

(2016) 07 AP CK 0015

In the Andhra Pradesh High Court

Case No : Writ Petition Nos. 27360 of 2015, 2911 of 2016, 7240 of 2016 and 12761 of 2016.

Koyyada Satish Kumar and another - Petitioners @HASH State of Telangana, Rep. by its Principal Secretary, General Administration (SC-A) Department, Secretariat Buildings, Hyderabad and another

Date of Decision : 22-07-2016

Acts Referred:

Administrative Tribunals Act, 1985 — Section 15, Section 28
Constitution of India, 1950 — Article 226

Citation : (2016) 6 ALT 221 : (2017) 1 AndhLD 76

Hon'ble Judges : Sri. A. Ramalingeswara Rao, J.

Bench : Single Bench

Advocate : Sri T. Sujan Kumar, Advocate, for the Petitioner; G.P. for GAD, for the Respondent No. 1; GP for Revenue, for the Respondent No. 2

Final Decision : Disposed Off

Judgement

Sri. A. Ramalingeswara Rao, J. - These four Writ Petitions are being disposed of by this common order as they relate to the issue of maintainability of the Writ Petition before this Court.

2. WP Nos. 27360 of 2015, 2911 of 2016 and 12761 of 2016 were filed challenging the action of the second respondent-District Collector in issuing proceedings dated 06.11.2008 rejecting the request of the first petitioner for appointment on compassionate grounds consequent to the death of a person in extremist violence.

3. WP No.7240 of 2016 was filed challenging the rejection of the application of the petitioner for the post of Assistant Motor Vehicle Inspector on the ground that she does not possess two years experience in driving motor vehicles as contrary to the notification dated 23.09.2015.

4. In all these cases the petitioners are claiming appointment to "civil post" either on compassionate ground or pursuant to a notification issued for appointment to the post.

5. When this Court pointed out to the learned counsel for the petitioners as to how the Writ Petitions are maintainable in this court, learned counsel for the petitioners submitted that since there was no appointment, the petitioners can approach this Court as it cannot be called as a service matter which can be entertained by the AP Administrative Tribunal.

6. Learned Government Pleader on the other hand submitted that though the writ petitioners were not appointed, when they are claiming appointment to a civil post, AP Administrative Tribunal alone has got jurisdiction to decide the said issue.

7. In the light of the above submissions it has to be seen whether the above Writ Petitions are maintainable in this Court or not.

8. Section 15 of the Administrative Tribunals Act, 1985 (for short "the Act") deals with the jurisdiction, powers and authority of State Administrative Tribunals under which the present common Administrative Tribunal for the two states of Telangana and Andhra Pradesh is functioning. The relevant portion of said Section reads as follows.

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

(1) 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 subsection 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."

9. An identical issue came up for consideration before this Court when the erstwhile Administrative Tribunal was functioning. A Full Bench of this Court in Smt. A. Sivamma v. The District Women and Child Welfare Officer, Kurnool, 1987 (1) ALT 530 (FB) repelled the contention of the petitioners that the Tribunal can

exercise jurisdiction only in respect of matters concerning the persons employed in service and it observed as follows.

"The counsel for the petitioners strongly relied on the expression "person employed" used in paragraph 7 of the Presidential Order to contend for the position that the Tribunal was authorised to receive representations for the redress of their grievances only from persons employed in service of the Government, and, therefore, the writ petitioners were not precluded from invoking the writ jurisdiction of this Court to seek appropriate relief. This contention overlooks what precisely is the meaning of the expression "person employed" used in paragraph 2 (1) (d) of the Presidential Order. Paragraph 2 (1) (d) of the Presidential Order is meant to remove any doubt on this question, and it reads as follows :

"person employed means an individual, in relation to whom the tribunal has jurisdiction in respect of the matters specified in paragraph 6 of this Order."

It is evident that the expression "person employed" is used in a comprehensive sense for the sake of convenience to avoid repetition. Though at the first flash the argument of the learned counsel for the petitioners would appear to be attractive, even in the absence of the definition in paragraph 2 (1) (d) of the Presidential Order, a careful analysis of the language guardedly used in sub-paragraph (1) of paragraph 7 thereof, would indicate that the persons employed are persons who are entitled to approach the Tribunal with "representations for the redress of their grievances relating to matters within its jurisdiction", which implies that the right of the persons to seek redressal extends to all matters within its jurisdiction. The provisions contained in sub-paragraph (2) of paragraph 7 of the Presidential Order are also of some relevance. The combined effect of clauses (3), (4) and (7) of art. 371-D of the Constitution and paragraphs 2 (1) (d), 6 and 7 of the presidential Order is that the Administrative Tribunal, and Administrative tribunal alone, has jurisdiction to entertain matters with respect to appointment inclusive of selection process for being appointed to the post in service of the Government. It has to be noticed that paragraph 7 of the Presidential order is one which lays down procedure than one conferring any right or jurisdiction. It is, in fact, an enabling provision which gives guidance as to what the Tribunal was expected and authorised to do when a person invokes its jurisdiction in terms of paragraph 6 (1) of the Presidential Order. It would be absolutely unreasonable to hold that the intention of using the expression "person employed" is to restrict the jurisdiction of the Tribunal."

10. A Division Bench of this Court had an occasion to consider the said issue in relation to the post of Village Administrative Officer in *Rana Ratna Rao v. State of AP*, 1992 (1) ALT 420 (DB). The said Division Bench, following the above Full Bench judgment held that the general nature of the definition contained in the Administrative Tribunals Act makes it clear that the matters of recruitment and of conditions of service pertains to the domain of the Administrative Tribunal and the High Court has no jurisdiction to hear and decide the same. The Division

Bench, considering Section 28 of the Act, held that the High Court cannot exercise jurisdiction which has been vested in the Administrative Tribunal as regards matters over which it has got jurisdiction.

11. Though the said Division Bench judgment was not noticed by another Division Bench, but following the above Full Bench decision, the Division Bench in *Makkina Satyendra Babu v. The Govt. of AP*, 1993 ALT Supp. (1) 787 (DB), while considering the issue relating to the Village Administrative Officer, after considering Section 15 of the Act, held as follows.

"It will be relevant to state that matters concerning recruitment to any "civil service" of the State, or to any "civil post" under the State are vested in the Tribunal under Section 15 of the Administrative Tribunals Act, 1985. Thus, jurisdiction of this Court to entertain disputes of this nature including question of recruitment or appointment is specifically excluded under Section 15 of the Administrative Tribunals Act, 1985."

12. Another Division Bench of this Court in *Director General, Indian Council of Agricultural Research, New Delhi v. A. Uma*, 1999(3) ALT 489 (DB), considered the case of appointment to the post of Scientist in Agricultural Research Service pursuant to the examination conducted by the Board and held that the Central Administrative Tribunal only has got jurisdiction to decide such service matter in the first instance.

13. The Hon"ble Supreme Court in *The Manager, Govt. Branch Press v. D.B. Belliappa*, AIR 1979 SC 429(1), while interpreting Article 16(1) of the Constitution of India held that the "matters relating to employment" is not confined to initial matters prior to the act of employment, but comprehends all matters in relation to employment both prior and subsequent to the employment which are incidental to the employment and form part of such employment, such as salary, increments, leave gratuity, pension, age of superannuation, promotion and even termination of employment.

14. In the present Writ Petitions, the petitioners are seeking employment either under a particular Government Order or pursuant to a notification and since the matters relate to a post under the Government, these matters are amenable to the jurisdiction of the AP Administrative Tribunal only and this Court is barred from entertaining the present Writ Petitions in view of Section 28 of the Act.

15. The Writ Petitions are accordingly dismissed. However, this will not prevent the petitioners from approaching the AP Administrative Tribunal, if they so desire. There shall be no order as to costs.

16. As a sequel thereto, the miscellaneous petitions, if any, pending in these Writ Petitions shall stand closed.