

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-18996-2014 (O&M)

Date of Decision:-02.05.2018.

Ranvir Singh and others

.....Petitioners

Versus

Union of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. I.D. Singla, Advocate for the petitioners.

Mr. Shivor Dhir, Central Govt. Counsel for
respondent No.1-UOI.

Mr. D.R. Sharma, Advocate for respondent Nos.2 and 3.

P.B. BAJANTHRI, J. (Oral)

In the instant writ petition, petitioners have challenged the order dated 15.07.2014 Annexure P-2 by which their grievance relating to regularization against the post of Mess Helper has been turned down on the score that their services have not been engaged in accordance with the Rules of the Navodaya Vidyalaya Samiti etc.

2.) Petitioners were stated to have been appointed on daily wages basis as Mess Helper in the year 1993 and they continued to hold the post and are discharging the duties of the post. They had grievance relating to regularization of their services in view of the length of service read with various decisions of the Courts. Preliminary issue is whether writ is maintainable in respect of petitioners' grievance relating to regularization against second and third respondent. Persons who were employed and their service conditions under respondent Nos.2 and 3 would be before the Central Administrative Tribunal in view of the Central Government

Notification dated 17.12.1998 issued under sub-Section 2 of Section 14 of the Administrative Tribunals Act, 1985 (13 of 1985).

3.) Learned counsel for the petitioners submitted that under Article 323-A (2) (d) there is a exclusion provision. Further he relies on Section 14 and 28 of the Administrative Tribunals Act, 1985 to the extent that matter is relating to recruitment, therefore, this Court has jurisdiction. Further he relied on 2 decisions, namely (i) **L. Chandra Kumar Vs. Union of India and others** reported in (1997) 3 SCC 261 and (ii) **Basudevpur (R&B) N.M.R. Association and others Vs. State of Orissa and others** reported in 1992 (2) SLR 793 (para-6) to contend that grievance relating to the petitioners like regularization would be entertainable under Article 226 of the Constitution.

4.) *Per contra* learned counsel for the respondents submitted that under the Administrative Tribunals Act, 1985, Government of India have issued a Notification on 17.12.1998 while including item No.35 Navodaya Vidyalaya Samiti which is a Society registered under the Societies Registration Act, 1860 to contend that such of those persons who are having a service condition and their grievance could be heard before the Central Administrative Tribunal. As long as Notification dated 17.12.1998 is not modified, reviewed, cancelled, jurisdiction in respect of the petitioners' grievance with the respondents-Navodyaya Vidyalaya Samiti is concerned, it would be Central Administrative Tribunal and not this Court. Further learned counsel for the respondents submitted that post of Mess Helper carries a particular pay scale of ₹ 2550 – 3200. In other words, post of Mess Helper do exist in the Navodaya Vidyalaya Samiti. Since petitioners' grievance is relating to regularization of their services in the post of Mess

Helper in view of the fact that their services have been engaged only in the year 1993 on daily wage basis (*ad hoc*). Petitioners' grievance would fall under sub-Section – c(1) of Section 14 read with Section 28 of the Administrative Tribunals Act, 1985.

5.) Heard the learned counsel for the parties.

6.) Crux of the matter in the present petition is whether the present writ petition is maintainable in respect of challenge to Annexure P-2 and further entitlement of regularization by the petitioners. Administrative Tribunals Act, 1985 was notified in the year 1985. During the period from 1985 till 31.12.1998 any recruitment or service conditions of the employees in relation to Navodaya Vidyalaya Samiti was vested with the Industrial Tribunal and this Court. Once the Central Government issued Notification on 17.12.1998 while invoking sub-Section 2 of Section 14 of the Administrative Tribunals Act, 1985 jurisdiction in respect of employees or recruitment in the Navodaya Vidyalaya Samiti which was vested with the Industrial Tribunal or this Court was taken away. Therefore, w.e.f. 1.1.1999 onwards any service conditions of employees including recruitment in relation to the Navodaya Vidyalaya Samiti would lie before the Central Administrative Tribunal (concerned branch). Regularization of ad hoc employees is one of the mode of recruitment. Learned counsel for the petitioners relied on Lal Chandra Kumar's judgment (cited supra). Para 99 reads as under:-

“In view of the reasoning adopted by us, we hold that Clause 2(d) of [Article 323A](#) and Clause 3(d) of [Article 323B](#), 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 323A and 323B 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 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 323A](#) and [Article 323B](#) 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 concerned Tribunal 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 concerned Tribunal. [Section 5\(6\)](#) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."

Reading of para 99, it is crystal clear that Administrative Tribunal has jurisdiction even to the extent of examining the validity of statutory rule issued by the concerned Government. Therefore, the first Court of instance in respect of employees or service conditions in relation to

(concerned bench). The Full Bench decision cited supra would not assist the petitioners in view of the Notification dated 17.12.1998 read with para 99 of the Lal Chandra Kumar's judgement. Reading of Section 14 and 28 of the Administrative Tribunals Act, 1985 read with Lal Chandra Kumar's judgment (cited supra) so also with reference to Notification dated 17.12.1998 and the fact that petitioners were appointed on muster roll in connection with the Navodaya Vidyalaya Samiti, this Court has no jurisdiction in respect of interference with Annexure P-2 and further prayer relating to regularization of the petitioners' service.

7.) Accordingly, petition stands dismissed. However, dismissal of the writ petition would not come in the way of petitioners to approach Central Administrative Tribunal. If there is any delay in approaching the Central Administrative Tribunal, petitioners can file application for condonation of delay under Section 21 of the Administrative Tribunals Act. Tribunal is requested to consider the delay application sympathetically and entertain the OA.

9.) At this stage, learned counsel for the petitioners assumed that the principle of res-judicata may arise in view of the fact that petitioners had suffered an order before the Administrative Tribunal on 09.11.2005. Question of res-judicata may not arise in view of the later development that petitioners' grievance is with reference to the communication of the Deputy Commissioner dated 15.07.2014.

(P.B. BAJANTHRI)
JUDGE

May 02, 2018.

sandeep

Whether speaking/reasoned:-

Whether Reportable:-

Yes / No

Yes / No.