

(1998) 08 AHC CK 0099
In the Allahabad High Court
Case No : Special Appeal No. 194 of 1998

Joint Director, Bhartiya Vanaspati Sarvekshan Madhya Kshettra, Allahabad and another APPELLANT

Vs

Jan Mohammad and others RESPONDENT

Date of Decision : 11-08-1998

Acts Referred:

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

Citation : (1998) 3 AWC 2368

Hon'ble Judges : D.P. Mohapatra, C.J.; R.R.K. Trivedi, J

Bench : Division Bench

Advocate : N.B. Singh, for the Appellant; S.P. Mishra, for the Respondent

Final Decision : Allowed

Judgement

D.P. Mohapatra, C.J. and R.R.K. Trivedi, J.—Heard Sri N.B. Singh, learned counsel for appellants. Sri S.P. Misra for respondents has not appeared though his name has been printed in the cause list and the list has been revised.

2. In this appeal filed under Chapter VIII, Rule 5 of the High Court Rules, the respondents of Civil Misc. Writ Petition No. 5100 of 1998 have challenged the judgment/order dated 18.2.1998 in which the learned single Judge disposed of the writ petition with certain directions. The impugned order reads as follows :

"Heard the learned counsel for the petitioners.

The petitioners who are five in number are Class IV employee in the office of Joint Director. Bhartiya Vanaspati Sarvekshan Madhya Kshettra. Allahabad. A controversy has been raised about the payment and nonpayment of the overtime allowances which is payable to the petitioners. This aspect of the matter cannot be gone into by this Court as it requires secretary (scrutiny) of facts.

The writ petition is finally disposed of with the direction that the Joint Director Bhartiya Vanaspati Sarvekshan Madhya Kshetra. Allahabad shall himself look into

the matter and pass appropriate order for releasing the overtime allowance in favour of the petitioner which has accrued to him according to law. The payment may be released if permissible under the rules within one month from the date a certified copy of this order is produced before him."

3. The sole contention raised by Sri N.B. Singh is that the dispute raised in the case is cognisable by the Central Administrative Tribunal as the writ petitioners/respondents are employees of the Central Government. The writ petition having been filed in this Court without approaching the Central Administrative Tribunal was not maintainable and should have been dismissed as not maintainable. He has placed reliance on the recent decision of the Supreme Court in L. Chandra Kumar Vs. Union of India and others,

4. We have perused the record of the case and aforementioned judgment of the Supreme Court. In the penultimate paragraph of the judgment, the Apex Court has ruled that the Tribunals created under Article 323A and Article 323B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules ; that all decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls ; that 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 ; that it will not, therefore, be open to 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 concerned Tribunal.

5. In view of the clear mandate of the Supreme Court noted above, the writ petition given rise to the appeal was not maintainable and should have been dismissed as such.

6. Accordingly the appeal is allowed and judgment/order dated 18.2.1998 is set aside. It will, however, be open to the writ petitioners who are respondents herein to approach the Central Administrative Tribunal in accordance with law, if they are so advised.