

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION NOs. 35307 and 36407 of 2015

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WP No.35307 of 2015:

Between :

Thirukkovela Vijaya Kumar, S/o T. Venkata Narayana,
Aged 48 years, Occu: Associate Professor in National
Institute of Rural Development and Panchayat Raj at
Rajendranagar, R/o. Quarter No.D-18, NIRD Campus,
Rajendranagar, Hyderabad.

.... Petitioner

and

The Union of India, through its Ministry of Rural
Development, Krishi Bhavan, Dr Rajendra Prasad Road,
New Delhi, rep. by its Secretary (Rural Development)
and others

.... Respondents

DATE OF JUDGMENT PRONOUNCED : 26.02.2016

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THE HON'BLE SRI JUSTICE P.NAVEEN RAO
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1. Whether Reporters of Local Newspapers : No
may be allowed to see the Judgments ?
 2. Whether the copies of judgment may be : **Yes**
marked to Law Reporters/Journals
 3. Whether Their Lordship wish to : No
see the fair copy of the Judgment ?

***THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

+WRIT PETITION Nos.35307 and 36407 of 2015

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WP No.35307 of 2015:

Thirukkovela Vijaya Kumar, S/o T. Venkata Narayana,
Aged 48 years, Occu: Associate Professor in National
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Rajendranagar, Hyderabad.

... Petitioner

Vs.

\$ The Union of India, through its Ministry of Rural
Development, Krishi Bhavan, Dr Rajendra Prasad Road,
New Delhi, rep. by its Secretary (Rural Development)
and others

.... Respondents

!Counsel for the petitioners : Sri B.Vijaysen Reddy counsel
for petitioner in WP No.35307
of 2015

Sri T.Surya Kiran Reddy,
senior counsel representing
Sri S.Lakshminarayana Reddy,
Counsel for petitioner in WP
No.36407 of 2015

Counsel for the Respondents: Sri B.Narayana Reddy, Asst.
Solicitor General for
Respondent No.1;
Sri N.Ashwani Kumar, counsel
for respondents 2,3,4,6 & 7 in
WP No.35307 of 2015 ;

Sri T.Sujan Kumar, standing
Counsel for respondents 1 to 3

<Gist :

>Head Note:

? Cases referred:

(1997) 3 SCC 261
JT 2010(3) SC 623
2013 (4) BomCR724
2014 (2) MPLJ
(2001) 10 SCC 623
(2010) 1 SCC 126
(2007) 10 SCC 88
(2003) 6 SCC 581
ILR (2005) 11 Delhi 911

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs.35307 and 36407 of 2015

COMMON ORDER:

Heard learned senior counsel Sri T.Surya Kiran Reddy representing Sri S.Lakshminarayana Reddy, counsel for petitioner in W.P.No.36407 of 2015, learned counsel Sri Sri B.Vijaysen Reddy for petitioner in W.P.No.35307 of 2015 and learned counsel Sri N.Ashwani Kumar, for National Institute of Rural Development (NIRD).

2. The National Institute of Rural Development is a premier training and research institute in the field of Rural Development. It is an autonomous organization under the Ministry of Rural Development, Government of India. Petitioners herein joined service of the NIRD as Assistant Professors in the year 2002 and are presently working as Associate Professors. A lady officer working as Assistant Professor complained against the petitioners alleging that petitioners were indulging in maligning her character by spreading false rumors; concocted stories were spread on her personal life; and indulging in passing demeaning comments on her and other lady officers of NIRD. The allegations were referred to the Internal Complaints Committee constituted by the competent authority vide his proceedings dated 20.10.2015. The committee conducted enquiry and submitted report.

Based on the report, petitioners were served show cause notices calling upon them to submit explanations. Vide Office Memorandum dated 20.10.2015 petitioners were visited with punishment and are also transferred to NIRD-NERC, Guwahati. By office order No.426 dated 26.10.2015, they were relieved. Challenging the orders in office memorandum dated 20.10.2015 and the consequential relieving order dated 26.10.2015, these two writ petitions are filed. In addition, petitioner in WP No.35307 of 2015 also challenges the show cause notice dated 5.8.2015.

3. When the matters were taken up for consideration, the Learned counsel for respondent-NIRD raised preliminary objection on maintainability of writ petitions. Learned counsel contended that the petitioners have efficacious remedy under the Administrative Tribunals Act, 1985 before the Central Administrative Tribunal (for short, 'CAT'). With reference to the service grievances of the employees working in NIRD, the jurisdiction is vested in CAT by virtue of the notification issued in S.O.1228(E) dated 25.07.2007 in exercise of power under Section 14 (2) of the Administrative Tribunals Act, 1985 (for short, 'Act, 1985'). NIRD is shown against serial no.48 of the notification.

4. Learned counsel for the respondent-NIRD also contended that the grievance agitated in the writ petitions arise out of their service in NIRD. The complaint by a lady officer working in the cadre of Assistant Professor fall within the definition of 'sexual harassment' as defined in Section 2(n) of the Act in the work place i.e., NIRD. The complainants were examined by the internal complaints committee of the NIRD and the punishments are imposed by the disciplinary authority as a consequence to the report of the internal complaints committee. As the complaints are generated on the activities of the petitioners during the course of their employment, resulting in imposing punishment and transfer, it is service grievance and petitioners have to invoke the jurisdiction of the CAT to redress their grievances. He further

contended that all the contentions urged in the writ petitions can as well be urged before the CAT. The CAT is competent to adjudicate all aspects arising out of service grievance in an organization covered by the provisions of the Act, 1985.

5. In support of his contention that this Court cannot entertain the writ petition directly without first availing the remedy under the Act, 1985 and that the Central Administrative Tribunal has got ample power and jurisdiction to consider all the grievances of the petitioners, learned counsel for respondent-NIRD placed reliance on the following decisions.

i) **L.Chandra Kumar v. Union of India and others**^[1]

ii) **Rajeev Kumar and another v. Hemraj Singh Chauhan and others**^[2]

iii) **Vijay Ghogare and others v. The State of Maharashtra and others**^[3]

iv) **Ramesh Pal v. Union of India and others**^[4]

6. On the issue of maintainability, learned counsel representing the petitioners sought to persuade the court to entertain the writ petitions and decide the matters on merits without relegating the petitioners to the CAT. It is contended that merely because the CAT is vested with jurisdiction to adjudicate the service grievances of officers of NIRD, extra-ordinary jurisdiction of this court is not ousted and the writ petitions are maintainable. In a given case the High Court can entertain the writ petition directly even without exhausting the remedy under the Act, 1985. In the instance case, petitioners are not only challenging the consequential orders passed by the disciplinary authority, but are challenging the manner in which the proceedings are initiated under the Act, the constitution of the internal complaints

committee, manner in which the internal complaints committee conducted the enquiry/ investigation and failure to observe the procedural formalities on such complaint under the Act, 2013.

7. Learned counsel further contended that Administrative Tribunal cannot go into the issues arising out of provisions of the Act, 2013. It has jurisdiction only to consider the punishments imposed by the disciplinary authority. The show-cause notice issued to the petitioner in W.P.No.35307 of 2015 is under the Act, 2013 and petitioner is challenging the validity of issuance of such show-cause notice and, therefore, the Central Administrative Tribunal cannot go into these issues agitated in the writ petition and, therefore, writ petition is maintainable. As the various issues agitated in the writ petition touch upon the scope and gamut of the provisions of the Act, 2013 the CAT is not the proper forum.

8. Learned counsel placed reliance on the decisions of the Supreme Court in the case of **Union of India vs. Rasila Ram and others**^[5]; **Satwati Deswal vs. State of Haryana and others**^[6]; **M.P. State Agro Industries Development Corporation Limited and another vs. Jahan Khan**^[7]; **T.K.Rangarajan vs. Government of Tamilnadu and others**^[8] and the decision of the Delhi High Court in **Samridhi Devi vs. Union of India and others**^[9], on maintainability of the writ petition directly in the High Court.

9. The issue for consideration is whether the writ petitions are liable to be dismissed on the ground of availability of remedy under the Administrative Tribunals Act, 1985 ?

10. It is settled principle of law, needs no reiteration that one of the self imposed restraint by the writ court is not to entertain writ petition in exercise of extra-ordinary jurisdiction under Article 226 of the

Constitution of India if petitioners have effective and efficacious remedy.

11. Central Administrative Tribunal is established under the Act, 1985 to adjudicate service disputes of persons governed by the provisions of the Act, 1985. In **L.Chadra Kumar** (supra), Supreme Court held that the Tribunals continue to act as Court 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.”

12. The issue of maintainability of the writ petition directly in the High Court has come up for consideration before the Bombay High Court in **Vijay Ghogare** (supra). In the said writ petition, the constitutional validity of the Maharashtra State Public Services (Reservation for Scheduled Castes, Scheduled Tribes, De-notified Tribes (Vimukta Jatis), Nomadic Tribes, Special Backward Category and other Backward Classes) Act, 2001 was challenged. The Bombay High Court held that though large number of employees have a grievance against denial or delay in their promotions in view of the impugned legislation, the same issue can still be agitated before the Tribunal and writ petition cannot be directly instituted without availing the said remedy.

13. In **Ramesh Pal**, before the Madhya Pradesh High Court the issue was under the Act, 2013. Preliminary objection was raised on maintainability of the writ petition directly by an employee of an institute under the Central Government. Opposing the objection it was contended that what was challenged was the report of the enquiry submitted by internal committee and the same cannot be challenged before the Tribunal. The Tribunal can have jurisdiction only if

employer takes action as per Section 13(3)(i) of the Act, 2013. It was contended that Tribunal has no jurisdiction to deal with the findings of the report of the Internal Committee and constitution of the committee.

14. On detailed consideration of the provisions of the Act, 2013 and the Administrative Tribunals Act, 1985, the Madhya Pradesh High Court held that all service matters pertaining to service in connection with the affairs of the Union can be decided by the Tribunal; that the internal enquiry conducted under the Act, 2013 also falls within the ambit of service matters and, therefore, Tribunal has jurisdiction to decide the said aspect. Madhya Pradesh High Court held that aggrieved employee/ officer can agitate against the recommendation of the internal committee and also its composition before the CAT.

15. In the instant case, petitioners are not challenging the constitution of the Internal Complaints Committee or the provisions of the Act, 2013. Petitioner in W.P.No.35307 of 2015 challenges the show cause notice issued to him by the competent authority on 05.08.2015 calling upon him to submit his explanation on the report filed by the Internal Complaints Committee. The show cause notice was issued in exercise of disciplinary control over the petitioners by the competent authority and it resulted in imposing the punishments by office memorandum dated 20.10.2015 and the transfer to a far of place.

Thus, the proceedings under challenge in the writ petitions directly arise out of their service in NIRD. I am in respectful agreement with the decisions of Bombay and Madhya Pradesh High courts referred to above. The grievance agitated in this writ petition is a service matter and the Central Administrative Tribunal constituted under the Administrative Tribunals Act has jurisdiction to entertain and adjudicate the grievance including all the issues urged in these writ petitions. The petitioners have to avail the remedy available under the Administrative Tribunals Act 1985, before invoking jurisdiction of this Court.

16. The Writ Petitions are accordingly dismissed, leaving open to the petitioners to avail the remedy as available under the Administrative Tribunals Act, 1985. All the issues agitated in the writ petitions are left open.

17. However, having regard to the facts of these cases and in view of earlier orders of this Court, the respondents are directed not to effect the transfer of petitioners for a period of four weeks.

If petitioners do not invoke the jurisdiction of the CAT within the period of four weeks, the interim orders stand vacated. It is also made clear that this direction not to effect transfer of petitioners is operative for a period of four weeks from the date of receipt of copy of the order or till the matter is considered by the CAT, whichever is earlier.

Miscellaneous petitions, if any, pending in these writ petitions shall stand closed. There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

Date:26.02.2016

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HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs.35307 & 36407 of 2015

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[\[9\]](#) ILR (2005) 11 Delhi 911