



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 13.04.2018
CORAM :
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

WEB COPY

W.P(MD) SR No.24235 of 2018

S.Willis Narayanan

... Petitioner

Vs.

1.The Director,
Directorate of Field Publicity,
Ministry of Information and Broadcasting,
Government of India,
5th Floor, Soochana Bhawan,
No.8, CGO Complex, Lodhi Road,
New Delhi - 110 003.

2.The Joint Director,
Department of Field Publicity,
(Ministry of Information and Broadcasting)
Government of India,
Shasthribhavan,
Chennai - 600 006.

3.The Field Publicity Officer,
Department Field Publicity,
Thirunelveli District.

4.S.Balasundari

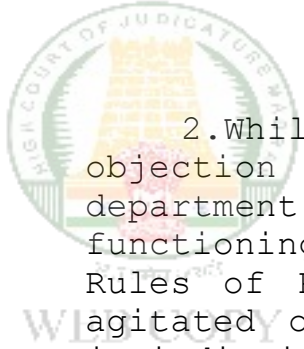
... Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order of the 1st respondent in No.B-13018/3/2017-Admin dated 27.02.2017 and quash the same and further direct the 1st respondent to pass an order appointing the petitioner on compassionate grounds on any of the posts of his department.

For Petitioner : Mr.B.N.Raja Mohamed

O R D E R

The petitioner seeking compassionate appointment approached the respondent department viz., the Directorate of Field Publicity, Ministry of Information and Broadcasting, Government of India. The said request, having been considered, was turned down as not feasible by impugned order dated 27.02.2017. Challenging the said order, the petitioner filed this present writ petition in W.P.(MD) SR No.24235 of 2018.



2.While scrutinising the papers, the Registry has raised objection that since the order passed by the respondents are the department of the Central Government, therefore, in view of the functioning of the Central Administrative Tribunal and the CAT Rules of Practice 1993, the grievance of the petitioner can be agitated only before the Central Administrative Tribunal having jurisdiction and not before this Court. However, on behalf of the petitioner, the learned counsel appearing for the petitioner seems to have made an endorsement stating that, as per the judgment of the Hon'ble Supreme Court of India, reported in (2010) 14 Supreme Court Cases 553 - *Union of India and others Vs. Mangal Textile Mills (I) (P) Ltd.*, the power of the High Court to issue prerogative writs under Article 226 is plenary in nature and therefore, it cannot be curtailed by other provision of Constitution or a statute and the rule of exclusion of writ jurisdiction on account of availability of an alternative remedy does not operate as an absolute bar to entertain a writ petition, but, it is only a rule of discretion to be exercised depending on facts of each case. Therefore, the learned counsel seems to have pressed the maintainability of the writ petition. That is why the matter is posted before this Court to evaluate about the maintainability of this writ petition.

3.I have heard Mr.B.N.Raja Mohamed, the learned counsel appearing for the petitioner, who would submit that, there were two objections raised by the Registry of this Court. One is that the writ petition seeking the prayer for compassionate appointment cannot be filed before this Court and the second one is that the issue can be agitated only before the Central Administrative Tribunal.

4.Insofar as the said objection, the learned counsel for the petitioner would make submissions by relying upon the following two decisions. One is reported in AIR 2013 Supreme Court 3365 in the matter of *MGB Gramin Bank V. Chakrawarti Singh* and another one is reported in (2010) 14 Supreme Court Cases 553 in the matter of - *Union of India V. Mangal Textile Mills (I) (P) Ltd.*

5.The learned counsel appearing for the petitioner would submit that if at all any service matters to be agitated before the Central Administrative Tribunal, the same may be pertaining to the recruitment. Here, it is not a recruitment, but only an appointment is sought for on compassionate ground by the petitioner. Therefore, the same need not be filed before the Central Administrative Tribunal, but it can be agitated before this Court.

6.The learned counsel for the petitioner by relying upon para 7 of the judgment of the Hon'ble Supreme Court reported in (2010) 14 Supreme Court Cases 553 cited supra, would submit that, the



plenary power and jurisdiction of this Court vest with them under Article 226 of the Constitution of India cannot be taken away or ousted by the mere fact of availability of alternative remedy. Therefore, the learned counsel for the petitioner would submit that this writ petition would be maintainable before this Court.

7. I have considered the said submissions made by the learned counsel appearing for the petitioner and have perused the materials available on record.

8. At the outset, this Court is of the view that, the learned counsel is totally under misconception the objection raised by the Registry with regard to the maintainability.

9. It is not the objection of the Registry that the grievance is with regard to the compassionate appointment. The objection is that, it should be agitated only before the Central Administrative Tribunal and not before this Court.

10. The grievance of the petitioner seeking compassionate appointment is, no doubt, a service dispute. However, what is the forum to be agitated at the first instance is the only issue. Under the provisions of Article 323 A of the Constitution of India, The Administrative Tribunals Act, 1985 was enacted by the Parliament, whereby, Central Administrative Tribunal was created under Section 14 and is functioning throughout the country. Insofar as the State of Tamil Nadu is concerned, the Central Administrative Tribunal, Madras Bench is functioning at Chennai, which will have a territorial jurisdiction of the whole State of Tamil Nadu, including the area, where the petitioner is residing.

11. Section 14 of the Administrative Tribunals Act, 1985 reads thus:

"14. (1) Save as otherwise expressly provided in this Act, 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-

(a) recruitment, and matters concerning, recruitment, to any All India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters 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 civil 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, a 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 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.

..... "

11. Moreover, when the issue with regard to the power and jurisdiction of the Central Administrative Tribunal vis-a-vis the plenary power of the High Court under Article 226 came up for consideration, a Constitution Bench of the Apex in the matter of *L. Chandra Kumar Vs. Union of India* reported in (AIR-1997 SC 1125 = 1997 (3) SCC 261 has held that at the first instance, service dispute shall be agitated before the Administrative Tribunal having jurisdiction and as against the order passed by the Tribunal only, the issue can be agitated by way of appeal/writ petition under Article 226/227 of the Constitution of India before the concerned jurisdictional High Court. The relevant portion of the said judgment is extracted herein for easy reference.

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

12. In view of the categorical declaration of law by the authoritative pronouncement of the Hon'ble Apex Court in the judgment cited supra in L.Chandrakumar Case, the grievance of service dispute against the Central Government department cannot be entertained by this Court, at the first instance, exercising the extraordinary original jurisdiction under Article 226 of Constitution of India. The remedy available for the petitioner is to agitate the issue before the Central Administrative Tribunal, if he is advised to do so.

13. In view of the above, objections raised by the Registry are sustained and accordingly, this writ petition is rejected in SR stage. The Registry is directed to return the case papers to the petitioner.

Sd/
Assistant Registrar (CS-I)

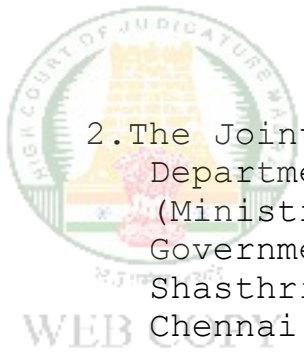
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Sub Assistant Registrar

To

1. The Director,
Directorate of Field Publicity,
Ministry of Information and Broadcasting,
Government of India,
5th Floor, Sookhana Bhawan,
No.8, CGO Complex, Lodhi Road,

<https://hcservices.ecourts.gov.in/hcservices/>
New Delhi - 110 003.



2.The Joint Director,
Department of Field Publicity,
(Ministry of Information and Broadcasting)
Government of India,
Shasthribhavan,
Chennai - 600 006.

3.The Field Publicity Officer,
Department Field Publicity,
Tirunelveli District.

Copy to:
The Section Officer,
E.R. Section,
Madurai Bench of Madras High Court,
Madurai.

W.P (MD) No.SR 24235 of 2018
13.04.2018

ARUL
KK/RSK/07.05.2018/SAR-4/6P-5C