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**(1981) 11 AHC CK 0036**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ Petition No. 13217 of 1981

Lal Ji Harijan

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

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**Date of Decision :** 18-11-1981

**Acts Referred:**

Constitution of India, 1950 — Article 254, 254(2), 323A, 323A(1)  
Uttar Pradesh Public Services (Tribunal) Act, 1976 — Section 46, 5B  
Constitution of India, 1950 — Article 254, 254(2), 323A, 323A(1)  
Constitution of India, 1950 — Article 254, 254(2), 323A, 323A(1)  
Uttar Pradesh Public Services (Tribunal) Act, 1976 — Section 46, 5B  
Uttar Pradesh Public Services (Tribunal) Act, 1976 — Section 46, 5B

**Citation :** (1982) AWC 57

**Hon'ble Judges :** K.N. Singh, J;B.N. Sapru, J

**Bench :** Division Bench

**Advocate :** S.P. Singh, for the Appellant;

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## **Judgement**

B.N. Sapru, J.—Lalji Harijan, a Lekhpal, has filed this writ petition claiming that he was a permanent Lekhpal and that his services has been terminated in violation of law by the Sub Divisional Officer.

2. Aggrieved by the termination order passed by the Sub Divisional Officer, Kerakat, Jaunpur dated 2-9-1981 he has filed the instant writ petition.

3. It was pointed out to the Petitioner that if the Petitioner was aggrieved, he could have filed a claim petition before the State Public Services Tribunal. This being an alternative remedy, a writ petition is not normally entertained.

4. The learned Counsel for the Petitioner has argued that the U.P. Public Services (Tribunals) Act, 1976 (UP Act No. XVII of 1976) is beyond the legislative competence of the State Legislature and he, therefore, submits that the Petitioner is entitled to file a writ petition in this Court. According to the Petitioner's counsel, the remedy provided under the U.P. Public Services (Tribunals) Act, 1976 (hereinafter called as "the Act") is not a remedy according

to law. The argument of the learned Counsel for the Petitioner is that in view of the provisions of Article 323A(1) the jurisdiction to constitute administrative tribunals for the adjudication or trial vests in the Parliament.

5. Before coming into force of the Act, there was the U.P. Public Services (Tribunals) Ordinance, 1975 being UP Ordinance No. XXIII of 1975. The preamble object of the Ordinance as it shows was to provide for the constitution of tribunals to adjudicate disputes in respect of the matters relating to employment of all public servants of the State. This Ordinance was followed by the Act (UP Act No. XVII of 1976) which received the assent of the President on 30-4-1976 and was published in the UP Gazette on 1-5-1976. This would go to show that the State Legislature had enacted first an Ordinance and then an Act for the adjudication and settlement of disputes relating to the employees in State Services before the introduction of Article 323A in the Constitution.

6. Article 323A was inserted in the Constitution by Section 46 of the Constitution (Forty Second Amendment) Act, 1976. It was enforced by the notification No. G.S.R. 2(E) dated 3rd January, 1977 published in the Gazette of India (Extraordinary) Part III, on the same date and the appointed date for coming into force of the Article 323A. Act came into force prior to the coming into force of the Constitution (Forty Second Amendment) Act, 1976.

7. The Act was apparently enacted by the State Legislature by virtue of the provisions of Entry 41 of List II of the VII Schedule of the Constitution. The Entry 41 runs as follows:

State Public Services; State Public Service Commission.

Under this Entry the State Legislature has powers to. constitute State Public Services and to regulate their conditions of Service, emoluments and provide for disciplinary matters etc. There is nothing in this Entry which could prevent the State Legislature from constituting a Tribunal to adjudicate a dispute pertaining to the employment of public servants. It is not necessary that an Entry in the Constitution should itself provide for the creation of a Tribunal. It is enough if powers are given to legislate on certain topic. For example, in List I of the VII Schedule we find Entry No. 2 which runs as follows:

Naval, military and air force; any other armed forces of the Union.

8. As is well known, Court Martials have been established which also deal with the maintenance of the discipline in the armed forces. These Tribunals adjudicate upon the dispute between the personnel for the forces also in disciplinary matters. They can impose punishments including dismissal, cashiering and other lesser punishments to the personnel of the armed forces. The power to constitute a Court Martial under this Entry has never been disputed.

9. Similarly, under Entry 83 of List I of the VII Schedule, a Tribunal has been constituted to adjudicate on the disputes regarding customs. The Entry runs as follows:

Duties of customs including expert duties.

This power has also never been questioned.

10. Under Entry 86 which provides for taxes on capital value of the assets exclusive of agricultural land, all individuals and companies; taxes on the capital of companies. Under that Entry Taxes have been imposed and a machinery for adjudication of the disputes in the matter of assessment and levy of taxes is provided for.

11. Under Entry 87 which provides for estate duty in respect of property other than agricultural land, the estate duty is levied and the disputes pertaining to levy and assessment of the estate duty are adjudicated upon by the authorities under the Estate Duties Act.

12. We find no reason to doubt the competence of the State Legislature to enact the U.P. Public Services (Tribunals) Act, 1976 by virtue of the powers vested in the State Legislature under Entry 41 of List II of the VII Schedule of the Constitution.

13. We are reinforced in the view that we are taking by a decision of our own High Court in the case of Bharat Ram v. State of U.P. 1979 Labour and Industrial Cases 181. In that case the validity of Section 5-B of the Act which was inserted by UP Act No. I of 1977, was challenged. Act No. I of 1977 had received the assent of the President on January 10, 1977 and was published in the UP Gazette (Extraordinary) dated January 15, 1977. A Division Bench of this Court held that Article 323A of the Constitution did not take away the powers of the State Legislature to add Section 5-B in the Act. It was held that the effect of Article 323A was that it came within the competence of the Parliament to provide for the adjudication or trial by the administrative tribunals of all disputes and complaints with respect to the 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. The Bench pointed out that if Parliament enacted a law on the subject of the administrative tribunals pertaining to the State Public Services, the Parliamentary law would hold the field and not the State law by virtue of the provisions of Article 254 of the Constitution of India. However, so long as there is no Parliamentary law, the State Legislature could legislate in respect of the State Public Services by virtue of Entry 41 of List II and hence Section 5-B inserted in the Act was validly enacted.

14. It is well settled that the Entries in the various List of the VII Schedule have to be given widest amplitude. A narrow interpretation of the Entry is not favoured by the Courts. When Entry 41 of the List II speaks of State Public Services, it deals with all matters pertaining to such services and it must necessarily follow, that the creation of the Tribunal for adjudication of all the dispute in such matters, was also contemplated by that Entry.

15. There is another decision of Lucknow Bench of this Court in the case of Atma Ram Verma v. The District Planning officer, Gonda, decided on 9-3-1977 by Hari Swamp and Prom Prakash, JJ. In that case, it was urged on behalf of the Petitioner that by virtue of Article 323A introduced in the Constitution by the Constitution (Forty-Second Amendment) Act, 1976, the powers to make law for the adjudication or trial of all the disputes by the Administrative Tribunal, was vested in the Union Legislature. This contention was repelled by the Bench on the ground that by virtue of Entry 3 of List II the State Legislature had the competence to make a law for the creation of a Tribunal and for adjudication of the disputes pertaining to service matters. It was held that the term "Administration of justice" to be found in that Entry included the powers to constitute a tribunal. We have our doubts about the correctness of the reasoning of the Bench but we consider it unnecessary in this case to finally determine whether the power to create a tribunal in respect of disputes arising in public services is in Entry 3 of List II or under Entry 41 of List II because even on the basis adopted in Atma Ram Verma's case the provisions of the Act must be held to be constitutional.

16. The learned Counsel for the Petitioner then argued that the disputes in public services necessarily have to be decided in a judicial manner and as such the matter can only be dealt with by the Tribunal created for the administration of justice and the powers must be found in the relevant Entry of the List. This power is to be found in Article 323A of the Constitution, therefore the State has no power to constitute Tribunal. Prior to the enactment of Article 323A the power to make a law in respect of State Services was vested only in the State Legislature. By the Constitution (Forty Second Amendment) Act, 1976, which introduced Article 323A in the Constitution, a concurrent power was vested in the Union Legislature. Article 323A does not take away the powers of the State Legislature to enact a law in respect of the State Public Services. If, however, there is a conflict between the law made by the Parliament and the State Legislature, then the Parliament would prevail unless the State law has been reserved for the consideration of the President and has received his assent as provided in Article 254(2) of the Constitution. Since the Parliament has not enacted any law as contemplated by Article 323A, the law made by the State legislature shall prevail.

17. We, therefore, hold that the U.P. Public Services (Tribunals) Act, 1976, was validly enacted and continues in force and as such the Petitioner has an adequate alternative remedy by filing a claim petition before the Public Services Tribunal.

18. We, therefore, dismiss the writ petition on the ground that the Petitioner has an adequate alternative remedy which he may avail of by filing a claim petition with the State Public Services Tribunal.