

110 13.05.22

Ct. No. 04

Akd

WP.ST. 46 of 2022

Koli Bibi & Anr.

Vs.

Kiron Khan & Ors.

Mr. Prosenjit Mukherjee,

Ms. Poulumi Dutta,

Ms. Tiyasa Ghosh.

... for the petitioners.

Despite service there is no representation on behalf of the respondents. The affidavit of service filed today be kept with the record.

The matter is pending before the Tribunal and has not been decided finally as yet. At this juncture the instant writ petition has been taken out contending that the point involved in the said original application has already been decided by the High Court as well as the Supreme Court and, therefore, the High Court in exercise of power under Article 226 of the Constitution of India should take up the original application in the guise of the writ petition and decide the fate thereof.

We are afraid with the aforesaid submission. By virtue of a Constitution Bench decision rendered in case of *L. Chandrakumar vs. Union of India & Ors.* reported in (1997) 3 SCC 261 the Tribunal is considered to be a Court of first instance and the power of High Court under Article 226 of the Constitution of India is retained as basic structure of the Constitution. Unless the Court of first instance takes a decision, it would not be advisable to usurp the power of the original authority and decide the cause simplicitor on the premise that the dispute has been set at rest by the decision of the High Court and the Supreme Court. The authority, where the matter is pending, is required to decide the same and all the pleas, which are available including the points

having settled by the High Court and the Supreme Court and if taken shall be decided on such consideration.

We thus do not find that the petitioner shall be permitted to bypass or jump the forum and invite the dispute to be settled by a higher forum pending lis in the forum of first instance.

We thus do not accept the contention of the petitioner in this regard.

Since the matter is pending before the Tribunal for a long time and the dispute is hovering around the compassionate appointment, we feel that the said matter should be taken on priority basis so that the purpose and object behind the framing of the scheme for compassionate appointment is not rendered otiose or frustrated.

We, therefore, direct the Tribunal to fix a date for disposal of the original application which shall not exceed fifteen days from the date of the communication of this order in presence of the respective Counsels and endeavour shall be shown to dispose of the same within two months therefrom in accordance with law.

The writ petition is thus disposed of.

(Harish Tandon, J.)

(Rabindranath Samanta, J.)

