

Supreme Court of India

Union Of India vs Scientific Workers Assn. (Regd.) on 18 March, 1994

Equivalent citations: 1994 SCC, Supl. (2) 159 JT 1994 (3) 170

Author: K Singh

Bench: Kuldip Singh (J)

PETITIONER:

UNION OF INDIA

Vs.

RESPONDENT:

SCIENTIFIC WORKERS ASSN. (REGD.)

DATE OF JUDGMENT 18/03/1994

BENCH:

KULDIP SINGH (J)

BENCH:

KULDIP SINGH (J)

VERMA, JAGDISH SARAN (J)

CITATION:

1994 SCC Supl. (2) 159 JT 1994 (3) 170

1994 SCALE (2) 344

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by KULDIP SINGH, J.- The demand, by the Senior Scientific Assistants working in the Department of Defence Production, Government of India, for revision of pay scale, was referred to the Board of Arbitration (the Board) constituted under the scheme called Joint Consultative Machinery and Compulsory Arbitration for Central Government Employees (JCM Scheme). The Board gave its award on August 12, 1985 granting higher pay scale to Senior Scientific Assistants with effect from September 22, 1982. Scientific Workers Association, respondent in the appeal herein, filed OA No. 952 of 19861 before the Central Administrative Tribunal, Principal Bench, New Delhi (Tribunal) seeking a direction to the Government of India to implement the award. During the pendency of the application Government of India, on November 11, 1988 decided to implement the award with effect from January 1, 1988.

2. The question before the Tribunal was whether the Government of India could modify the award so as to alter the date of its implementation from September 22, 1982 to January 1, 1988. The

Tribunal answered the question in the negative, allowed OA No. 952 of 19861 and directed the Government of India to implement the award with effect from September 22, 1982.

3. The Government of India placed the matter before the Cabinet which took a decision on August 23, 1989 to move a resolution before Parliament under clause 21 of the JCM Scheme for modification of the date of implementation of the award from September 22, 1982 to January 1, 1988. The Lok Sabha adopted the resolution on October 13, 1989 approving the modification of the date of implementation of the award and similar resolution was passed by the Rajya Sabha on December 29, 1989.

4. Union of India, meanwhile filed Special Leave Petition No. 14911 of 1989 on November 9, 1989 against the judgment of the Tribunal which was granted on August 3, 1990 giving rise to Civil Appeal No. 3769 of 1990.

5. After the adoption of resolutions by the two Houses of Parliament the Union of India filed a review petition before the Tribunal which was dismissed 1 Scientific Workers Association v. Union of India, (1990) 12 ATC 123 : ATR (1989) 2 CAT 532: (1989) 4 SLJ (CAT) 433 on April 10, 19902 on the ground that the resolutions adopted by the two Houses of Parliament could not have the effect of modifying the judgment of the Tribunal dated August 10, 1989.

6. It would be relevant to mention that Civil Appeal No. 3769 of 1990 was dismissed by this Court in default.

7. This appeal by the Union of India is against the judgment of the Tribunal dated August 10, 1989 in OA No. 952 of 19861 and also against the order of the Tribunal dated April 10, 19902 rejecting the review application filed by the Union of India.

8. At this stage it would be useful to have a look at the relevant provisions of the JCM Scheme. The Scheme on the pattern of the Whitely Machinery in the UK was recommended by the Second Pay Commission. After working out the details in consultation with the leaders of the employees, the Scheme was introduced in the year 1966. At that time it broadly covered 2.5 out of 2.6 million regular civil employees of the Central Government. The Scheme is a voluntary one and the Government as well as the Staff Associations/Unions participating in the Scheme are required to subscribe a Declaration of Joint Intent which, inter alia, provides for abjuration of agitational methods by the Staff Unions/Associations for redressal of their grievances. Clauses 16 to 21 of the JCM Scheme which provide for the Machinery of Arbitration are reproduced hereunder :

"Arbitration

16. Compulsory arbitration shall be limited to

(i) pay and allowances,

(ii) weekly hours of work, and

(iii) leave of a class or grade of employees.

17. Cases of individuals shall not be subject to compulsory arbitration.

18. A dispute shall not be referred to arbitration unless it has been considered by the National Council or the appropriate Departmental Council, as the case may be, and final disagreement between the two sides has been recorded. If there is a dispute relating to an arbitrable matter in a lower council it will be placed before the Departmental Council concerned.

19. On a final disagreement being recorded as mentioned in clause 18, the Government shall appoint a Board of Arbitration as soon as possible. The Board will consist of 3 members, one drawn from a panel of 5 names submitted by the official side, one from a similar panel submitted by the staff side of the National Council, and a Chairman who will be an independent person. The members and the Chairman will be selected by the Minister of Labour.

20. (i) In determining a dispute the Board of Arbitration shall examine the merits of the case presented by both the official and staff sides, and take into account all other relevant factors including the principles enunciated in any recent report of a Commission of enquiry etc. 2 Scientific Workers Association v. Union of India, ATR 1990 (2) CAT 76: (1990) 2 SU CAT

(ii) Matters, determined by the Government in accordance with the recommendations of a Commission will not be subject to arbitration for a period of 5 years from the date of the recommendations, after which they will become arbitrable with reference, as far as possible, to the factors referred to in (i) above.

21. Subject to the overriding authority of Parliament, recommendations of the Board of Arbitration will be binding on both sides. If, for reasons to be recorded in writing, the Central Government is of opinion that all or any of the recommendations of Board of Arbitration should on grounds affecting national economy or social justice be modified, the Central Government shall, as soon as may be, lay before each House of Parliament the report of the Board containing such recommendations together with the modifications proposed and the reasons, therefor, and thereupon Parliament may make such modifications in the recommendations as it may deem fit. Modification may extend to the rejection of a recommendation."

9. Mr S.K. Dholakia, learned counsel for the respondents has raised a preliminary objection. According to him Civil Appeal No. 3769 of 1990, having been dismissed by this Court, the present appeal was not competent. The precise contention is that the judgment of the Tribunal in OA No. 952 of 1986, directing the Government of India to implement the award with effect from September 22, 1982 having been upheld by this Court by dismissing CA No. 3769 of 1990 it has achieved finality and as such the same question cannot be agitated in the present appeal. We do not agree

with the contention of the learned counsel. The Tribunal delivered its judgment in OA No. 952 of 1986 on August 10, 1989 whereas the two Houses of Parliament approved the modification of the award on October 13, 1989 and December 29, 1989 respectively. The action of Parliament was not the subject-matter of controversy before the Tribunal. It would be useful to quote, hereunder, two paragraphs from the judgment of the Tribunal : (ATC p. 125) "5. An award could be modified only by the Central Government laying before such House of Parliament the report of the Board containing recommendations together with the modifications proposed and the reasons therefor and after Parliament gives its approval to the modifications sought. Where it is proposed to reject or modify an Award, the department concerned should first consult the Department of Personnel and Training and seek the approval of the Cabinet to take suitable steps to obtain Parliament's specific directions on the suggested modifications.

6. Giving effect to the Award from January 1, 1988 and not from September 22, 1982 amounts to modification of the recommendation made by the Board of Arbitration. There is no indication in the records that the Award in the instant case was sought to be modified by the Government in accordance with the procedure envisaged in clause 21 of the JCM Scheme or that Parliament gave its approval to the modification of the Award so as to give effect to it only from January 1, 1988 and not from September 22, 1982, as stipulated in the Award. In the facts and circumstances, we are of the opinion that the applicants are entitled to the benefit conferred by the Award w.e.f. September 22, 1982 and not from January 1, 1988."

10. We are of the view that after the adoption of the resolutions by the two Houses of Parliament a new situation had arisen. It is no doubt correct that the passing of the resolutions by itself, could not have the effect of modifying the judgment of the Tribunal but it was certainly a valid ground for filing the review petition. The Tribunal directed the enforcement of the award with effect from September 22, 1982 because by that date the procedure envisaged under clause 21 of the JCM Scheme had not been followed. The Tribunal did not and could not have restrained the Government of India from invoking the said procedure. The Government of India, ordinarily, is bound by the award given by the Board unless the same is modified or rejected by Parliament. As stated above, immediately after the judgment of the Tribunal, the Cabinet took a decision on August 23, 1989 and the two Houses of Parliament passed the resolutions modifying the award. The situation which emerged as a result of the resolutions passed by the two Houses of Parliament was not before the Tribunal in OA No. 952 of 1986. That was brought before the Tribunal by the Union of India by filing the review petition. It is, therefore, the judgment of the Tribunal in the review petition which dealt with the question before us. Even if it is assumed that the judgment of the Tribunal in OA No. 952 of 1986 has achieved finality it is of no consequence because the issue before us was not before the Tribunal at that stage. The question for our consideration is whether the procedure under clause 21 of the JCM Scheme has been legally followed, if so, with what effect. This question could not have been and was not the subject-matter of Civil Appeal No. 3769 of 1990. In any case, the said appeal was not decided by this Court on merits. It was dismissed for non-prosecution and in default. There is no adjudication by this Court on the merits of the controversy involved in the said appeal. We, therefore, see no force in the preliminary contention of the learned counsel and, as such, we reject the same.

11. The Tribunal despite its finding that Parliament was competent to modify the award dismissed the review petition on the following reasoning:

"On the merits, it was argued by the learned counsel for the petitioners that Parliament is supreme and that under JCM Scheme, Parliament is competent to modify the Award given by Board of Arbitration. To that extent, the position stated by him is unexceptionable. However, there is nothing in the Resolution adopted by the Lok Sabha and the Rajya Sabha to indicate that the directions issued to the petitioners by the judgment of this Tribunal dated August 10, 1989 in OA No. 952 of 1986 have been sought to be modified by Parliament. The question arises whether the directions of this Tribunal in its judgment dated August 10, 1989 that the Union of India shall implement the Award of the Board of Arbitration with effect from September 22, 1982 and not with effect from January 1, 1988 and that they should pay the arrears of pay and allowances to the Senior Scientific Assistants on the said basis, together with interest at the rate of 10% per annum from September 2, 1982 to the date of payment, can be nullified or set at naught by subsequent legislative action taken by Parliament. ... The ratio of the decisions of the Supreme Court in Pathak case³, Bahadur case⁴ and Nachane case⁵ is that a writ issued by the High Court cannot be overridden or nullified retrospectively even by legislation. In our opinion, having regard to the ratio in the aforesaid decisions, the modification of the 3 1978 SCC (L&S) 103 4 1981 SCC (L&S) 111 5 1982 SCC (L&S) 53 Award given by the Board of Arbitration in the instant case which is sought to be made by the Resolutions adopted by the Lok Sabha on October 13, 1989 and by the Rajya Sabha on December 29, 1989 cannot nullify or render nugatory the directions issued by this Tribunal in its judgment dated August 10, 1989. The directions issued by the Tribunal cannot be set at naught retrospectively by such legislation.... In our opinion, the Resolutions adopted by both Houses of Parliament do not have the effect of modifying the judgment of this Tribunal dated August 10, 1989. Therefore, the respondents are bound to comply with the directions contained in the said judgment. In the conspectus of the facts and circumstances of the case, we find no merit in the present review petition and the same is rejected."

12. We are of the view that the reliance by the Tribunal on the judgments of this Court in Madan Mohan Pathak v. Union of India³, LIC v. D.J. Bahadur⁴ and A. V. Nachane v. Union of India⁵, is wholly misplaced. These judgments have no relevance whatsoever to the facts of the present case.

13. In the present. case the award given by the Board had not achieved finality in the sense that it was open to the Government of India to have invoked the procedure envisaged under clause 21 of the JCM Scheme. The judgment of the Tribunal directing the implementation of the award could only mean that the Government of India was bound to implement the award subject to its power to have it modified in terms of clause 21 of the JCM Scheme. The judgment of the Tribunal could not be read to mean that the Government of India was precluded from proceeding under clause 21 of the JCM Scheme.

14. The matter can be examined from another angle. Government of India took a decision on November 11, 1988 to implement the award with effect from January 1, 1988. That decision was taken by the Government of India without invoking the procedure under clause 21 of the JCM Scheme. Till August 10, 1989 when the Tribunal decided OA No. 952 of 1986 the decision of the Government of India was sub judice before the Tribunal. While interpreting the provisions of the JCM Scheme, the Tribunal came to the conclusion that without resorting to the provisions of clause 21 of the JCM Scheme the Government of India was bound to implement the award as given by the Board and the Government of India had no power to alter the date of implementation of the award to the detriment of the respondents. In pith and substance, the question before the Tribunal was whether the Government of India without resorting to the provisions of clause 21 of the JCM Scheme could have changed the terms of the award to the disadvantage of the respondents. The Tribunal answered the question in the negative. Immediately thereafter the Government of India in accord with the judgment of the Tribunal placed the matter before the Cabinet which took the decision on August 23, 1989 to the effect that a resolution be moved in Parliament under clause 21 of the JCM Scheme for implementing the award with effect from January 1, 1988. In this view of the matter it is wholly futile to say that Parliament had no power to modify the terms of the reference after the judgment of the court. We are of the view that the Tribunal fell into patent error in dismissing the review petition on the basis of the misplaced reliance on the three judgments of this Court.

15. Clause 21 of the JCM Scheme clearly lays down that the Central Government in the interests of national economy or social justice can lay the award before each House of Parliament for the modifications of the recommendations of Board. There is no material on the record to show that the exercise of power by the Central Government under clause 21 of the JCM Scheme is vitiated in any manner. The two Houses of Parliament having passed the resolutions the award stood modified in terms of the resolution and as such can be implemented with effect from January 1, 1988 and not from September 22, 1982.

16. Mr Dholakia, learned counsel for the respondents has invited our attention to the office memorandum issued by the Government of India, Department of Personnel and Training dated January 20, 1988. Learned counsel for the appellants has also placed before us the memorandum dated June 10, 1988 issued by the same authority. Both these memorandums lay down time schedule for the implementation of the award. These memorandums were issued in the year 1988 whereas the award in this case was given in the year 1985. The respondents filed the application before the Central Administrative Tribunal in the year 1986 which was decided on August 10, 1989. May be because the matter was sub judice, the Government of India did not take any decision under clause 21 of the JCM Scheme. As mentioned above immediately after the judgment the Cabinet, on August 23, 1989, took the decision to lay the award before Parliament for modification. In the facts and circumstances of this case, we see no delay on the part of the Government of India in placing the award before Parliament for modification. We are, however, of the view that the Government of India should, ordinarily, follow the time schedule prescribed in the above mentioned memorandums. The decision as to whether the provisions of clause 21 of the JCM Scheme are to be invoked in a given case should be taken within a reasonable time.

17. The argument of Mr Dholakia that before passing the resolution Parliament should have given an opportunity of hearing to the respondents, has been noticed to be rejected. The JCM Scheme has been formulated in consultation with the representatives of the employees. The parties have by consent left the residuary power to modify or reject the award with Parliament. In any case the affording of an opportunity to the respondents by Parliament does not appear to be a requirement of clause 21 of the JCM Scheme.

18. We allow the appeal, set aside the judgment of the Tribunal dated August 10, 1989¹ and also set aside the judgment of the Tribunal dated April 10, 1990². Review Petition No. 30 of 1990 in OA No. 952 of 1986 is allowed and OA No. 952 of 1986 filed by the respondent before the Tribunal is dismissed. We leave the parties to bear their own costs.

REFERENCE UNDER ARTICLE 317(1) OF THE CONSTITUTION OF INDIA ORDER

1. This is a reference dated January 30, 1985 under Article 317 of the Constitution of India by the President of India for inquiry and report as to whether Shri Megha Chandra Singh, Chairman of Manipur Public Service Commission, ought, on the ground of misbehaviour to be removed from the office of the Chairman of the Commission.

2. The order of reference reads as under:

"Whereas the Chief Minister of Manipur has reported to the Government of India that he had been receiving complaint from different sources against Shri Megha Chandra Singh, Chairman, Manipur Public Service Commission, expressing doubts about his honesty and integrity.

And whereas the Government of India felt it necessary that it should conduct a probe into the allegations through a Central agency with a view to collecting such evidence as may be available and to satisfy itself that there is indeed a prima facie case, it entrusted the investigation to the Central Bureau of Investigation to give a report.

And whereas according to the report of the Central Bureau of Investigation, the conduct of Shri Megha Chandra Singh did not appear to be above board and further that Shri Megha Chandra Singh refused to make available to the Investigation Officer the relevant documents required for the purpose of the aforesaid inquiry, which were in his personal custody. And whereas the Government of Manipur has reiterated their request that because of the gravity of the allegations the State Government desires to have a full-fledged investigation so that the real truth may come out and the issues involved are settled to the satisfaction of all concerned. And whereas I am satisfied from the above referred materials before me that it is necessary that the said allegations be inquired into.

Now therefore, in exercise of the powers conferred upon me by clause (1) of Article 317 of the Constitution, I Zail Singh, President of India, hereby refer to the Supreme

Court of India, for inquiry and report as to whether Shri Megha Chandra Singh, Chairman, Manipur Public Service Commission, ought, on the ground of misbehaviour to be removed from the office of the Chairman of the Commission. New Delhi Dated: January 30, 1985 Sd/-

(Zail Singh) PRESIDENT OF INDIA."

3. The allegations against Shri Megha Chandra Singh are as follows:

" (a) That the mark-sheets of the prospective candidates for the posts of Assistant Engineer (Electricals) and Assistant Director (Statistics) were tampered with, forged and fabricated in the office of the Chairman, Manipur Public Service Commission in order to show favours to certain candidates.

(b) That the answer books for the Manipur Civil Service/Manipur Police Service Examinations conducted in September 1981 were tampered with. The mark-sheets and the tabulated charts furnished by the examiners and kept in the personal custody of the Chairman, were also tampered with and forged to show favours to certain candidates.

(c) The Chairman introduced a new system of marking in the viva voce tests in which marks were recorded and signed only by the Chairman.

Other Members of the Commission or representatives of Government Departments were not allowed to sign the mark-sheets. The Chairman introduced this new consensus system in viva voce tests to enable him to make manipulations in the mark-sheets with a view to showing favour to candidates of his choice.

(d) One Shri L. Ibomacha Singh is alleged to have stated to have paid a bribe of Rs 15,000 to the Chairman for his selection as a Sub- Deputy Collector under Manipur Government."

4. In the meanwhile, Shri Megha Chandra Singh retired and the State was directed to take appropriate instructions in the matter. Shri Megha Chandra Singh filed a counter to the effect that this order has far-reaching implications insofar as it gave credence to the fact of his retirement on January 19, 1987 which retirement was allowed earlier by the Governor by his order dated January 5, 1987. On July 31, 1991, the Government was pleased to sanction the payment of admissible pension provisionally subject to the final pension and the decision of this Court on reference.

5. On the charges, he would urge that the appointments made by him were ever questioned by anyone. The selectees have been holding their posts for ore than 10 years. The allegation of taking bribe is false, baseless and malacious.

6. Under these circumstances, we feel appropriate to adopt the procedure indicated in Re Reference under Article 317(1) of the Constitution of India'. The inquiry contemplated under Article 317 is into the facts themselves so as to enable this Court to pronounce upon the question whether the allegations made against the Chairman of Manipur Public Service Commission are proved. Therefore, we direct evidence with relation to the reference will be recorded by a sitting Judge of the High Court of Guwahati who will be nominated by the learned Chief Justice of High Court of Guwahati. The nomination may be made within four weeks from the date of this order.

7. In recording the evidence, the learned Judge may adopt the following guidelines:

"(i) The affidavits filed in this Court will be treated as the examination in-chief of the respective witnesses.

(ii) The evidence to be recorded by the learned Judge will be limited to the cross-examination of witnesses who have filed affidavits before us. In other words, no person who has not filed an affidavit in this Court will be examined or cross-examined as a witness, except with the leave of this Court.

(iii) Witnesses who have filed affidavits in this Court may be summoned or requested by the learned Judge to attend his Court for the purpose of cross-examination. The proceedings will normally be held in Guwahati. Evidence may, however, be recorded at any other place if the learned Judge considers it necessary or convenient."

8. The question relating to the admissibility and relevance of a particular evidence will be decided by this Court.

9. The first date of hearing is fixed on Monday, April 4, 1994 at 11 a.m. Thereafter, it will proceed from day to day till the completion of evidence.