

(2020) 06 J&K CK 0108

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 467 Of 2020, Civil Miscellaneous No. 1052 Of 2020

Razia Begum

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 12-06-2020

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 14(1)(c), 18(i), 29
Constitution Of India, 1950 — Article 226, 323(A), 370, 370(1), 370(3)

Citation : (2020) 06 J&K CK 0108

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Judgement

Sanjeev Kumar, J

1. The petitioner, in this petition, essentially seeks a direction to the respondents to regularize the services of her deceased husband as Lineman w.e.f 2006 in the Power Development Department. The dispute raised in this petition pertains to recruitment to a civil post under the Union Territory of Jammu and Kashmir.

2. It may be noted that prior to the promulgation of Jammu and Kashmir Reorganization Act, 2019 which came into force w.e.f 31st October, 2019, the service disputes concerning the employees of erstwhile State of Jammu and Kashmir and the Government of Jammu and Kashmir were not amenable to the jurisdiction of Central Administrative Tribunal constituted under the Administrative Tribunals Act, 1985 (?Act of 1985? for short). However, from the appointed date i.e., 31st October, 2019, two Union Territories i.e, Union Territory of Jammu and Kashmir and Union Territory of Ladakh were carved out of the erstwhile State of Jammu and Kashmir. This was aftermath a declaration issued by the President of India in exercise of powers conferred by clause (3) of Article 370 read with clause (I) of Article 370 of Constitution of India whereby Article 370 was modified to, inter alia, provide that all the provisions of the Constitution as amended from time to time, without any modification or exception, would

apply to the State of Jammu and Kashmir. With the extension of all the provisions of Constitution of India to the State of Jammu and Kashmir, Article 323 A of Constitution of India too became applicable to the State of Jammu and Kashmir. That apart, with the coming into force of the Jammu and Kashmir Reorganization Act, 2019 and creation of Union Territory of Jammu and Kashmir and Union Territory of Ladakh, the employees, who were earlier serving in connection with the affairs of the State became proprio vigore the employees of Union Territory of Jammu and Kashmir and Union Territory of Ladakh.

3. In terms of Section 14 of the Act of 1985, all the matters concerning recruitment to any civil service of the Union Territory or a civil post under the Union Territory became amenable to the jurisdiction of Central Administrative Tribunal. It would be pertinent to note that in view of explanation appended to sub-clause (c) of clause (1) of Section 14 of the Act of 1985, references to "Union" are to be construed as including references also to a Union Territory. It is, thus, beyond any pale of doubt that all the service matters including matters concerning recruitment to any civil service of the Union Territory or a civil post under the Union Territory are amenable to the jurisdiction of Central Administrative Tribunal and by operation of Section 29 of the Act of 1985, all such matters pending before any Court or other authority immediately before the date of establishment of a Tribunal shall stand transferred on that date to such Tribunal.

4. In the instant case, from the appointed date when the Status of State of Jammu and Kashmir and its employees changed to Union Territory and the employees of Union Territory, cases coming within the ambit of Central Administrative Tribunal would automatically stand transferred to Central Administrative Tribunal. However, Government of India vide its Notification No. 267(E) and in exercise of powers conferred by sub section (i) of Section 18 of the Act of 1985, allocated the cases of the employees of Union Territory of Jammu and Kashmir and Union Territory of Ladakh to Central Administrative Tribunal, Chandigarh Bench. Later on, another Notification was issued by the Government of India vide GSR No. 317 (E) dated 28th May 2020 whereby permanent Benches of Central Administrative Tribunal were constituted for the Union Territory of Jammu and Kashmir and Union Territory of Ladakh.

5. In view of the aforesaid developments and in consonance with the law declared by the Hon?ble Supreme Court in the cases of L. Chandra Kumar vs. Union of India, (1997) 3 SCC 261 and Kendriya Vidyalaya Sangathan vs. Subhas Sharma, (2002) 4 SCC 145, this Court is of the considered view that matters concerning the recruitment to the civil service or to the civil post of the Union Territory of Jammu and Kashmir and Union Territory of Ladakh including the service matters thereof are amenable to the jurisdiction of Central Administrative Tribunal Jammu.

6. I am aware that the power of judicial review vested in this Court under Article 226 of Constitution of India is inalienable and cannot be taken away by any

constitutional or statutory provision. However, in view of the dictum of law declared by the Hon?ble Supreme Court in the case of L. Chandra Kumar (supra), this Court cannot entertain such petitions and the persons invoking jurisdiction of this Court under Article 226 of the Constitution directly are to be relegated to the Central Administrative Tribunal, being the Court of first instance. As held by the Hon?ble Supreme Court in the case of L. Chandra Kumar (supra), the orders/ judgments passed by the Central Administrative Tribunal are subject to judicial review of the concerned territorial High Court.

7. For the foregoing discussion, I am of the considered opinion that this case deserves to be transferred to Central Administrative Tribunal, Jammu. Ordered accordingly.

Registry shall immediately transmit the records of this case to Central Administrative Tribunal, Jammu, which shall, on receipt of the file, proceed in the matter in accordance with law, of course, after putting the parties to notice.