

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WP(C) 2389/2016

% Date of Decision: 21st March, 2016

RAM PRASAD SINGH & ORS. ...Petitioners
Through : Mr.Sanjiv Joshi and Mr.Manoj Kumar, Advs

Versus

UNION OF INDIA & ORS ...Respondents
Through : Mr.Vivek Goya, CGSC and Mr.Prabhakar
Srivastava, Advocate for UOI.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J.

1. Ram Prasad Singh and Others in this writ petition impugn the order dated 1st March, 2016 by which OA.NO.774/2016 has been dismissed in *limine* on the ground that it is in the nature of public interest litigation, and the Tribunal is not empowered to entertain the said O.A. The order records that the petitioners had made amendments to the prayer clause, which post amendments reads:-

“i) quash and set aside the impugned advertisement No.F.No.3/1/2016-P & P-1dated 13.02.2016 to the extent it

provides for maximum age limit for appointment against the post in the Grade Pay of Rs.4200, 4600 & 4800 as 30 years.

ii) direct the respondents to consider the applicant's candidature for appointment against the post having Grade Pay of Rs.4200, 4600 & 4800 by incorporating enhanced age limit.

iii) pass such other and further order as this Hon'ble Tribunal may deem (sic deem) fit and proper in the interest of justice."

2. The petitioners are aspirants who would be appearing in the Combined Graduate Level Examination 2016, to be conducted by the Staff Selection Commission, and was advertised on 13th February, 2016. The petitioners rely and refer to the recommendations of the 6th pay Commission to contend that the upper age limit for all posts should be increased to 30 years. The grievance is that the age limit for some posts is 27 years. The 6th Pay Commission's recommendations having been accepted, all departments and ministries should have amended and modified their recruitment rules, and lapse and failure of ministries to amend the recruitment rules for some of the posts requires judicial intervention and correction. Reference is made to the notifications issued by the Department of Personnel & Training [DoP&T], calling upon all Ministries to take steps to amend the recruitment rules. The petitioners, it is submitted, have raised their individual and personal grievance, as they aspire appointment to posts in the grade pay of Rs 4200, 4600 and 4800.

3. The term “service matters” has been defined in Section 3(q) of the Administrative Tribunals Act, 1985 (the Act, in short), which means all matters relating to service conditions including remuneration, tenure, leave, disciplinary matters or any other matter whatsoever. The expression “service rules as to the redressal of grievances” is defined in clause (r) to Section 3 as “in relation to any matter, it means rules, regulations, orders or other instruments or arrangements as in force for the time being with respect to redressal, otherwise than under this Act of any grievances in relation to such matters”. It is apparent and clear from the aforesaid provisions that the scope and jurisdiction of the tribunal is wide and broad. Section 14 of the Act deals with jurisdiction, powers and authority of the Central Administrative Tribunal and states, that the said Tribunal shall exercise jurisdiction, powers and authority which was earlier exercised by all courts (except the Supreme Court), in relation to service matters as specified in clause (b). Clause (a) specifically stipulates that recruitment and matters concerning recruitment to any All India Service, any Civil Service of the Union or civil post under the Union, etc, shall fall within the sole jurisdiction of the tribunal, to the exclusion of the High Court, as the forum/court of first instance. The tribunal, in the impugned order, has not held or observed that the prayer clause or the dispute raised would not be covered by the expression “service matters” (as per the definition clauses), and hence would not be within its jurisdiction under Section 14 read with Section 19 of the Act. On the other hand the tribunal has dismissed the OA on the ground that the grievance is in the nature of public interest litigation.

4. We have heard counsel for the petitioner and counsel for the respondent on the said aspect. In fact counsel for the respondent during the course of hearing had accepted that the OA filed before the tribunal was not a public interest litigation. Albeit, our attention was drawn to the decision of the Supreme Court in ***Dr.Duryodhan Sahu & Or.s Jitendera Kumar Mishra & Ors.*** (1998) 7 SCC 273 to the effect that the tribunal being created by the Act, the scope and the extent of its jurisdiction has to be determined by interpreting the provisions therein. The tribunal exercises specific power which has been conferred under sub-section 1 of Section 19 of the Act, which has reference to a “person aggrieved” by any order pertaining to any matter within the jurisdiction of the tribunal. The expression ‘aggrieved person’ denotes, an elastic and to an extent an elusive concept and refers to the applicant’s interest and the nature and extent of the prejudice or injury suffered by the said person. In the present case, the petitioners are applicants and they are redressing their personal grievance, and not a grievance or injury alien to them. They are not strangers, who are espousing cause of other citizens. They are concerned in the subject matter as they perceive themselves being denied the opportunity of being considered for appointment in some posts in view of the upper age bar.
5. The expression ‘public interest litigation’ was elucidated upon in ***Janta Dal Vs. H.S. Chaudhary & Ors.*** (1992) 4 SCC 305 with reference to the Oxford English Dictionary, 2nd Edition, Vol. XII as "the common well being...also public welfare". The concept relates to matters of public or general interest. It deals with the interest of the

community at large, including pecuniary or some interest by which their legal rights or liabilities are affected. The Supreme Court has opined:

“53. The expression 'litigation' means a legal action including all proceedings therein, initiated in a Court of Law with the purpose of enforcing a right or seeking a remedy. Therefore, lexically the expression 'PIL' means a legal action initiated in a Court of Law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected. There is a host of decisions explaining the expression 'PIL' in its wider connotation in the present-day context in modern society, a few of which we will refer to in the appropriate part of this judgment.”

6. In ***Ashok Kumar Pandey Vs. State of West Bengal***, (2004) 3 SCC 349 after referring to the dictionary meaning of the expression ‘public interest’ and ***Janta Dal’s case (supra)***, observations have been made on when a public interest litigation should be entertained. Elaborate discussion can be found on what is meant by the terms ‘public interest litigation’ in ***State of Uttaranchal Vs. Balwant Singh Chauhan & Ors.*** (2010) 3 SCC 402, in which it has been held as under:

“26. Advanced *Law Lexicon* has defined ‘Public Interest Litigation’ as under:-

“...The expression ‘PIL’ means a legal action initiated in a Court of law for the enforcement of public interest or general interest in which the

public or a class of the community has pecuniary interest or some interest by which their legal rights or liabilities are affected."

27. The Council for Public Interest Law set up by the Ford Foundation in USA defined "public interest litigation" in its report of Public Interest Law, USA, 1976 as follows:

"10.Public Interest Law is the name that has recently been given to efforts provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary market place for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, *consumers, racial and ethnic minorities and others.*" (*Holicow Pictures (P) Ltd. V. Prem Chandra Misra, SCC p 288, para 10: AIR p. 918 para 19*).

(emphasis supplied)

28. This court in *People's Union for Democratic Rights & Others v. Union of India & Others* (1982) 3 SCC 235 defined "Public Interest Litigation" and observed that the Public interest litigation is a cooperative or collaborative effort by the petitioner, the State of public authority and the judiciary to secure observance of constitutional or basic human rights, benefits and privileges upon poor, downtrodden and vulnerable sections of the society".

7. It is pertinent to mention here that the Supreme Court in *Girjesh Srivastava and Ors. Vs. Vs. State of Madhya Pradesh & Ors.* (2010) 10 SCC 707, has held that public interest litigation is not maintainable in service matters and only affected persons and not a stranger or third

party should approach the Court or administrative tribunal. It was held as under:

16. *In B. Srinivasa Reddy v. Karnataka Urban Water Supply & Drainage Board Employees' Association and others*, reported in (2006) 11 SCC 731 (II), this Court held that in service matters only the non-appointees can assail the legality of the appointment procedure (See SCC p. 755, para 51 of the Report).

17. This view was very strongly expressed by this Court in *Dattaraj Nathuji Thaware v. State of Maharashtra and others*, reported in (2005) 1 SCC 590, by pointing out that despite the decision in *Duryodhan Sahu (supra)*, PILs in service matters “continue unabated”. This Court opined that High Courts should “throw out” such petitions in view of the decision in *Duryodhan Sahu* (SCC p.596, para 16).

18. Same principles have been reiterated in *Ashok Kumar Pandey v. State of W.B.*, reported in (2004) 3 SCC 349, at page 358 (Para 16).

20. In a recent decision of this Court delivered on 30.8.2010, in *Hari Bansh Lal v. Sahodar Prasad Mahto and others*, , it has been held that except in a case for a writ of ‘Quo Warranto’, PIL in a service matter is not maintainable (See SCC paras 15).”

8. In view of the aforesaid legal position, we set aside the impugned order dated 1st March, 2016 and remit the case to the tribunal for a fresh decision on merits. We clarify that we have not expressed any opinion on the merits of the prayer or on the issue as to whether the petitioner has established that he has a legal right, be it statutory or constitutional. These are the aspects and matters which the tribunal has to examine.

9. Parties will appear before the tribunal on 4th April, 2016, when a date of hearing will be fixed. No order as to costs.

(SANJIV KHANNA)
JUDGE

(NAJMI WAZIRI)
JUDGE

March 21st, 2016/ssn