State Of Haryana vs Haryana Co-Operative Transport Ltd. & ... on 2 December, 1976

Equivalent citations: 1977 AIR 237, 1977 SCR (2) 306, AIR 1977 SUPREME COURT 237, 1977 (1) SCC 271, 1977 LAB. I. C. 32, 1977 2 SCR 306, 1977 (1) LABLN 31, 50 FJR 323, 33 FACLR 413, 1977 U J (SC) 25, 1977 (1) SERVLR 247

Author: Y.V. Chandrachud

Bench: Y.V. Chandrachud, P.K. Goswami

PETITIONER:
STATE OF HARYANA

Vs.

RESPONDENT:
HARYANA CO-OPERATIVE TRANSPORT LTD. & ORS.

DATE OF JUDGMENT02/12/1976

BENCH:
CHANDRACHUD, Y.V.
BENCH:
CHANDRACHUD, Y.V.
GOSWAMI, P.K.

CITATION:
1977 AIR 237 1977 SCR (2) 306
1977 SCC (1) 271

ACT:
Constitution of India--Articles 226-227--Mentioning wrong writ--Writ of quo warranto-Must be specifically prayed--Whether can be challenged in collateral proceedings--Industrial Disputes ACt 1947--Sec. 9(1), finality of award of Labour Court--Whether can be challenged by a writ petition--Challenge to appointment of the Judge of Labour Court.

HEADNOTE:
The first respondent, a Co-operative Transport Society terminated the services of respondent 3 and 4. The State of Punjab referred the dispute arising out of the dismissal of respondents 3 to 4 under 10 of the Industrial Disputes Act 1947 to the Labour Court that was presided over by Mr.

Das. On Mr. Das's retirement Shri Hans Raj Gupta was appointed as the Presiding Officer of the Court. Mr. Gupta gave an award directing the reinstatement of respondents 3 and 4 with 50 per cent back wages from the date of their dismissal until the date of reinstatement.

The first respondent being aggrieved by the award filed a writ petition in the High Court under Articles 226 and 227 of the Constitution praying that the award given by second respondent be set aside on the ground, inter alia, that he was not qualified to become the Presiding Officer under s. 7(3) of the Act since he did not hold any judicial office in India for not less than 7 years.

The contention of respondent No. 2 was that he held such a judicial office because he worked as Upper Division Clerk-cum-Head Clerk, Assistant Settlemeat Officer and Registrar of the Pensions Appeals Tribunals. The contention that he held judicial office was not pressed before the High Court and in this Court by the State. The State Government, however. supported the award on the plea that Mr. Gupta's appointment cannot be challenged in collateral proceedings filed in the High Court for challenging the award.

Re Toronto & Co. v. City of Toronto 46 Dominion Law Reports 547; Bhaskara Pillai and Anr. v. State [1950] 5DLR Travailcore-Cochin 382 and Queen Empress v. Ganga Ram ILR 16 All. 136 distinguished.

Dismissing the appeal,

HELD: 1. Considering the nature and course of proceedings in the instant it is impossible to hold that the challenge to Mr. Gupta's appointment was made in a collateral proceeding. The appointment of Mr. Gupta could not have been challenged before him. The challenge to his appointment having been made by writ petition under Articles 226 and 227 of the Constitution to which Mr. Gupta was impleaded as a party-respondent, the challenge was made directly in a substantive proceeding and not in a collateral proceeding. Since he was impleaded in the writ petition he had a clear and rightful opportunity to defend kid appointment. [311 C-E]

2. The mere circumstance that the first respondent did not in so many words ask for a writ of quo warranto cannot justify the argument that the appointment was being challenged collaterally in a proceeding taken to challenge the award. On the averments in the writ petition it is clear that the main and real attack on the award was the ineligibility of Shri Gupta to occupy the post of a Judge of a Labour Court in the discharge of whose functions the award was rendered by him. [311 G-H, 312A]

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3. The relief of certiorari asked for by the writ petition was certainly inappropriate but the High Court was also invited to issue such other suitable writ, order or direction as it deemed fit and proper in the circumstances of the case. There is no magic in the use of a formula. The facts necessary for challenging the appointment are stated

clearly in the writ petition and the challenge to the appointment is expressly made on the ground that the officer was not qualified to hold the post. [312A-B]

4. The finality of the orders of the Labour Court contemplated by section 9(1) although widely worded must be given a limited meaning so as to bar the jurisdiction of civil courts in the ordinary exercise of their powers. It is impossible to construe the provisions in derogation of the remedies provided by Articles 226 and 227 of the Constitution. [313D-E]

Bezparua (G.C.) v. State of Assam A.J.R.--1954 Assam 161, Jagannath Vinayak Kale v. Ahmadi--[1958] II L.L.J. 50 (Bom.) and Mewar Textile Mills Ltd. v. Industrial Tribunal--A.I.R. 1951 Raj 161, approved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1164 of 1970. (Appeal by Special Leave from the Order dated the 5th Sep- tember 1969 of the Punjab & Haryana High Court in S.C.A. No. 197 of 1968) Naunit Lal, Girish Chandra and R.N. Sachthey, for the appel- lant. S.B. Wad, for respondent No. 1.

The Judgment of the Court was delivered by CHANDRACHUD, J. The 1st respondent is a co-operative transport society carrying on transport business at Kaithal, District Karnal, State of Haryana. The Society terminated the services of respondents 3 and 4 who were working with it as conductor and driver, respectively. The State of Punjab, on June 22, 1964 referred the dispute arising out of the dismissal of respondents 3 and 4, under s. 10 of the Indus- trial Disputes Act (14 of 1947) for the adjudication of the Labour Court, Rohtak. That Court was then presided over by Shri Jawala Dass. On Shri Dass's retirement, Shri Hans Raj Gupta was appointed on June 4, 1965, as the presiding Officer of the Court. The reference was thereafter heard by him and on April 16, 1966 he gave an award directing the reinstatement of respondents 3 and 4 with 50% backwages from the date of their dismissal until the date of reinstatement. The Presiding Officer of the Labour Court is the 2nd re- spondent to this appeal.

Being aggrieved by the award, the 1 st respondent filed Writ Petition No. 1575 of 1966 in the High Court of Punjab and Haryana under arts. 226 and 227 of the Constitution, praying that the award given by the 2nd respondent be set aside on the ground, inter alia, that he was not qualified to hold the post of a Judge of the Labour Court, and, therefore, the award was without jurisdiction. The Writ petition having been allowed by a Division Bench by its judgment dated March 26, 1968 the State of Haryana has filed this appeal by special leave. The Presiding Officer of the Labour Court was impleaded to the Writ Petition as the 2nd respondent.

The only question for decision in this appeal is whether Shri Hans Raj Gupta who gave his award as the presiding Officer of the Labour Court was qualified for being appoint- ed as a Judge of the Labour Court. Section 7(1) of the Industrial Disputes Act provides that the appropriate Gov-

ernment may constitute one or more Labour Courts for the adjudication of Industrial disputes relating to any matter specified in the Second Schedule to the Act. A Labour Court, under s.7(2), shall consist of one person only to be appointed by the Government. Sub-section (3) of s. 7 reads thus:

> "(3) A person shall not be qualified for appointment as the presiding officer of a Labour Court, unless--
>
> (a) he is, or has been, a Judge of a High Court; or
>
> (b) he has, for a period of not less than three years, been a District Judge or an Additional District Judge; or
>
> (c) he has held the office of the chairman or any other member of the Labour Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950 (48 of 1950), or of any Tribunal, for a period of not less than two years; or
>
> (d) he has held any judicial officer in India for not less than seven years; or
>
> (e) he has been the presiding officer of a Labour Court constituted under any Provincial Act or State Act for not less than five years".

It was common ground in the High Court that Shri Gupta did not satisfy the qualifications laid down in any of the clauses (a), (b), (c) and (e) of s. 7(3). It was, however, urged in the High Court, in the first instance, that Shri Gupta had held a judicial offical in India for not less than seven years and was, therefore, qualified for being appointed as a Judge of the Labour Court under clause (d) of s.7 (3). This argument was made before the learned Chief Justice of the High Court who, while hearing the Writ Peti- tion singly, felt that the question raised was of public importance. He, therefore, referred the matter to a Divi- sion Bench. The contention that Shri Gupta was qualified to hold the office of a Judge of the Labour Court under clause (d) of s.7(3) was, however, given up by the State before the Division Bench. Before us, the learned counsel for the appellant, the State of Haryana, rightly did not pursue the unstatable contention.

Shri Hans Raj Gupta was initially working as an Upper Division Clerk-cure-Head Clerk. Thereafter, he worked from January 14, 1947 to October 19, 1954 as the Registrar to the Pensions Appeals Tribunal, Jullundur Cantonment. After relinquishing that post, he was reverted as an Upper Divi- sion Clerk-cum-Head Clerk, which office he held till Febru- ary 17, 1957. Subsequentiy, he was appointed as an Assistant Settlement officer in which post he worked fill September 1962. It is obvious, and requires no clever argument to show, that Shri Gupta was holding clerical posts which, with some courtesy may be described as posts calling for and furnishing administra- tive experience. As an Upper Division Clerk, even if the duties of that post were combined with those of the Head Clerk, Shri Gupta was nowhere in the shadow of a judicial office. As a Registrar of the Pensions Appeals Tribunal, Jullundur Cantonment, he was admittedly discharging adminis- trative functions. A circumstance which seems to have blurred the perception of the State Government perhaps was

that the Pensions Appeals Tribunal was a judicial or quasi- judicial body and since Shri Gupta was closely associated with it, does not matter in what capacity, he could be said to hold a judicial office. Administrative proximity with judicial work was regarded as an excuse good enough to elevate the administrator into a holder of judicial office. This was a wholly misconceived approach to a matter of some moment for, were it so, many a judicial clerk would be qualified to be appointed to a judicial office. Having never held any judicial office, Shri Gupta totally lacked judicial experience and was incompetent to discharge the functions of a Judge of the Labour Court. His appointment was therefore illegal and his award without jurisdiction. We are happy to note that the State Government did not take the time of the DiVision Bench of he High Court and of this Court in arguing an impossible proposition. Nevertheless, the award given by Shri Gupta as the Presiding Officer of the Labour Court is defended by the State Government on the Plea that Shri Gupta's appointment cannot be challenged in a collateral proceeding filed in the High Court for challenging the award. Reliance is placed in support of this submission on the following passage in Cooley's "A Treatise on the Constitutional Limitations"

> (8th edn; vol. 2; pages 1255-1358);
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> "An officer de jure is one who, possessing the legal qualifications, has been lawfully chosen to the office in question, and has fulfilled any conditions precedent to the performance of its duties. By being thus chosen and. observing the precedent conditions, such a person becomes of right entitled to the pos- session and enjoyment of the office, and the public, in whose interest the office is creat- ed, is entitled of right to have him perform its duties. If he is excluded from it, the exclusion is both a public offense and a private injury.
>
> An officer de lure may be excluded from his office by either an officer de facto or an intruder. An officer de facto is one who by some color of right is in possession of an office and for the time being performs its duties with public acquiescence though having no right in fact.His color of right may come. from an election or appointment made by some officer or body having colourable but no actual right to make it; or made in such disregard of legal requirements as to be ineffectual in law; or made to fill the place of an officer illegally removed; or made in favor of a party not having the legal qualifications; or it may come from public acquiescence in the officer-holding without performing the precedent conditions, or holding over under claim of right after his legal right has been terminated; or possibly from public acquiescence alone when accompa- nied by such circumstances of official reputa- tion as are calculated to induce people, without inquiry, to submit to or invoke offi- cial action on the supposition that the person claiming the office is what he assumes to be. An intruder is one who attempts to perform the duties of an office without au- thority of law, and without the support of public acquiescence.
>
> No one is under obligation to recognise or respect the acts of an intruder, and for all legal purposes they are absolutely void. But for the sake of order and regularity, and to prevent confusion in the conduct of public business and in security of private

> rights, the acts of officers de facto are not suffered to be questioned because of the want of legal authority except by some direct proceeding instituted for the purpose by the State of by some one claiming the office de lure, or except when the person himself attempts to build up some right, or claim some privilege or emolument, by reason of being the officer which he claims to be. In all other cases the acta of an officer de facto are as valid and effectual, while he is suffered to retain the office, as though he were an officer by right, and the same legal consequences will flow from them for the protection of the public and of third parties. This is an important principle, which finds concise expression in the legal maxim that the acts of officers de facto cannot be questioned collaterally."

Equally strong reliance was placed by the State Govern- ment on a decision of the Ontario Supreme Court in Rs Toronto N. Co. City of Tornoto (1) in which, after an exami- nation of several American and other decisions, Meredith, C.J.O., observed:

> "That it is not open to attack, in a collateral proceeding, the status of a de facto Judge, having at least a colourable title to the office, and that his acts are valid, is clear, I think, on principle and on authority, and it is also clear that the proper proceeding to question his right to the office is by quo warranto information." (PP. 551-552) Learned counsel for the State, Shri Naunit Lal, further drew our attention to a decision of the High Court of Tra- vancore-Cochin in Bhaskera Pillai and Ant. rs. State(2) which, relying upon the passage in Cooley's Constitutional Limitations and the Canadian case, held that the appoint- ment of the Chief Justice of that Court could not be ques- tioned collaterally in a proceeding for leave. to appeal to the Supreme Court against the decisions rendered by him. Some sustenance was also sought to the same argument from a decision of a Full Bench of (1) 46 Dominion Law Report 547.
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> (2) (1950) 5, D.L.R. Travancore-Cochin 382.

the Allahabad High Court in Queen Empress vs. Garsa Sam(1) in which it was held that where a person had in fact been exercising all the functions of a Judge of the High Court, the appointment even if apparently ultra vires must never- theless be presumed, in the absence of fuller information, to have been legally made in the exercise of some power, unknown to the Court, vested in the Secretary of State for India.

Broadly, the starting point and the primary basis of these decisions is the passage from Cooley's Constitutional Limitations, which we have extracted above. That passage says and means that the acts of officers de facto cannot be suffered to be questioned for want of legal authority except by some direct proceeding. This important principle, according to Cooley, finds concise expression in the legal maxim that the acts of officers de facto cannot be allowed to be questioned collaterally.

Considering the nature and course of proceedings in the instant case, it seems to us impossible to hold that the challenge to Shri Gupta's appointment was made in a collat- eral proceeding. That Shri

Gupta's appointment was not challenged in the very proceeding before him does not meet the point and in any case, if the proper mode to challenge the validity of an appointment to a public office is by a petition for the writ of quo warranto, the Labour Court over which Shri Gupta presided was hardly an appropriate forum for challenging the appoinment of its Presiding Officer. The 1st respondent, the Haryana Co-operative Transport Ltd., against whom Shri Gupta gave the award, filed a writ peti- tion in the High Court of Punjab and Haryana to challenge the award on the ground that Shri Gupta was not qualified to hold the office of a Judge of the Labour Court and, there- fore, the award given by him was without jurisdiction. The challenge to Shri Gupta's appointment having been made by a writ petition under arts. 226 and 227 of the Constitution, to which Shri Gupta was impleaded as a partyrespondent, the challenge was made directly in a substantive proceeding and not collaterally. The writ petition was filed mainly with a view to challenge Shri Gupta's appointment on the ground that he was not qualified to fill the post to which he was appointed. Having been impleaded to the writ peti- tion he had a clear and rightful opportunity to defend his appointment. The proceedings by way of a writ petition were taken not collaterally for attacking an appointment to a judicial office in a proceeding primarily intended for challenging a so-called judicial decision, but the proceed- ing was taken principally and predominantly for challenging the appointment itself. None of the decisions, nor indeed the passage in Cooley's Treatise, is therefore, any answer to the prayer that the award be declared to be ultra vires on the ground that the officer who gave it was not qualified to hold that post in the exercise of whose functions the award was given.

The mere circumstance that the 1st respondent did not in so many words ask for the writ of quo warranto cannot justi- fy the argument that the appointment was being challenged collaterally in a proceeding takes to challenge the award. Considering the averments in the writ petition, it seems to us clear that the main and real attack on the award (3) I.L.R. 16. All. 136.

4---1546 SCI/76 was the ineligibility of Shri Gupta to occupy the post of a Judge of the Labour Court, in the discharge of whose func- tions the award was rendered by him. The relief of certio- rari asked for by writ petition was certainly inappropriate but by clause (c) of paragraph 16, the High Court was invited to issue such other suitable writ, order or direc- tion as it deemed fit and proper in the circumstances of the case. There is no magic in the use of a formula. The facts necessary for challenging Shri Gupta's appointment are stated clearly in the writ petition and the challenge to his appointment is expressly made on the ground_ that he was not qualified to hold the post of a Judge of the Labour Court.

It must be mentioned that in the Canadian case of re Toronto vs. City of Toronto (supra) the contention was that the Ontario Railway and Municipal Board was a "Superior Court" within the meaning of s. 96 of the British North America Act and its members, not having been appointed by the Governor General, had no jurisdiction to exercise the powers conferred upon the Board by the Act by which it was created. This argument was repelled firstly on the ground that the Board was not a Court but an administrative body and secondly on the ground that there was nothing to show that the members of the Board were not appointed by the Governor General.

In the Travancore Cochin case the Chief JustiCe whose appointment was challenged was qualified to hold that post since he had held the office of a Judge of the Madras High Court though he had retired from that office on attaining the age of 60. The question really turned on the construc- tion of art. 376 (2) of the Constitution which confers power on the President is determine the period for which a Judge of a High Court in any Indian State corresponding to any State specified in part B of the First Schedule holding office immediately before the commencement of the Constitu- tion may continue to hold that office. Besides, the Chief Justice's appointment was challenged collaterally in appli- cations for leave to appeal to the Supreme Court against the judgments pronounced by him.

The Full Bench judgment of the Allahabad High) rested on the presumption, in the absence of fuller information, that the appointment must be deemed to have been made in the exercise of some power vested in the Secretary of State for India even if such power was unknown to the Court. Deliver- ing the judgment of the Court, Edge, C.J. observed at page 157: "Being in ignorance as to whether or not any power existed under which Mr, Justice Burkitt may have been lawfully appointed to act as a Judge of this court, we hold that the presumption that he was duly appointed, which arises from the fact of his having acted as a Judge of the Court since November 1892, has not been re-butted. This may seem to be a lame and impotent conclusion for a Court of Justice to arrive at concerning the validity of the appoint- ment of one of its acting Judges, but our lack of necessary information,ion as to the appointment, coupled with the circumstances of the case, permits of our arriving at no other."

Learned counsel for the State of Haryana contends that there is one more impediment in the Court holding that Shri Gupta was not qualified under s. 7(3) of the Act to be appointed as a Judge of the Labour Court. Reliance is placed in support of this argument on s. 9(I) of the Act which reads thus:

> "9. Finality of orders constituting Boards, etc.--(1) No order of the appropriate Government or of the Central Government appointing any person as the chairman or any other member of a Board or Court or as the presiding officer of a Labour Court, Tribunal or National Tribunal shall be called in ques- tion in any manner; and no act or proceeding before any Board or Court shall be called in question in any manner on the ground merely of the existence of any vacancy in, or defect in the constitution of, such Board or Court."

It is true that s.9(1) is worded so widely and generally that it could cover any and every challenge to the appoint- ment to the particular posts therein mentioned. But it is impossible to construe the provision as in derogation of the remedies provided by arts. 226 and 227 of the Consti- tution. The rights conferred by those articles cannot be permitted to be taken away by a broad and general provision in the nature of s.9(1) of the Act. The words "in any manner" which occur in s.9(1) must, therefore, be given a limited meaning so as to. bar the jurisdiction of civil courts, in the ordinary exercise of their powers, to enter- tain a challenge to appointments mentioned in the sub-sec- tion. The High Court of Assam(1), Bombay(2) and Rajasthan(3) have taken, like the High Court of Punjab and Haryana in the instant case, a correct view of the scope and meaning of s.9(1) of the Act by limiting its operation to ordinary powers of the civil Courts. The rights conferred by arts. 226 and 227 can be abridged or taken away only by an appro- priate amendment of the Constitution and

their operation cannot be whittled down by a provision like the one con- tained in s.9(1) of the Act. Accordingly, it is open to the High Courts in the exercise of their writ jurisdiction to consider the validity of appointment of any person as a chairman or a member of a Board or Court or as a presiding officer of a Labour Court, Tribunal, or National Tribunal. If the High Court finds that a person appointed to any of these offices is not eligible or qualified to hold that post, the appointment has to be declared invalid by issuing a writ of quo warranto or any other appropriate writ or direction. To strike down usurpation of office is the function and duty of High Courts is the exercise of their constitutional powers under arts. 226 and 227. In the result we affirm the judgment of the High Court and dismiss this appeal. We are thankful,. to Shri Wad for assisting the Court as amicus.

S.R. Appeal dismissed.

(1) Bozbarua (G.C.) v. Sate of Assam----1954 Assam 161. (2) lagannath Vinayak Kale v. Ahmedi--(1958) II L.L.J. 50 (Bom.) (3) Mewer Textile Mills Ltd. v. Industrial. Tribunal--A.I.R. 1951 Raj. 1961