
(2019) 04 CAL CK 0002

In the Calcutta High Court

Case No : Writ Petitions (WP) 3596 (W) Of 2019

Dr. Samir Kumar Nanda

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 02-04-2019

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 14(2), 14(1)(b)(iii)
Central Administrative Tribunal Rules Of Practice, 1993 — Rule 154(b)
Constitution Of India, 1950 — Article 323A

Citation : (2019) 04 CAL CK 0002

Hon'ble Judges : Ashis Kumar Chakraborty, J

Bench : Single Bench

Advocate : Soumya Majumdar, R. N. Chakraborty, M. Ahmed, Kausik Chanda, Partha Ghosh Subhojit Seal, Joytosh Majumder, Srijib Chakraborty

Judgement

The petitioner, an Associate Professor of Forensic and State Medicine in National Institute of Homoeopathy, Salt Lake, Kolkata (the respondent no.7) has filed this writ petition to challenge the office order dated February 11, 2019 issued by the respondent no. 8 (the Director-in-Charge of the respondent no.7) transferring him to the North-Eastern Institute of Ayurveda and Homoeopathy, Shillong, Meghalaya.

At the very outset, a strong objection was raised on behalf of the respondent Union of India as well as the respondent nos. 7 and 8 with regard to the maintainability of this writ petition before this Court. It was contended that by virtue of the enactment of the Administrative Tribunals Act, 1985 (in short "the Act of 1985") and establishment of the Central Administrative Tribunal under Article 323-A of the Constitution of India, the petitioner's remedy to challenge the impugned order of transfer lies in approaching the Central Administrative Tribunal, Kolkata and this Court lacks the jurisdiction to entertain this writ petition. It was submitted that the respondent no.7 is an autonomous body, registered under the Societies Registration Act and controlled by the Government of India, the petitioner cannot maintain this writ petition before this Court.

Buttressing the point that the Central Administrative Tribunal has the exclusive jurisdiction to adjudicate the challenge by the petitioner of his order of transfer to the North-Eastern Institute of Ayurveda and Homoeopathy at Shillong Mr. Joytosh Majumdar, learned counsel for the respondent nos. 7 and 8 referred to Section 14(1) (b) (iii) of the Act of 1985. For the sake of convenience, the said provisions are extracted below:

"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) * * *

(b) all service matters concerning

-(i) -(ii)

(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.

Mr. Majumdar further drew the attention of this Court to Item Number 115 of Appendix VI under Rule 154(b) of the Central Administrative Tribunal Rules Of Practice, 1993 providing for department wise classification cases, including the cases relating to the respondent no.7. Thus, it was reiterated that the service disputes raised by the petitioner would come under the jurisdiction of the Administrative Tribunal. In support of his contention, learned Advocate appearing for the respondent nos. 7 and 8 relied on the decision of the Supreme Court in the case of Kendriya Vidyalaya Sangathan and Anr. -Vs- Subhas Sharma reported in (2002) 4 SCC 145 as well as the Division Bench decision dated June 23, 2011 passed in W.P.C.T. No. 351 of 2007 (Debashish Debnath -vs-Union of India and Ors.) and W.P.C.T. No. 93 of 2011 (Goutam Kumar Sahoo -vs- Union of India & Ors.).

On the other hand, Mr. Soumya Majumder learned counsel appearing for the petitioner contended that there is no merit in the objection raised by the respondents with regard to the maintainability of the writ petition. Admittedly, the respondent no. 7 is a society. He submitted that Article 323-A of the Constitution of India contemplates the power of the Parliament to enact law providing for the adjudication or trial by administrative tribunals of the disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts 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 owned or controlled by the Government. According to the petitioner, from a bare reading of Article 323A of the Constitution of India, it is evident that the said provision does not confer any power on the Parliament to make any enactment providing for adjudication of any dispute or complaint with respect to recruitment and conditions of service of persons appointed by a society controlled by the Union of India. Thus, according to the petitioner, the insertion of the term 'society' in the provisions of Section 14 (1) (b) (iii) as well as Sections 14(2) and 14 (3) of the Act of 1985 is void and this Court does not have the jurisdiction to entertain this writ petition filed by the petitioner as the Associate Professor of the respondent no.7, which is a society registered under Societies Registration Act. In support of such contention, learned counsel appearing for the petitioner relied on the Division Bench decision of this Court in the case of Kendriya Vidyalaya Sangathan & Anr. -vs- Shri Prem Narayan Pandey & Ors. reported in (2011) 3 CAL LT 134 (HC). It was argued that in view of the said Division Bench decision in the case of Shri Prem Narayan Pandey (supra), the reliance placed by the respondent nos. 7 and 8 on the Division Bench decision dated June 23, 2011 passed in W.P.C.T. No. 351 of 2007 (Debashish Debnath -vs-Union of India and Ors.) and W.P.C.T. No. 93 of 2011 (Goutam Kumar Sahoo -vs-Union of India & Ors.) is misplaced. The petitioner further submitted that in any event, various other writ petitions filed by him against the various misconduct committed by the respondent no.8 as against him are pending before this Court which have a bearing on this writ petition.

However, Mr. Kaushik Chanda, learned Additional Solicitor General of India submitted that the decision of the Division Bench of this Court in the case of Kendriya Vidyalaya Sangathan represented by the Joint commissioner (Admin.) & Ors. has already been set aside by the Supreme Court. In this regard, he relied on the order dated December 5, 2017 by the Hon'ble Supreme Court in special leave to appeal (civil) no.977/2012 (Shri Prem Narayan Pandey & Ors. Vs. Kendriya Vidyalaya Sangathan & Ors..

I have considered the materials-on-record and the arguments advanced by the learned counsel appearing for the respective parties. The only ground urged by the petitioner to refute the objection raised by the respondent no.s 7 and 8 as well as by the union of India is based on the decision of the Division Bench of this Court in the case of Prem Narayan Pandey(supra). Admittedly, the respondent no.7 is an autonomous body fully controlled by the Union of India and a society registered under the Societies Registration Act. The issue as to whether the Central Administrative Tribunal has the jurisdiction to adjudicate any dispute and complaint with respect to recruitment and conditions of service of persons appointed in a society fully controlled by the Central Government, as contemplated under Section 14 of the Act of 1985, has already been decided the Supreme Court in the case of Subhas Sharma (supra). In the said decision, the Supreme Court held that the administrative tribunal has the jurisdiction concerning service matters of employees of Kendriya Vidyalaya Sangathan, an

autonomous body registered under the Societies Registration Act and controlled by the Government of India. However, the Division Bench of this Court in the case of Shri Prem Narayan Pandey & Ors. (supra) did not consider the earlier decision of the Hon'ble Supreme Court in the case of Subhash Sharma (supra). Thus, the Division Bench decision of this Court in the case of Shri Prem Narayan Pandey & Ors.(supra) is per incurium and as pointed out by the learned Additional Solicitor General, the said decision has already been set aside by the Hon'ble Supreme Court. In view of the said decision of the Supreme Court in the case of Subhas Sharma (supra) the subsequent decision of the Division Bench of this Court in the case of Debashish Debnath (supra) followed the decision of the Supreme Court in the case of Subhash Sharma (supra) and held that the Central Administrative Tribunal has the exclusive jurisdiction to entertain any service dispute raised by an employee of an autonomous body fully controlled by the Central Government and registered under the Societies Registration Act. The said decision of the Supreme Court in the case of Subhash Sharma (supra) as well as the Division Bench decision of this Court in the case of Debashish Debnath (supra) are binding upon this Court.

For the reasons as aforesaid, I find merit in the objection raised by the respondent Union of India as well as the respondent nos.7 and 8 to the maintainability of this writ petition. When this Court lacks the jurisdiction to entertain this writ petition, the pendency of any other writ petition by the petitioner against the respondent no.7 before this Court is irrelevant. Accordingly, the writ petition being WP 3596(W) of 2019 fails for lack of jurisdiction of this Court to entertain the same.

There shall, however, be no order as to costs.