
(2010) 06 UK CK 0005
In the Uttarakhand High Court

Smt. Rachna Phulera and Others

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 21-06-2010

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 3

Citation : (2010) 06 UK CK 0005

Hon'ble Judges : J.S. Khehar, C.J.;Sudhanshu Dhulia, J

Bench : Division Bench

Judgement

J.S. Khehar, C.J.—Through the instant writ petition, the petitioners claim family pension. We are satisfied, that the petitioners have an efficacious alternative remedy under the Administrative Tribunals Act, 1985. The husband of petitioner No. 1, on whose account the petitioners are claiming family pension, was a member of the Indian Forest Service. Jurisdiction in respect of claims, arising out of the employment of the husband of petitioner No. 1, lie before the Central Administrative Tribunal in terms of Section 14 of the Administrative Tribunals Act, 1985, which is being extracted hereunder:

14. Jurisdiction, powers and authority of the Central Administrative Tribunal:

(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to-

(a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning?

(i) a member of any All-India Service; or

(ii) a person [not being a member of an All-India Service or a person referred to in Clause (c)] appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian [not being a member of an All-India Service or a person referred to in Clause (c)] appointed to any defence services or a post connected with defence, and pertaining to the service of such member, person or civilian, 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 or society owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in Sub-clause (ii) or Sub-clause (iii) of Clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation or society or other body, at the disposal of the Central Government for such appointment.

Explanation: For the removal of doubts, it is hereby declared that references to "Union" in this Sub-section shall be construed as including references also to a Union territory.

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of Sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations or societies owned or controlled by Government, not being a local or other authority or corporation or society controlled or owned by a State Government:

Provided that if the Central government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this Sub-section in respect of different classes of or different categories under any class of, local or other authorities or corporations or societies.

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this Sub-section apply to any local or other authority or corporation or society, all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court) in relation to-

(a) recruitment, and matter concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation or society; and

(b) all service matters concerning a person [other than a person referred to in Clause (a) or Clause (b) of Sub-section (1)] appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such

affairs.

2. In order to fully appreciate the effect of Section 14 (extracted hereinabove) reference must necessarily be made also to Section 3(q) of the Administrative Tribunals Act, 1985, which defines the term "service matters". Section 3(q) is accordingly being extracted hereunder:

3. Definitions. - In this Act, unless the context otherwise requires.-

(q). "service matters", in relation to a person, means all matters relating to the conditions of his service 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, as the case may be, of any corporation or society owned or controlled by the Government, as respects?

(i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;

(iii) leave of any kind;

(iv) disciplinary matters; or

(v) any other matter whatsoever;

We are satisfied, that on a collective perusal of Section 14 and Section 3(q) of the Administrative Tribunals Act, 1985, the claim of the petitioners for family pension can be raised before the Central Administrative Tribunal.

3. Since the petitioners have an efficacious alternative remedy, we consider it just and appropriate to relegate the petitioners to their aforesaid remedy under the Administrative Tribunals Act, 1985.

4. The instant writ petition stands disposed of in the aforesaid terms.