

GOVERNMENT OF A.P. AND ANR.

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v.

Y. SURENDER REDDY

MAY 25, 2006

[DR. AR. LAKSHMANAN AND LOKESHWAR SINGH PANTA, JJ.]

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*Constitution of India, 1950—Article 136—Jurisdiction under—Exercise of—Government challenging the order of High Court—Held: Order of High Court had worked itself out with the passing of an order by State Government—State Government's order superseded by subsequent order of the tribunal which is not challenged—Hence relief sought for cannot be granted—However, in the interest of justice, party permitted to challenge the order of tribunal by filing writ petition before the High Court—Administrative Tribunal Act, 1985.*

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Respondent, an employee of APSRTC filed an application before the Administrative Tribunal for issuance of direction to the appellant-Government to consider his case for appointment as Assistant Motor Vehicle Inspector. Tribunal dismissed the application. Respondent filed a writ petition. High Court directed the Surplus Manpower Cell to sponsor the name of the respondent for appointment since the respondent had undergone training. State Government did not implement the order passed by High Court. Respondent filed a contempt petition before the High Court. During pendency of the contempt petition, appellant filed the instant special leave petition. Thereafter, High Court disposed of the contempt petition holding that since the Government had considered the case of the respondent and passed an order there was no wilful disobedience of the order and the aggrieved respondent could seek redressal from the appropriate forum. Thereafter, respondent filed an application challenging the Government's order, before the Administrative Tribunal which was allowed. This Court granted leave prayed for in SLP and stayed the order.

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Disposing of the appeal, the Court

HELD: 1.1. In the absence of the challenge to the judgment dated 26.05.2004 passed by the Tribunal in O.A. No. 3200/2004, relief cannot

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A be granted to the appellants in the instant appeal. The impugned order dated 08.08.2003 has worked itself out with the passing of the order dated 23.12.2003 by the State Government. That order stands superseded in view of the Tribunal's order dated 26.5.2004. Since the order dated 26.05.2004 has not been challenged, in the interest of justice, appellants are permitted to challenge the order of the Tribunal dated 26.5.2004 in O.A. No. 3200 of 2004 before the High Court. [1025-D-G]

1.2. Even though the order was passed on 26.5.2004, the same could not be challenged because of the pendency of the appeal in this Court. Therefore, the time, if any taken by the appellants to file this appeal has to be excluded in computing the period of limitation. [1025-G]

1.3. It cannot be said that since the similarly placed persons have been accommodated and the respondent's case is an isolated one and since the appellants have not challenged the tribunal's order dated 26.5.2004 for the last two years, this Court may not exercise its jurisdiction under Article 136 of the Constitution of India in favour of the appellants. If similarly placed persons have already been accommodated, the State may consider the case of the respondent in a sympathetic manner and pass appropriate orders accordingly. [1026-B-D]

E CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7938 of 2004.

From the Judgment and Order dated 8.8.2003 of the High Court of Andhra Pradesh at Hyderabad in W.P No. 14645/2000.

F Mrs. D. Bharathi Reddy, Adv., for the Appellants.

K.V. Vishwanathan, D. Bharat Kumar, Anand and Abhijit Sengupta, Advs., for the Respondents.

G The Judgment of the Court was delivered by

H Dr. AR. LAKSHMANAN, J. : The above appeal is directed against the final judgment and order dated 8.8.2003 passed by the High Court of Judicature of Andhra Pradesh at Hyderabad in Writ Petition No. 14645 of 2000 whereby the High Court disposed of the writ petition filed by the

respondent herein with a direction that the Surplus Manpower Cell in Finance Department shall consider the case of the writ petitioner for sponsoring his name to the Transport Commissioner for being appointed as Assistant Motor Vehicles Inspector pending any modifications to the Rules, if required. The High Court also directed that this exercise shall be done within a period of six weeks from the date of receipt of a copy of the said order.

We have heard Mrs. Bharti Reddy, learned counsel for the appellants and Mr. Vishwanathan, learned counsel for the respondent.

Before proceeding to consider the rival submissions, it is necessary to set out certain background facts of this case:

The respondent herein filed the application under Section 19 of the Administrative Tribunal Act, 1985 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad praying for a direction to the appellant to consider his case for appointment of Assistant Motor Vehicle Inspector. At that time (and even now the respondent) is an employee of A.P.S.C.R.I.C. The respondent has based his right *inter alia* in G.O. Ms No. 275 dated 14.12.1995 and on the fact that similarly situated employees have been considered for appointment as Assistant Motor Vehicle Inspector. Further, details are not necessary since the present appeal has become infructuous, according to the respondent.

The Andhra Pradesh Administrative Tribunal dismissed the O.A. No. 3805/2000 as not maintainable since the Tribunal felt that the respondent was an employee of a Corporation and as corporation employee will not come within the purview of the Act. The respondent had argued that as per Section 15 of the Administrative Tribunal Act, the Tribunal has got jurisdiction since the respondent was seeking an appointment to the civil post under the State Government based *inter alia* on G.O. Ms. No. 275 dated 14.12.1995. The Tribunal dismissed the O.A. as not maintainable.

The respondent filed W.P. No. 14645/2000 before the High Court of Andhra Pradesh and not only prayed for setting aside the Tribunal order dated 24.7.2000 in O.A. No. 3805/2000 but also prayed for a direction to consider the case of the respondent for appointment as Assistant Motor Vehicle Inspector.

A The Division Bench of the High Court did not go into the maintainability of the O.A. and further considered the matter and passed the impugned order. The observations are as follows:

B “Now, the scenario has been changed. It is the case of the petitioner that he was sponsored by Surplus Manpower Cell in Finance Wing to Transport Commissioner for being appointed as Assistant Motor Vehicle Inspector, and consequently he had undergone training and completed the training. But no appointment orders are issued.

C Under these circumstances, since the petitioner was found to be eligible for being appointed as Assistant Motor Vehicles Inspector and also undergone required training, we are inclined to dispose of the writ petition with a direction that the Surplus Manpower Cell in Finance Department shall consider the case of the petitioner for sponsoring name of petitioner to the Transport Commissioner for being appointed as Assistant Motor Vehicle Inspector pending any modifications to the Rules, if any required. This exercise shall be done within a period of six weeks from the date of receipt of a copy of this order. No costs.”

E The appellant purportedly in implementation of the impugned order took up the case of the respondent on the ground that Act 14 of 1997 of the Andhra Pradesh Legislature prohibits the corporation employees from being absorbed in Government. In fact the contention of the respondent is that the Act 14 of 1997 has no application since it says that the absorption of public sector undertaking employees is prohibited only on the ground that the undertaking has become sick or are likely to become sick. In this case the contention of the respondent's is that A.P.S.C.R.I.C. is not sick. The respondent filed a contempt petition aggrieved by the order dated 23.12.2003.

G The appellant filed the present special leave petition during the pendency of the Contempt Petition No. 85/2005 before the High Court.

The Contempt Petition filed by the respondent in the High Court was disposed of with the following observations:

H “In the counter affidavit, it has been stated that Government considered the case of the petitioner and passed an order on

23.12.2003. As such, there is no wilful disobedience of the order of this Hon'ble Court. If the petitioner is aggrieved of order dated 23.12.2003, he can seek redressal from the appropriate forum".

Thereafter, against the order of 23.12.2003, the respondent preferred O.A. No. 3200/2004 before the A.P.A.T., Hyderabad and the same was allowed by the Tribunal with the following observations:

"In the facts and circumstances of the case, since the answering respondent has already undergone training, taking into consideration, the observations made by the Hon'ble High Court in W.P. No. 14645/2000, the Finance Department i.e. the first respondent is directed to sponsor the name of the answering respondent for appointment to the post of Assistant Motor Vehicle Inspector and pass appropriate orders within a period of three months from today, after due consideration of the judgment of the Hon'ble High Court in W.P. No. 14645/2000 dated 18.8.2002."

On 6.12.2004, this Court granted leave in the special leave petition and directed that there shall be a stay of operation of impugned judgment.

We have considered the rival submissions. In our view, in the absence of the challenge to the judgment dated 26.5.2004 passed by the Tribunal in O.A. No. 3200/2004, relief cannot be granted to the appellants in the present appeal. The impugned order dated 8.8.2003 has worked itself out with the passing of the order dated 23.12.2003 by the State Government. That order stands superseded in view of the Tribunal's order dated 26.5.2004 in O.A. No. 3200 of 2004. The learned counsel for the appellant also raised the contention before this Court in regard to the jurisdiction of the Andhra Pradesh Administrative Tribunal. Since the said order has not been challenged, we now permit the appellants, in the interest of justice, to challenge the order of the Tribunal dated 26.5.2004 in O.A. No. 3200 of 2004 before the High Court. This apart, the Special Leave Petition filed by the appellants is also pending before this Court. Even though the order was passed on 26.5.2004, the same could not be challenged because of the pendency of the appeal in this Court. Therefore, the time taken by the appellants to file this appeal has to be excluded in computing the period of limitation, if any. The appellants may file a writ petition questioning the correctness of the order dated 26.5.2004, if they so desire. If such a writ petition is filed within one month

- A from today, the same shall be entertained and disposed of by the High Court on merits and in accordance with law. The respondent has also filed another Writ Petition No. 8350/2004 in the High Court citing the case of appointments made in similarly situated persons. The said writ petition is also pending consideration by the High Court, which also shall be disposed of by the High Court as expeditiously as possible along with the petition that may be filed by the State of Andhra Pradesh. Mr. Vishwanathan, learned Counsel for the respondent also submits that similarly placed persons have been accommodated and the respondent's case is an isolated one and since the appellants have not challenged the Tribunal's Order dated 26.5.2004 in O.A. No. 3200 of 2004 for the last two years, this Court may not exercise its jurisdiction under Article 136 of the Constitution of India in favour of the appellants. We are not able to countenance the respondent's submissions. The statement of Mr. Vishwanathan is disputed by Mrs. Bharati Reddy, learned counsel for the State. If similarly placed persons have already been accommodated, the State may consider the case of the respondent in a sympathetic manner and pass appropriate orders accordingly.
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We have already stated the reasons as to why the writ petition could not be filed by the State challenging the order of the Tribunal. In view of the reasons stated in the foregoing paragraph, we permit the State to file the writ petition before the High Court.

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The Civil Appeal is disposed of accordingly. No order as to costs.

N.J.

Appeal disposed of.