
(2007) 04 UK CK 0008

In the Uttarakhand High Court

Case No : Defective Special Appeal No. 35 of 2007

Dhirendra Kumar Pande and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-04-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 32, 323A, 323B

Citation : (2007) 04 UK CK 0008

Hon'ble Judges : Rajeev Gupta, C.J.; J.C.S. Rawat, J

Bench : Division Bench

Advocate : Shruti Joshi, for the Appellant; Arvind Vashistha, Assistant Solicitor General, for the Respondent

Final Decision : Dismissed

Judgement

Rajeev Gupta, C.J.—The Appellants have filed this Special Appeal under Chapter VIII Rule 5 of the High Court Rules against the impugned judgment dated 14-03-2007 passed in Writ Petition No. 165(S/S)of2007.

2. The Appellants filed the writ petition for the following reliefs:

A. To issue a writ order or direction in the nature of certiorari for quashing the impugned order dated 22-01-2007 passed by Respondent No. 1 (Annexure No. 19 to the writ petition).

B. To issue a writ, order or direction in the nature of mandamus commanding the Respondent No. 1 to remove the disparity in the pay scales of Demonstrators serving in Indian Military Academy including its Army Cadet College Wing.

C. To issue a writ order or direction in the nature of mandamus commanding the Respondent No. 1 to extend the benefit of order dated 3-10-1996 passed by Respondent No. 1 to the Petitioners and grant the revised pay scale from due date i.e. 1.1.1983 when other Demonstrators were granted the said benefit.

D. To issue a writ order or direction in the nature of mandamus commanding the

Respondent No. 1 to grant all consequential benefits to the Petitioner including arrears of salary along with interest at a rate to be specified by this Hon''ble Court.

E. To issue a writ order or direction in the nature of mandamus commanding the Respondent No. 1 to constitute a body/committee for redressal of genuine grievances of employees serving in I.M.A., Dehradun so that they are not burdened with unnecessary litigation.

F. To issue any other writ order or direction, which this Hon''ble Court may deem fit and proper in the circumstances of the case.

G. Award the cost of the writ petition in favour of the Petitioners.

3. The learned Standing Counsel for the Union of India appearing in the writ petition raised a preliminary objection about the maintainability of the writ petition on the ground that the Petitioner had an alternative efficacious remedy of filing an Original Application before the Central Administrative Tribunal.

4. The learned Single Judge sustained the preliminary objection raised on behalf of the Respondents and dismissed the Appellants'' writ petition on the ground of availability of alternative remedy with the liberty to Petitioners to approach the Central Administrative Tribunal for redressal of their grievances.

5. Ms. Shruti Joshi, the learned Counsel for the Appellants, vehemently argued that the learned Single Judge has erred in dismissing the Appellants'' writ petition on the ground of availability of an alternative efficacious remedy as in the Appellants'' earlier writ petition the Respondents were directed to consider and decide their representation which has been dismissed by the Respondents on flimsy and unsustainable grounds.

6. Be that as it may, the fact remains that the Appellants have an alternative efficacious remedy of filing an Original Application before the Central Administrative Tribunal. The Petitioners could not have approached the High Court directly without filing an Original Application before the Central Administrative Tribunal in view of the dictum of the Apex Court in the case of L. Chandra Kumar Vs. Union of India and others, , wherein it was observed by the Apex Court in para 99:

In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323-A and Clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226 or Article 227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226 or Article 227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers

conferred by Articles 226 or Article 227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.

7. In view of the above quoted dictum of the Apex Court in the case of L. Chandra Kumar (Supra), no fault can be found with the approach and the impugned judgment of the learned Single Judge.

8. We, therefore, do not find any scope of interference in this Special Appeal.

9. The Special Appeal, therefore, is liable to be dismissed and is hereby dismissed summarily.