

(2002) 03 SC CK 0117

In the Supreme Court Of India

Case No : Civil Appeal No. 5448 of 2000 and 5021 of 2001

Kendriya Vidyalaya Sangathan and Another

APPELLANT

Vs

Subhash Sharma etc. and R.D. Vishwakarma and Others

RESPONDENT

Date of Decision : 07-03-2002

Acts Referred:

Administrative Tribunals Act, 1985 — Section 1(2), 14(1), 14(2), 28, 5(6)

Constitution of India, 1950 — Article 136, 226, 227, 323, 323A

Constitution of Jammu and Kashmir, 1956 — Section 103, 104

Citation : AIR 2002 SC 1295 : (2002) AIRSCW 1105 : (2002) 4 SCC 145 : (2002) 2 Supreme 314

Hon'ble Judges : S.N. Phukan, J;P. Venkatarama Reddi, J

Bench : Division Bench

Advocate : V. Gaurishankar and S. Rajappa, for the Appellant; Altaf Ahmed, Addl. Solicitor General, P. Kapur and B.D. Sharma, for the Respondent

Final Decision : Disposed Of

Judgement

S.N. Phukan, J.—In these two appeals by special leave, two orders of the High Court of Jammu and Kashmir at Jammu have been assailed. By the impugned orders the High Court rejected two applications filed by the Appellants for transfer of the writ petitions to the Central Administrative Tribunal, Chandigarh Bench. As the points Involved are the same, they were heard together and by this judgment both the appeals are disposed of.

2. The Appellants are the Kendriya Vidyalaya Sangathan (for short 'Kendriya Vidyalaya') and its officials. The Respondent No. 1 in Civil Appeal No. 5021 of 2001 and the sole Respondent in Civil Appeal No. 5448 of 2000 are the employees of the Kendriya Vidyalaya and as some dispute arose regarding their service conditions, they filed two writ petitions under Article 226 of the Constitution before the High Court for adjudication. In the above two writ petitions the Kendriya Vidyalaya filed two separate applications for transfer of the writ petitions to the Central Administrative Tribunal on the ground that under the

Administrative Tribunals Act, 1985 (for short 'the Act') the Tribunal has got jurisdiction to decide the disputes. By the impugned orders, both the applications were dismissed.

3. By order dated January 24, 2002, this Court after hearing the counsel for the parties Issued notice to the learned Attorney General of India and the Advocate-General of the State of Jammu and Kashmir. The learned Advocate-General did not respond. Mr. Altaf Ahmed, learned Additional Solicitor General has appeared on behalf of the learned Attorney-General to assist this Court.

4. The High Court relying on a Full Bench decision of the same High Court in *Kuldip Khud v. Masud Ahmad Chodhry and Ors.* (1994 JKL 25) held that the writ Court has Jurisdiction to decide service disputes of the present nature and, therefore, rejected the prayer for transfer holding that the writ petitions were maintainable. The High Court extracted the following paragraph from the judgment of the Full Bench.

We have already indicated that the Administrative Tribunals Act, 1985 though extends to whole of India, would still not affect the constitutional jurisdiction of this Court in entertaining the writ petitions concerning the service matters of the employees of the Central Government. Applicability of the Act is different than the destruction of the constitutional jurisdiction of this Court by the Act. While the employees of the Central Government etc. posted in the State of Jammu and Kashmir may have been provided in respect of service matters, they still retain the choice to approach this Court u/s 103 of the State Constitution by filing a writ petition and praying for an appropriate writ order or direction for the redressal of their grievances. The Tribunal in these circumstances will be an additional or alternative forum and not an exclusive forum.

5. Mr. Altaf Ahmed has made the following submissions:

(1) In view of Clause (a) of Sub-section (2) of Section 1 of the Act, the Act extends to the State of Jammu and Kashmir and as the Respondents are employees of the Kendriya Vidyalaya, which is an autonomous body registered under the Societies Registration Act and controlled by the Government of India, such disputes regarding service matters are exclusively within the jurisdiction of the Central Administrative Tribunal.

(2) According to Mr. Ahmed though the High Court under Article 226 of the Constitution or Section 103 of Jammu and Kashmir Constitution has wide power, but in view of the restraint imposed by the judgment of the Constitution Bench of this Court in *L. Chandra Kumar Vs. Union of India and others*, High Court ought not to have entertained the writ petition.

6. Mr. Gaurishankar, learned Senior Counsel and Mr. Rajappa and Mr. Kapur, Learned Counsel appearing for the Appellants have adopted the submissions of Mr. Altaf Ahmed. In reply Mr. B.D. Sharma, Learned Counsel appearing for the Respondent No. 1 In Civil Appeal No. 5021 of 2001 has submitted that In view of

Article 370 of the Constitution and the Constitution of the State of Jammu and Kashmir, the Act does not apply to the State. Though, notice was served, the Respondent in Civil Appeal No. 5448 has not appeared.

7. Regarding applicability of the Act to the State of Jammu and Kashmir, Mr. Ahmed has drawn our attention to Clause (a) of Sub-section (2) of Section 1 of the Act. The said Sub-section runs as follows:

(2) It extends,-

(a) in so far as it relates to the Central Administrative Tribunal, to the whole of India.

(b) in so far as it relates to Administrative Tribunals for States, to the whole of India, except the State of Jammu and Kashmir.

8. In view of the above legal provision, we hold that the Act applies to all categories of Central Government servants and Ors. posted to work in the State of Jammu and Kashmir as well. We are, therefore, of the opinion that the contention of Mr. B.D. Sharma, Learned Counsel for the Respondent has no force. We may add here that the Full Bench of the High Court in Kuldip Khud (supra) has also taken the view that the Act extends to the whole of India which includes the State of Jammu and Kashmir.

9. In support of his contention that the Central Administrative Tribunal has exclusive jurisdiction in respect of service matters of the employees of the Kendriya Vidyalaya, Mr. Ahmed has drawn our attention to Sub-clause (iii) of Clause (b) of Sub-section (1) of Section 14 of the Act. The said provision is 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 this day by all Courts (except the Supreme Court) in relation to-

(a)

(b) all service matters concerning-

(i) and (ii)

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

(Emphasis supplied)

10. The Kendriya Vidyalaya is an autonomous body registered under the Societies, Registration Act and controlled by the Government of India and that being the position the Administrative Tribunal has jurisdiction concerning service matters of the employees of the Kendriya Vidyalaya in view of Sub-clause (iii) of Section 14(1)(b). In this connection, the learned Additional Solicitor General has also drawn our attention to the Notification of the Government of India dated 17th December, 1998 issued under Sub-section (2) of Section 14 of the Act by which the Central Government specified that the Act shall apply to the organisations mentioned in the schedule to the Notification and the Kendriya Vidyalaya has also been included in the said Notification at Item No. 34. Therefore, Mr. Ahmed has rightly submitted that the service dispute concerning the employees of the Kendriya Vidyalaya would come under the jurisdiction of the Central Administrative Tribunal. It does not make any difference that the institution is located in Jammu and Kashmir and the Respondent is working there.

11. To appreciate the second submission of Mr. Ahmed we extract below relevant portions from paragraphs 93 and 99 of the decision of the Constitution Bench of this Court in L. Chandra Kumari's case (supra):

(93) We may add that the Tribunals will, however, continue to act as the only Courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.

(99) 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.

12. The Constitution Bench of this Court has clearly held that Tribunals set up under the Act shall continue to act as the only Courts of first Instance 'in respect of areas of law for which they have been constituted. It was further held that it will not be open for litigants to directly approach the High Court even in cases where they question the virus of statutory legislation (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal.

13. In view of the clear pronouncement of this Court, the High Court erred in law in directly entertaining the writ petitions concerning service matters of the employees of the Kendriya Vidyalaya as these matters come under the jurisdiction of the Administrative Tribunal. We, therefore, hold that the High Court committed an error by declining to transfer the writ petition to the Central

Administrative Tribunal. Consequently, we set aside the Impugned orders and direct the High Court to transfer both the writ petitions to the Central Administrative Tribunal, Chandigarh Bench which may, in its turn, make over the case to the circuit Bench in the State of Jammu and Kashmir for disposal in accordance with law.

14. We record our appreciation for the valuable assistance rendered by Mr. Altaf Ahmed.

15. In the result both the appeals are allowed. Parties to bear their own costs.

P. Venkatarama Reddi, J.

16. While I concur with the conclusion reached and the order made by my learned brother, I would like to append this brief supplement, mainly with a view to squarely meet the argument based on the Full Bench decision of J and K High Court on which reliance has been placed in the Impugned order giving rise to the appeal. In *Kuldip Khud v. Masud Ahmad* (1994 SLJ 287A), the Full Bench, speaking through Saghir Ahmad, C.J. (as he then was) took the view that the Constitution (42nd Amendment) Act, whereby Article 323-A was introduced, does not apply to the State of Jammu and Kashmir for the reason that the mechanism prescribed in Article 370 was not resorted to. It was, therefore, held:

Since, Article 323A does not apply to this State, any law made by the Parliament under that Article taking away constitutional jurisdiction of the High Court in issuing writs in service matters as specified in that article would not affect the constitutional Jurisdiction of the High Court of this State.

Again at paragraph 39, it was highlighted:

We have already indicated that the Administrative Tribunal Act, 1985 though extends to whole of India, would still not affect the constitutional Jurisdiction of this Court in entertaining the writ petitions concerning the service matters of the employees of the Central Government. Applicability of the Act is different than the destruction of the constitutional jurisdiction of this Court by the Act. While the employees of the Central Government etc. posted in the State of Jammu and Kashmir may have been provided a forum for quick and early disposal of their grievances in respect of service matters, they still retain the choice to approach this Court u/s 103 of the State Constitution by filing a writ petition and praying for an appropriate writ, order or direction for the redressal of their grievances.

17. The Full Bench of the High Court then observed, in keeping with what was stated above, that the Tribunal will be an additional or alternative forum and not an exclusive forum. Availability of remedy in an alternative forum does not have the effect of ousting the Jurisdiction of the High Court u/s 103 of J and K State Constitution.

18. We shall proceed on the assumption that the view of the Full Bench regarding the applicability of Article 323A to J and K State is correct. If so, as pointed out

by the Full Bench, the bar contained in Clause 2(d) of Article 323A excluding the jurisdiction of all Courts except the Jurisdiction of the Supreme Court under Article 136 with respect to the service matters of persons appointed to public services and posts in connection with the affairs of the Union and Ors. specified in Clause (1) will not apply and in such a case, the J and K High Court could entertain the writ petitions filed by such public servants subject, of course, to the usual self-imposed limitations such as the existence of alternative remedy. Whether the reasoning of the Full Bench of the High Court is correct or not need not be gone into in view of the Constitution Bench decision of this Court in *L. Chandra Kumar Vs. Union of India and others*, wherein this Court struck down the Clause 2(d) of Article 323A on the ground that it offends one of the basic and essential features of the Constitution, viz., the power of judicial review vested in the High Court and the Supreme Court. Thus the embargo on the constitutional jurisdiction of the High Court stands lifted by virtue of the decision in *Chandra Kumar's* case. The offending provision in Article 323A eroding the constitutional powers of High Court goes out of existence. The High Courts, under Articles 226/227 of the Constitution of India or the corresponding provisions in J and K Constitution, namely, Sections 103/ 104 will, therefore, retain their jurisdiction even in relation to the service matters falling within the sweep of Clause (1) of Article 323A. To this extent, the ultimate conclusion reached by the Full Bench of the J and K High Court on an entirely different ground accords with the Constitution Bench judgment in *Chandra Kumar's* case. But, then, the effect and implications of the ruling in *Chandra Kumar's* case have to be considered in order to see whether the impugned order of the High Court can be sustained. This Court having struck down the offending clause of Article 323A proceeded to hold that the power conferred on the Administrative Tribunals should be preserved without sacrificing the judicial review power of the High Court and the Supreme Court inhering from Articles 226/227 and 32 respectively. With this objective in view, to keep the mechanism of Administrative Tribunals in tact, this Court deemed it expedient to impose certain restraints on the entertainment of petitions under Articles; 226/227. The Court held that an Administrative Tribunal can still perform its supplementary role in relation to the service matters and it can even test the constitutional validity of the statutory provision or rule except the Act or the Rule under which it was created. It was laid down that the Tribunal will continue to act as Court of first instance in respect of matters falling within its jurisdiction and it was not open to the: aggrieved person to directly approach the! High Court by overlooking the jurisdiction of the Tribunal concerned. In this context, my learned brother has quoted the relevant passage from the decision in *Chandra Kumar's* case.

19. I must say that the decision in *Chandra Kumar's* case is a product of judicial craftsmanship and a landmark in the development of constitutional law in our republic. Even if this judgment does not ipso facto apply to the J. and K. State Constitution, there is no apparent reason why the ratio of this judgment should not be applied to the exercise of Jurisdiction by J and K High Court under

Sections 103 and 104 of J and K Constitution. The wholesome principle evolved by this Court in Chandra Kumar, could be extended to Sections 103 and 104 as well; otherwise it would lead to an anomalous result of the Central Government servants/employees of Central Government controlled Corporations, etc. working in J. and K. being left with the option of bypassing the Tribunal, without falling in line with their counterparts working elsewhere.

20. As regards the territorial operation of the Administrative Tribunals Act, as my learned brother has pointed out, it extends to whole of India including Jammu and Kashmir. The Full Bench of the High Court has also recognised this position and clarified that the Tribunal will function as an additional or alternative forum without affecting the constitutional jurisdiction of the High Court. Therefore, the contention that the machinery under the Administrative Tribunals Act to decide the disputes or complaints specified therein cannot function within the State of J. and K. does not deserve further consideration. However, it is clarified that in the light of the pronouncement in Chandra Kumar's case. Section 28 of the Act does not have the effect of affecting the power of Judicial review of constitutional Courts. At the same time, as laid down in Chandra Kumar, the High Court ought not to permit the aggrieved person to bypass the remedy of moving the Administrative Tribunal in the first instance.