

Bhagwan Ram Vs. Regional Director, Staff Selection Commission, Allahabad and Another

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Court : Allahabad

Decided On : Jul-29-1999

Reported in : 1999(3)AWC2693; (1999)3UPLBEC1768

Judge : D.K. Seth, J.

Acts : [Constitution of India](#) - Articles 226, 323A and 323A (1) and 371D; (Central) Administrative Tribunal Act, 1985 - Sections 14 and 14(1)

Appeal No. : C.M.W.P. No. 16166 of 1997

Appellant : Bhagwan Ram

Respondent : Regional Director, Staff Selection Commission, Allahabad and Another

Advocate for Def. : S.C. and ;Prashant Mathur, Adv.

Advocate for Pet/Ap. : Kumar and ;Sheo Shankar Tripathi, Adv.

Judgement :

D.K. Seth, J.

1. The petitioner has appeared for the selection of Divisional Accountant and Junior Accountant held by the Staff Selection Commission, Government of India, Department of Personnel, Public Grievance and Pension. It is alleged that the petitioner had been successful and his name was in serial No. 138 while he comes at serial No.8 among the schedule caste candidates. Despite being successful, no appointment letter was being issued to the petitioner. Therefore, this writ petition has been filed.

2. In the counter-affidavit, the question of maintainability has been raised apart from the objections to the merit of the case. The learned counsel for the petitioner Mr. Sheo Shankar Tripathi contends that unless the petitioner is given appointment, it does not come within the purview of Central Administrative Tribunals Act and as such, the jurisdiction of this Court cannot be taken away. In order to substantiate his contention, he relies on Article 323A of the Constitution and contends that it relates to the Government service. Unless a person is appointed, he is not in Government service. Therefore, in the present case when the matter is in the process of recruitment and the petitioner is seeking issue of an appointment letter, the petitioner is not in Government service amenable to the provisions of the Central Administrative Tribunal Act. According to him, there cannot be inconsistency between the Act and Article 323A. In case there is inconsistency in the Act. in that extent it would be incompetent, void and ultra vires to that extent to Article 323A of the Constitution. Since the Article 323A prescribes Government service, therefore, all matters relating to recruitment cannot be brought within the purview of the Central Administrative Tribunal.

3. I have heard the learned counsel for the petitioner. No one, however, appears on behalf of the respondents.

4. The contention of the counsel for the petitioner appears to be wholly misconceived. A reading of Article 323A shows that the entire argument of Mr. Tripathi is based on a misreading of the said Article. In order to appreciate the situation, it would be beneficial to refer to the provision of the said Article. Article 323A prescribes as follows :

'Article 323A. Administrative Tribunals.--(1) Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect of 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 owned or controlled by the Government.

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

(a) provide for the establishment of an administrative tribunal for the Union and a separate 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 371D;

(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 provision of this Constitution or in any other law for the time being in force.'

5. A perusal of the said Article shows that the Parliament was empowered to provide for adjudication or trial by the Administrative Tribunal established by law made by it, in respect of disputes and complaints regarding recruitment as well as conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or State or local or other authority within the territory of India or under the control of the Government of India or any corporation owned and controlled by the Government. By such law, the Parliament may specify the jurisdiction and powers of the Tribunal.

6. In the present case, it is not disputed that the selection is being made in respect of a post under the control of the Government of India. Therefore, the question of recruitment to such posts can very well be incorporated within the Act creating Central Administrative Tribunal by an Act of Parliament.

7. In Section 14 of the Central Administrative Act. 1985, the jurisdiction has since been prescribed. Section 14 prescribes as follows :

'Section 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 matter 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 service's 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.'

8. It appears from the said provision that the jurisdiction of the Central Administrative Tribunal includes the recruitment and matters concerning recruitment to any civil service of Union or civil post under the Union. That this recruitment is in respect of a post under the Union, is not in dispute. However, Mr. Tripathi had sought to rely on clause (c) of sub-section (1) of Section 14 and contended that unless the petitioner is appointed, the matter cannot said to be related or said to be pertaining to service. But that reliance appears to be misplaced. We are at the threshold of recruitment and in the present case, the matter pertains to recruitment. It is in effect a complaint with regard to the recruitment. This is a matter of complaint in recruitment within the meaning of the expression used in Article 323A and accordingly, a matter concerning recruitment within the meaning of the expression used in clause (a) of sub-section (1) of Section 14. Thus this case is wholly covered with clause (a) of sub-section (1) of Section 14 and as such, the case falls within the scope and ambit of the jurisdiction of the Administrative Tribunal. Section 14 excludes the jurisdiction of this Court and confers it on the Administrative Tribunal in respect of matters concerning recruitment as is involved in the present case. Therefore, this Court cannot entertain this matter since it is outside the jurisdiction of this Court. This question has also been gone into in the case of *L. Chandra Kumar v. Union of India*, 1997 (3) SCC 261, by the Apex Court which has specifically laid down that a

matter pertaining to the jurisdiction of the Administrative Tribunal cannot be initiated before this Court under Article 226 of the [Constitution of India](#).

9. Thus this matter being a matter pertaining to a complaint about recruitment within the meaning of Article 323A falling within the scope and ambit of the expression, the matter concerning recruitment within the meaning of Section 14(i)(a) of the Central Administrative Tribunal Act is outside the scope of jurisdiction of this Court. As such the writ petition is not maintainable.

10. Therefore, the writ petition is dismissed as not maintainable for want of jurisdiction.

11. Let it be recorded that I have not gone into the merit of the case. However, it would be open to the petitioner to approach the Tribunal, if he is so advised.

12. However, there will be no order as to costs.

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