

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 19415 of 2004 (O&M)

Date of Decision : 14.9.2016

...

Jagmohan Sharma

.....Petitioner

vs.

Union of India and another

.....Respondents

Coram: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. Anirudh Gupta, Advocate with
Mr. Rohit Seth, Advocate for the petitioner

Mr. Vivek Singla, Advocate
for the respondents.

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P.B. Bajanthri, J. (Oral)

CM No. 10298 of 2015

The instant application under Section 151 of Code of Civil Procedure has been filed on behalf of the applicant-respondents for dismissing the writ petition being not maintainable as the remedy available is before the learned Central Administrative Tribunal, Chandigarh.

Heard.

The learned counsel for the parties fairly submitted that the matter would be agitated before the Central Administrative

Tribunal which has the jurisdiction.

For the reasons stated in the application, the same is allowed.

CWP No. 19415 of 2004

In view of the order passed in CM No. 10298 of 2015 and with the consent of the learned counsel for the parties, the writ petition is heard today itself.

2) Writ petition is not maintainable before this Court on the sole ground that this Court has no jurisdiction to entertain grievance of the petitioner who is an employee of M/s Semiconductor Complex Limited, Government of India, Public Sector Undertaking.

3) Section 14(1)(b) of The Administrative Tribunals Act, 1985, provides that 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 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 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 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 Union/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. The question therefore, is whether appointment under the Government in a Department can be stated to be appointment to any Civil Service of the Central Government or any Civil post under the Central Government. 'Civil Service of the State' includes all persons holding office under the Union/State. The holder of a Civil Post is a person serving or employed under the Union/State of the Civil Side as distinguished from defence services. The preliminary tests therefore are :-

- (i) whether the duties which the servants of Government are required to perform are in connection with the affairs of the Central Government;
- (ii) whether the expenditure towards their pay and allowances are met by the Central Government; and
- (iii) whether their service conditions (recruitment, pay, pension, disciplinary action etc.) are regulated by Rules made by

the Government. If the said tests are applied, there can be no doubt that the servants of the Government in a Department hold Civil Posts and they are appointed to Civil Service of the Central Government.

4) The Constitution Bench in *L. Chandra Kumar Vs. Union of India, (1997) 3 SCC 261* held that the power of the High Court under Articles 226 and 227 of the Constitution and of Apex Court under Article 32 of the Constitution is a part of the basic structure of our Constitution. The Constitution Bench of the Apex Court also held that various tribunals created under Articles 323-A and 323-B of the Constitution, will function as court of first instance and are subject to the power of judicial review of the High Court under Articles 226 and 227 of the Constitution. The Constitution Bench also held that these tribunals are empowered even to deal with constitutional questions and can also examine the vires of statutory legislation, except the vires of the legislation which creates the particular tribunal. Further at Para 93 it has been specifically held as under:

“93.....We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted.”

.....By this, we mean that it will not be open for litigants to directly approach the

High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.”

5) Thus, it is crystal clear that the Tribunals will function as the Court of only first instance in respect of the areas of law for which they have been constituted and even where any challenge is made to the vires of legislation, excepting the legislation under which Tribunal has been set up, in such cases also, litigants will not be able to directly approach the High Court overlooking the territorial jurisdiction of the Tribunal. The aforesaid propositions have been repeated again by the Constitution Bench in **L. Chandra Kumar case (Supra)**.

6) In view of the repeated and authoritative pronouncement by the Constitution Bench of the Apex Court, the approach made to this High Court by the petitioner for the first time in support of his service disputes over which the Central Administrative Tribunal has jurisdiction, is not legally sustainable. The principles laid down in **L. Chandra Kumar's case (Supra)** virtually embody a rule of law and in view of Article 141 of the Constitution, the same is binding on the High Court.

7) In view of the proposition laid down by the Supreme Court, the present writ petition be transferred to the Central

Administrative Tribunal, Chandigarh Bench, Chandigarh, for disposal in accordance with law. The matter relates to the year 2004. Therefore, the Tribunal is requested to consider and dispose of the matter within a period of 4 months from the date of receipt of the order and writ papers.

8) The Registry is directed to transmit the present writ papers to the Central Administrative Tribunal, Chandigarh Bench, Chandigarh, at the earliest.

9) Writ petition stands disposed of.

14.9.2016

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(P.B. Bajanthri)
Judge

Whether speaking / reasoned

Yes/ No

Whether reportable

Yes/ No