

(2020) 07 J&K CK 0098

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 908, 913 Of 2020

Abhishek Gupta And Others

APPELLANT

Vs

Jammu And Kashmir Bank Ltd And Others

RESPONDENT

Date of Decision : 03-07-2020

Acts Referred:

Administrative Tribunal Act, 1985 — Section 3(q), 5(7), 14, 14(1), 14(1)(a), 14(1)(a)(b)(c), 14(2), 18(1)
Post-Graduate Institute Of Medical Education And Research, Chandigarh, Act 1966 — Section 4
Constitution Of India, 1950 — Article 12, 310(2), 311, 370(3)

Citation : (2020) 07 J&K CK 0098

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Jahangir Iqbal Ganai, Humaira Shafi, D. C. Raina, Sajad Ashraf, Sunil Sethi, Ravi Abrol

Judgement

Ali Mohammad Magrey, J

1. By this order I proceed to deal with the issue raised by Mr. D. C. Raina, learned Advocate General, and Mr. Sunil Sethi, learned senior counsel, representing respondents 1 & 2, that in view of the application of the Central Administrative Tribunal Act, 1985 (CAT Act) to the Union Territory of Jammu and Kashmir, this Court does not have the jurisdiction to entertain this writ petition against the Jammu and Kashmir Bank Limited (the Bank) as a Court of first instance, or that the Court of first instance in relation to the controversy raised in this petition is the Central Administrative Tribunal.

2. Before coming to the arguments advanced at the Bar, I deem it apt to mention here that after his Excellency the President made the Constitutional (Application to Jammu and Kashmir) Order, 2019 (C.O. 272) dated 05.08.2019 read with the Declaration made under Article 370(3) of the Constitution in terms of Notification G.S.R. 562(E) (C.O. 273) dated 06.08.2019; and after the Parliament enacted the Jammu and Kashmir Reorganization Act, 2019 (No.34 of 2019), the

Government of India in the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), New Delhi, in exercise of powers conferred by sub-section (1) of section 18 of the CAT Act, issued Notification G. S. R. 267(E) dated 29.04.2020 extending the jurisdiction of the Central Administrative Tribunal, Chandigarh Bench, inter alia, to the Union Territories of Jammu and Kashmir, and Ladakh. Subsequently, by another notification, issued in exercise of the powers conferred by sub-section (7) of Section 5 of the CAT Act, the said Department issued Notification no. G.S.R. 317(E) dated 28.05.2020, specifying Jammu and Srinagar as the places at which the Benches of the Central Administrative Tribunal shall ordinarily sit for the Union Territory of Jammu and Kashmir and Union Territory of Ladakh. Further, by yet another Notification no. G.S.R. 318(E) of even date, issued by the Central Government in the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), New Delhi, in exercise of the powers conferred by sub-section (1) of Section 18 of the said Act, the jurisdiction of the Jammu Bench of the Tribunal, was specified to be the Union Territory of Jammu and Kashmir and Union Territory of Ladakh. In short, the CAT Act stands extended to the two Union Territories (UTs) and a Bench thereof stands established at Jammu for the two UTs.

3. The learned Advocate General submitted that after the establishment of the Central Administrative Tribunal (CAT) for the Union Territories of Jammu and Kashmir, and Ladakh, all the jurisdiction, powers and authority which were exercisable by this Court immediately before establishment of the CAT in relation to the matters enumerated thereunder, in terms of Sub-Section (1) of Section 14 of the CAT Act are exercisable by the CAT as the court of first instance. The learned Advocate General made specific reference to the words 'recruitment, and matters concerning recruitment' occurring in Clause (a) of Sub-section (1) of Section 14 and submitted that since the instant matter relates to recruitment in the Bank, declared as a public authority, all jurisdiction and powers and authority in relation thereto lies with the CAT. Similar argument was made by Mr. Sunil Sethi, learned senior counsel, for respondents 1 and 2. Mr. Sunil Sethi, while seeking to rebut the argument of Mr. Jehangir Iqbal, learned senior counsel for the petitioners, which would be referred to immediately hereafter, went a step further to submit that since the Bank is a public authority and a State within the meaning of Article 12 of the Constitution, the posts borne on it are civil posts under the Union and, therefore, are covered under Clause (a) of Sub-section (1) of Section 14 of the CAT Act. The learned Advocate General and Mr. Sunil Sethi also made an endeavour to convince this Court that the matter in issue would also fall within the purview of clauses (b) and (c) of Sub-section (1) of Section 14 of the Act, inasmuch as reference was also made to the definition of the words 'service matters' given in definition clause (q) of Section 3 of the CAT Act.

4. Mr. Jehangir Iqbal Ganai, learned senior counsel, for the petitioners submitted that the instant matter does not fall within the purview of sub-section (1) of Section 14, but is covered by sub-section (3) thereof, which exclusively refers to

'any local or other authority or corporation or society'. However, he submitted that the provision of sub-section (3) does not have an automatic application to local or other authorities or corporations or societies, but this provision is to be applied by the Central Government by notification. The learned counsel submitted that so far the Central Government has not issued any such notification applying the provision of sub-section (3) to the J&K Bank. The learned senior counsel submitted that given such a factual scenario, the CAT does not have any jurisdiction, power or authority in relation to the recruitment which is the subject matter of dispute in the instant petition. Mr. Jehangir Iqbal Ganai also submitted that the Banking service or the posts borne on the Bank cannot, by any stretch of imagination, be called as civil service of the Union or civil posts under the Union. To buttress his arguments, the learned senior counsel cited and relied upon two Apex Court decisions in *S. L. Agarwal v. G. M., Hind. Steel Ltd.*, 1970 (1) SCC 177; and *Gurjeewan Garewal (Dr.) v. Dr. Sumitra Dash*, (2004) 5 SCC 263; and two High Court decisions in *Ram Kishore Meena v. Union of India*, MANU/RH/0068/2002 : 2002(4) SLR 39; and *Saurendra Nath Maity v. State of West Bengal*, MANU/WB/0031/2004 : 2004(1)CLJ(CAL)407.

5. Admittedly, the subject matter of this writ petition is the recruitment process concerning the posts borne on the service of the Bank. Section 14 of the CAT Act referred to at the Bar, falls in Chapter III, captioned jurisdiction, powers and authority of Tribunals. It reads as under:

"14. Jurisdiction, powers and authority of the Central Administrative Tribunal.-

(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts, except the Supreme Court, in relation to-

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning-

(i) a member of any All-India Service; or

(ii) a person, not being a member of an All-India Service or a person referred to in clause (c), appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian, not being a member of an All-India Service or a person referred to in clause (c), appointed to any defence services or a post connected with defence;

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of

any corporation or society owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation 4 [or society] or other body, at the disposal of the Central Government for such appointment.

Explanation.- For the removal of doubts, it is hereby declared that references to 'Union' in this sub-section shall be construed as including references also to a Union territory.

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations or societies owned or controlled by Government, not being a local or other authority or corporation or society controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations or societies.

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation or society, all the jurisdiction, powers and authority exercisable immediately before that date by all courts, except the Supreme Court, in relation to-

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation or society; and

(b) all service matters concerning a person, other than a person referred to in clause (a) or clause (b) of sub-section (1), appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs."

6. A bare perusal of the Section 14 of the Act unambiguously prescribes that, on and from the appointed day, the CAT shall exercise all the jurisdiction, powers and authority exercisable immediately before that day by all courts, except the Supreme Court, in relation to the matters enumerated in Clauses (a), (b) and (c) of sub-section (1) thereof. I will come to Clause (a) a bit later. Let me first refer to Clauses (b) and (c) of the sub-section.

7. Perusal of Clauses (b) and (c) of sub-section (1) of Section 14 makes it axiomatic that the same speak of and relate to 'all service matters'. The term 'service matters' has been defined in Section 3(q) as under:

"(q) 'service matters', in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or, as the case may be, of any corporation or society owned or controlled by the Government, as respects-

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
- (iii) leave of any kind;
- (iv) disciplinary matters; or
- (v) any other matter whatsoever."

It is thus seen that the definition of the words 'service matters' is given as meaning all matters relating to the conditions of service of a person as respects his remuneration, allowances, pension and other retirement benefits; tenure, including confirmation, seniority, promotion, reversion, premature retirement and superannuation; leave of any kind; disciplinary matters or any other matter, whatsoever. The phrase does not, however, bring within its fold "recruitment and matters concerning recruitment". It is not *res integra* that conditions of recruitment are different from conditions of service. Conditions of service, therefore, cannot be construed conditions of recruitment. Consequently, the words 'service matters' do not include 'recruitment or matters concerning recruitment'. The argument raised in this regard, therefore, is untenable.

8. So far as Clause (a) of sub-section (1) of Section 14 is concerned, it specifically mentions and relates to recruitment and matters concerning recruitment. But it does not relate to the Banking Services or the posts borne thereon. It specifically enumerates the services to which it is relatable, that is, to any All India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian. Obviously, the posts borne on the service of the Bank in respect of which recruitment is to be made do not constitute All India Service. These posts, or the service of the Bank, also do not constitute civil service of the Union or civil posts under the Union or posts connected with defence or defence services filled by civilians.

9. However, as already mentioned earlier, an endeavour was made to plead that the posts borne on the service of the Bank are civil posts, therefore, governed and covered by Clause (a) of sub-section (1) of Section 14 of the CAT Act. I may at the very outset observe that this argument on the face of it is wholly,

conceptually untenable. The term 'civil post' has been expounded by a five Judge Bench of the Supreme Court, headed by the then Chief Justice, way back in 1967, in *State of Assam v. Kanak Chandra Dutta*, AIR 1967 SC 884, in the following words:

"9 ...There is no formal definition of 'post' and 'civil post'. The sense in which they are used in the Services Chapter of Part XIV of the Constitution is indicated by their context and setting. A civil post is distinguished in Art. 310 from a post connected with defence; it is a post on the civil as distinguished from the defence side of the administration, an employment in a civil capacity under the Union or a State. See marginal note to Art. 311. In Art. 311, a member of a civil service of the Union or an all-India service or a civil service of a State is mentioned separately, and a civil post means a post not connected with defence outside the regular civil services. A post is a service or employment. A person holding a post under a State is a person serving or employed under the State. See the marginal notes to Arts. 309, 310 to 311. The heading and the sub-heading of Part XIV and Chapter I emphasise the elements of service. There is a relationship of master and servant between the State and a person holding a post under it. The existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. A relationship of master and servant may be established by the presence of all or some of these indicia, in conjunction with other circumstances and it is a question of fact in each case whether there is such a relation between the State and the alleged holder of a post.

10. In the context of Arts. 309, 310 and 311, a post denotes an office.

A person who holds a civil post under a State holds 'office' during the pleasure of the Governor of the State, except as expressly provided by the Constitution. See Art. 310. A post under the State is an office or a position to which duties in connection with the affairs of the State are attached, an office or a position to which a person is appointed and which may exist apart from and independently of the holder of the post. Article 310(2) contemplates that a post may be abolished and a person holding a post may be required to vacate the post, and it emphasises the idea of a post existing apart from the holder of the post. A post may be created before the appointment or simultaneously with it. A post is an employment, but every employment is not a post. A casual labourer is not the holder of a post. A post under the State means a post under the administrative control of the State. The State may create or abolish the post and may regulate the conditions of service of persons appointed to the post." (Underlining supplied)

None of the elements as enumerated in the aforesaid judgment are attendant in the instant case, or are shown to exist vis-à-vis the employees of the Bank. Especially, it is not shown that there exists a master and servant relationship between the UTs of Jammu and Kashmir and Ladakh and the employees on the service of the Bank. It is clearly laid down in the aforesaid judgment that the

existence of this relationship is indicated by the State's right to select and appoint the holder of the post, its right to suspend and dismiss him, its right to control the manner and method of his doing the work and the payment by it of his wages or remuneration. It is rather admitted that the right to select and appoint the holders of the posts borne on the service of the Bank is with the Bank. Reference in this connection may be made to Government Order no.377-F of 2019 dated 04.07.2020 which is captioned "(i) Streamlining the procedure for procurement of Goods and Services and award of contracts by Public Sector Undertakings / Autonomous Bodies / Societies; and (ii) Creation of posts and regulation of recruitment in Public Sector Undertakings / Autonomous Bodies / Societies". Clauses (iii) and (iv) of this Government order ordain as under:

"(iii) No new posts shall be created by the Public Sector Undertakings / Autonomous Bodies / Societies without the prior concurrence of Finance Department;

(iv) No recruitment against vacant posts shall be made by Public Sector Undertakings / Autonomous Bodies / Societies without the prior concurrence of the Finance Department."

The Government order clearly suggests that the posts are created by the Bank itself and recruitments thereto are, or are to be, made by the Bank itself. A further insight into the material elements, discussed in the aforesaid decision of the Supreme Court, vis-à-vis the Bank can be had from a perusal of the relevant Articles and Memorandum of Association of the Bank reproduced in the Full Court decision of this Court in *Firdous Ahmad Tanki & ors. v. The J&K Bank Ltd. & ors*, 2006(1) S.L.J. 1.

10. It is also not shown that the UTs have the right to suspend and/or dismiss any holder of the post borne on the service of the Bank; or that the UTs have the right to control the manner and method of doing the work of the holders of the posts borne on the service of the Bank, or that the payment of their wages or remuneration is made by the two UTs. Further, it is not shown to the Court that the posts borne on the service of the Bank are under the administrative control of the UTs or that the UTs have the right or power to create or abolish the posts and regulate the conditions of service of persons appointed to the posts in question. Viewed thus, it can by no stretch of interpretation of clause (a) of sub-section (1) of section 14 of the CAT Act be said that the service of the Bank is, or constitutes, a civil service of the Union or the posts borne on the service of the Bank are, or constitute, civil posts under the Union.

11. In *S. L. Agarwal v. G. M., Hind. Steel Ltd.*, (supra), which is again a five Bench decision of the Supreme Court, cited and relied upon by the learned senior counsel for the petitioners, a similar issue was involved concerning the Hindustan Steel Limited Corporation. It was held therein that the Corporation was not a department of the Government nor were its servants holding posts under the State, and that it had its independent existence. Therefore, the appellant before

the Supreme Court therein, who was an employee of the Corporation, did not answer the description of a holder of a civil post under the Union. Same is the case with the Bank herein.

12. Again, in *Gurjeewan Garewal (Dr.) v. Dr. Sumitra Dash*, (supra), the point as to meaning of the phrase 'civil post' occurring in Article 311 of the Constitution in context of a holder of the post in Post Graduate Institute of Medical Education and Research, Chandigarh (PGIMER) was involved. Section 4 of the Post Graduate Institute of Medical Education and Research, Chandigarh Act, 1966, provided that PGIMER was a body corporate, having a perpetual succession and a common seal with power. Relying on para 9 of the judgment in *State of Assam v. Kanak Chandra Dutta*, quoted hereinabove, the Supreme Court held that Section 4 of the PGIMER Act clearly provided that it was a separate entity in itself and that its employees, or for that matter, of any authority which is a legal entity separate from the State, cannot claim to be holders of civil posts under the State.

13. The above two judgments cited at the Bar support the view this Court has already expressed hereinabove.

14. Now, coming to sub-section (3) of Section 14, it starts with the phrase "Save as otherwise expressly provided in this Act". This phrase has long since been interpreted to mean that the provision would apply only to cases not expressly provided for in the Act [See *Sambhu Nath Sarkar v. State of W. B.*, (1973 1 SCC 856). Applying this interpretation herein, since sub-section (1)(a)(b)(c) of Section 14 of the CAT Act does not expressly apply to the 'recruitment and matters concerning recruitment' in the Bank, sub-section (3), undoubtedly, would apply thereto. But the application of this provision viz. sub-section (3) of Section 14 of the CAT Act is hedged in the condition prescribed in sub-section (2) of Section 14, which is that sub-section (3) does not have an automatic application; its application is dependent on the discretion of the Central Government to apply it to a local or other authorities within the territory of India or under the control of the Government of India and to corporations or societies etc., and such discretion has to be exercised only by issuance of a notification in that behalf. The language of sub-section (2) of Section 14 in this regard is unambiguous and empathic that the Central Government may, by notification, apply the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations or societies owned or controlled by Government, not being a local or other authority or corporation or society controlled or owned by a State Government. The learned senior counsel for the petitioners has in this regard cited two judgments: the first being of the High Court of Rajasthan in *Ram Kishore Meena v. Union of India*, MANU/RH/0068/2002 : 2002(4) SLR 39; and the other of the High Court of Calcutta in *Saurendra Nath Maity v. State of West Bengal*, MANU/WB/0031/2004 : 2004(1)CLJ(CAL)407. Since the provisions of law in question are clear in their language, the Court deems it unnecessary to quote herein what the above two High Courts have laid down in this regard.

15. It may be observed here that during the course of arguments, this Court specifically enquired from the learned Advocate General and Mr. Sunil Sethi, learned senior counsel, whether the Central Government had issued any such notification. They frankly answered in negative.

16. It is not that the Central Government has not issued any notification in exercise of the powers under sub-section 2 of Section 14 of the Act applying the provision of sub-section (3). Certain documents / notifications issued by the Central Government, from time to time, in exercise of such power under sub-section (2) of Section 14 have been placed before the Court which depict that so far nearly 214 organizations, by their name, have been brought under the purview of sub-section (3) of Section 14 of the CAT Act; the J&K Bank, in any case, is not one amongst them.

17. Viewed in the above context, it cannot be said that sub-section (3) of Section 14 of the CAT Act applies to the Bank or the instant recruitment process of the Bank.

18. This answers the point in issue raised by the learned Advocate General and Mr. Sunil Sethi, learned senior counsel, for respondents 1 and 2. Resultantly, it is held that the CAT does not have the jurisdiction under Section 14 in relation to the subject matter of controversy in the instant case; and, further, that this Court continues to have the jurisdiction in relation thereto to entertain this petition.

19. Before parting with the file, I may observe that when the learned Advocate General appeared before this Court on 26.06.2020, apart from making a submission that the decision of the Full Court in Firdous Ahmad Tanki's case was no more applicable to the Bank, and that by reason of the applicability of the CAT Act to the UTs of Jammu and Kashmir, and Ladakh, this Court did not have the jurisdiction to entertain this writ petition as a Court of first instance, he touched the merits of the case, saying that by cancellation of the selection process midway none of the rights of the petitioners have been violated and that merely by participation in the selection process no right has accrued to them to seek completion of the selection process, selection or appointment; especially so when their right to consideration under the fresh advertisement notice has been secured and preserved. Similar submissions were made by Mr. Sunil Sethi, learned senior counsel, for respondents 1 and 2. However, since the jurisdiction of this Court to hear the petition was under question, this Court declined to hear the learned counsel on the merits of the case then. Now that the preliminary issues stand determined, this Court would proceed to hear the learned counsel for the parties on the merits of the case on the next date of hearing.

20. The petition is admitted to hearing. Post admission notice is waived by Mr. Ravi Abrol, learned appearing counsel, on behalf of respondents 1 and 2, and Mr. Sajad Ashraf, GA for respondent no.3.

21. List these petitions for final hearing on 20.07.2020. Meanwhile, the parties

shall complete their pleadings and/or supplement their pleadings, if they choose so. It is expressly provided herein that on the date fixed an endeavour would be made that the arguments in the case are concluded so that the matter is finally decided and disposed of. The Registry shall transmit photocopies of this order by any available mode to the learned Advocate General, Mr. Sunil Sethi and Mr. J. I. Ganai, learned senior Advocates, for their information.