

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND**

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

Writ Petition Nos.30450 and 30449 of 2017

COMMON ORDER: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

These two writ petitions are filed by the Andhra Pradesh Government Teachers' Association and 7 other employees in Government High Schools in the State of Andhra Pradesh to declare paragraph 2A and Entries 23A, 26A and 26B in the Third Schedule respectively of the A.P.Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 as unjust, arbitrary and violative of Articles 14, 16, 21, 243G, 309 and 311 and 371D of the Constitution of India.

Sri S.Ramachandra Rao, learned Senior Counsel appearing on behalf of the petitioners, would seek an interim order similar to that passed in W.P.Nos.23267 and 23274 of 2017 dated 31.07.2017 wherein the Division Bench, of which one of us (RR,J) was a Member, directed the respondents therein to maintain *status quo*, as on the date of the order, for a period of two weeks. The said interim order has since been extended, and continues to remain in force.

While the very same Presidential Order is, no doubt, under challenge in these writ proceedings also, it must be borne in mind that the petitioners herein are the association representing A.P. Government Teachers, and certain employees in Government High Schools in the present State of Andhra Pradesh. Unlike the Telangana Government Teachers' Association and employees working in Government Schools in the State of Telangana, the petitioners herein are entitled to invoke the jurisdiction of the A.P. Administrative Tribunal (for short "the Tribunal"). While the Tribunal no longer exercises jurisdiction in respect of public servants employed by the Government of Telangana

from 15.09.2016, it continues to exercise jurisdiction with respect to public servants employed by the Government of Andhra Pradesh, including petitioners 2 to 8 herein.

Sri S.Ramachandra Rao, learned Senior Counsel would rely on a Division Bench judgment of this Court in ***Muthineni Krishna Rao and others vs. Union of India and others***¹ to submit that, since the very same issue is pending consideration before this Court, the petitioners cannot be relegated to the remedy of invoking the jurisdiction of the Tribunal.

In ***Muthineni Krishna Rao***¹, the validity of the provisions of the Administrative Tribunals Act, 1985 (for short “the Act”) was subjected to challenge and, in the light of the law declared by a Seven Judge Bench of the Supreme Court in ***L.Chandra Kumar vs. Union of India***² that the Tribunal lacked jurisdiction to decide the validity of the provisions of the Act under which it was constituted, the petitioners therein had no other remedy except to invoke the jurisdiction of the High Court under Article 226 of the Constitution of India.

In the present case, it is not the provisions of the Administrative Tribunals Act, but the validity of the Presidential Order, issued under Article 371-D of the Constitution of India, which is under challenge. As the law declared by the Supreme Court, in ***L.Chandra Kumar***², mandates that the jurisdiction of the Tribunal should be invoked in the first instance, before the jurisdiction of the High Court under Article 226 of the Constitution of India can be invoked, the petitioners ought to have, in the first instance, approached the Tribunal before invoking the jurisdiction of this Court under Article 226 of the Constitution of India. The observations in the order of the Division Bench, in ***Muthineni Krishna Rao***¹, must be read in the context in which those observations

¹ 1998(6) ALD 378 (DB)

² AIR 1997 SC 1125

were made and, consequently, it is only in cases where the *vires* of the provisions of the Act is under challenge, can the jurisdiction of the High Court under Article 226 of the Constitution of India be directly invoked without, in the first instance, approaching the Tribunal.

The law declared in ***L.Chandra Kumar***² was followed in ***Rajiv Kumar vs. Hemraj Singh Chauhan***³ wherein the Supreme Court observed that, in the light of the judgment of the Supreme Court in ***L.Chandra Kumar***², the Tribunals would function as the only court of first instance in respect of areas of law for which they have been constituted; even where any challenge is made to *vires* of legislation, excepting legislation under which the Tribunal is set up, in such cases also litigants cannot directly approach the High Court overlooking jurisdiction of the Tribunal; and a party cannot approach the High Court by treating it as a court of first instance. The Supreme Court further observed that the principles laid down in ***L.Chandra Kumar***² embodied a rule of law and, in view of the Article 141 of the Constitution of India, the same was binding on the High Court.

In the light of the law declared by the Supreme Court in ***Rajiv Kumar***³, holding that the principles laid down in ***L.Chandra Kumar***² embody a rule of law and are binding on the High Courts under Article 141 of the Constitution of India, reliance placed on the earlier judgment of a Division Bench of this Court, in ***Muthineni Krishna Rao***¹, is misplaced. As the petitioners have directly invoked the jurisdiction of this Court under Article 226 of the Constitution of India, without approaching the Tribunal in the first instance, we see no reason to entertain these writ petitions.

The Writ Petitions fail and are, accordingly, dismissed. Needless to state that this order shall not preclude the petitioners from invoking

³ (2010) 4 Supreme Court Cases 554

the jurisdiction of the A.P. Administrative Tribunal and, on its jurisdiction being invoked, the Tribunal shall examine the petitioners' contentions on its merits, and in accordance with law. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(A.SHANKAR NARAYANA, J)

13th September, 2017
JSU



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