

22.03.2021.
Item no. 22.
Court No.13
ap

**W.P.A. No. 394 of 2020
(Through Video Conference)**

**Dhirendra Nath Sarkar & Ors.
Versus
The State of West Bengal & Ors.**

Mr. Partha Chakraborty.

..For the petitioners.

Mr. Tapan Kumar Mukherjee,
Mr. Somnath Naskar.

...For the State respondents.

Affidavit-of-service filed in Court today by the
Counsel for the petitioners be taken on record.

By an order dated 5th February, 2020, a Co-
ordinate Bench of this Court had taken up a prima
facie view that the writ petition should not be
entertained in view of availability of efficacious
alternative remedy before the State Administrative
Tribunal.

Counsel for the petitioners would rely upon a
decision of the Hon'ble Supreme Court of India in the
case of ***Bharati Reddy – Vs. – State of Karnataka &
Ors.*** reported in ***(2018) 12 Supreme Court Cases 61***
particularly paragraphs 11, 12 and 13 thereof.

It is now well settled that the power of the High
Court under Articles 226 and 227 of the Constitution
of India, cannot under any circumstances be curtailed
or limited or extinguished.

However, by reason of the decision of the
Hon'ble Supreme Court of India in the case of ***L.***

Chandrakumar – Vs. – Union of India & Ors.

reported in ***A.I.R. 1997 SC 1125, Paragraph 99,***

this Court is of the view that the petitioners should approach the State Administrative Tribunal under the provisions of the Administrative Tribunals Act, 1985.

Paragraph 99 as above is set out hereinbelow.

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.

The petitioners are aggrieved by their non-recruitment to the post of, inter alia, Operator-cum-Mechanic by the Superintending Engineer (AM), Siliguri.

They submit that despite selection process in which they were found eligible, they have not been recruited and persons falling below the rank of the petitioners have been recruited. The petitioners have been kept in a waiting list.

This Court sees that the facts of the present case are not as such to warrant invocation of the High Court in its high prerogative Writ Jurisdiction over and above the authority and jurisdiction of the State Administrative Tribunal at Kolkata.

Indeed it is true that the principles of alternative remedy are a matter of prudence and not an exclusionary or compulsive principle to be followed.

However, given the aforesaid dicta of the Hon'ble Supreme Court of India in the case of **L. Chandrakumar** (supra), this Court is of the view that the exercise of jurisdiction under Article 226 of the Constitution of India directly by Court, in the instant case would be inappropriate.

It may be relevant to note that the persons similarly placed as the petitioners have already approached the Tribunal for remedy and their proceedings have been entertained.

In view of the above, the writ petition must fail and is hereby dismissed with liberty however reserved to the petitioners to approach the State Administrative Tribunal at Kolkata.

There will be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(*Rajasekhar Mantha, J.*)