
(1988) 01 AHC CK 0033
In the Allahabad High Court
Case No : Writ petition No. 6467 of 1987

Sudhanshu Tripathi

APPELLANT

Vs

Union of India & Another

RESPONDENT

Date of Decision : 29-01-1988

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 28
Constitution of India, 1950 — Article 136, 226, 323A

Citation : (1988) 01 AHC CK 0033

Hon'ble Judges : S.S.Ahmad, J and Brijesh Kumar, J

Final Decision : Dismissed

Judgement

S.S. Ahmad, J.

1. The petitioner in this petition has challenged the examination held by the opposite parties for recruitment to Civil Services including Indian Administrative Service in 1985. The grounds on which the examination has been challenged, need not be scrutinized as the Senior Standing counsel for the Union of India has raised a preliminary objection that in view of the provisions contained in the Administrative Tribunals Act, 1985, the Court has no jurisdiction to entertain this petition.

2. Section 14 of the Act provides, as under:

?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 AllIndia 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 AllIndia Service; or

(ii) a person not being a member of an AllIndia 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 AllIndia 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 subclause (ii) or subclause (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 reference to ? Union? in this subsection 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 subsection (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 subsection in respect of different classess 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 subSection apply to any local or other authority or corporation, all the jurisdiction, powers and authority exercisable immediately before that date by all courts except the Supreme Court in relation to

(a) Recruitment, and matters 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 subsection (1) appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and person in connection with such affairs.?

3. Section 28 of the Act provides as under:

?28. Exclusion of jurisdiction of courts except the Supreme Court under Article 136 of the Constitution :

On and from the date from which any jurisdiction, power and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any Service or persons appointed to any Service or post, no court except

(a) the Supreme Court; or

(b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force;

shall have, or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment of matters concerning, such recruitment or such service matters.?

4. The emphasis of the Senior Standing Counsel is on the words ?recruitment? and ?matters concerning recruitment? used in clause(a) of subsection (1) of section 14 and section 28 quoted above. It is contended that holding of examination for recruitment to All India Service is a ?matter concerning recruitment? and, therefore, if a petition is filed challenging the process of recruitment, the Court cannot entertain it as the jurisdiction to look into that matter is with the Central Administrative Tribunal constituted under the said Act. The objection raised by the Senior Standing Counsel as to the jurisdiction of this Court is sought to be met by the petitioner by submitting that the jurisdiction of the Tribunal can be invoked by a person who has been appointed to any All India Service or to any Civil Service of the Union or a Civil Post under the Union and/or to any other post or service specified in clauses (a) and (b) of subsection (1) of section 14. Since the petitioner, it is contended, is challenging only the validity of the examination held in 1985, the jurisdiction of this court is not ousted, as the petitioner has not yet been appointed to any All India Service or to any Civil Service etc. the Union.

5. The Administrative Tribunal Act, 1985 has been enacted in pursuance of Article 323A of the Constitution which is quoted below:

?323A (1) Parliament may, by law, provide 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 services and posts in

connection with the affairs of the Union or of any State or any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government.

(2) A law made under clause (1) may

(a) provide for the establishment of an administrative tribunal for each State or for two or more States;

(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;

(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;

(d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under Article 136, with respect to the disputes or complaints referred to in clause (1);

(e) provide for the transfer to each such administrative tribunal of any cases pending before any court or other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment;

(f) repeal or amend any order made by the President under clause (3) of Article 371 D;

(g) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as Parliament may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

(3) The provisions of this Article shall have effect notwithstanding anything in any other provisions of this Constitution or in any other law for the time being in force.?

6. In clause (1) of Article 323A the relevant words used are 'recruitment' and 'conditions of service of persons appointed to public service and posts'. It is obvious that the words 'recruitment' and 'conditions of service of persons appointed' have been used to indicate different meanings and purpose. The appointment to public service or post is not the same thing as the recruitment. The 'appointment' as defined in Words and Phrases. Permanent Edition, Volume 3A means the designation of a person to hold an office (Use of Braden V. O'Neill, 83 A. 2d 382). It also means the designation of a persons, by the person or persons having authority therefor, to discharge the duties of some office or trust (In re Nicholson's Estate, 93 P. 2d 880, 884, 104 Colo. 561) 'Appointments' is used in the sense of designation to or selection for public office, not only as meaning the office or service to which one is appointed, but denoting the right or privilege conferred by an appointment, and the subject of a term of office is fairly

included in a broad signification of the word. (State V. Peake 120 N. W. 47, 49, 18 N. D. 101).

7. The meaning of the words ?recruitment? as specified in the Shorter Oxford Dictionary, Vol. II, 1978 Edition page 1768 is ?a reinforcement; the act or process of recruiting.?

8. Taking clue from the words used in Article 323A of the Constitution the Parliament deliberately used the words ?recruitment? and ?matters concerning recruitment? in sections 14 and 28 of the Act so as to indicate that the Tribunal shall have exclusive jurisdiction to deal with these matters and that the High Court in view of the specific provisions contained in section 28, shall not have jurisdiction to entertain or adjudicate upon the petition in which questions relating to recruitment and matters concerning recruitment are raised.

9. It is not disputed that holding of a competitive examination is a condition precedent for appointment to an All India Service for which the petitioner had applied and appeared and was ultimately declared not to have succeeded. It is also not disputed that appointment to All India Services, atleast, to the Indian Administrative Service, as indicated in the petition, is made on the basis of the result of the competitive examination held by the Union Public Service Commission. The examination, therefore, is a part of the process of recruitment.

10. In view of the provisions contained in section 14, since the dispute raised in the present petition directly concerns the recruitment to All India Service, we are of the opinion that the petition can be entertained only by the Administrative Tribunal.

11. A Division Bench of the Orissa High Court in Pratap Chandra Rout and others v. State of Orissa and others, 1987 Labour & Industrial Cases, 104 laid down that disputes and complaints relating to the stage of recruitment i.e. a stage prior to actual appointment in service, are within the exclusive jurisdiction of the Administrative Tribunal. To the same effect is a Full Bench decision of the Andhra Pradesh High Court in K. Naga Raja and others v. Superintending Engineer, Irrigation Department and another AIR 1987 Andhra Pradesh, 230. The words ? recruitment? and matters concerning recruitment? have also been used in clause (a) of section 15 (1) which were considered in the above decisions. We are in respectful agreement with the above decisions particularly as the learned counsel for the petitioner could not persuade us to take a different view.

12. For the reasons stated above, we are of the opinion that the petition is not cognizable by this court and is, therefore, dismissed summarily.