the Central Government offices or establishments are civil posts and the incumbent would qualify as holders of civil posts under the Central Government. Necessary Rules under proviso to Article 309 of the Constitution of India, 1950 (in short 'the Constitution') were framed and published in the official gazette on 7.7.1981. As the present appellants were holding civil post, the only forum to adjudicate their grievance was the Central Administrative Tribunal (in short 'Administrative Tribunal) constituted under the Administrative Tribunal's Act, 1985 (in short the 'Act') and not the CGIT. Questioning the correctness of the judgment of the High Court the present appeals have been filed. It was submitted that a three-Judge Bench of this Court in *General Manager, Telecom* v. *A. Srinivasa Rao and Ors.*, [1997] 8 SCC 767 has held that the views expressed in *Bombay Canteen Employee's Association* v. *Union of India*, [1997] 6 SCC 723 were not correctly decided. It was held that the view expressed that the "telecom industry" is not an industry is not correct. A similar view was expressed about another in a decision in *Sub-Divisional Inspector of Post, Vaikam and Ors.* v. *Theyyam Joseph and Ors.*, [1996] 8 SCC 489. Wherein it was held that the postal department is not an "industry". Both *Theyyam Joseph* and *Bombay Canteen Employees' Association* (supra) were rendered by two-Judge Benches.

Learned counsel for the appellants submitted that since it has been

A held by a three-Judge Bench that Telephone Nigam is an industry, the reference made to CGIT and the adjudication by it was not without jurisdiction. In any event, as workman of an industry, it was open to the appellants to seek relief from CGIT, even though, it is conceded for the sake of argument, that the appellants held civil post. They were free to choose any
B of the forums available.

In response, learned counsel for the respondents submitted that the question whether the present appellants could have moved the CGIT and not the Administrative Tribunal was not decided by the three-Judge Bench *General Manager, Telecom* case (supra). With reference to the office
C memorandum reiterating the decision contained in office memorandum (O.M. No.6/41/73-Welfare) dated 18th December, 1979, it was submitted that in clear terms it has been provided that the employees of the canteen do not come under the purview of the ID Act. The notification dated 11.12.1979 clearly indicated that all posts in the canteen and tiffin rooms run
D departmentally by the Government of India are in connection with the affairs of the Union. That being so, the CGIT had no jurisdiction to deal with the matter and the appellants should have moved the Administrative Tribunal. According to him the effect of the notifications and office memorandum were not considered.

E We find that in *General Manager, Telecom* (supra) there was no adjudication of the question whether the holder of civil posts could move the CGIT or the only forum to seek relief was the Administrative Tribunal. Further, the effect of the notifications and office memorandums were not considered in the said case. Legality of the notifications and office
F memorandums has not been questioned. In *Bombay Telephone Canteen Employees' Association, Prabhadevi Telephone Exchange* v. *Union of India and Anr.,* AIR (1997) SC 2817, in para 11 this Court observed as follows:

> "On an overall view, we hold that the employees working in the statutory canteen, in view of the admission made in the counter-
G affidavit that they are holding civil posts and are being paid monthly salary and are employees, the necessary conclusion would be that the Tribunal has no jurisdiction to adjudicate the dispute on a reference under Section 10(1) of the Act. On the other hand, the remedy to approach the constitutional court under Article 226 is
H available. Equally, the remedy under Section 19 of the Administrative

Tribunals Act is available. But, generally, the practice which has grown is to direct the citizen to avail of, in the first instance, the remedy under Article 226 or under Section 19 of the Administrative Tribunals Act and then avail of the right under Article 136 of the Constitution by special leave to this Court etc. Thus, in view of the admission made by the respondents in their counter-affidavit that the workmen of the appellant Association are holding civil posts and are being paid monthly wages and benefits and are considered to be employees, the jurisdiction of the Industrial Tribunal stands excluded. It is open to the aggrieved party to approach the appropriate authority in accordance with law. In that view, the finding of the Tribunal in the impugned judgment is legal and warrants no interference. It is open to the respondents to avail of such remedy as is available to a regular employee including the right to approach the Central Administrative Tribunal or the High Court or this Court thereafter for redressal of legal injury."

Question may arise as to whether the workman had a right to move the Industrial Tribunal. It is certainly not a right in the sense that it is within the discretion of the Government to make a reference or refuse it, of course for legally tenable reasons. On the contrary, under the Act there is no such restriction.

The three-Judge Bench was not directly considering the questions involved in the present appeals. It cannot be said that the said decision has concluded the matter against the present respondents.

We, therefore, think it proper to refer the matter for hearing by a three-Judge Bench. The basic issue to be considered by the three-Judge Bench would be whether a person holding civil post can seek relief under the ID Act on the basis that he was a workman.

Let the papers be placed before the Hon'ble Chief Justice of India for appropriate directions.

K.K.T. Referred to three-Judge Bench.