

(1989) 01 MAD CK 0057
In the Madras High Court

N. Bala Subramanian

APPELLANT

Vs

Government of Tamil Nadu

RESPONDENT

Date of Decision : 19-01-1989

Acts Referred:

Citation : (1989) 1 LW 79 : (1989) 1 MLJ 219

Hon'ble Judges : Sivasubramanian, J;Sivasubramaniam, J

Bench : Division Bench

Judgement

Sivasubramanian, J.—The present Writ petition has been filed for issue of a writ of mandamus directing the respondent to pass orders on the

show cause letter dated 30-6-1988 before 15-2-1989.

2. The Office returned the papers requesting the learned Counsel for the petitioner herein to present the same before the State Administrative

Tribunal, as the subject matter of the writ petition comes under its jurisdiction. Since the learned Counsel represented the papers stating that u/s 15

of the Central Administrative Tribunals Act, 1985, the State Tribunal will have jurisdiction only in respect of service matters and since the prayer in

this writ petition is to direct the Government to complete the inquiry before 15-2-1989, only a writ petition would lie and that therefore, the said

Administrative Tribunals Act is not a bar. Therefore, the matter was posted before Court for deciding the question of maintainability.

3. Shri K. Chandra Mouli, learned Counsel appearing for the petitioner submitted that the relief asked for in the present writ petition is simply to

direct the State Government to pass orders on the show cause letter issued to the petitioner and that such a matter will not come under the

provisions of Administrative Tribunals Act, which will hereinafter be referred to as

the Act. He submitted that u/s 19 of the Act, only a person aggrieved by an order relating to any matter within the jurisdiction of the Tribunal can approach the Tribunal. He relied on the explanation to the said section and pointed out it would show that the order contemplated by the said provision must be a final order. A case of this nature where only a direction is prayed for to dispose of certain matters pending before the Governmental Authorities, would not come under the purview of the Act and that the State Administrative Tribunal will have no jurisdiction to deal with such matters.

4. As this matter is of some importance, I heard the learned Government Advocate and Shri K.B. Srinivasan Raghavan and Mr. M.I. Bala Sundaram, who had volunteered to assist the court.

5. In order to decide the question of maintainability, we have to look at the background in which the Act came to be passed. After 36 years of the exercise of power of judicial review by the High Court, following the enforcement of the constitution, the necessity for certain separate Tribunal for service matters was felt by the Government and others. As the population of the country increased, litigating before the Courts became unmanageable. The Committee appointed in 1969 recommended the setting up of an independent Tribunal to deal with pending cases before the High Court. The Administrative Reforms Commission also considered the question and recommended the setting up of Civil Service Tribunal. As a consequence of deep consideration in this regard, 42nd Amendment of the Constitution was introduced inserting Article 323 which authorised the Parliament to provide by law "for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public service and those in connection with the affairs of an union or of any local or other authority within the territory of India or under the control of Government of India or of any corporation owned or controlled by the Government." It is significant to note that this Article has contemplated the exclusion of jurisdiction of all courts except the jurisdiction of Supreme Court. This Act was challenged before the Supreme Court in the case reported in S.P. Sampath Kumar and Others Vs. Union of India (UOI) and Others, . One of the grounds raised before the Supreme Court was about the propriety of

exclusion of jurisdiction of High Courts in service matters. It was contended that the right to move the High Court in its writ jurisdiction is essential for the exercise of right of citizens to have judicial review is an integral part of our constitutional system and without it, there would be no Government of laws and the rule of law would become an unreality. After considering this question, the Supreme Court came to the conclusion that the exclusion of jurisdiction of High Courts does not totally bar judicial review, as the Tribunal has been contemplated as a substitute and not supplemental to the High Court in the scheme of administration of justice. It was pointed out with the paramount importance that the substitute institution must be a worthy successor of the High Court in all respects.

6. If the provisions of the Act considered with the above said background, it would be clear that the Act has been passed to settle disputes relating to recruitment and conditions of service of the employees falling within the purview of the Act. Section 14 of the Act (SCC) that an Administrative Tribunal is a substitute for High Court. After coming into force of the Act, no other court except the Supreme Court shall have the jurisdiction to decide when it relates to the matter relating to recruitment and conditions of service. There can be no further doubt in this regard after the principle is well settled that the Tribunal is a substitute for the High Court. Therefore, any grievance relating to recruitment can be decided by the Tribunal, Section 15 of the Act makes this provision clear. This point has been considered by the Principal Bench of the Central Administrative Tribunal reported in G.P. Mathur, Ashkaram Aggl, Ajit Singh v. State of Rajasthan, U.P.S.C.U.O.I. AIR 1988 CAT 58 and accepted the above said principle. The definition contained in Section 3(q) of the Act defines the expression, ""Service matters"" which occurs in Section 14 and 15 of the Act. As per the definition, service matters in relation to the conditions of service in connection with the affairs of a State. Again Section 3(r) defines the expression service rules as to redressal of grievances in relation to any matter meaning the rules, regulations, orders or other instrument or arrangement as in force for the time being with respect to redressal of any grievance in relation to such matters, otherwise than under the Administrative Tribunals Act, 1985. Therefore, there is no difficulty in holding hat

if any grievance arises in relation to the delay in the disposal of service matters, such a grievance can be agitated before the State Administrative Tribunal. This conclusion of mine is Section 28 of the Act, under which the jurisdiction, power and authority of High Court and other subordinate Courts in regard to service matters of Tamil Nadu Government servants have been taken away and entrusted to the Tamil Nadu Administrative Tribunal from 1-12-1988. It is not possible to have a piecemeal jurisdiction in respect of service matters and there cannot be two forums functioning parallelly in respect of any matter relating to such matters and the recruitment and conditions of service. All grievances relating to such matters have to be dealt with by the Tribunal. The provisions of Section 19(1) of the Act are subject to other provisions of the Act, and therefore, the scheme of the Act has to be considered as a whole and not in an isolated manner. Therefore, the limitation contained u/s 19(1) that an employee order, cannot be construed as a bar for considering the other grievance. The judgment of the Madras Bench of the Central Administrative Tribunal taking a different view from G.P. Mathur, Ashkaram Aggl. *Ajit Singh v. State of Rajasthan, U.P.S.C., U.D.I. AIR 1988 (2) CAT 58* was not followed by the principal Bench of the Tribunal.

7. Before concluding, I must place on record the valuable assistance rendered by Shri K.B. Srinivasa Raghavan, Mr. M.I. Balasundaram in disposing of this matter.

8. In the result, I find that this writ petition is not maintainable before this Court. The papers are therefore returned to the petitioner for presenting before the proper forum.