
(1993) 06 MP CK 0014

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition 1278 of 1992

Dr. Usha Narwariya

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 22-06-1993

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 15, 19
Constitution of India, 1950 — Article 323A

Citation : (1994) 2 LLJ 252 : (1993) 2 MPJR 1 : (1993) 38 MPLJ 969 : (1993) MPLJ 969

Hon'ble Judges : Shacheendra Dwivedi, J;S.K. Dubey, J;R.C. Lahoti, J

Bench : Full Bench

Judgement

R.C. Lahoti, J.

This common order answers the common reference made in M.P. No. 1278/92 (Dr. Usha Narwariya v. State of M.P.) and M.P. No. 1335/92 (Jairam Soni v. M.P. Public Service Commission). A Division Bench consisting of S.K. Dubey and S.K. Chawla, JJ. formed an opinion that there was a cleavage of opinion in two Division Bench decisions of this Court, namely, M.P. No. 1060/ 91 (Man Mohan Singh v. State of M.P.) decided on February 7, 1992 at Gwalior and M.P. No. 166/91 (Betalsingh Mahore v. State of M.P.) decided on April 28, 1992 at Gwalior (1992) 1 MP 437, and made a reference to the Hon'ble Chief Justice who has been pleased to constitute this Full Bench for resolving the conflict in the abovesaid two Division Bench decisions.

A reference in brief to the facts of the two cases is proposed to be made as it would enable acquiring firm grip over the controversy arising for decision.

In M.P. No. 1278/92, in response to an advertisement issued by M.P. Public Service Commission (hereinafter "the Commission", for short) the petitioner Dr. Usha Narwariya had applied for appointment by selection to the post of Assistant Professor in Zoology. She was given a roll number and allowed to appear in the written examination. However, she was excluded from the zone of consideration

for her having passed M.Sc. in Bio-Science.

In M.P. No. 1335/192, pursuant to an advertisement issued by the Commission, the petitioner Jairam Soni had applied for appearing in the State Services Preliminary Examination, 1992 arranged for selecting suitable candidates for appointment to the State Administrative Services, The petitioner and a few others around 300 could not appear at the preliminary examination held at Gwalior on July 19, 1992 allegedly because of dislocation in railway services consequent to a sudden strike by railway employees at Jhansi resulting in belated arrival of the trains at Gwalior by which time the examination was already over.

At the hearing before the Division Bench, the learned counsel for the respondent-Commission created a stumbling block to the maintainability and entertainability of the petitions submitting that Section 14 read with Section 28 of the Administrative Tribunal Act, 1985 (hereinafter referred to as "the Tribunals Act" for short), excluded the jurisdiction of the High Court and the appropriate forum before which the two petitioners should have raised their grievances was of the State Administrative Tribunal duly established and functioning in the State of Madhya Pradesh with a Bench seat at Gwalior. The contention of the learned counsel for the Commission was that the words "recruitment or matters concerning recruitment" used in Clause (a) of Sub-section (1) of Section 14 of the Tribunals Act include the process of selection beginning with the issuance of advertisement and ending with the preparation of selection list for appointment of the candidates. In support of his contention, the learned counsel placed reliance on Supreme Court decisions in Union of India v. Deepchand (1993 LIC 98) A.P. Public Service Commission, Hyderabad and Another Vs. B. Sarat Chandra and Others, Sudhanshu Tripathi v. Union of India 1988 56 FLR 696 (All) and an unreported Division Bench decision of this Court in the case of Man Mohan Singh (supra).

The learned counsel for the petitioners, on the other hand, placed reliance on Betalsingh Mahore's case (supra), the Chairman, Railway Recruitment Board Vs. S. Ruban Peter and others, and submitted deriving assistance from Vijay Singh Jadon Vs. State of Madhya Pradesh and Others, that matters relating to "pre-recruitment stage" cropping up for consideration at the instance of persons who are not "in-service" do not lie within the jurisdiction of the State Administrative Tribunal, as "recruitment and matters concerning recruitment" occurring in Sections 14 and 15 of the Act were circumscribed in their application and covered the persons who had been appointed to public service or who were holding posts in connection with affairs of the Union or the State etc.: the Act having been enacted pursuant to the powers conferred on the Parliament by Article 323A of the Constitution of India.

The abovesaid is the glimpse of the background in which the issue had to be placed before us.

To begin with, let us notice Article 323A of the Constitution and the relevant provisions of the Administrative Tribunals Act, 1985, because in the course of this order, we would be required to refer to these provisions time and again:

Constitution of India

"323A. Administrative Tribunals.-

(1) Parliament may, by law, provide for the adjudication or trial by administrative tribunals of 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.

(2) A law made under Clause (1) may-

(a) provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State or for two or more States;

(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;

(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;

(d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under Article 136, with respect to the disputes or complaints referred to in Clause (1);

(e) provide for the transfer to each such administrative tribunal of any cases pending before any court or other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment;

(f) repeal or amend any order made by the President under Clause (3) of Art 371D;

(g) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as Parliament may deem necessary for the effective functioning of, and for the disposal of cases by, and the enforcement of the order of, such tribunals.

(3) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force."

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Administrative Tribunals Act, 1985:

Preamble: "An Act to provide for the adjudication or trial by Administrative Tribunals of 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 or society owned or controlled by the Government in pursuance of Article 323A of the Constitution and for matters connected therewith or incidental thereto."

"Section 3(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;"

"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 service 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 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 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 subsection 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) 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."

"Section 15 Jurisdiction, powers and authority of State Administrative Tribunals. -

(i) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State 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 civil service of the State or to any civil post under the State;

(b) all service matters concerning a person not being a person referred to in Clause (c) of this sub-section or a member, person or civilian referred to in Clause (b) of Sub-section (1) of Section 14 appointed to any civil service of the State or any civil post under the State and pertaining to the service of such person in connection with the affairs of the State or of any local or other authority under the control of the State Government or of any corporation or society owned or controlled by the State Government.

(c) all service matters pertaining to service in connection with the affairs of the State concerning a person appointed to any service or post referred to in Clause (b), being a person whose services have been placed by any such local or other authority or corporation or society or other body as is controlled or owned by the State Government, at the disposal of the State Government for such appointment.

(2) The State 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 and corporations or societies controlled or owned by the State Government.

Provided that if the State 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 Administrative Tribunal for a State 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 (b) of Sub-section (1) of this section or a member, person or civilian referred to in Clause (b) of Sub-section (1) of Section 14 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.

(4) For the removal of doubts, it is hereby declared that the jurisdiction, powers and authority of the Administrative Tribunal for a State shall not extend to, or be exercisable in relation to, any matter in relation to which the jurisdiction, powers

and authority of the Central Administrative Tribunal extends or is exercisable."

"Section 19. Applications to Tribunals

(1) Subject to the other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.

Explanation: For the purpose of this sub-section, "order" means an order made-

(a) by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation or society owned or controlled by the Government; or

(b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation or society referred to in Clause (a).

(2) Every application under Sub-section (1) shall be in such form and be accompanied by such documents or other evidence and by such fee, if any, not exceeding one hundred rupees in respect of the filing of such application and by such other fees for the service or execution of processes, as may be prescribed by the Central Government.

(3) On receipt of an application under Sub-section (1) the Tribunal shall, if satisfied after such inquiry as it may deem necessary, that the application is a fit case for adjudication or trial by it, admit such application; but where the Tribunal is not so satisfied, it may summarily reject the application after recording its reasons.

(4) Where an application has been admitted by a Tribunal under Sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules."

"Section 28 Exclusion of jurisdiction of courts except the Supreme Court under Article 136 of the Constitution on and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or post or service matters concerning members of any service or persons appointed to any service or post, no Court except-

(a) the Supreme Court; or

(b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force, shall have or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment of such service matters."

Before we embark upon analysing the relevant statutory provisions we propose to notice the decided cases available on the point and also the two Division Bench decisions of this Court taking conflicting views.

The latest decision available from the Supreme Court is in Deep Chand Pandey's case (supra). Deep Chand Pandey and another were engaged by Deputy Chief Engineer of Railways as casual typists on daily wages. Their services were terminated. Challenging the termination orders as wrongful, writ petitions were filed before the High Court which were allowed. In an appeal preferred by the Union of India before the Supreme Court, an objection was raised that the Central Administrative Tribunal was competent to entertain the claim canvassed and hence the order of the High Court was without jurisdiction. Referring to the parental provisions, that is Article 323A of the Constitution and Sections 14 and 3(q) of the Tribunals Act, their Lordships held (Paras 5 and 6):

"The scope of Article 323A permitting the Parliament to legislate on the subject covered therein is, having regard to the language, very wide, and by enacting 1985 Act this power has been exercised in almost full measure. An examination of Sections 14 and 3(q) clearly indicates that the Act covers a very wide field, and there is nothing to suggest that the provisions dealing with the jurisdiction of the tribunal should receive a narrow interpretation. This is also supported by the clarification offered by the then Minister for law, who was piloting the Bill, while replying to the demand for the future enumeration of the conditions of service in Sections 14 and 15. He stated that (as recorded in the proceedings on 9th to 11th November, 1976 of the Rajya Sabha Debate) he believed the "conditions of service" to be of such a wide expression that an attempt of enumeration would be "really so dangerous from the point of view of the employees themselves that by exclusion you say that the others are not".

The present respondents are claiming the right to continue in the employment of the Union of India as before, with additional claim of temporary status and it is, therefore, idle to suggest that such a claim is not covered by the Act. The necessary conclusion, therefore, is, that the remedy of the respondents was before the tribunal and not the High Court."

Their Lordships found no merit in the stand taken by the writ petitioners that they were not holding any civil posts and were engaged only on casual basis and so the provisions of the Tribunals Act were not attracted.

In Sudhanshu Tripathi's case (supra), the examinations held by the Union of India for recruitment to civil services including I.A.S. in 1985 were under challenge. The Division Bench held that the examination was a part of the process of recruitment included within the meaning of the term "recruitment" occurring in Article 323A of the Constitution as well as Sections 14 and 28 of the Act so as to take away the jurisdiction of a High Court in the matter of such dispute as was raised. The Division Bench of Allahabad High Court, Lucknow Bench held:

"In Clause (1) of Article 323A the relevant words used are "recruitment" and "conditions of service of persons appointed to public service and posts." It is obvious that the words "recruitment" and "conditions of service of persons appointed" have been used to indicate different meanings and purpose. The appointment to public service or post is not the same thing as the recruitment. The "appointment" as defined in Words and Phrases, Permanent Edition, Volume 3-A means the designation of person to hold an office (Use of Braden V.O" Neill, 83 A. 2d 382). It also means the designation of a person, by the person or persons having authority therefore to discharge the duties of some office or trust (In re: Nicholson's Estate, 93 p. 2d/880,884, 104 Colo 561).

"Appointments" is used in the sense of designation to or selection for public office, not only as meaning the office or service to which one is appointed, but denoting the right or privilege conferred by an appointment, and the subject of a term of office is fairly included in a broad significance of the word. (State v. Peake 120 N.W. 47, 18 N.D. 101).

The meaning of the word "recruitment" as specified in the Shorter Oxford Dictionary Vol. II, 1978 Edition page 1768 is "a reinforcement; the act or process of recruiting".

Taking clue from the words used in Article 323A of the Constitution the Parliament deliberately used the words "recruitment" and "matters concerning recruitment" in Sections 14 and 28 of the Act so as to indicate that the Tribunal shall have exclusive jurisdiction to deal with these matters and that the High Court in view of the specific provisions contained in Section 28, shall not have jurisdiction to entertain or adjudicate upon the petition in which questions relating to recruitment and matters concerning recruitment are raised".

Full Bench decision of the Andhra Pradesh High Court in K. Naga Raja and Others Vs. The Superintending Engineer, Irrigation Department, Irrigation Circle, Chittoor and Another, and a Division Bench decision of the Orissa High Court in Pratap Chandra Rout v. State of Orissa 1987 LIC 104 were followed.

The Full bench decision of Andhra Pradesh High Court in K. Nagaraja's case (supra) is exhaustive and touches several relevant; aspects of the issue at hand. Applications made by the petitioners for appointment to several posts were turned down at the threshold as they were not sponsored by Employment Exchange. The aggrieved petitioners approached the High Court. The contention of the petitioners was that the Administrative Tribunal would assume jurisdiction only when the dispute related to a person already employed in service and that any dispute relating to process of selection leading to appointment would not fall within the ambit of Section 14 of the Act. The Full Bench held (at P.234 of AIR):-

"It is a settled proposition that in interpreting the provisions of the Constitution, the widest possible amplitude should be given to the expressions used therein. The constitutional object of Article 371D, as we could gather, with particular reference to Clause (7) thereof, is to relieve the High Court (for that matter,

every other court and tribunal, except the Supreme Court) of the burden concerning service matters relating to the State Government employees; and in that view also it would run counter to the provisions of the Article both in letter and spirit if we give a restrictive meaning to the application of the provisions barring the jurisdiction of the High Court in terms of Clause (7) of the Article. Viewed in that light, we are clear in our mind that the expression "with respect to appointment" in Clause (3) of Article 371D should not be given a narrow meaning as to restrict its application to the stage after actual appointment. That expression not only takes within its sweep actual appointment as such or any stage posterior to such appointment, but also every stage leading to the appointment. The entire process of appointment forms an integral whole and it could not be taken in parts, so as to exclude the exercise in the process of selection leading to appointment from the jurisdictional ambit of the Administrative Tribunal. No such distinction or differentiation is warranted if we go by the plain meaning of the expression used. The principle and reasoning underlying the observations of Gajendragadkar, J. (as he then was) in *The General Manager, Southern Railway Vs. Rangachari*, (in para 16 at P.41) that "there would be no difficulty in holding that the matters relating to employment must include all matters in relation to employment both prior, and subsequent, to the employment and form part of the terms and conditions of such employment" should hold with equal force to the expression "with respect to appointment" occurring in Clause (3) of the Article also. The usage of the words "with respect to appointment" in fact conveys a larger meaning, not a narrower meaning than the usage "appointment" simpliciter"

The Full Bench overruled an earlier Division Bench decision of the same High Court in *Dr. N. Venkat Reddy, v. State of Andhra Pradesh* 1982 LIC 1927 wherein the view taken was to the contrary.

In *Pratapchandra Rout*'s case (supra) the petitioners were not appointed though on the select list. The jurisdiction of the High Court was sought to be invoked by submitting that the grievance raised related to a stage before the stage of actual appointment. The Division Bench of Orissa High Court held:

"Disputes and complaints relating to the stage of recruitment i.e. a stage prior to actual appointment in service are within the jurisdiction of the Administrative Tribunals by amending the constitution was to take away the cases relating to "Service" from the jurisdiction of the High Courts and put them within the fold of a separate forum where they could be adjudicated more speedily. The Court must therefore put a construction which is harmonious and furthers the aim and object of the legislation instead of impeding the same. The legislative intentment is to transfer to the Administrative Tribunal all cases concerned with the disputes relating to the stage of recruitment, i.e. prior to the actual appointment."

In the term "recruitment", interpreting it widely, the Division Bench included all disputes and complaints relating to a stage prior to getting into service.

We may now notice the two Division Bench decisions founding the order of reference. In Man Mohan Singh case the grievance of the petitioner related to the preparation of the select list in which the petitioner though fully qualified, was excluded and someone else, not eligible, was included. The Division Bench held that the challenge laid in the petition was not only to the procedure of selection but also to the selection already made and the direction sought for was quashing of this select list which was an act accomplished. Distinguishing an earlier Division Bench decision of this Court in Dr. C.P. Kulshreshth v. State of M.P. (1991) 1 MP 196 the Division Bench held that the subject matter of the petition fell squarely within the jurisdiction of the State Administrative Tribunal.

In Betalsingh Mahore's case (supra), the petitioner, a member of Scheduled Caste, had complained of gross violation of statutory rules and foul play at the process of selection conducted by the Selection Committee and the relief prayed for was the persons who were actually selected be given appointment by excluding from appointment such as were not selected. A perusal of the order of Division Bench indicated that really speaking it had laid down nothing of its own but had placed implicit reliance on the Division Bench decision of the Madras High Court in S. Ruban's case (supra) by extensively quoting therefrom and expressing its respectful agreement with the view taken and then concluding by holding that the petition filed by the petitioner who was not in service and raising matters as to pre- recruitment stage did not lie within the jurisdiction of State Administrative Tribunal.

In S. Ruban Peter's case (supra) the Railway Recruitment Board had conducted examinations. There was a leakage of question papers. A second written examination was proposed and that was challenged. Dr. A.S. Anand C.J. (as His Lordship then was) spoke for the Division Bench and having reviewed the constitutional and statutory provisions, held that a person who was not in service could not be said to be an aggrieved person u/s 19 of the Tribunal Act so as to invoke the jurisdiction of the Tribunal. The Division Bench concluded by holding: Chairman, Railway Recruitment Board Vs. S. Ruban Peter and others,

"Since Section 14 and the other provisions of the Act derive their strength from the Act enacted by virtue of the powers contained in Article 323A of the Constitution, the expression "recruitment and matters concerning recruitment" as occurring in Section 14 of the Act cannot travel beyond the provisions of Article 323A of the Constitution, which as already noticed authorised the Parliament to, by law, provide tribunals for adjudication of disputes and complaints with respect to recruitment and service conditions of the employees who are already in service of the Union etc. It is fundamental that no subordinate legislation can either override or widen the provisions contained in the Constitution and considered in that light also it becomes obvious that the use of the expression "recruitment and matters concerning recruitment" occurring in Section 14 must be confined and related to persons who have been appointed to public services who hold posts in connection with the affairs of the Union etc."

Before we may proceed further, we would like to take a note of yet two other decisions of this Court.

17-1. In *Dr. C.P. Kulshresht v. State of M.P.*, (supra) really speaking they were not the provisions of the Administrative Tribunals Act which had come up for consideration, but the Division Bench of this Court was called upon to consider an order of the Hon''ble Chief Justice issued in exercise of the powers conferred by presidential notification u/s 51(2) of the States Reorganisation Act, 1956. The Hon''ble Chief Justice of Madhya Pradesh High Court had ordered that all cases relating to selection and/or appointment of judicial officers to be heard at Jabalpur, the main seat. The petitions were filed before the Gwalior Bench challenging the action of the Public Service Commission refusing to call the petitioners for interview for the post of Civil Judge. The Division Bench interpreting the term "selection and appointment" "concluded by holding:

"Only cases of perfected right of a candidate offering himself for selection as a Judicial Officer, such as of his being duly selected for appointment as such officer, come within the purview of the afore-quoted order. It shall be open to any candidate qua citizen, to challenge any arbitrary action of any authority by which the pre- selection procedure is vitiated and his right to selection is infringed."

The term "recruitment" and phrase "matters concerning recruitment" were not posed before the Division Bench.

17-2. In *Vijaysingh Jadon v. State of M.P.*, (supra) the Division Bench determined the scope of Tribunal's jurisdiction mainly by referring to the entitlement of a citizen to invoke the jurisdiction of tribunal by making an application u/s 19 of the Act and held *Vijay Singh Jadon Vs. State of Madhya Pradesh and Others*,

"The State Administrative Tribunal has not been vested with "jurisdiction, powers and authority" to entertain and deal with an "application" by a person in public employment whose conditions of service and recruitment are not governed by statutory Rules because he is not a person "appointed to any civil service of the State or to any civil post under the State." The status of a citizen, after he is employed by the State, can be changed only by statutory rules and not by any other instrumentality and not by any individual officer or employer even if acting in connection with affairs of the State because sovereign functions in that regard vest in the State, to be discharged in accordance with the provisions of the Constitution. Even in cases of such a citizen in public employment (answering to the test formulated), if he is not eligible to make "application" to the Tribunal in terms of Section 19, High Court's jurisdiction to entertain his petition under Article 226 of the Constitution is not ousted u/s 28 of the Administrative Tribunal Act. In case of daily rated workers, there is no "order" passed generally when they are employed or when the employment is terminated. Even if any order is passed, that has no statutory character as that is not passed in exercise of powers conferred under statutory provisions. The contract of employment in their case, evidently, does not have statutory sanction. High Court's residuary

jurisdiction stands unaffected and refusal to exercise of the same to render a citizen remediless would be breach of constitutional trust. The Tribunal has no jurisdiction u/s 19 when no "order" was passed though the applicant may be still "aggrieved" or when the application made is time-barred according to Section 20 and is not entertained by the Tribunal on that account. High Court's jurisdiction to act is not ousted u/s 28 in such cases."

It was contended that the power to enact a legislation like the Administrative Tribunal Act flew from the fountain source inhabiting in Article 323A of the Constitution and no Act enacted by the Parliament could afford to travel beyond the scope of powers conferred by the parent provision, Article 323A itself, for no creature can enjoy the life throbs beyond the realm of creator itself. Art 323-A speaks of disputes and complaints with respect to "recruitment" and "conditions of service" of persons appointed to public services and posts etc. The Preamble to the Administrative Tribunals Act and Sections 14 and 15 thereof speak of "recruitment" and "matters concerning recruitment" etc. It was submitted that Article 323A did not contemplate "matters concerning recruitment" being provided by the Parliament for being adjudicated upon by the Administrative Tribunals, and to that extent, the provisions of Administrative Tribunals Act would either be ultra vires or would deserve to be so narrowly interpreted as to uphold the constitutionality of the Act.

The contention is fallacious as would shortly be demonstrated. What is recruitment? What is its connotation in juxtaposition with the term "appointment"? Recently in Prafulla Kumar Swain Vs. Prakash Chandra Misra and Others, their Lordships had an occasion to deal with the two terms holding (p. 754):

"We will proceed to decide as to the meaning and effect of the words "recruitment" and "appointment". The term "requirement" connotes and clearly signifies enlistment, acceptance, selection or approval for appointment. Certainly, this is not actual appointment or posting in service. In contradistinction the word "appointment" means an actual act of posting a person to a particular office.

Recruitment is just an initial process that may lead to eventual appointment in the service. But, that cannot tantamount to an appointment".

In A.P. Public Service Commission, Hyderabad v. B. Sarat Chandra (supra) their Lordships of the Supreme Court laid down in the context of A.P. Public Service Commission, Hyderabad and Another Vs. B. Sarat Chandra and Others,

"The word "selection" in the context does not mean only the final act of selecting candidates with preparation of the list for appointment. The process of selection begins with the issuance of advertisement and ends with the preparation of select list for appointment. Indeed, it consists of various steps like inviting applications, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates, conducting examination, calling for interview or viva voce and preparation of list of successful candidates for appointment".

It is thus clear that recruitment is an earlier part of the process which culminates in appointment. Selection is part of recruitment process and precedes appointment. Notifying the vacancies, inviting applications, their scrutiny, finalisation of list of such eligible candidates as would be put to test, their written or oral test and interview, selection and approval for appointment, are all different steps in the process of recruitment. So it would not have made any difference if the Preamble to the Administrative Tribunals Act and Sections 14 and 15 thereof would have used the term "recruitment" merely and avoided the use of the word, "matters concerning recruitment" inasmuch as "matters concerning recruitment" would have been deemed to be included in "recruitment" itself. The use of the phrase "matters concerning recruitment" preceded by the word and conjunction "recruitment and" is definitely suggestive of legislative intent to make the provision wide in its import so as to include in "matters concerning recruitment" all such matters as could unwittingly be left out of "recruitment". Such an interpretation would also advance the object behind enactment of Tribunals Act.

It is well known that Article 323A and Article 323B finding place in Part XIV-A of the Constitution were so inserted by 42nd Amendment with the idea of lessening the burden of courts and ensuring speedy dispensation of justice in service matters through adjudicatory bodies called Administrative Tribunals. What necessitated insertion of Article 323A in the Constitution and enactment of Administrative Tribunals Act has been noticed and stated by the Supreme Court in S.P. Sampath Kumar and Others Vs. Union of India (UOI) and Others, and S.P. Sampath Kumar and Others Vs. Union of India (UOI) and Others, The tribunals are meant to be substitutes for High Courts for relieving them of mounting backlog of cases and assuring quick settlement of service disputes in the interest of public servants. The Tribunals Act is a remedial piece of legislation. In construing a remedial Act, the Court ought to give widest operation which the language of the Act will permit.

The provisions of Administrative Tribunals Act do not travel beyond the boundaries of Article 323A, is to be held for yet another reason. Article 323A does not say recruitment merely. It says "disputes and complaints with respect to recruitment & c." Clause (1) of Article 323A having provided for establishment of Administrative Tribunals Act, Clause (2) thereof confers power on Parliament to make such laws as would make the provision for (i) jurisdiction and powers of the Tribunal, and (ii) exclusion of jurisdiction of all the courts other than Supreme Court under Article 136. Clause (3) gives the provisions of Article 323A an overriding effect over all other laws as also any other provision of the Constitution. The phraseology used does not permit its meaning being confined to "in-service" persons merely.

The provisions of Article 323A have to be interpreted widely and liberally. The provisions of the Administrative Tribunals Act also have to be interpreted liberally so as to be construed in favour of Tribunal's jurisdiction whenever it may appear

to be conflicting with the jurisdiction of the Court.

The abovesaid view is in line with the view taken by majority of the High Courts, such as Andhra Pradesh, Allahabad and Orissa High Courts in the decisions noticed above.

Having interpreted the term "recruitment" as we have done, consistently with the law laid down by the Supreme Court, we are of the opinion that we see no justification in carving out jurisdiction to the courts from the jurisdiction of the Administrative Tribunals by drawing a distinction between "pre-recruitment matters" and "recruitment matters" for such a distinction would be not real, but merely a distinction without any difference. What has been called "pre-recruitment" disputes in some of the decisions is nothing but a "dispute concerning recruitment" within the meaning of the Act and the "dispute or complaints with respect to recruitment" within the meaning of Article 323A of the Constitution. Such a dispute would lie within the jurisdiction of the Administrative Tribunals.

We have also found it difficult to accept the submission of the learned counsel for the respondent that Section 19 of the Tribunal Act can be pressed into service for determining the scope and operation of Sections 14 and 15 of the Act. To be precise, the submission of the learned counsel has been that Sub-section (1) of Section 19 of the Act contemplates an application being made to the Tribunal by a person aggrieved by any "order" as defined therein and the pro forma of the application prescribed pursuant to Sub-section (2) of Section 19 of the Tribunals Act contemplates an application being filed before the Tribunal only by an "in-service" person which suggests that a person "not-in-service" cannot approach the Tribunal.

Section 19 of the Tribunals Act referred to and relied on by the learned counsel for the respondent finds place in Chapter IV entitled "Procedure", while Sections 14 and 15 are to be found in Chapter III entitled- "Jurisdiction, power and authority of Tribunals". Section 19 is merely a procedural or machinery provision which cannot be pressed into service for limiting down the scope of substantive provisions contained in Sections 14 and 15 of the Tribunals Act. The Rules framed under the Act in exercise of delegated legislative power conferred by the Act itself can also not be utilised for construing the provision of the Act and determining the length and breadth of the various substantive provisions contained in the Act Presumably the view taken by the Division Bench in *Betalsingh Mahore's* case (1992 (1) MP 437) (supra) would not have been what it is, if only several decisions noticed by us hereinabove would have been placed before that Division Bench also. *Betalsingh Mahore's* case was not correctly decided. It is overruled.

In *V.S. Jadon's* case (supra) also reliance was placed on Section 19 of the Tribunals Act for placing narrow construction on jurisdiction of the tribunals, confining its availability to only "in- service" civil servants. To that extent the law

was not correctly laid down and is overruled.

Manmohan Singh's case (supra) proceed on its own logic as noticed in para 14 above. It is of no assistance in resolving the problem at hand. Dr. C.P. Kulshreshtha's case (supra) interpreting the phrase "selection and appointment" is on its own peculiar facts and has relevance only for construing the order of the Hon"ble Chief Justice. It has no utility for resolving the problem at hand.

In the view we have taken, we are also of the opinion that M.P. No. 1278/92 raising a dispute as to exclusion of the petitioner from consideration zone and M.P. No. 1335/92 also raising a dispute as to exclusion from, and/or entitlement for, participation at the examination, both relate to "recruitment" stage. Both the petitioners raise dispute and complaint with respect to "recruitment" within the meaning of the Preamble of the Act. They call for determination of "matters concerning recruitment" within the meaning of Section 15 of the Act. Both the petitions lie within the jurisdiction of the State Administrative Tribunal. The petitions do not lie before this Court.

Let the two petitions be now placed before the Division Bench making the reference.

One copy each of this order shall be placed on the records of the two petitions.