

(2000) 08 KL CK 0022

In the High Court Of Kerala

Case No : O.P. No's. 7508/90 R. and 4945 of 1991 L.

Tomy Philip and Others

APPELLANT

Vs

The Chief General Manager Telecommunication and Others

RESPONDENT

Date of Decision : 02-08-2000

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 14(1), 19, 20, 21
Constitution of India, 1950 — Article 226, 227, 32, 323A, 323B

Citation : (2000) 08 KL CK 0022

Hon'ble Judges : A.V. Savant, C.J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : Benoy Thomas, for the Appellant; V.V. Suresh, for Respondent 1, M.R. Rajendran Nair, P. Sukumaran Nayar, Sr. for Respondents 3, 4, 6 to 10, K. Unnikrishna Kurup, P. Parameswaran Nair, P. Thomas Joseph and N. Govindan Nair for Respondent 5 and P. Kesavan Nair and K.G. Cleetus for Respondents 11 and 12, for the Respondent

Judgement

A.V. Savant, C.J.—Heard all the learned Counsel; Mr. Benoy Thomas for the Petitioners, and Mr. K. Ramakumar, Senior Central Government Standing Counsel, Mr. M. R. Rajendran Nair, Mr. P. Sukumaran Nayar, Mr. P. Kesavan Nair, Mr. K. G. Cleetus, Mr. N. Govindan Nair, Mr. K. Unnikrishna Kurup, Mr. P. Parameswaran Nair and Mr. P. Thomas Joseph for Respondents.

2. These two petitions have been placed for final hearing before us pursuant to the reference order, dated 20th July, 1993 passed by the learned Single Judge. Petitions are filed by candidates who failed to get appointment as Junior Telecom Officers despite their claim that they had satisfied the qualifications prescribed in the notification, Ext. P-2, issued by the Department of Telecommunications, Kerala Telecommunication Circle. In O. P. No. 7508/90 there are three Petitioners. Originally, there were only two Respondents. The first Respondent is the Chief General Manager, Telecommunication, Kerala Circle and the second Respondent is one of the persons appointed as Junior Telecom Officer pursuant to the said notification, Ext. P-2. The remaining Respondents are those who have

been appointed subsequently and, hence, were added as such. In O. P. No. 4945/91 there is only one Petitioner, Biji Jacob and one Respondent, viz. Chief General Manager, Telecommunication, Kerala Circle. By consent of all the learned Counsel, these two petitions were heard together and are being disposed of by this common Judgment.

3. The common grievance of the Petitioners in these petitions is that persons who are less qualified than the Petitioners are selected and appointed, Hence, the first relief sought for is to issue a writ of certiorari or other appropriate writ ordirection, quashing the illegal and arbitrary selection/appointment made by the first Respondent to the post of Junior Telecom Officers pursuant to Ext. P-2. The second relief is for a writ of mandamus directing the first Respondent to fill up all the vacancies of the posts of Junior Telecom Officers under the first Respondent's jurisdiction after duly publishing the select/rank list of candidates, ranked according to the order of merit on the basis of marks obtained in Engineering Degree Examination, etc. Another relief prayed for is for a writ of certiorari or any other writ or order quashing the selection of those candidates to the post of Junior Telecom Officers pursuant to Ext. P-2, who have secured lesser marks than the Petitioners in Part III of B.Sc. Examination. Further relief prayed for is for a writ of mandamus directing the first Respondent to cancel the selection of those candidates who have secured lesser marks than the Petitioners in Part III of B.Sc. Examinations to the post of Junior Telecom Officers under the first Respondent made pursuant to Ext. P-2 and to appoint the Petitioners in their place. These reliefs are to be found in prayers (a) to (g) in O. P. No. 7508 of 1990. In O. P. No. 4945 of 1991, similar reliefs have been prayed for. It is not necessary to reproduce the prayers because, in our view, the reliefs prayed for are identical. In O. P. No. 7508 of 1990, persons who have actually been selected and appointed as Junior Telecom Officers have been joined as Respondents 2 to 12.

4. When the petitions were heard by the learned Single Judge, a preliminary objection was raised on behalf of the Central Government Standing Counsel as to the maintainability of the petitions in this Gsurt.

Preliminary objection was that the grievance of the Petitioners has to be agitated before the Central Administrative Tribunal, (for short "Tribunal"), constituted under the Administrative Tribunals Act, 1985 (for short, "the Act"). That would be the court of first instance in respect of areas of law for which they have been constituted. It will, therefore, be not permissible for the Petitioners and litigants similarly situated to directly approach the High" Court 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. In view of this preliminary objection raised by the Central Government Standing Counsel for the first Respondent, the learned Single Judge thought that an important question of law had arisen which required to be decided by a Division Bench and that is how the matters have been referred to

the Division Bench.

5. We may at the outset mention that, in two decisions of this Court viz., (i) O. P. No. 10934 of 1987 decided on 6th January, 1988 *Saleem v. Deputy Collector* 1988 (1) KLT 757, and (ii) O. P. No. 13618 of 1992, decided on 20th November, 1992 similar preliminary objection raised on behalf of the first Respondent was upheld. However, the learned Single Judge thought that, in view of the decisions of some other High Courts, the question is to be decided by a Division Bench.

6. Before us, the learned Counsel for the Respondent has reiterated the same preliminary objection. The question, therefore, which arises for our consideration, is as under:

Whether, in view of the provisions of Section 14 of the Administrative Tribunals Act, 1985 and the law laid down by the Apex Court in *L. Chandra Kumar Vs. Union of India and others*, , the Central Administrative Tribunal is the court of first instance where the Petitioners' grievances can be agitated?

Our answer to this question would depend upon the interpretation of provisions of Section 14 of the Act, in the light of the preamble of the Act and the provisions of Article 323A of the Constitution, to which we will make a brief reference. The preamble to the Act reads as under:

An Act to 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 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 in pursuance of Article 323A of the Constitution and for matters connected therewith or incidental thereto.

(emphasis supplied).

Chapter II of the Act deals with establishment of Tribunals and Benches thereof. Section 4 deals with establishment of Administrative Tribunals; Section 5 deals with composition of Tribunals and benches thereof. We are not concerned here with the qualifications for appointment as Chairman, Vice-Chairman or other Members mentioned in Section 6, and other connected provisions relating to the term of their office, resignation, removal, salaries and allowances, other terms and conditions of service, etc.

7. Chapter III of the Act deals with the jurisdiction, powers and authority of Tribunals and Section 14 is relevant, which reads 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 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 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 or 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 of 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 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 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.

Section 15 deals with the Jurisdiction, powers and authority of State Administrative Tribunals with which we are not concerned.

8. Chapter IV of the Act deals with the procedure and Section 19 lays down the procedure for making an application to the Tribunal. Section 20 says that application should not be admitted unless other remedies are exhausted. Section 21 deals with limitation. Suffice it to say that Sub-section (3) of Section 21 gives power to the Tribunal to condone the delay in making the application, if sufficient cause is made out. Section 28 deals with exclusion of jurisdiction of Courts except the Supreme Court. We will make a brief reference to these provisions when we refer to the decision in *L. Chandra Kumar Vs. Union of India and others*, . Section 29 deals with transfer of pending cases with which we are not concerned. The rest of the provisions are also not material for our discussion.

9. The short controversy, which arises before us, is whether the words "in relation to ... (a) recruitment, and matters concerning recruitment" appearing in Clause (a) of Sub-section (L) of Section 14 of the Act, apply only to those who are already appointed to any civil service as is contended by the Petitioners or whether the said words are wide enough to include in their ambit the case of the Petitioners who had applied for being selected and appointed to civil service of the Union, but were not successful in being selected and appointed. Petitioners' contention is that having regard to the preamble to the Act, which was enacted to provide for adjudication or trial 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 and for matters connected therewith or incidental thereto, the words "in relation to recruitment and matters concerning recruitment" must be given a narrow meaning, viz., disputes and complaints in relation to matters concerning only those who were already appointed to civil services. On the other hand, contention of the counsel for the first Respondent is that having regard to the concluding portion of the preamble viz. "and for matters connected therewith or incidental thereto",--the words "in relation to (a) recruitment and matters concerning recruitment" to any civil service must be given a wider meaning and would take within their sweep disputes which arise preceding the appointment and even selection of candidates to any civil service.

10. We may first make a reference to the two decisions of this Court to which a

reference has been made by the learned Single Judge in the reference order as mentioned in para 5 above. In O. P. No. 10934 of 1987 decided on 6th January, 1988--Saleem v. Deputy Collector 1988 (1) KLT 757, it has been held that, Section 14 of the Act, inter alia, vests in the Tribunal exclusive jurisdiction over matters in relation to, or concerning recruitment to any All India Service or any civil service of the Union. The word "recruitment" in the section is not restricted to recruitment by transfer of persons already in service. It is of wide amplitude and can take within its ambit direct recruitment as well. There is, and there can be, no ambiguity in the meaning of the word "recruitment" in Section 14. The section on its plain language must, therefore, even apply to future direct recruitments. The preamble cannot be resorted to interpret and restrict the scope of Section 14 when its language is clear and unambiguous, and there is no absurdity or anomaly to be avoided. Any person in service at that time is a person "appointed" and, therefore, within the ambit of even the preamble. The word "appointed" is only descriptive of the person to whom the Act applies and not indicative of the time of appointment. In this view of the matter, the petition filed by those aspiring for selection and recruitment as sepoy in the Centrzl Excise Department was held to be maintainable before the Tribunal and the petitions were accordingly dismissed.

11. In the second case referred in the reference order, viz., O. P. No. 13618 of 1992 decided on 20th November 1992, K. G. Balakrishnan, J. (as His Lordship then was), gave a similar wider meaning to the words "recruitment and matters concerning recruitment" appearing in Clause (a) of Sub-section (1) of Section 14 of the Act. In this view of the matter, it was held that petition was not maintainable before this Court, having regard to the law laid down in S.P. Sampath Kumar and Others Vs. Union of India (UOI) and Others, wherein it was held that petition was not maintainable before in the High Court.

12. We must now make a brief reference to the decisions of the Apex Court regarding the interpretation of the words "recruitment and matters concerning recruitment". In A.P. Public Service Commission, Hyderabad and Another Vs. B. Sarat Chandra and Others, the question arose as to the meaning of the word "Selection" appearing in Rule 5 of the Andara Pradesh Police Service Rules, 1966 and the scope thereof. It was held that the process of selection leading to recruitment to police service under the said Rule 5 begins with the issuance of advertisement and ends with the preparation of select list for appointment. Indeed, it consists of various steps like inviting applications, scrutiny of applications, rejection of defective applications or elimination of ineligible candidates, conducting examinations, calling for interview or viva-voce and preparation of list of successful candidates for appointment. The relevant observations are to be found in para 7 of the Judgment at Para 137.

13. In Prafulla Kumar Swain Vs. Prakash Chandra Misra and Others, the Apex Court was considering the scope and interpretation of the words "recruitment" and "appointment" and the distinction between the two under the Orissa Forest

Service Class II Recruitment Rules, 1959. It was held that the word "recruitment" connotes and clearly signifies enlistment, acceptance, selection or approval for appointment. Certainly, this is not actual appointment or posting in service. In contra-distinction, the word "appointment" means an actual act of posting a person to a particular office. It has been further held that recruitment is just an initial process, that may lead to eventual appointment in the service. But, that cannot tantamount to an appointment. The relevant observations are to be found in paras 29 and 30 of the Judgment at page 754.

14. A Full Bench of the Madhya Pradesh High Court had occasion to consider an identical question. In *Dr. Usha Narwariya Vs. State of M.P. and Others*, the Madhya Pradesh High Court was called upon to consider the meaning of the word "recruitment" appearing in Section 14 of the Act. It was held that, recruitment is an earlier part of the process which culminates in appointment. Selection is part of recruitment process and precedes appointment. Notifying vacancies, inviting applications, scrutiny, finalisation of the list of such eligible candidates as would be put to written or oral test and interview are all different steps in the process of recruitment. In this view of the matter, it would not have made any difference if the preamble to the Administrative Tribunals Act and Sections 14 and 15 thereof would have merely used the term "recruitment" and avoided the use of the words "matters concerning recruitment", inasmuch as "matters concerning recruitment" would have been included in "recruitment" itself. It was further held that the phrase "matters concerning recruitment" preceded by the word and conjunction "recruitment and" is definitely suggestive of legislative intent to make the provisions in Section 14 wider in its import so as to include in "matters concerning recruitment" all such matters as could unwittingly be left out of "recruitment". Such an interpretation would also advance the object behind enactment of the Act. It was further held that, there is no justification in carving out jurisdiction to the courts from the jurisdiction of the Tribunals by drawing a distinction between "pre-recruitment matters" and "recruitment matters", for such a distinction would be not real but merely a distinction without any difference. What has been referred to as "pre-recruitment disputes" is nothing but a dispute concerning recruitment within the meaning of Clause (a) of Sub-section (1) of Section 14 of the Act read with Article 323A of the Constitution. Such a dispute would lie within the jurisdiction of the Tribunals. The relevant observations are to be found in paras 18 to 21 of the Judgment at pages 261-262, and para 26 at page 263.

15. In view of the above decisions of the Apex Court, and the Full Bench decision of the Madhya Pradesh High Court as also the two decisions of this Court (Para 10 and 11 above), we have no hesitation in coming to the conclusion that the dispute sought to be raised in the two petitions is in relation to recruitment and matters concerning recruitment within the meaning of Clause (a) of Sub-section (1) of Section 14 of the Act. If that be the true position, having regard to the law laid down by the Apex Court in *L. Chandra Kumar's* case (*supra*), the Tribunal would be the Court of first instance where such a dispute can be first raised.

16. In this behalf, we may reproduce the observations of the Apex Court in para 99 of the Judgment in *L. Chandra Kumar Vs. Union of India and others*, , (at page 1156).

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 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 323A and Article 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.

On a consideration of the relevant constitutional provisions and the scheme of the Tribunals Act, it has been held by the Apex Court that, the Tribunals created under Article 323A and Article 323B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. The Tribunals will continue to act as the Courts of first instance in respect of areas of law for which they have been constituted, though their decisions will however, be subject to a scrutiny before a Division Bench of the High Court. To a limited extent, Section 28 of the Administrative Tribunals Act, 1985 and the exclusion of jurisdiction clauses in all other legislations enacted under the aegis of Articles 323A and 323B was, to that extent, held to be unconstitutional, making a departure from the earlier decision in *S. P. Sampath Kumars* case (*supra*).

17. We will now consider two decisions where a different view has been expressed. In *The Chairman, Railway Recruitment Board v. S. Ruban Peter* 1990 (I) M.L.J. 373, the Madras High Court took the view that the jurisdiction of the High Court under Article 226 and 227 of the Constitution of India to deal with service matters with effect from 1st November 1985 was excluded only in so far as the employees already in service of the Government, local authority etc. are

concerned, provided they relate to matters which strictly fall within Section 14 read with Section 3(q) of the Act and not in other cases. It is further held that it is only an "aggrieved person" as contemplated by Section 19 of the Act who is required to approach the Tribunal only for adjudication and trial of such disputes and complaints etc. In all other cases, the jurisdiction of the High Court under Article 226/227 of the Constitution remains intact even after 1st November 1985. A perusal of the said decision would show that, it has exhaustively dealt with the law laid down in S. P. Sampath Kumar's case (supra). We have already indicated in para 16 above that, in the later Larger Bench decision in L. Chandra Kumar's case, the Apex Court has made a partial departure from the ratio laid down in S. P. Sampath Kumar's case. Similarly in the two decisions, which we have discussed in para 12 and 13 above, namely A. P. Public Service Commission case and Profulla Kumar Swain's case, the Apex Court has given a wider meaning to the words "selection and recruitment". It has been held that the process of selection leading to recruitment begins from the issuance of advertisement and ends with preparation of select list for appointment. Indeed, it consists of various steps like inviting applications, scrutiny of applications, rejection of defective applications, elimination of ineligible candidates, conducting examinations, calling for interview or viva voce and preparation of list of successful candidates for appointment. Recruitment is an initial process which may lead to eventual appointment in service. In view of this wider interpretation put by the Apex Court, we find it difficult to persuade ourselves to come to the conclusion that the words "recruitment and matters concerning recruitment" occurring in Clause (a) of Sub-section (1) of Section 14 must be read and understood to apply the inservice candidates who alone can raise the dispute before the Tribunal even in respect of matters relating to the process of recruitment as understood widely.

18. Similarly in Basudevpur (R and B) N.M.R. Employees Association v. State of Orissa 1992 (4) S.L.R. 271, it has been held by the Orissa High Court that unless a person has been appointed to civil service under the State or a civil post under the State, a complaint by him as regards any service matter is not cognisable by the State Administrative Tribunal. This view is expressed in para 6 of the Judgment at pages 275 and 276. In view of the decisions of the Apex Court referred to in para 12, 13 and 16 above as also the decisions of this Court in the two cases mentioned in para 10 and 11 above, we regret our inability to agree with the view expressed by the Madras and the Orissa High Courts.

19. In this view of the matter, we have no hesitation in coming to the conclusion that the preliminary objection raised by the first Respondent must be upheld as was the view taken by this Court in the two decisions referred to in para 10 and 11 above.

20. In the light of the above discussion, our answer to the question framed in para 6 is as under:

In view of the provisions of Section 14 of the Administrative Tribunals Act, 1985 and the law laid down by the Apex Court in L. Chandra Kumar Vs. Union of India

and others, the Central Administrative Tribunal is the Court of first instance where the Petitioners' grievance can be agitated. We, therefore, answer the question in the affirmative.

21. In this view of the matter, the two writ petitions are held to be not maintainable in this Court in the light of the law laid down in L. Chandra Kumar's case (supra). The Petitioners would, therefore, be entitled to approach the Central Administrative Tribunal u/s 14 of the Administrative Tribunals Act, 1985, if so advised, and apply for condonation of delay in accordance with the provisions of the said Act.

22. Both the original petitions are accordingly disposed of.