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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2270 OF 2021

Gaurav Ganesh Das Daga & Ors. ...Petitioners

V/s.

Maharashtra Public Service Commission
& Anr. ...Respondents

**WITH
INTERIM APPLICATION NO. 1736 OF 2021
IN
WRIT PETITION NO. 2270 OF 2021**

Hulkunde Manoj Sharnappa ...Applicant

V/s.

Maharashtra Public Service Commission
& Anr. ...Respondents

**WITH
WRIT PETITION NO. 3770 OF 2021**

Yojana Shriniwas Kulkarni & Ors. ...Petitioners

V/s.

Maharashtra Public Service Commission,
through Chairman & Anr. ...Respondents

**WITH
INTERIM APPLICATION (ST) NO. 3588 OF 2022
IN
WRIT PETITION NO. 3770 OF 2021**

Bhavesh Bhiku Shinde ...Applicant

V/s.

Yojana Shriniwas Kulkarni & Ors. ...Respondents

**WITH
INTERIM APPLICATION NO. 3133 OF 2021
IN
WRIT PETITION NO. 3770 OF 2021**

Subhash Dattu Borate & Ors.	...Applicants
V/s.	
Yojana Shriniwas Kulkarni & Ors.	...Respondents

**WITH
WRIT PETITION NO. 8636 OF 2021**

Shubham S/o. Dineshchandra Mishra	...Applicant
V/s.	
The State of Maharashtra & Anr.	...Respondents

**WITH
WRIT PETITION NO. 4775 OF 2021**

Pradipkumar Ankush Dhengale	...Petitioner
V/s.	
State of Maharashtra & Ors.	...Respondents

**WITH
WRIT PETITION NO. 2512 OF 2021**

Shital Suresh Bharate & Anr.	...Petitioners
V/s.	
The State of Maharashtra, through its Secretary & Anr.	...Respondents

**WITH
INTERIM APPLICATION (ST) NO. 19721 OF 2021
IN
WRIT PETITION NO. 2512 OF 2021**

Shital Suresh Bharate & Anr.	...Applicants
V/s.	
The State of Maharashtra & Ors.	...Respondents

**WITH
WRIT PETITION NO. 2683 OF 2021**

Surekha Sidraya Kulangi	...Petitioner
V/s.	
State of Maharashtra & Ors.	...Respondents

Mr. Rajendra Deshmukh, Senior Advocate with Mr. Sayyed Tauseef & Mr. Hassan Khan for petitioner in WP/2270/2021, WP/2683/2021, & WP/3770/2021.

Mr. Surel S. Shah for petitioner in WP/4775/2021.

Mr. Vishal Hegde with Mr. Akshay Naik i/by Vishal Kadam for petitioner in WP/2512/2021.

Mr. Satish B. Talekar i/by Talekar & Associate for Applicant in IAST/3588/2022 in WP/3770/2021.

Mr. V.A. Thorat, Senior Advocate (Special Counsel) with Mr. Mihir Desai, Senior Advocate (Special Counsel), Mr. P.P. Kakade, Government Pleader & Ms. R.A. Salunkhe, AGP for State.

Mr. Ashutosh Kulkarni with Mr. Sarthak Diwan with Ms. Neha Rautela for respondent no. 1/MPSC.

**CORAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE: MARCH 4, 2022

P.C.: (PER DIPANKAR DATTA, CJ.)

1. This batch of six writ petitions are at the instance of multiple petitioners. These petitioners had responded to Advertisement No.5/2019 published by the Maharashtra Public Service Commission (hereafter "the MPSC", for short) inviting

applications from eligible candidates for selection and ultimate appointment on vacant posts of engineers in the Maharashtra Engineering Services. It is the specific claim of the petitioners that not only have they cleared the preliminary examination conducted by the MPSC, but also the mains examination. However, it is alleged that during the course of the selection process initiated by the MPSC several Government Resolutions (hereafter "GRs", for short) have been issued which have the effect of impeding the petitioners' right of consideration for such appointment.

2. The cause of action, as pleaded in the writ petitions, is common. All the petitioners belong to Economically Weaker Section (hereafter "E.W.S.", for short) category and had applied as such for selection and appointment on posts reserved for E.W.S category of candidates. The Supreme Court in **Jaishri Laxmanrao Patil vs. The Chief Minister & Ors.**¹ having held reservation granted to the Maratha community by the Socially and Educationally Backward Classes Act, 2018 (hereafter "the SEBC Act", for short) as *ultra vires* the Constitution and having struck down such enactment, the Government had opened a window for the candidates belonging to the Socially and Educationally Backward Classes (hereafter "S.E.B.C.", for short) category to opt for the E.W.S. category upon change of reservation. The said policy of the Government, according to the petitioners, seriously prejudices the career prospects of the E.W.S. candidates like the petitioners who, after having competed with other candidates belonging to the same category, are

¹ (2021) 2 SCC 785

now made to lock horns with S.E.B.C. category of candidates. According to them, the Government policy has led to an unnecessary intrusion in the reserved category for E.W.S. candidates and the level playing field, which was earlier available for E.W.S. candidates, has been taken away after the selection process has commenced. In view of law settled by the Supreme Court in a couple of decisions that the rules of the game cannot be changed after the game has commenced, the petitioners primarily have sought for quashing the relevant GRs, which place them at a disadvantageous position, as well as for direction on the MPSC to fill up the posts reserved for the E.W.S. category by candidates belonging to such category only based on their *inter-se* merit.

3. These writ petitions were moved some time in the middle of last year whereupon several orders have been passed over the past few months. Neither the advocate for the State nor the advocate for the MPSC objected to the maintainability of these writ petitions on the ground that the remedy of the petitioners, at the first instance, lay before the Maharashtra Administrative Tribunal (hereafter "the MAT", for short) constituted under the Administrative Tribunals Act, 1985 (hereafter "the Act", for short). The writ petitions having been listed before us on 2nd March, 2022, we had expressed in no uncertain terms that the petitioners ought to be relegated to the MAT for relief. An adjournment was prayed on behalf of the petitioners to enable Mr. Rajendra Deshmukh, learned senior advocate, to address us through the virtual platform from Aurangabad. We had granted such prayer and directed listing of all the writ petitions today. It is recorded that on

behalf of the petitioners, other than Mr. Deshmukh none else has advanced arguments.

4. Mr. Deshmukh has spared no effort to impress upon us that remedy of the petitioners before the MAT notwithstanding, this Court ought to try the writ petitions having regard to the decisions of the Supreme Court in **Bal Krishna Agarwal vs. State of U.P. & Ors.**², **T. K. Rangarajan vs. Government of Tamil Nadu & Ors.**³ and **Magadh Sugar & Energy Ltd. vs. The State of Bihar & Ors.**⁴. Reliance was also placed by him on the coordinate Bench decision of this Court in **Sanjay & Ors. vs. The State of Maharashtra & Ors.**⁵ as well as another coordinate Bench decision of the Delhi High Court in **Rajendra Prasad Sharma & Ors. vs. Union Public Service Commission & Ors.**⁶ in support of his submission that the remedy before the Administrative Tribunals under the Act is nothing more than an alternative remedy and mere availability of such remedy cannot oust the jurisdiction of this Court. In exceptional situations such as the present, where the E.W.S. category of candidates were being discriminated, it would be well within the jurisdiction of this Court to proceed to hear the merits of the challenge instead of relegating the petitioners to the MAT, which would cause immense hardship to them.

5. *Per contra*, Mr. Kulkarni, learned advocate for the MPSC relies on the coordinate Bench decision of this Court in **Vijay**

² MANU/SC/0574/1995 : 1995 LabIC 1396

³ (2003) 6 SCC 581

⁴ MANU/SC/0706/2021 : 2021(6) BLJ 356

⁵ MANU/MH/0498/2020 : 2020 (4) MhLJ 663

⁶ MANU/DE/0466/2021 : 2021 (3) SLR 920

Ghogare & Ors. vs. State of Maharashtra & Ors.⁷ for the contention that it is the MAT only, having the jurisdiction to function as the Court of first instance in respect of the areas of law for which it has been constituted, which should have been approached by the petitioners.

6. Mr. Kulkarni draws our attention to the fact that the decision in **Vijay Ghogare** (supra) is based on due consideration of the Constitution Bench decision of the Supreme Court in **L. Chandra Kumar vs. Union of India**⁸ as well as other subsequent decisions of the Supreme Court in **Kendriya Vidyalaya Sangathan vs. Subhas Sharma**⁹ and **Rajeev Kumar vs. Hemraj Singh Chauhan**¹⁰. He further points out that the decision in **T. K. Rangarajan** (supra), relied on by the petitioners, was duly considered by the coordinate Bench in **Vijay Ghogare** (supra). It was held therein that the case before Their Lordships involving denial of promotions to higher posts on the basis of reservation in favour of candidates belonging to certain communities was not comparable with the facts in **T. K. Rangarajan** (supra), where thousands of State Government employees were suspended/dismissed without conducting any inquiry. Finally, he contends that the decision in **Vijay Ghogare** (supra) was rendered after Rule was issued. Even after admission of the writ petition, the coordinate Bench relegated the petitioners to the Tribunal. The contention, therefore, is that the mere fact of diverse orders having been passed on these writ petitions

⁷ 2013 SCC OnLine Bom 1764 : (2013) 4 Bom CR 724

⁸ (1997) 3 SCC 261

⁹ (2002) 4 SCC 145

¹⁰ (2010) 4 SCC 554

earlier would not clothe this Court with the jurisdiction to try and decide the same on merits at this stage.

7. Mr. Thorat and Mr. Desai, learned senior counsel appearing for the State have also submitted that the remedy of the petitioners lies elsewhere.

8. Having heard the parties and on consideration of the decisions cited at the Bar, we find no reason to take a view different from the one expressed by us orally on 2nd March, 2022. We completely concur with the reasons assigned by the coordinate Bench in **Vijay Ghogare** (supra) for holding the writ petition to be not maintainable before the Court at this stage. In view of such concurrence, we could have preferred to maintain reticence to assigning our reasons twice over on the same subject. However, we wish to furnish our opinion with a view to clear certain misconceptions in law while holding these writ petitions not to be maintainable before this Court. This, we feel, is required on noticing the emergence of judicial decisions by some Courts, based on misreading of the law laid down in **L. Chandra Kumar** (supra) as well as **T. K. Rangarajan** (supra), whereby grievances of State Government employees were entertained at the first instance upon holding that the remedy before the Tribunals constituted by the Act is an alternative to the writ remedy available under Article 226 of the Constitution.

9. The discussion on the topic must, however, begin with **Kiran Singh & Ors. vs. Chaman Paswan & Ors.**¹¹. It happens to be one of the vintage decisions of the Supreme

¹¹ AIR 1954 SC 340

Court referring to the fundamental principle of law, well established, that a decree passed by a Court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject matter of the action strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties. The said decision has been followed in a long-line of decisions to which reference is considered unnecessary at this stage. However, we wish to record why such decision is relevant at a later part of this discussion.

10(a). **T. K. Rangarajan** (supra) being the sheet anchor of Mr. Deshmukh's argument, we have read the decision in between the lines. At the very beginning of the judgment, Their Lordships of the Supreme Court recorded that it was rendered in circumstances which were 'unprecedented'. Lakhs of lowly placed State Government employees had resorted to a strike for certain demands which, ultimately, led to drastic action being taken by the Government including arrests and dismissal from service without any enquiry. Those employees who had a right to post had their services terminated without compliance with natural justice. It is in such fact situation, the Supreme Court held in paragraph 5 that:

"5. At the outset, it is to be reiterated that under Article 226 of the Constitution, the High Court is empowered to exercise its extraordinary jurisdiction to meet unprecedented extraordinary situation having no parallel. It is equally true that extraordinary powers are required to be sparingly used. The facts of the

present case reveal that this was most extraordinary case, which called for interference by the High Court, as the State Government had dismissed about two lakh employees for going on strike."

10(b). While considering what **L. Chandra Kumar** (supra) had said about the functioning of the Administrative Tribunals all over the country at paragraph 9, the Court noted that:

"(It is to be stated that in Tamil Nadu, at present, the Administrative Tribunal is manned by only one man.)"

(brackets in original)

10(c). This was followed by further consideration of the decision in **L. Chandra Kumar** (supra) and the following observation, which makes the case distinct from any other case:

"10. There cannot be any doubt that the aforesaid judgment of larger Bench is binding on this Court and we respectfully agree with the same. However, in a case like this, if thousands of employees are directed to approach the Administrative Tribunal, the Tribunal would not be in a position to render justice to the cause. Hence, as stated earlier, because of very very exceptional circumstance that arose in the present case, there was no justifiable reason for the High Court not to entertain the petitions on the ground of alternative remedy provided under the statute."

(emphasis ours)

10(d). Once the Bench of two Judges felt bound by what was declared as law in **L. Chandra Kumar** (supra), any observation on the exercise of right by an employee of the Union or the State, if any, to move the High Court directly under Article 226 of the Constitution could be urged to be followed if "very very exceptional circumstance" does arise for which such an employee may find it difficult, nay impossible, to pursue his remedy before the Tribunal constituted under

the Act.

10(e). Next, the Court went on to discuss whether there is a Fundamental Right or legal/statutory authority of employees to resort to strike as well as moral or equitable justification to go on strike, and answered in the negative. The principles based on which these findings were returned would operate as ratio decidendi and be binding on us. However, the operative directions would seem to clearly show that the Court exercised its power under Article 142 to do complete justice between the parties.

10(f). Even if we consider the decision in **T. K. Rangarajan** (supra) as one which binds us under Article 141 of the Constitution, still such decision is distinguishable on another count. While in **T. K. Rangarajan** (supra) most of the employees had lost their service and thereby means of livelihood, the petitioners here have not even been appointed. Not only have they not acquired any right to post, they may not also have any right to claim appointment at this stage without the MPSC concludes the process of selection unless, of course, a grave illegality in conducting the selection process having occasioned is proved to exist. In the absence of the MPSC's recommendation to the State Government, the stage is inchoate and, therefore, by no stretch of imagination the present fact situation is comparable with the fact situation in **T. K. Rangarajan** (supra) which the Court said was an extraordinary situation not having any parallel. The said decision is, therefore, clearly distinguishable on facts and inapplicable here.

11. We have found on perusal of the decisions cited by Mr. Deshmukh that some of the Courts have lost complete sight of the difference between an alternative remedy (meaning thereby that, apart from the High Court, another statutory remedy is available that provides an equally efficacious remedy and which could have been pursued by the litigant, but he elects to explore the writ remedy since the bar of alternative remedy, being a rule of self-imposed limitation, does not oust the writ court's jurisdiction) and a statutory remedy (which is provided by the law as the first, nay only, legal remedy, whereafter the aggrieved party could pursue, if so advised, the writ remedy questioning the decision given by the statutory fora). This position of law would require a little elaboration in the wake of what the position in law was prior to the 42nd Constitution (Amendment) Act, 1976, which introduced Part XIV A in the Constitution containing Articles 323-A and 323-B as well as in the light of what the Constitution Bench laid down in **L. Chandra Kumar** (supra) while *inter alia* examining challenges to sub-clause (d) of clause (2) of Article 323-A and section 28 of the Act.

12. A short trip down memory lane would not be inapt. The Administrative Tribunals were not part of the original framework of the Constitution. Prior to the enactment of the Act following introduction of Article 323-A in the Constitution, service related disputes of the employees of the Union and the States could be heard and decided by the High Courts in exercise of jurisdiction under Article 226 of the Constitution or even in exercise of jurisdiction conferred by sections 96, 100 and 104 of the Civil Procedure Code. Following introduction of

Article 323-A, the Act was enacted. Section 28 thereof provided for exclusion of jurisdiction of Courts, except the Supreme Court under Article 136 and the Industrial Tribunals under the Industrial Disputes Act, 1947. Once Administrative Tribunals were constituted in the various States in terms of the provisions of the Act, such tribunals could only entertain and try service related disputes of Central and State Government employees as well as others duly notified, but not those specifically excluded by section 2, to the complete exclusion of even the Supreme Court under Article 32 and the High Courts under Article 226. A decision of the Administrative Tribunal could be carried higher up by an aggrieved party only to the Supreme Court under Article 136. Thus, the High Courts were denuded of the jurisdiction to hear and decide "service matters" as defined in section 3(q) of the Act.

13(a). Two of the questions which the Supreme Court in **L. Chandra Kumar** (supra) was urged to decide were:

"(1) Whether the power conferred upon Parliament or the State Legislatures, as the case may be, by sub-clause (d) of clause (2) of Article 323-A or by sub-clause (d) of clause (3) of Article 323-B of the Constitution, to totally exclude the jurisdiction of 'all courts', except that of the Supreme Court under Article 136, in respect of disputes and complaints referred to in clause (1) of Article 323-A or with regard to all or any of the matters specified in clause (2) of Article 323-B, runs counter to the power of judicial review conferred on the High Courts under Articles 226/227 and on the Supreme Court under Article 32 of the Constitution?

(2) Whether the Tribunals, constituted either under Article 323-A or under Article 323-B of the Constitution, possess the competence to test the constitutional validity of a statutory provision/rule?"

13(b). The Court upon consideration of a large number of precedents held that 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.

13(c). In respect of the first question, the Court arrived at the following conclusion:

“90. We may first address the issue of exclusion of the power of judicial review of the High Courts. We have already held that in respect of the power of judicial review, the jurisdiction of the High Courts under Articles 226/227 cannot wholly be excluded. ***”

The rest of paragraph 90 brought about restoration of the High Courts’ jurisdiction in the following words:

“It has been contended before us that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations is questioned, and that they should restrict themselves to handling matters where constitutional issues are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings and may cause avoidable delay. If such a view were to be adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals. Moreover, even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14, 15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted. On the other hand, to hold that all such decisions will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls will serve two purposes. While saving the power of judicial review of

legislative action vested in the High Courts under Articles 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter.”

13(d). There are other relevant observations contained in the landmark judgment. We can do no better than reproduce the same, reading as follows:

“91. *** we hold that all decisions of Tribunals, whether created pursuant to Article 323-A or Article 323-B of the Constitution, will be subject to the High Court’s writ jurisdiction under Articles 226/227 of the Constitution, before a Division Bench of the High Court within whose territorial jurisdiction the particular Tribunal falls.

92. We may add here that under the existing system, direct appeals have been provided from the decisions of all Tribunals to the Supreme Court under Article 136 of the Constitution. In view of our above-mentioned observations, this situation will also stand modified. In the view that we have taken, no appeal from the decision of a Tribunal will directly lie before the Supreme Court under Article 136 of the Constitution; but instead, the aggrieved party will be entitled to move the High Court under Articles 226/227 of the Constitution and from the decision of the Division Bench of the High Court the aggrieved party could move this Court under Article 136 of the Constitution.

93. *** We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.

94. The directions issued by us in respect of making the decisions of Tribunals amenable to scrutiny before a Division Bench of the respective High Courts will, however, come into effect prospectively i.e. will apply to decisions rendered hereafter. To maintain the sanctity of judicial proceedings, we

have invoked the doctrine of prospective overruling so as not to disturb the procedure in relation to decisions already rendered.

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."

(emphasis ours)

14. It is, therefore, pellucid that the 42nd Constitution (Amendment) Act, 1976 having divested the High Courts of its powers of judicial review in relation to "service matters" of Central/State Government employees and other notified employees but the Supreme Court having held the jurisdiction

conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution to be a part of the inviolable basic structure of our Constitution, leading to striking down of sub-clause (d) of clause (2) of Article 323-A and section 28 of the Act, to the extent of excluding the jurisdiction of the High Courts, a vacuum was created which the Supreme Court by the process of judicial legislation intended to fill up. The High Courts were conferred the jurisdiction to exercise powers of judicial review and superintendence under Articles 226/227 by reason of such authoritative pronouncement in **L. Chandra Kumar** (supra).

15. To the less discerning and uninitiated, the High Courts can still be directly approached by Central/State Government employees and other notified employees, regard being had to the decision in **L. Chandra Kumar** (supra), if at all the proceedings initiated before the Court touching "service matters" includes a challenge being laid to any provision of the Act which, the Tribunal being a creature of the Act, would be unable to examine. That apart, notwithstanding what has been said in **L. Chandra Kumar** (supra), an employee could also approach the High Court directly in two other situations: first, in a situation like the one in **T.K. Rangarajan** (supra) and secondly, if the Administrative Tribunals are non-functional for any reason whatsoever. However, that is not the case in this State where the benches of the MAT ~ at Mumbai, Nagpur and Aurangabad ~ are functional with retired Judges of this Court at the helm of such benches.

16. Having regard to such scheme of things, which could be pursued by an aggrieved employee, we are also of the firm view that the law laid down in **Whirlpool Corporation vs. Registrar of Trade Marks**¹² (carving out exceptions on the fulfillment whereof a writ petition could be directly entertained notwithstanding that the litigant has not availed the alternative remedy made available by a statute) cannot be applied to proceedings seeking to invoke the writ jurisdiction of the High Court for relief when the subject matter of the action is covered by “service matters” as defined in section 3(q) of the Act.

17. Strong reliance has been placed by Mr. Deshmukh on the decision of the Supreme Court in **Magadh Sugar & Energy** (supra). There was indeed a statutory remedy available to the appellant under the Bihar Electricity Duty Act, 1948, which could have been pursued by it. The Division Bench of the Patna High Court declined to entertain the writ petition of the appellant on the ground that the dispute between the parties is factual in nature and is suitable for adjudication in terms of the available statutory remedy. However, the Court felt that without delving into any factual dispute, there could have been a determination of the questions of law upon a comprehensive reading of the Bihar Electricity Act and hence, the writ petition was restored to the file of the High Court for fresh determination. The ratio of such decision cannot be applied in the present case having regard to the ratio of the decision in **L. Chandra Kumar** (supra), succinctly captured in **Rajeev Kumar** (supra) in the following words:

¹² (1998) 8 SCC 1

"11. On a proper reading of the abovequoted two sentences, it is clear:

(a) The tribunals will function as the *only* court of first instance in respect of the areas of law for which they have been constituted.

(b) Even where any challenge is made to the vires of legislation, excepting the legislation under which tribunal has been set up, in such cases also, litigants will not be able to directly approach the High Court 'overlooking the jurisdiction of the tribunal'."

18. Unhesitatingly therefore, we record that the decision in **Magadh Sugar & Energy** (supra) does not assist the case of the petitioners.

19. The decision in **Bal Krishna Agarwal** (supra) held that the facts therein were not such that the appellant could be non-suited on the ground of non-exhaustion of the statutory remedy available under section 68 of the Uttar Pradesh State Universities Act, 1973. We have failed to find the materiality of such decision in the facts and circumstances that are before us.

20. For the reasons, as above, we hold that the decision in **Sanjay** (supra) does not lay down correct law. We are conscious that the decision in **Sanjay** (supra) has been rendered by a coordinate bench of this Court and in keeping with judicial decorum, discipline and comity, the matter ought to be referred to a larger bench for a decision; however, we have also found that the coordinate bench in **Sanjay** (supra) did not have the benefit of looking into the decision in **Vijay Ghogare** (supra) which, in turn, was rendered looking into other decisions of the Supreme Court. The decision in **Rajeev Kumar** (supra) too was not placed before the coordinate

bench for consideration. Since we are inclined to accept the reasoning of the coordinate bench in **Vijay Ghogare** (supra), we see no need to make a reference to a larger bench.

21. Insofar as the decision in **Rajendra Prasad Sharma** (supra) is concerned, the coordinate bench of the Delhi High Court also did not have the benefit of considering the decision in **Rajeev Kumar** (supra). It proceeded to decide a writ appeal based on its own appreciation of the decision in **T. K. Rangarajan** (supra). We need not remark as to whether the bench was right or wrong in its appreciation of the said decision. Suffice it to note, the decision in **Rajendra Prasad Sharma** (supra) is not an original decision but was rendered while hearing an intra-court appeal and in course of such appellate proceedings, the considerations are not quite the same as deciding a writ petition. However, the perception of the bench that the remedy available under section 14 of the Act is an alternative remedy to the writ remedy does not commend to us to be the correct view for reasons assigned above.

22. Now, we need to come back to **Kiran Singh** (supra) and say why it is relevant for the present purpose. In our considered opinion, a decision rendered by the High Court on a challenge of the present nature (which is covered by the provisions of the Act and MAT being the forum required to be approached for relief) would be a nullity in view of the decision in **Kiran Singh** (supra) read with **L. Chandra Kumar** (supra). Knowing and understanding what the law is, straining ourselves to look into the merits of the challenge and

rendering a decision which we know would be a nullity should not at all be attempted.

23. We ought to deal with one other side argument of Mr. Deshmukh before recording our conclusion. He has submitted that since the GRs under challenge in this batch of writ petitions are also under challenge in a separate batch of writ petitions concerning recruitment of engineers in the Maharashtra State Electricity Distribution Company Ltd. (hereafter "MSEDCL", for short), the MAT has no jurisdiction to try such writ petitions and the same would be required to be heard and decided on merits by this Court. However, driving one set of petitioners to move the MAT while allowing another set of petitioners to have their claim decided by the High Court could lead to divergent opinions being rendered. He, therefore, submits that it is desirable that this Court hears all the writ petitions analogously.

24. What Mr. Deshmukh says about pendency of other writ petitions is correct but his anxiety is based on assumptions; hence, we find no reason to accept his submission. If the decision on the claim of the petitioners aspiring for appointment in the MSEDCL is decided earlier in point of time to the decision being given by the MAT, this Court's decision would be binding on such tribunal; on the contrary, if the MAT decides the petitioners' application(s) earlier, this Court would have the benefit of such decision and thereafter decide whether to confirm or reverse the same based on the Court's understanding of the legal issues. Therefore, the question of any divergent opinion being rendered and/or the same having

the effect of prejudicing the result of the other writ petitions is too remote to call for any consideration now.

25. For the reasons aforesaid, all these writ petitions must fail on the ground of lack of jurisdiction of this Court to try the same. The writ petitions are disposed of, granting liberty to the petitioners to approach the MAT in accordance with law. Since these writ petitions have been pending on the file of this Court for quite some time, we are certain that if the MAT is approached, it will bear in mind the provisions of section 14 of the Limitation Act, 1963. Also, it shall proceed to decide the issues uninfluenced by the refusal of the Court to entertain the writ petitions. All contentions on merits are left open. No costs.

26. In view of the above, all pending interim applications do not survive and stand disposed of as such.

27. Mr. Deshmukh has, at this stage, prayed for an order on the MPSC not to proceed further with the selection process. Since we have found the writ petitions not to be maintainable, question of passing such restraining order does not also arise in view of the decision of the Supreme Court in **State of Orissa vs. Madan Gopal Rungta**¹³. The prayer is, therefore, refused. However, we record the submission of Mr. Kulkarni that for two weeks no action adverse to the petitioners' interest shall be taken.

28. Finally, Mr. Deshmukh has prayed that the MAT may be directed to dispose of the applications filed before it expeditiously. Since the petitioners are yet to approach the

¹³ AIR 1952 SC 12

MAT, any direction as prayed is not called for at this stage. However, we have no doubt in our mind that the MAT, if approached, will proceed to give a decision in accordance with law as expeditiously as possible, subject to its convenience.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)

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