

CASE NO.:
Appeal (civil) 6462 of 2003

PETITIONER:
Umesh Korga Bhandari

RESPONDENT:
Mahanagar Telephone Nigam Ltd. & Ors.

DATE OF JUDGMENT: 08/08/2005

BENCH:
ARIJIT PASAYAT & H. K. SEMA

JUDGMENT:
J U D G M E N T
[With C.A. No.6463/2003 and C.A. No.6464/2003]

ARIJIT PASAYAT, J.

Challenge in these appeals is to the correctness of the judgment rendered by a Division Bench of the Bombay High Court 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 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). Both *Theyyam Joseph* and *General Manager, Telecom* (supra) were rendered by two-Judge Benches.

Learned counsel for the appellants submitted that since it has been 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 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 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 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.

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 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-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 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 appellants 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.