

Court No. - 2

Case :- WRIT - A No. - 7877 of 2024

Petitioner :- Raj Narayan Singh And 4 Others

Respondent :- Union Of India Thru. Secy. Deptt. Of Personal And Training New Delhi And 5 Others

Counsel for Petitioner :- Avinash Singh Vishen, Nishant Pandey, Vedant Srivastava

Counsel for Respondent :- A.S.G.I., C.S.C.

Hon'ble Rajan Roy, J.

Hon'ble Om Prakash Shukla, J.

1. Heard.

2. By means of this writ petition, the petitioners herein, who are erstwhile officers of the Indian Administrative Service having retired from the post, have challenged the vires of provisions for recovery of commuted pensions as provided under Rule 10A of Central Civil Service Commutation of Pension Rules, 1981 as arbitrary, illegal and unconstitutional.

3. A preliminary objection has been raised by Shri Sudhanshu Chauhan, learned counsel appearing for opposite party No.1- Union of India that this petition is not maintainable before the High Court under Article 226 of the Constitution of India directly in view of the judgment of Hon'ble Supreme Court of India passed in the case of ***L. Chandra Kumar Vs. Union of India and others*** reported in **(1997) 3 SCC 261**. He referred to para 99 thereof. He also invited our attention to a subsequent judgment passed by Hon'ble Supreme Court in the case of ***Rajeev Kumar and Another vs. Hemraj Singh Chauhan*** reported in **(2010) 4 SCC 554** wherein decision in ***L. Chandra Kumar (supra)*** has been considered.

4. On being confronted, learned counsel for the petitioners relied upon the decision of Hon'ble Supreme Court passed in the case of

Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others reported in **(1998) 8 SCC 1** and referred to para 15 thereof, according to which certain exceptions have been carved out for entertaining a writ petition in spite of existence of alternative remedy, one of which is there being a challenge to vires of an enactment as in this case. He submitted that existence of alternative remedy is not an absolute bar, rather it is a discretion to be exercised by High Court and High Court being a constitutional Court is best suited to consider the vires of the Act.

5. He also relied on another judgment of the Hon'ble Supreme Court of India in this regard passed in ***Union of India and another V. State of Haryana and another*** reported in **(2000) 10 SCC 482**. In the said case in the facts of the case before the Hon'ble Supreme Court, it was observed that the question raised before it was fundamental in character and need not have been put through the mill of statutory appeals in the hierarchy and should have been decided by the High Court. The submission was that discretion should be entertained by this Court especially as similar issue is already pending consideration before this Court before a learned Single Judge wherein similar provision applicable to the employees of the State of U.P. is under challenge in Writ-A No.7097 of 2024.

6. We have heard learned counsel for the parties and have perused the record. The issue pertaining to terms and conditions of service or retirement benefits of officers of the Indian Administrative Service was involved. Of course, there can be no qualms with regard to legal position propounded in the case of ***Whirlpool Corporation (supra)***. However, we cannot at the same time ignore the decision of a larger Bench of Hon'ble Supreme Court of India in the case of ***L. Chandra Kumar (supra)***, which was a matter involving similar issue as involved herein. Para 99 of the said judgment reads as under:-

"99. In view of the reasoning adopted by us, we hold that clause 2(d)

of Article 323-A and clause 3(d) of Article 323-B, 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 323-A and 323-B 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 a 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 323-A and Article 323-B 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 Tribunal concerned 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 Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."

7. The said judgment was again considered by a Division Bench of Hon'ble Supreme Court of India in the case of **Rajeev Kumar (supra)** and after noticing the decision in **L. Chandra Kumar (supra)**, the Supreme Court of India disapproved the High Court having entertained a writ petition directly in respect of a service dispute covered within the jurisdiction of the Central Administrative Tribunal and it observed as under:-

"13. In view of such repeated and authoritative pronouncement by the Constitution Bench of this Court, the approach made to the High Court for the first time by these appellants in respect of their service disputes over which CAT has jurisdiction, is not legally sustainable. The Division Bench of the High Court, with great respect, fell into an error by allowing the appellants to treat the High Court as a court of first instance in respect of their service disputes for adjudication of which CAT has been constituted."

8. No doubt, existence of alternative remedy is not an absolute bar and it is a discretion to be exercised considering relevant parameters, which includes the parameters laid down in the case of **Whirlpool Corporation (supra)**, but it would also include the law declared by the

Hon'ble Supreme Court of India in the case of ***L. Chandra Kumar (supra)***, which cannot possibly be ignored. In the case of ***L. Chandra Kumar (supra)***, the Supreme Court of India has already held that the Central Administrative Tribunal can also decide the vires of statutes except the statute under which it has itself been created. Such a decision on vires of enactment is always subject to the exercise of jurisdiction by the High Courts and the Hon'ble Supreme Court of India, but in view of *L. Chandra Kumar, (supra)*, it would not be proper for this Court to entertain this writ petition directly without the petitioners having approached the Central Administrative Tribunal.

9. We therefore decline to entertain this writ petition and dismiss it accordingly. However, if the petitioners approach the Central Administrative Tribunal raising their grievances within one month, then the Tribunal shall make earnest endeavour to consider and decide their original application at the earliest, to say within a period of eight months.

10. With the aforesaid observations, this writ petition is **dismissed**.

(Om Prakash Shukla,J.) (Rajan Roy,J.)

Order Date :- 13.9.2024
Gurpreet Singh