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SUPREME COURT CASES

(2009) 15 SCC

19. It is true that the appellant has worked for a long time. His appointment, however, being in contravention of the statutory provision was illegal, and, thus, void ab initio. If his appointment has not been granted approval by the statutory authority, no exception can be taken only because the appellant had worked for a long time. The same by itself, in our opinion, cannot form the basis for obtaining a writ of or in the nature of mandamus; as it is well known that for the said purpose, the writ petitioner must establish a legal right in himself and a corresponding legal duty in the State. (See *Food Corpn. of India v. Ashis Kumar Ganguly*³.) Sympathy or sentiments alone, it is well settled, cannot form the basis for issuing a writ of or in the nature of mandamus. (See *State of M.P. v. Sanjay Kumar Pathak*⁴.)

20. For the reasons aforementioned, there is no merit in this appeal. It is dismissed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.

(2009) 15 Supreme Court Cases 444

(BEFORE TARUN CHATTERJEE AND H.L. DATTU, JJ.)

STATE OF WEST BENGAL AND OTHERS . . . Appellants;

Versus

SAMAR KUMAR SARKAR . . . Respondent.

Civil Appeal No. 4350 of 2009[†], decided on July 14, 2009

A. Constitution of India — Arts. 227 and 228 — High Court's power of superintendence — Under Art. 227 — Held, does not include power to withdraw a case from an Administrative Tribunal and decide the case itself — High Court could however direct the Tribunal to decide the matter expeditiously

B. Constitution of India — Art. 227 — High Court's power of superintendence — Held, can ordinarily be exercised to correct jurisdictional errors of lower courts/tribunals

C. Constitution of India — Arts. 226 and 227 — Jurisdiction under Art. 226 vis-à-vis jurisdiction under Art. 227 — Held, jurisdiction under Art. 226 is wider

The issue involved in this case was whether it was permissible to High Court to invoke Article 227 of the Constitution to withdraw a case from Administrative Tribunal and decide it itself because the Tribunal was not disposing of the case expeditiously.

Allowing the appeal, the Supreme Court

Held :

Power of superintendence conferred upon an High Court under Article 227 is not as extensive as power conferred upon it by Article 226 of the Constitution. Ordinarily, it is open to High Court, in exercise of its power of superintendence,

³ (2009) 7 SCC 734 : (2009) 2 SCC (L&S) 413 : (2009) 8 Scale 218

⁴ (2008) 1 SCC 456 : (2008) 1 SCC (L&S) 207

[†] Arising out of SLP (C) No. 22165 of 2008. From the Judgment and Order dated 7-7-2008 of the High Court of Calcutta in WPST No. 649 of 2007

a only to consider whether there is an error of jurisdiction in the decision of court or tribunal subject to its superintendence. High Court in exercise of its power of superintendence under Article 227 can rectify an error but it cannot, under Article 227, withdraw a case from a tribunal and dispose of the same. It would have been proper if High Court by exercising power under Article 227 directed Administrative Tribunal to dispose of the matter expeditiously, instead of transferring the matter to itself. (Paras 12 and 23)

Thakur Jugal Kishore Sinha v. Sitamarhi Central Coop. Bank Ltd., AIR 1967 SC 1494 : (1967) 3 SCR 163; *State of Gujarat v. Vakhatsinghji Vajesinghji Vaghela*, AIR 1968 SC 1481; *Bathumal Raichand Oswal v. Laxmibai R. Tarta*, (1975) 1 SCC 858; *State v. Navjot Sandhu*, (2003) 6 SCC 641 : 2003 SCC (Cri) 1545; *Nagendra Nath Bora v. Commr. of Hills Division*, AIR 1958 SC 398, *relied on*

b

L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577, *cited*

c

D. Constitution of India — Art. 228 — High Court's power to transfer a case from subordinate court to itself — Conditions precedent for exercising power under Art. 228 — The case must be pending in court subordinate to High Court, involving substantial question of law as to the interpretation of Constitution, and determination of such question was necessary for disposal of the case

E. Constitution of India — Arts. 228, 226 and 227 — Art. 228 vis-à-vis Arts. 226 and 227 — Held, scope of Art. 228 is different from Arts. 226 and 227

d *Held* :

Article 228 of the Constitution covers a different field from that covered by Articles 226 and 227 of the Constitution. It lays down the procedure regarding transfer of a case pending in courts subordinate to High Court. This power is not to be founded both under Articles 226 and 227 of the Constitution. The conditions that are required to be fulfilled before Article 228 of the Constitution can be applied are that a case must be pending in a court subordinate to High Court, the case must involve substantial question of law as to the interpretation of the Constitution or the Government of India Act, 1935 and determination of question of law must be necessary for disposal of the case. Once these three conditions are fulfilled, the article requires that High Court will withdraw the case and then may either dispose of the case itself or determine the question of law and return the case to the court from which the case has been withdrawn.

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f Primary ingredient for exercise of power under Article 228 is that the case should contain a substantial question of law, which requires an interpretation of the Constitution. (Para 16)

Umaji Keshao Meshram v. Radhikabai, 1986 Supp SCC 401; *Rao Shiva Bahadur Singh v. State of Vindhya Pradesh*, AIR 1955 SC 446 : (1955) 2 SCR 206, *relied on*

K-M/42861/S

g Advocates who appeared in this case :

Tara Chandra Sharma and Ms Neelam Sharma, Advocates, for the Appellants;
Shravan Kumar, Senior Advocate (Neeraj Shekhar and Amit Kr. Singh, Advocates) for the Respondent.

Chronological list of cases cited

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|---|---|------------|
| h | 1. (2003) 6 SCC 641 : 2003 SCC (Cri) 1545, <i>State v. Navjot Sandhu</i> | 449g-h |
| | 2. (1997) 3 SCC 261 : 1997 SCC (L&S) 577, <i>L. Chandra Kumar v. Union of India</i> | 447c, 448c |
| | 3. 1986 Supp SCC 401, <i>Umaji Keshao Meshram v. Radhikabai</i> | 450d-e |

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4. (1975) 1 SCC 858, *Bathutmal Raichand Oswal v. Laxmibai R. Tarta* 449f
5. AIR 1968 SC 1481, *State of Gujarat v. Vakhtasinghji Vajesinghji Vaghela* 449d, 449e
6. AIR 1967 SC 1494 : (1967) 3 SCR 163, *Thakur Jugal Kishore Sinha v. Sitamarhi Central Coop. Bank Ltd.* 447g-h, 451b ^a
7. AIR 1958 SC 398, *Nagendra Nath Bora v. Commr. of Hills Division* 451d
8. AIR 1955 SC 446 : (1955) 2 SCR 206, *Rao Shiva Bahadur Singh v. State of Vindhya Pradesh* 450e-f

The Judgment of the Court was delivered by

H.L. DATTU, J.— Leave granted. The petition raises an important question as to the power of the High Court under Article 227 of the Constitution of India to transfer an application filed under Section 19 of the Administrative Tribunal Act pending before the Administrative Tribunal to the High Court for its consideration and decision. ^b

2. The facts in a nutshell are, the respondent before the West Bengal Administrative Tribunal is the petitioner in this petition. The respondent in the present petition filed OA No. 912 of 2003 under Section 19 of the Administrative Tribunals Act, 1985 before the West Bengal State Administrative Tribunal inter alia requesting the Tribunal to direct respondents therein to appoint the applicant to the post of Group D in the Office of District Land and Land Reforms Officer, Howrah, on the ground that he had served as Tahsil Mohurrir under the Block Land and Land Reforms Officer, Shyampur. ^c

3. After service of notice on the respondents, several adjournments were granted by the Tribunal to the parties to complete the pleadings. The application thereafter was posted before the Tribunal on 1-2-2005. The Tribunal had granted permission to the respondents therein to file its reply, if any, within three weeks. ^d

4. Aggrieved by the order so passed, the applicant had moved a petition before the High Court at Calcutta under Articles 226 and 227 of the Constitution, assailing the correctness or otherwise of the order dated 1-2-2005 and also praying for the very same reliefs that were sought in the application. The Court by its order dated 7-3-2005 had rejected the writ petition on the ground that the petition filed is premature. ^e

5. The Tribunal could not hear the application for various reasons. Those reasons are not relevant for the purpose of disposal of this appeal. Therefore, we are not advertent to the orders passed by the Tribunal on several dates of hearing. ^f

6. The respondent herein who was the applicant before the Tribunal has filed one more writ petition under Articles 226 and 227 of the Constitution in the High Court at Calcutta, wherein apart from others has requested the Court for issuance of a writ in the nature of mandamus directing the respondents in the said application to give appointment to him with effect from 6-3-2000 and to release arrears of salary and other benefits. Writ Petition No. 649 of 2007 was heard by the High Court on 7-7-2008. The High Court by its order dated 7-7-2008, directed the Registry of the West Bengal Administrative Tribunal to transmit all the original records of OA No. 912 of 2003 to the High Court for taking a decision in the matter. ^g

^h

7. The findings and the observations of the High Court in its order dated 7-7-2008 are as under:

- a “In our view, with great respect, the learned Tribunal having found no time on earlier occasions, should have placed, at least on a particular date, this matter at the top of the list so that the matter could have been heard. In our order dated 16-8-2007 it was observed that in the event the learned Tribunal could not hear out this matter, this Court will, in exercise of its power under Article 227 of the Constitution of India
- b withdraw the same and hear out the matter, as the learned Tribunal has failed to decide the matter. Accordingly, we are of the view that the learned Tribunal has failed to decide the matter. We are not oblivious of the position of law that this Court cannot try the above matter at the first instance in view of the judgment of Supreme Court rendered in *L. Chandra Kumar v. Union of India*¹. But this Court having superintending
- c power cannot remain passive institution when learned Tribunal abdicates its legal, if not constitutional duty. When a subordinate court or tribunal fails or neglects absolutely to function, it can be concluded without any hesitation that extraordinary situation has arisen that endangers due process of law. In such situation to disclose (*sic* discharge) constitutional obligation to the citizens of India, this Court has power, in our opinion,
- d not only to withdraw the case of this nature, but to try the same. The word ‘superintendence’ is of wide connotation. It has inclusive meaning which inter alia are to oversee, monitor so that things are done or act is accomplished with logical conclusion and finally in case of failure, to take upon itself to do and accomplish what ought to have been done by the person or forum subordinate to it.

- e Hence, we direct the Registry of the learned Tribunal to transmit all the original records of OA No. 912 of 2003 (*Samar Kumar Sarkar v. State of W.B.*) to this Court for taking a decision in this matter.

- f The records shall be transmitted to this Court by special messenger, cost of which shall be paid by the applicant and this shall be brought to this Court within a fortnight from the date of service of copy of this order.”

Aggrieved by the aforesaid order, the respondents in the application are before us in this civil appeal.

- g 8. The learned Senior Counsel for the appellant State submitted that the impugned order of the High Court in withdrawing the application OA No. 912 of 2003 (*Samar Kumar Sarkar v. State of W.B.*) pending before the West Bengal Administrative Tribunal for its consideration and decision is contrary to law and also the decision of this Court in *Thakur Jugal Kishore Sinha v. Sitamarhi Central Coop. Bank Ltd.*², wherein it is stated, that: (AIR p. 1504, para 24)

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- 1 (1997) 3 SCC 261 : 1997 SCC (L&S) 577 : AIR 1997 SC 1125
2 AIR 1967 SC 1494 : (1967) 3 SCR 163

“24. ... Needless to add that errors as to the interpretation of the Constitution is not out of the purview of Article 227 although the High Court could not, under the powers conferred by this article, withdraw a case to itself from a tribunal and dispose of the same, or determine merely the question of law as to the interpretation of the Constitution arising before the tribunal.” a

9. It is further submitted by the appellant State that the High Court has no inherent power to transfer a case to itself outside the provisions contained in Article 228 of the Constitution of India and since the instant case is not covered by Article 226 of the Constitution of India, the High Court committed a grave error in directing the transfer of the case pending before the State Administrative Tribunal to itself. It is further submitted that the order and direction issued by the High Court is contrary to the direction and observation made by this Court in *L. Chandra Kumar v. Union of India*¹. b

10. The learned counsel for the contesting respondent submitted that the petition that was filed before the High Court was both under Articles 226 and 227 of the Constitution and therefore, the High Court in exercise of its supervisory jurisdiction was justified in directing the Tribunal to transmit all the records pertaining to the case of the respondent, since there was inordinate delay by the Tribunal in deciding an application which did not involve either complicated questions of fact or the law. c

11. The relevant articles of the Constitution of India may be extracted: d

“227. *Power of superintendence over all courts by the High Court.*—(1) Every High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may— e

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts. f

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such courts and to attorneys, advocates and pleaders practising therein: g

Provided that any rules made, forms prescribed or tables settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor. g

(4) Nothing in this article shall be deemed to confer on a High Court powers of superintendence over any court or tribunal constituted by or under any law relating to the armed forces.

228. *Transfer of certain cases to High Court.*—If the High Court is satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the h

determination of which is necessary for the disposal of the case, it shall withdraw the case and may—

- a (a) either dispose of the case itself, or
(b) determine the said question of law and return the case to the court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.”
- b 12. Under Article 227, the High Court has been given the power of superintendence both in judicial as well as administrative matters over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. It is in order to indicate the plentitude of the power conferred upon the High Court with respect to courts and the tribunals of every kind that the Constitution conferred the power of superintendence on the High
- c Court. The power of superintendence conferred upon the High Court is not as extensive as the power conferred upon it by Article 226 of the Constitution. Thus, ordinarily it will be open to the High Court, in exercise of the power of superintendence only to consider whether there is an error of jurisdiction in the decision of the court or the tribunal subject to its superintendence.
- d 13. In *State of Gujarat v. Vakhatsinghji Vajesinghji Vaghela*³ this Court held that: (AIR p. 1488, para 14)
“14. ... Article 227 of the Constitution [of India] gives the High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.”
It is held that: (*Vaghela case*³, AIR p. 1488, para 14)
“14. ... This jurisdiction cannot be limited or fettered by any Act of the State Legislature.”
- e It is held that:
“14. ... The supervisory jurisdiction extends to keeping the subordinate tribunals within the limits of their authority and to seeing that they obey the law.”
- f 14. In *Bathutmal Raichand Oswal v. Laxmibai R. Tarta*⁴ this Court again reaffirmed that the power of superintendence of the High Court under Article 227 being extraordinary was to be exercised most sparingly and only in appropriate cases. The High Court’s function is limited to see that the subordinate court or tribunal functioned within the limits of its authority. The Court further said that the jurisdiction under Article 227 could not be
- g exercised “as the cloak of an appeal in disguise”.
15. This Court in *State v. Navjot Sandhu*⁵ held that: (SCC pp. 656-57, para 28)

h 3 AIR 1968 SC 1481
4 (1975) 1 SCC 858
5 (2003) 6 SCC 641 : 2003 SCC (Cri) 1545

“28. ... Article 227 of the Constitution of India gives the High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. ... The powers under Article 227 are wide and can be used, to meet the ends of justice. ... However the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power.”

16. Article 228 of the Constitution covers a different field from that covered by Articles 226 and 227 of the Constitution. It lays down the procedure regarding transfer of a case pending in courts subordinate to the High Court. This power is not to be founded both under Articles 226 and 227 of the Constitution. The conditions that require to be fulfilled before Article 228 of the Constitution can be applied are, that a case must be pending in the court subordinate to the High Court, the case must involve a substantial question of law as to the interpretation of the Constitution or the Government of India Act, 1935 and the determination of the question of law must be necessary for disposal of the case. Once these three conditions are fulfilled, the article requires that the High Court will withdraw the case and then may either dispose of the case itself or determine the question of law and return the case to the court from which the case has been withdrawn.

17. Reference may also made to the decision of this Court in *Umaji Keshao Meshram v. Radhikabai*⁶ wherein it was held that: (SCC p. 453, para 80)

“80. ... Article 228 confers upon the High Court the power to transfer a case pending in a court subordinate to it for disposal by itself if ‘it involves a substantial question of law as to the interpretation of this Constitution’.”

18. In *Rao Shiva Bahadur Singh v. State of Vindhya Pradesh*⁷ it is stated by this Court that (AIR p. 450, para 10) the High Court if satisfied that a case pending in a court subordinate to it involves a substantial question of law as to the interpretation of the Constitution, the determination of which is necessary for the disposal of the case, may withdraw the case either to dispose of the case itself or determine the said question of law and return the case to the court from which it has been so withdrawn so as to enable the said court to proceed to dispose of the case in conformity with the judgment of the High Court.

19. Therefore, the High Court in exercise of power under Article 228 of the Constitution can withdraw a case from a subordinate court and decide the whole case by itself or decide the question of law and return the case to the court from which it is withdrawn. But the primary ingredient for exercise of the power under this article is that the case should contain a substantial question of law, which requires an interpretation of the Constitution.

6 1986 Supp SCC 401

7 AIR 1955 SC 446 : (1955) 2 SCR 206

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20. But, at this stage, we are not concerned in this appeal with Article 228 of the Constitution but only with Article 227 of the Constitution and more specifically with the correctness of the order passed by the Division Bench of the High Court wherein the High Court has withdrawn the application pending before the Administrative Tribunal for its consideration and decision.

21. With regard to the power of the High Court in withdrawing a case from the Tribunal for deciding it by itself by exercising its power under Article 227, this Court in *Thakur Jugal Kishore Sinha v. Sitamarhi Central Coop. Bank Ltd.*² held that: (AIR p. 1504, para 24)

“24. ... Article 227 is of wider ambit; it does not limit the jurisdiction of the High Court to the hierarchy of courts functioning directly under it under the Civil Procedure Code and Criminal Procedure Code but it gives the High Court power to correct errors of various kinds of all courts and tribunals in appropriate cases. Needless to add that errors as to the interpretation of the Constitution is not out of the purview of Article 227 although the High Court could not, under the powers conferred by this article, withdraw a case to itself from a tribunal and dispose of the same, or determine merely the question of law as to the interpretation of the Constitution arising before the tribunal.”

22. It was held in *Nagendra Nath Bora v. Commr. of Hills Division*⁸ that: (AIR p. 413, para 30)

“30. ... Under Article 226, the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority.”

23. In the light of the above discussions, in our view, it would have been proper if the High Court in exercising its jurisdiction under Article 227 had directed the Tribunal to dispose of the matter expeditiously, instead of transferring the matter to itself.

24. In the result, the appeal is allowed. The impugned order is set aside. The High Court is requested to return all the documents pertaining to OA No. 912 of 2003 to the Administrative Tribunal forthwith. The Tribunal is directed to consider the matter promptly and dispose of the same within six months from the date of the pronouncement of this judgment. No order as to costs.

⁸ AIR 1958 SC 398