

(2019) 03 KAR CK 0030

In the Karnataka High Court

Case No : Writ Appeal No. 200715 Of 2018 (S-DE)

Shivaprasad Biradar

APPELLANT

Vs

Karnataka Lokayukta

RESPONDENT

Date of Decision : 11-03-2019

Acts Referred:

Administrative Tribunals Act, 1985 — Section 5(2), 5(6), 15, 15(3), 28

Karnataka State Civil Services Act, 1978 — Section 3, 5, 8, 9

Karnataka Civil Services Rules, 1958 — Rule 32

Constitution Of India, 1950 — Article 32, 226, 227, 309, 323A(1), 323A(2)(d), 323B(3) (d)

Citation : (2019) 03 KAR CK 0030

Hon'ble Judges : P.B.Bajanthri, J;P.G.M.Patil, J

Bench : Division Bench

Advocate : Ameet Kumar Deshpande, H. M. Muralidhar, Mallanna Reddy

Judgement

1. In the instant appeal, appellant has assailed the learned Single Judge's order dated 02.11.2018 passed in W.P.No.203924/2018. Grievance of the appellant before the learned Single Judge reads as under:

"Petitioner is working as Assistant Engineer in Public Works Department. On account of a complaint lodged by one Mr. Subash Hosamani claiming himself to be the President of Karnataka Pranta Raita Sangha, Taluk Samithi, Jewargi Taluk, Kalaburagi District, an enquiry came to be instituted against the petitioner by 2nd respondent by order dated 17.05.2017. Articles of charges came to be issued as per Annexure-B and a report came to be submitted under Section 12(3) on 20.02.2017 by the 2nd respondent. Based on the said report, 3rd respondent has passed an order referring the matter for enquiry and report vide proceedings dated 10.05.2017 Annexure-D.

2. During pendency of said enquiry, Departmental Promotion Committee ('DPC' for short) meeting came to be convened to fill up the post of Assistant Executive Engineer, Divisional-1 by promotion in accordance with Rule 32 of Karnataka Civil

Service Rules and petitioner who was in the zone of consideration also came to be considered by the DPC in its meeting held on 20. 04.2018 and it was opined by DPC that result of the proceedings of the DPC for promoting the petitioner be kept in a sealed cover vide proceedings dated 20.04.2018 Annexure-E. Pursuant to same, petitioner is said to have submitted a representation on 28.04.2018 Annexure-F to 3rd respondent which has not been considered. Hence, petitioner is before this Court for quashing of the enquiry proceedings pending on the file of 1st and 2nd respondent in so far as petitioner is concerned and has prayed for a writ of mandamus being issued to 3rd respondent to consider the representation dated 28.04.2018 Annexure-F.

3. The appellant is in the cadre of Assistant Engineer in the department of Public Works Department, Government of Karnataka. After certain investigation by the Karnataka Lokayukta a report was submitted under Section 12(3). Consequently, enquiry proceedings were commenced. In the meanwhile petitioner was due for promotion to the post of Assistant Executive Engineer, Division-1 and such consideration is with reference to Rule 32 of KCSR (placing independent charge of the post). The learned Single Judge rejected the first prayer and insofar as second prayer it was ordered as under:

"12. In so far as second prayer with regard to direction being issued to 3rd respondent for consideration of petitioner's representation, it would suffice to direct 1st and 2nd respondents to expedite the enquiry and immediately based on outcome of the enquiry proceedings 3rd respondent would necessarily be required to consider the prayer of the petitioner for promotion by opening the sealed cover if he is entitled for being considered."

Thus, the appellant is dissatisfied and aggrieved by the order of the learned Single Judge, presented this appeal.

3. Learned counsel for the appellant submitted that matter is covered by decision passed by this Court in W.P.No.43389/2018, W.P.No.43388/2018 and W.P.No.43676/2018, wherein this Court has directed the official respondents to consider the representation of the petitioner therein with reference to decision of the Supreme Court in the case of State of Punjab and Others vs. Chaman Lal Goyal reported in (1995) 2 SCC 570.

4. On the other hand, learned counsel for the respondent-State supported the order of the learned Single Judge. It was argued that even though grievance of the petitioner in respect of the first prayer is rejected, however, the observation has been made to expedite the enquiry. If the appellant succeeded in enquiry to the extent of exoneration in that event he is entitled to consider his name for promotion from retrospective i.e. from the date of his juniors promotion. Therefore, the appellant has not made out a case so as to interfere with the learned Single Judge's order.

5. Heard the learned counsel for the parties.

6. Before advertng to the merits of the case, it is to be noted that the appellant is in the cadre of Assistant Engineer in the department of Public Works Department Government of Karnataka. He is a Government servant. His grievance touching the service condition is required to be agitated before the State Administrative Tribunal in terms of Section 15(3) of the Administrative Tribunal Act. Without exhausting the forum of first Court of instance remedy i.e. State Administrative Tribunal with reference to the status of the petitioner as Government servant writ petition under Article 226 of the Constitution before this Court is not maintainable.

7. Learned counsel for the petitioner submitted that under Article 226 of Constitution writ is maintainable for seeking mandamus even by a Government servant as he is seeking mandamus with reference to statutory right vested with the Government servant. The Hon'ble Supreme Court in the case of L. Chandra Kumar vs. Union of India reported in (1997) 3 SCC 261 in paras-98 and 99 has held as under:

"98. "Since we have analysed the issue of the constitutional validity of Section 5(6) of the Act at length, we may now pronounce our opinion on this aspect. Though the vires of the provision was not in question in Dr. Mahabal Ram case, we believe that the approach adopted in that case, the relevant portion of which has been extracted in the first part of this judgment, is correct since it harmoniously resolves the manner in which Sections 5(2) and 5(6) can operate together. We wish to make it clear that where a question involving the interpretation of a statutory provision or rule in relation to the Constitution arises for the consideration of a Single Member Bench of the Administrative Tribunal, the proviso to Section 5(6) will automatically apply and the Chairman or the Member concerned shall refer the matter to a Bench consisting of at least two Members, one of whom must be a Judicial Member. This will ensure that questions involving the vires of a statutory provision or rule will never arise for adjudication before a Single Member Bench or a Bench which does not consist of a Judicial Member. So construed, Section 5(6) will no longer be susceptible to charges of unconstitutionality.

99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the

competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."

8. Perusal of statutory provisions of the Administrative Tribunal Act, in particularly Section 15 read with Supreme Court decision cited supra each and every Government servant who has any grievance with reference to service conditions first Court of instance would be State Administrative Tribunal. Therefore, writ petition filed by the appellant itself is not maintainable. Accordingly, order of the learned Single Judge dated 02.11.2018 is set aside. Reserving liberty to the appellant to approach State Administrative Tribunal.

9. At this stage, learned counsel for the appellant cited decisions of this Court reported in ILR 1994 Kar 2008 in the case of Krishnegowda vs. Karnataka State Co-operative Apex bank Ltd on the issue that in case of alternative remedy is available and writ petition is disposed of in that event question of going into availability of alternative remedy need not be looked in to.

10. Present case is not related to alternative remedy. In L. Chandra Kumar decision cited supra in paras-98 and 99 elaborately considered even to the extent of validity of legislative action like statutory rules touching service condition of a Government servant, in such circumstances remedy is only before the State Administrative Tribunal and not before the High Court, hence the above contention of the appellant is hereby rejected. High Court can invoke Article 227 of Constitution to the extent of validity of Central/State Tribunal's order that too by a Division Bench. Hence, it is not a situation of alternative remedy, whereas it is a forum of first Court of instance.

11. No jurisdiction under Article 226 of the Constitution with regard to the matter which fall within jurisdiction of the Administrative Tribunal, recruitment to any civil service or to any post under the State and matters connected with or incidental thereto came in purview of Section 15 of the Administrative Tribunals Act. Section 15 of the said act defines the jurisdiction, powers and authority of the State Administrative Tribunals in regard to service matters of various categories of persons mentioned therein and as a result thereof, for matters coming within the purview/jurisdiction of the Tribunal, the jurisdiction of Courts other than the Supreme Court by implication stands excluded. Thus, though in view of the recent decision of the Apex Court in the case of L. Chandra Kumar the power of judicial review under Article 227 of the Constitution on India can be exercised by the High Court, it can have no jurisdiction under Article 226 in any

matter relating to recruitment or matters concerning recruitment to any civil services of the State or to any civil post under the State and matters connected to therewith or incidental thereto, in terms of Section 15 of the Act. In view of these facts and circumstances, the dispute in question, as it relates to the disciplinary proceedings relating to the petitioner, falls within the jurisdiction of the State Administrative Tribunal. Hence, entertaining the appellant's writ petition is without jurisdiction of this Court in particularly under Article 226 of the Constitution of India.

12. Appellant's writ petition is not maintainable in the High Court as he is holder of the post of Civil post namely Assistant Engineer, which is governed by the Rules of Recruitment, such recruitment rules have been framed under Article 309 of the Constitution read with Sections 3, 5, 8 and 9 of the Karnataka State Civil Services Act, 1978. Section 15 of the Administrative Tribunals Act deals with the jurisdiction of the Administrative Tribunal. Appellant's grievance is in respect of certain disciplinary actions on alleged misdeeds stated to have been committed, there cannot be any doubt whatsoever that the same would come within the purview of sub-section (3) of Section 15 of the Act. In the case of L. Chandra Kumar the Apex Court while holding that by reasons of the provisions under Section 28 of the Act the power of judicial review conferred upon a High Court in terms of Article 226 of the Constitution of India could not be taken away, regard being had to the fact that the power of judicial review forms the basic structure of the Constitution of India. Grievance of the appellant is required to be heard, at the first instance, by the Tribunal itself and thereafter only the Division Bench of the High Court can exercise the power of judicial review, since appellant held his employment under the State Government of Karnataka. Therefore, in view of Article 323-A (1) of the Constitution, the Single Judge of the High Court had no jurisdiction to entertain, try and dispose of writ petition under Article 226 of the Constitution. In view of the decision of the Apex Court in L. Chandra Kumar's case, we are of the opinion that writ petition filed by the appellant itself is not maintainable.