

(2006) 06 KAR CK 0005
In the Karnataka High Court
Case No : Writ Appeal No. 15 of 2006

Sri T.M. Siddalingappa

APPELLANT

Vs

The Headquarters Assistant to the Deputy Commissioner and
Competent Authority under the Public Premises Eviction Act,
The Accountant General in Karnataka (A and E), The
Executive Engineer, Building Division, ESI Building Division
and The Treasury Officer

RESPONDENT

Date of Decision : 12-06-2006

Acts Referred:

Administrative Tribunals Act, 1985 — Section 15
Constitution of India, 1950 — Article 226, 227, 32, 323A, 323B
Karnataka Civil Services Rules, 1974 — Rule 215

Citation : (2008) ILR (Kar) 2008 : (2008) 5 KarLJ 187

Hon'ble Judges : Cyriac Joseph, C.J.; N. Kumar, J

Bench : Division Bench

Advocate : D.S. Joshi, for the Appellant; A.N. Venugopala Gowda, GA, for the Respondent

Final Decision : Dismissed

Judgement

Cyriac Joseph, C.J.—The appellant was a Deputy Director of Public Instructions in the service of the Government of Karnataka. He retired from service on superannuation on 30.4.1998. As he did not vacate the Government quarters after the expiry of the permissible period proceedings were initiated against him under the provisions of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974. He vacated the premises only on 21.11.2003. As per Annexure-G communication dated 10.1.2005 the Executive Engineer, Buildings Division, ESI, Bangalore (third respondent herein) requested the Accounts Officer, Pension Section, Office of the Accountant General, Bangalore (second respondent) to recover an amount of Rs. 4,30,301/- towards arrears of rent of the Government quarters. The request was to recover the amount from the appellant's pension. Thereafter, as per Annexure-A, the communication dated

22.3.2005, the second respondent informed the fourth respondent Treasury Officer, Chitradurga, that an amount of Rs. 4,30,301/- may be recovered out of the DA on pension of the appellant and to credit the same to the account of the Government Aggrieved by Annexure-A and G the appellant filed Writ Petition No. 15590/2005 praying for a writ of certiorari quashing Annexures-A and G. The learned single Judge dismissed the Writ Petition on the ground that the dispute raised in the Writ Petition relates to service matter as defined u/s 3(q) of the Administrative Tribunals Act, 1985 and, therefore, the Writ Petitioner has got an alternative efficacious remedy of approaching the Karnataka Administrative Tribunal against Annexures-A and G. Challenging the order of the learned single Judge this Writ Appeal has been filed.

2. Even though learned Counsel for the appellant relied on Rule 215 of the Karnataka Civil Services Rules and the decision of the Hon''ble Supreme Court in Gorakhpur University and Others Vs. Dr. Shitla Prasad Nagendra and Others, , to support his contention that the amount in question is not liable to be recovered by the Government from, the DA on pension of the appellant, we are not inclined to examine the merit of the said contention in view of the fact that the learned single Judge is right in holding that the Writ Petitioner/appellant has got an alternative efficacious remedy of approaching the Karnataka Administrative Tribunal u/s 15 of the Administrative Tribunals Act, 1985. The view taken by the learned single Judge is correct in the light of the observations contained in paragraph 99 of the judgment of the Hon''ble Supreme Court in L. Chandra Kumar Vs. Union of India and others, . For convenience the said paragraph 99 is extracted hereunder:

99. In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323A and Clause 3(d) of Article 323B, 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 323A and 323B 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 part of 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 323A and 323B 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 concerned Tribunal 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 concerned Tribunal. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.

In view of the clear observations of the Hon''ble Supreme Court that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations by over-looking the jurisdiction of the Tribunal concerned, we are of the view that the Writ Petition was not maintainable and hence the same was rightly rejected by the learned single Judge. Hence, the Writ Appeal is dismissed.