

(2000) 06 AP CK 0063

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 8411 and 8412 of 2000

M. Sridhar Reddy and others

APPELLANT

Vs

Hyderabad Metropolitan Water Supply and Sewerage Board,
Hyd. and others

RESPONDENT

Date of Decision : 30-06-2000

Acts Referred:

Administrative Tribunals Act, 1985 — Section 15(2), 15(3), 6
Constitution of India, 1950 — Article 14, 141, 15, 16, 226
General Clauses Act, 1897 — Section 3(31)
Hyderabad Metropolitan Water Supply and Sewerage Board Act, 1989 — Section 113(1), 113(2), 3
Hyderabad Metropolitan Water Supply and Sewerage Board Regulations, 1989 — Regulation 19, 22, 8
Payment of Bonus Act, 1965 — Section 32(2)

Citation : (2000) 4 ALD 481 : (2000) 4 ALT 262

Hon'ble Judges : J. Chelameswar, J

Bench : Single Bench

Advocate : Mr. L. Ravichander, for the Appellant; Mr. P. Krishna Rao, SC, Government Pleader for Municipal Administration, Mr. M. Surender Rao, Mr. J.R. Manohar Rao and Mr. M. Ratna Reddy, for the Respondent

Judgement

1. These two writ petitions listed are before me along with three interlocutory applications seeking to implead the applicants as party-respondents in the writ petitions, and further to vacate the interim orders granted on 9-5-2000 in the above writ petitions. In fact berth the writ petitions were admitted and interim directions were granted by the learned single Judge of this Court on the said date.

2. The facts leading to the present litigation are as follows:

The writ petitioners in both the writ petitions are working as Managers (Engineering) in the respondent-Hyderabad Metropolitan Water Supply and Sewerage Board, (for short "the Board") which was constituted under the Hyderabad Metropolitan Water Supply and Sewerage Act, 1989, (for short "the Act"), which came into force in the month of July, 1989.

3. The petitioners in the first Writ Petition No. 8411 of 2000 were directly recruited by the said Board and the petitioners in the second Writ Petition No.8412 of 2000 were the employees of the Andhra Pradesh Public Health Department, whose services were transferred to the respondent-Board by virtue of operation of Section 113(1) of the above mentioned Act, 1989.

4. WP MP Nos.12009, 12199 and 12342 of 2000 in Writ Petition No.8412 of 2000, and WP MP Nos.12200, 12029 and 12306 of 2000 in WP No. 8411 of 2000 are filed by various persons who are also working with the respondent-Board, who at an earlier point of time were recruited in the services of Andhra Pradesh Public Health Department at various levels and whose services were being utilised by the respondent-Board and subject to an option being exercised by each one of those petitioners and the same being accepted by the Board, are required u/s 113(2) of the Act to be absorbed into the services of the respondent-Board, though there is some dispute about the fact and the legal requirements as to the finality of such absorption.

5. Whatever be the status of the petitioners and the implead petitioners, the fact remains that all of them as on today are working in the first respondent-Board in the same rank as Managers. It appears that the respondent-Board is likely to make promotions from amongst various parties before the Court to certain number of posts designated as Deputy GeneralManagers. Apprehending that the claims of the writ petitioners who are directly recruited by the Board are likely to be overlooked and preference is likely to be given to some of the implead petitioners, these writ petitions are filed with a prayer as follows:

"For the reasons stated in the accompanying affidavit it is prayed that this Hon"ble Court may be pleased to issue a writ, order or direction, declaring the action of the 1st respondent in not filling up the post of Deputy General Manager (Engineering) by promoting the petitioners and permitting the posts to be filled up by Deputy Executive Engineers working in the Andhra Pradesh Public Health and Municipal Engineering Services as arbitrary, illegal, unjust, contrary to law and teeth of Section 113 of the Hyderabad Metropolitan Water Supply and Sewerage Act, 1989 and contrary to Regulations 8, 19 and 22 of the Hyderabad Water Works and Sewerage Board and issue consequential directions to consider the petitioners for promotion to the post of Deputy General Manager (Engineering) and to pass such other order or orders as the Hon"ble Court deems fit and proper in the circumstances of the case."

6. The matters were admitted as already mentioned above on 9-5-2000 and interim directions were granted by the learned single Judge of this Court directing the respondents not to fill up the posts of Deputy General Manager (Engineering), upon which implead petitioners approached this Court by way of above mentioned implead petitions and also with a prayer to vacate the interim directions granted earlier.

7. WP MP No. 13110 of 2000 in WP No 8411 of 2000 and WP MP No. 13111 of

2000 in WP No.8412 of 2000 were filed thereby seeking the prayer for the amendment of the Writ Petitions to the effect of challenging the constitutionality of Section 15(2) of the Administrative Tribunal Act.

8. With the consent of the learned Counsel appearing for both the parties the writ petitions are heard finally.

9. The Hyderabad Metro Water Supply and Sewerage Board was brought into existence by Act 15 of 1989 of the State of Andhra Pradesh. By virtue of Section 3(1)(b) the said Board is declared to be a body corporate having perpetual succession and a common seal. Section 7 of the Act mandates that-

"7. General duties of the Board:--(1) it shall be the duty of the Board to provide for,--

(a) The supply of potable water, including planning, design, construction, maintenance, operation and management of water supply system, and

(b) Sewerage, sewage disposal and sewage treatment works including planning, design, construction, maintenance, operation and management of all sewerage and sewage treatment works; in the Hyderabad Metropolitan area".

For the purpose of discharging certain duties the Act provides for an elaborate machinery vesting the Board with various powers and obligations which included the power to levy rates, fees, tariffs, rentals, deposits, contributions and other charges. Prior to the formation of the said Board the activities of supply of potable water and sewerage operations were being carried on by the Water Works Department and for discharging the above mentioned duties certain persons who were the members of Andhra Pradesh Public Health and Municipal Engineering Services were put in charge. In view of the creation of new statutory body under the Act 15 of 1989, which required personnel to handle the various operations of the Board and to see that the Board discharges the statutory functions entrusted to it, the Legislature u/s 113 of the Act provided as follows:

"113. Provisions to employees employed in connection with water supply and sewerage undertakings :--(1) Every officer and other employee employed with the Hyderabad Metropolitan Water Works and sewerage and sewage treatment works as the case may be, shall stand transferred to and become an officer or other employee of the Board with such designations as the Board may determine and shall hold by the same tenure, at the same remuneration the same terms and conditions of service applicable immediately before such transfer and shall continue to do so unless and until such tenure, remuneration and terms and conditions are duly altered by the Board:

Provided that any service rendered by such officer or employee before such transfer shall be deemed to be service rendered under the Board.

(2) Every officer or employee of the Andhra Pradesh Public Health and Municipal Engineering Service and the Andhra Pradesh Public Health and Municipal

Engineering Subordinate Service serving in the posts not below the rank of Assistant Engineer in the Hyderabad Metro Water Works or Sewerage and Sewage treatment works shall continue to serve in the Hyderabad Metro Water Works or Sewerage and Sewage treatment works under the same terms and conditions applicable to them in their parent Department and until their absorption is finally determined by the Board in accordance with the rules and regulations made for this purpose under this Act:

Provided that an officer or employee shall be given an opportunity to opt for the service of the Board or to remain in the service of his parent department.

(3) The Board may employ any officer or other employee transferred under subsection (1) in the discharge of such functions under this Act, as it may think proper and every such officer or other employee shall discharge those functions accordingly".

10. It can be seen from the language of Section 113 that two classes of employees are contemplated in the said section. The first category covered by sub-section (1) Which ordains that persons whose services were declared by the Legislature to have been transferred to the new Board and a further declaration that such person whose services transferred to the Board would automatically become an employee of the Board. The second category is covered by sub-section (2), which deals with officers and employees of the Andhra Pradesh Public Health and Municipal Engineering Service and the Andhra Pradesh Public Health and Municipal Engineering Subordinate Service serving in the posts not below the rank of Assistant Engineering in the Hyderabad Metro Water Works or Sewerage and Sewage treatment works. Such of those employees who are already governed by the rules of the above mentioned two services of the State of Andhra Pradesh are given an option either to be absorbed into the newly constituted Board, or remain in the services of the State of Andhra Pradesh. The sub-section further provides that if any one of those employees desired to be absorbed into the services of newly constituted Board, the same is required to be finally determined by the Board in accordance with Rules and Regulations made for the said purpose under the Act.

11. Admittedly, all the implead petitioners, are those persons working with the first respondent Board falling broadly under sub-section (2) of Section 113 of the Act, who have exercised their option to be absorbed into the first respondent Board and it is further asserted by the implead petitioners that the Board by its proceedings dated 5-8-1992 took a decision to absorb all the implead petitioners into the services of the Board. However, I am told the disputes are pending about the legality of such absorption at the instance of various persons in the Andhra Pradesh Administrative Tribunal.

12. In this background the petitioners submit that implead petitioners are not finally absorbed into the services of the respondent-Board, they are still substantively in the employment of the State of Andhra Pradesh in the two

services referred to above and as on today implead petitioners are in the Board only on deputation retaining the lien on their substantive posts. Therefore any consideration by the respondent Board to appoint any one of the implead petitioners or others who are similarly situated, to the post of the Deputy General Manager (Engineering) would be contrary to the service regulations framed by the Board, and more particularly Regulation 8 of the Hyderabad Metropolitan Water Supply and Sewerage Board Regulations read with Annexure No.III of the said Regulations. According to the said Regulations the post of the Deputy General Manager (Engineering) is required to be filled up by promotions from the cadre of one Manager (Engineering), Technical officer (Estimates) subject to 2% of the sanctioned strength of Deputy General Manager (Engineering) cadre or by direct recruitment or by deputation in case of non-availability of qualified person internally.

13. Writ petitioners submitted that all of them are working as Managers in the Engineering wing of the first respondent-Board and are qualified to be promoted as Deputy General Managers. Therefore, the question of the respondent-Board considering the cases of any one of the implead petitioners or persons who are similarly situated for the purpose promoting them as Deputy General Managers (Engineering) does not arise in view of the above mentioned Regulations.

14. In the above mentioned background, these writ petitions came to be filed. However, the implead petitioners took a preliminary objection that in view of the judgment of the Supreme Court reported in L. Chandra Kumar Vs. Union of India and others, , these writ petitions are not maintainable before this Court as the writ petitioners are required to approach the Andhra Pradesh Administrative Tribunal at the first instance if they have any grievance and only after exhausting such a remedy the petitioners could approach this Court, if they are not satisfied with the decision rendered by the Tribunal. Learned Counsel for the implead petitioners brought to my notice Section 15(2) of the Administrative Tribunals Act, 1985, an enactment made by the Parliament pursuant to the scheme of the Constitution obtaining under Part XIV-A which itself was introduced into the Constitution by (Forty-second Amendment) Act, 1976. Under the said Act, the Administrative Tribunals were created for each State to deal with the dispute arising out of recruitment and of service matters concerning employment under the States. Sub-section (3) of Section 15 further provides that the Tribunal so constituted would not only have the jurisdiction to deal with the disputes arising out of service of any person with the concerned state, but also similar disputes arising out of the service of any person with any local or other authority, corporations or societies controlled or owned by the State Government. Learned Counsel for the implead petitioners thereforesubmitted that in view of G.O. Ms. No.652, General Administration Department, dated 11-11-1989, the relevant portion which reads as follows:

"In exercise of the powers conferred by sub-section (2) of Section 15 of the

Administrative Tribunals Act, 1985 (Central Act 13 of 1985) the Government of Andhra Pradesh hereby specified the Eleventh day of November, 1989 as the date with effect from which the provisions of sub-section (3) of Section 15 of the said Act shall apply to the local authorities under the control of the State Government",

the disputes raised in one of the writ petitions falls within the jurisdiction of the Andhra Pradesh Administrative Tribunal and the writ petitioners, who have approached this Court without first approaching the Administrative Tribunal are debarred from making any claim before this Court in view of the law declared by the Apex Court in Chandra Kumar 's case (supra).

15. Learned Counsel for the writ petitioners on the other hand submitted that the respondent-Board is not a local or other authority within the meaning of Section 15 of the Administrative Tribunal Act, and therefore, any amount of declaration by the State that of local or other authorities, brought within the jurisdictional purview of the Administrative Tribunal, would not create necessary jurisdiction in the Andhra Pradesh Administrative Tribunal to deal with the disputes arising out of the services of the employees of the first respondent-Board. Secondly the learned Counsel for the writ petitioners submitted that assuming for the sake of argument that the first respondent Board is one of such bodies as contemplated under Sections 15(2) and (3) of the Act, in view of the express provision under Article 371-D, it is only the President of India who is competent to make such declarations insofar as the State of Andhra Pradesh is concerned and both the Parliament and the State Legislature would lack legislative competence to make such a declaration. Yet another submission was made by the learned Counsel for the petitioner that the Andhra Pradesh Administrative Tribunal which is functioning without a Chairman for the last about 8 months is not a Tribunal validly constituted in accordance with the Act and also the constitutional requirements under Articles 323-A and 371-D of the Constitution of India as interpreted by the Supreme Court in S.P. Sampath Kumar v. Union of India AIR 1987 SC 386

16. In this background, it becomes necessary for this Court to examine the rival submissions made by the learned Counsel appearing on either side on the maintainability of the writ petition before going into merits of the writ petitions, which itself would depend upon the conclusion to be reached on the maintainability of the writ petitions.

17. The first issue that is required to be examined in this context is whether the first respondent is either a local or other authority which can be brought within the jurisdictional purview of the Administrative Tribunal. The creation of the Administrative Tribunal for resolving the disputes between the State and its employees was first made in the State of Andhra Pradesh in view of certain historical necessities resulting in constitutional 32nd Amendment by which Article 371-D was introduced in the Constitution. Sub-Article (3) of Article 371-D empowers the President of India, by order, to provide for the constitution of an

Administrative Tribunal for the State of Andhra Pradesh to deal with the various kinds of disputes enumerated under the sub-Article (3) of Article 371-D. The disputes arising out of the appointment, allotment or promotion to any local authority under the control within the State is also included in the said Article. Subsequently, Part XIV-A was introduced in the Constitution, the same was made applicable to the entire country.

18. The expression of "local authority" though not defined under the Constitution or under the Administrative Tribunal Act, the same is defined under the General Clauses Act, 1897 which is made applicable for the interpretation of the Constitution by virtue of express declaration of Article 367.

19. Sub-section (31) of Section 3 of the General Clauses Act defines "local authority" in the following terms:

"Local authority" shall mean Municipal Committee, District Board, body of Port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a Municipal or local fund."

20. An examination of the definition reveals that it is in two parts, that certain categories of bodies like Municipal Committee, District Board or body of Port Commissioners are automatically brought under the definition of the said expression and the second category contemplated under the definition is "other authorities" which are legally entitled to or entrusted by the Government with the control or management of a Municipal or local fund. The scope of such a definition fell for consideration of the Supreme Court in *Union of India (UOI) and Others Vs. Shri R.C. Jain and Others*, wherein their Lordships held as follows:

"Let us, therefore, concentrate and confine our attention and enquiry to the definition of "Local authority" in Section 3(31) of the General Clauses Act. A proper and careful scrutiny of the language of Section 3(31) suggests that an authority, in order to be a local Authority, must be of like nature and character as a Municipal Committee, District board or Body of Port commissioners, possessing, therefore, many, if not all, of the distinctive attributes and characteristics of a Municipal Committee, District Board, or Body of Port Commissioners, but, possession one essential feature, namely, that it is legally entitled to or entrusted by the Government with, the control and management of a municipal or local fund. What then are the distinctive attributes and characteristics, all or many of which a Municipal Committee, District Board or Body of Port Commissioners shares with any other local authority? First, the authorities must have separate legal existence as Corporate bodies. They must not be mere Governmental agencies but must be legally independent entities. Next, they must function in a defined area and must ordinarily, wholly or partly, directly or indirectly, be elected by the inhabitants of the area. Next, they must enjoy a certain degree of autonomy, with freedom to decide for themselves questions of policy affecting the area administered by them. The autonomy may not be complete and the degree of the dependence may vary considerably but, an appreciable measure of

autonomy there must be. Next, they must be entrusted by Statute with such Governmental functions and duties as are usually entrusted to municipal bodies, such as those connected with providing amenities to the inhabitants of the locality, like health and education services, water and sewerage, town planning and development, roads, markets, transportation, social welfare services etc., etc. Broadly we may say that they may be entrusted with the performance of civic duties and functions which would otherwise be Governmental duties and functions. Finally, they must have the power to raise funds for the furtherance of their activities and the fulfillment of their projects by levying taxes, rates, charges, or fees. This may be in addition to moneys provided by Government or obtained by borrowing or otherwise. What is essential is that control or management of the fund must vest in the authority,"

21. On the other hand learned Counsel for the writ petitioners relied upon a decision of the Supreme Court in *Housing Board of Haryana Vs. Haryana Housing Board Employees Union and others*, wherein the Haryana Housing Board could be called a local authority within the meaning of Section 32(2) of the Payment of Bonus Act, 1965. Their Lordships while approving the earlier decision of the Supreme Court referred to above, came to the conclusion, having regard to various provisions of the Haryana Housing Board Act, 1971, that the Housing Board created under the said Act did not have semblance of independence which is normally possessed by local self Government bodies like Municipal Boards or District Boards etc., and therefore not a local authority.

22. It can be seen from *Union of India's case* (supra), that in order to be a "local authority" within the meaning of Section 3 sub-section (31) of the General Clauses Act, that all attributes and characteristics of a Municipal committee, District Board or Body of Ports Commissioner need not exist in such bodies. One essential feature that is required to be satisfied is that such an authority is legally entitled to or is entrusted by the Government with the control and management of a municipal or local fund. Applying the said test to the facts and circumstances of the present case, the Hyderabad Metropolitan Water Supply and Sewerage Board is entrusted with a local fund. Section 8 of the Act, as we have already noticed, enables the first respondent-Board to levy various kinds of rates, fees, tariffs, rentals, deposits, contributions and other charges etc., therefore, I have no doubt that the first respondent-Board is a local authority within the meaning of Section 3 sub-section (31) of the General Clauses Act

23. That conclusion requires me to examine the next submission about the constitutionality of Section 15(2) of Administrative Tribunal Act, made by the learned Counsel for the writ petitioners that in view of the provisions of Article 371 whether the Parliament or the State Legislature would have such a power to bring the local authorities within the jurisdictional ambit of the Andhra Pradesh Administrative Tribunal which is undoubtedly a body created by the Administrative Tribunal Act, 1985 under the scheme contained under Part XIV-A of the Constitution.

24. Learned Counsel for the petitioners submitted that assuming that the Parliament would have such a power to place the local authorities within the jurisdictional ambit of the Administrative Tribunal, in view of the scheme of Article 323-A with respect to the rest of the country, insofar as the State of Andhra Pradesh is concerned the same cannot be done by the Parliament nor could the Parliament authorise the State Government to issue a notification as contemplated u/s 15(2) of the Administrative Tribunal Act, 1985. Learned Counsel further submitted that Article 371-D being special provision dealing exclusively with the State of Andhra Pradesh which incidentally contained a provision for the creation of a Administrative Tribunal by the President must be given priority over the scheme of Article 323-A, which generally deals with the creation of Administrative Tribunals in all the States all over the country. Learned Counsel further submitted that the settled principle and interpretation of statutes that the specific excludes the general must be invoked in the present case. The argument appears very attractive, but it has limitations. It is only a principle of interpretation of statutes and no principle of interpretation of statutes is absolute. The Parliament being the sovereign law-maker can always deviate from the existing principles of interpretation of statutes by express declarations and that is what happened under Article 323-A. Article 323(2)(f) specifically refers to Article 371-D and authorises the Parliament to make a law either to repeal or amend any order made by the President under Clause 3 of Article 371-D. Not satisfied with empowering the Parliament with such authority the Article further made an express declaration under sub-article (3) of Article 323-A to the effect that - "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". No doubt sub-article (10) of Article 371-D also makes similar declaration in following terms.

"(10) The provisions of this Article and of any order made by the President thereunder shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force".

25. Phased with two such declarations the settled principle of interpretation of statutes is that the latest will of the sovereign prevails and in view of the said principle Article 323-A which was inserted under the Constitution by 42nd Amendment in 1976 should prevail over the provision of Article 371-D which was made prior to the insertion of Article 323-A. Obviously sovereign law-maker, took notice of the existing constitutional position and made a categorical declaration. Therefore, the second submission also must fail.

26. Coming to the third submission of the learned Counsel for the petitioners that in view of the legal position declared by the Supreme Court in S.P. SampathKumar's case (supra), the Andhra Pradesh Administrative Tribunal as it is today, is without a Chairman for the last about 8 months and (the Chairman u/s 6 of the Administrative Tribunal Act shall be a person who is or has been a Judge of the High Court) and functioning under the control of a person who is

only an administrative member, does not constitute a Tribunal satisfying both the constitutional and statutory requirements. Learned Counsel placed strong reliance on the observations made by Justice Bhagwathi in his concurring judgment, which reads as follows:

"It is necessary to bear in mind that service matters which are removed from the jurisdiction of the High Court under Articles 226 and 227 of the Constitution and entrusted to the Administrative Tribunal set up under the impugned Act for adjudication involve questions of interpretation and applicability of Articles 14, 15, 16 and 311 in quite a large number of cases. These questions required for their determination not only judicial approach but also knowledge and expertise in this particular branch of constitutional law. It is necessary that those who adjudicate upon these questions should have same modicum of legal training and judicial experience because we find that some of these questions are so difficult and complex that they baffle the minds of even trained Judges in the High Courts and the Supreme Court. That is the reason why at the time of the preliminary hearing of these writ petitions we insisted that every Bench of the Administrative Tribunal should consist of one judicial member one administrative member and there should be no preponderance of administrative members of any bench. Of course, the presence of the administrative member would provide input of practical experience in the functioning of the services and add to the efficiency of the Administrative Tribunal but the legal input would undeniably be more important and sacrificing the legal input or not giving it sufficient weightage would definitely impair the efficacy and effectiveness of the Administrative Tribunal as compared to the High Court. Now Section 6 provides that the Chairman of the Administrative Tribunal should be or should have been a Judge of the High Court or he should, have for atleast two years held office of Vice-Chairman or he should have for atleast two years held the post of Secretary to the Government of India or any other post under the Central or State Government carrying a scale of pay which is not less than that of a Secretary to the Government of India. I entirely agree with Ranganath Misra, J., that the Chairman of the Administrative Tribunal should be or should have been a Judge of a High Court or he should have for atleast two years held office as Vice-Chairman. If he has held office as Vice-Chairman for a period of atleast two years he would have gathered sufficient experience and also within such period of two years, acquired reasonable familiarity with the constitutional and legal questions involved in service matters. But substituting the Chief Justice of a High Court by a Chairman of the Administrative Tribunal who has merely held the post of a Secretary to the Government and who has no legal or judicial experience would not only fail to inspire confidence in the public mind but would also render the Administrative Tribunal a much less effective and efficacious mechanism than the High Court. We cannot afford to forget that it is the High Court which is being supplanted by the Administrative Tribunal and it must be so manned as to inspire confidence in the public mind that it is a highly competent and expert mechanism with judicial approach and objectivity. Of course, I must make it clear

that when I say this, I do not wish to cast any reflection on the members of the Civil Services because fortunately we have, in our country, brilliant civil servants who possess tremendous sincerity, drive and initiative and who have remarkable capacity to resolve and overcome administrative problems of great complexity. But what is needed in a judicial Tribunal which is intended to supplant the High Court is legal training and experience. I am, therefore, of the view, in agreement with Ranganath Misra, J., that clause (c) of Section 6(1) must be struck down as invalid.

I also fail to see why a District Judge or an advocate who is qualified to be a Judge of a High Court should not be eligible to be considered for appointment as Vice-Chairman of the Administrative Tribunal. It may be noted that since the Administrative Tribunal has been created in substitution of the High Court, the Vice-Chairman of the Administrative Tribunal would be in the position of a High Court Judge and if a District Court Judge, there is no reason why he should not equally eligible to be a Vice-Chairman of the Administrative Tribunal. Can the position of a Vice-Chairman of the Administrative Tribunal considered higher than that of a High Court Judge so that a person who is eligible to be a High Court Judge may yet be regarded as ineligible for becoming a Vice-Chairman of the Administrative Tribunal. It does appear that the provisions of the impugned Act in regard to the composition of the Administrative Tribunal are a little weighted in favour of members of the Services. This weightage in favour of members of the Services and value discounting of the judicial members does have the effect of making the Administrative Tribunal less effective and efficacious than the High Court. I would therefore suggest that a District Judge or an advocate who is qualified to be a Judge of the High Court should be regarded as eligible for being Vice-Chairman of the Administrative Tribunal and unless an amendment to that effect is carried out on or before 31st March, 1987, the impugned Act would have to be declared to be invalid, because the provision in regard to composition of the Administrative Tribunal cannot be served from the other provisions contained in the impugned Act."

27. Learned Counsel therefore submitted that the Tribunal where there is no Chairman who under the scheme of the Act is required to be either a sitting or retired Judge of the High Court to give necessary legal directions, cannot be called a Tribunal constituted in accordance with law. Therefore, the declaration of the Supreme Court in Chandra Kumar's case (supra) that the persons, like the petitioners herein should first approach the Administrative Tribunal before approaching the High Court may not be pressed into service seriously in the above mentioned factual background.

28. It is a lamentable state of affairs that a body like Andhra Pradesh Administrative Tribunal created for the purpose of resolving the disputes arising or in connection with services of various persons under the State or such other bodies contemplated u/s 15 of the Act, should be functioning without a Chairman, who by the mandate of the Parliament is required to be either a sitting

or retired Judge of the High Court. The mandate of the Parliament is obviously for the reason of the creation of such Tribunals and the purported exclusion of jurisdiction of this Court in such matters, require the Tribunal which is invested with great powers of adjudication or resolving the disputes, and incidentally for that purpose deciding the constitutionality of various enactments touching upon the subject, requires judicially-trained minds to chair it for the purpose of effectively discharging such constitutional obligations and also to instill the necessary confidence in the minds of those who are required to approach those Tribunals with grievance.

29. But by that itself does not, in my view, create any right in favour of the petitioners herein nor would this Court be justified or pay disobedience to the mandate of Article 141 of the Constitution which proclaims that the law declared by the Supreme Court shall be binding on all the Courts within the territory of India.

30. For the above reasons the preliminary objections raised by the impleaded petitioners is upheld and in view of the law declared by the Supreme Court in Chandra Kumar's case (supra), the writ petitioners ought to have approached the Andhra Pradesh Administrative Tribunal. In view of the fact that they have not approached the Administrative Tribunal at the first instance, the writ petitions filed before this Court are not maintainable.

31. In view of my findings on preliminary objections, I do not propose to go into the merits of the case.

32. The writ petitions are accordingly dismissed and the interim order granted by this Court stands vacated.