

(2020) 08 J&K CK 0092

In the Jammu And Kashmir High Court

Case No : Civil Miscellaneous No. 2740, 2741 Of 2020, Writ Petition (C) No. 1132 Of 2020

Sushma And Others

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 10-08-2020

Acts Referred:

Administrative Tribunals Act, 1985 — Section 2, 28
Constitution Of India, 1950 — Article 136, 323(A), 323(A)(2), 323(B)

Citation : (2020) 08 J&K CK 0092

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : Aijaz Ahmad Chisti

Final Decision : Disposed Off

Judgement

Ali Mohammad Magrey, J

1. By the present writ petition, the petitioner seeks a direction to the respondents to implement the Government Order No. 1401-GAD of 2016 dated 22.01.2016 by convening a meeting at the earliest in order to save the service rights of the petitioner.

2. Heard learned counsel for the petitioner and considered the submissions made.

3. Admittedly, the petitioner is a Government Employee in the Union Territory of Jammu and Kashmir. Article 323-A and Article 323-B for the establishment of various Tribunals was introduced in the Constitution by its (42nd Amendment) Act, 1976. Under Article 323-A of the Constitution, Central Administrative Tribunal Act, 1985 was established. Article 323A (2)(d) excludes the jurisdiction of all Courts, except that of the Supreme Court under Article 136, with respect to the dispute or complaints referred to in clause (1).

4. Section 28 of the Administrative Tribunals Act, 1985, deals with the exceptional jurisdiction, therefore, is taken note of herein:

"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, powers 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 (14 of 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 or matters concerning such recruitment or such service matters."

5. While the Act makes it clear that it is the Tribunal, the forum of first instance to consider and decide the services matters of employees of Central Government and the Union Territories, it also provides for exemption of few where the Act will not apply. The section 2, for facility of reference, is taken note of hereunder:

"2. Act not to apply to certain persons. _ The provisions of this Act shall not apply to_

(a) Any member of the naval, military or air forces or of any other armed forces of the Union;

(c) Any officer or servant of the Supreme Court or of any High court [or courts subordinate thereto];

(d) Any person appointed to the secretarial staff of either House of Parliament or to the secretarial staff of any State Legislature or a House thereof or, in the case of Union Territory having a Legislature, of that Legislature."

6. From the above discussion what emerges is that, this Court, cannot entertain a petition raising a service dispute of the employee in the service of the Government of India or the Government of Union Territory of Jammu and Kashmir and Ladakh.

7. The court, in view of above, holds that this Court has no jurisdiction to entertain the petition and the same be, instead, presented before the CAT Bench, Jammu that has the jurisdiction.

8. Writ petition alongwith connected CM disposed of as above

9. Registry to send copy of this order to the learned counsel for the petitioner through e-mail.