

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8051 OF 2019

Sharad S. Pente

.. Petitioner

vs.

Union of India & Anr.

.. Respondents

Dr. Uday Warunjikar, amicus curiae.

Mr. Sharad S. Pente, Petitioner in person.

Mr. Neel Helekar i/b. Mr. Ashutosh R. Gole for the respondents.

**CORAM :- DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.**

Date :- July 12, 2021.

PC :

1. Heard Mr. Warunjikar, learned Amicus Curiae, Mr. Sharad S. Pente – Petitioner in person and Mr. Helekar, learned Counsel for the respondents.

2. The petitioner an employee of the Bhabha Atomic Research Centre (BARC) filed this petition on February 27, 2019, initially praying for the following reliefs:-

“(i) Be pleased to call for the record and proceedings of file in OA 27/2015, OA 119/2017 & OA 304/2017 from Hon’ble Administrative Tribunal, Mumbai Bench with all pending litigations before this Hon’ble Court and they be read as part of this petition.

(ii) By a suitable writ, order or direction this Hon'ble Court may be pleased to quash and set aside the impugned order dated 16/10/2018 passed by Hon'ble Tribunal an direct to the Hon'ble Tribunal to hear the Original Application 119/2017 on merit after giving all possible legal opportunities to the Petitioner.

(iii) Order to be pass for direction to Hon'ble Tribunal to allow the MA 548/2018 filed by Applicant on 03/10/2018 with issuing notice to all concerned.

(iv) Costs of this petition be provided for and it may be recovered from all responsible individuals.

(v) Any other order necessary & fit in the interest of justice may kindly be passed.

The Petitioner's, therefore, pray for **INTERIM RELIEF**.

Be pleased to pass the direction to respondent department & Hon'ble Tribunal, not to pass any communication/direction/ order against the petitioner (OR to maintain 'status-quo' except any relief to petitioner from court of law) with 'stay' on any communication/ direction/ order against the petitioner passed after 16/10/2018."

3. During the pendency of the petition, the petitioner was compulsorily retired by an order dated July 8, 2019. The petitioner, therefore, sought leave to amend the petition and prayed for the following additional reliefs:-

"(i)A. Be pleased to pass the direction to respondent department to file all documents/records pertaining to order dated 08/07/2019 passed by Head P&C Division BARC. By a suitable writ, order or direction this Hon'ble Court may be pleased to quash and set aside order of 'premature retirement' of petitioner; passed by Head P&C Division BARC dated 08/07/2019 (ref.: PR/2012/Vig.(Part File)./128254).

The petitioner's, therefore, pray for **INTERIM RELIEF** (amended)

In the view of legal facts and circumstances, in the interest of timely justice, be pleased to pass the order for 'stay', on order passed by Head, P&C Division BARC dated 08/07/2019, till the disposal / finality of this litigation(s)."

4. At the outset, we have pointed out to the petitioner that if the petitioner is aggrieved by the order of compulsory retirement, the remedy for the petitioner is to first approach the appellate authority as constituted under the Discipline and Appeal Rules of the respondents and only thereafter, he could approach the Tribunal under Section 19 of the Administrative Tribunals Act, 1985. The principles of law in this regard are well settled. (**See: S.S.Rathore Vs. State of Madhya Pradesh**" AIR 1990 SC 10).

5. The petitioner-in-person, however, contends that the present petition is nonetheless maintainable and he would be justified in directly filing the proceedings before the High Court under Article 226 of the Constitution. In support of such contention, the petitioner has placed reliance on the decision of the Supreme Court in "**T.K.Rangarajan Vs. Government of Tamil Nadu & Ors.**" (2003)6 SCC 581".

6. In our opinion, the petitioner is not correct in his submission as the facts in **T.K.Rangarajan** case (supra) were completely

different and uncomparable to the facts of the present case. The case before the Supreme Court was an unprecedented case where the respondent-State had terminated the services of about 2000 employees who had resorted to strike for their demands. Such employees had approached the High Court by filing writ petitions under Articles 226 and 227 of the Constitution. Before the High Court, the learned Single Judge by an interim order had directed the State Government that the suspension and dismissal of the employees without conducting an enquiry, be kept in abeyance until further orders and the employees were directed to resume duty. This order of the learned Single Judge was challenged by the State Government in writ appeals. The Division Bench set aside the interim order passed by the learned Single Judge, observing that without exhausting the alternative remedy of approaching the Administrative Tribunal, writ petitions were not maintainable. In such extraordinary circumstances of the case, the Supreme Court observed that although the judgment of the Constitution Bench of the Supreme Court in “**L.Chandra Kumar V. Union of India & Ors**” (1997)3 SCC 261 was binding and that the Bench respectfully agreed with the same, however in the case in hand, if thousands of employees were directed to approach the Administrative Tribunal, the Tribunal would not be in a position to render justice to the cause. Thus, as observed by the Supreme Court “*in very very exceptional*

circumstances”, the Supreme Court held that there was no justifiable reason for the High Court not to entertain the petitions, on the ground of alternative remedy provided under the statute. This judgment of the Supreme Court would not, in any manner, assist the petitioner to depart from the well settled principle of law as laid down in **L.Chandra Kumar** (supra), that is the petitioner needs to first approach the tribunal when the departmental remedy, if any, attains finality and only thereafter, he can approach the High Court in the proceedings under Article 227 of the Constitution.

7. We accordingly dispose of this petition with liberty to the petitioner to avail of such appropriate remedy as available to him in law. All contentions of the parties are expressly kept open.

8. As this petition was pending for some time, we direct that in the event the petitioner files any appellate proceedings or an original application, as the case may be, within two weeks from today, the concerned forum shall not reject such application on the ground of limitation.

9. Disposed of in the above terms. No costs.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)