

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

WRIT PETITION NO. 967 OF 2021

Shakila Ibrahim Pathan	}	Petitioner
Versus		
Mumtaz Ibrahim Pathan and Ors.	} }	Respondents

Mr. Samir A. Kumbhakoni for the petitioner.

Ms. R. A. Salunkhe, AGP for respondent no.1 (State).

Mr. Rahul B. Vijaymane for respondent no.2.

Ms. Priyanka Gaonkar i/b. Mr. Arun Sapkal & Co. for respondent no.3.

Ms. Neeta Masurkar with Ms. Nieyaati V. Masurkar for respondent no.4.

**CORAM: DIPANKAR DATTA, CJ. &
MADHAV J. JAMDAR, J.**

DATE: SEPTEMBER 23, 2022

P.C.:

1. Ibrahim Pathan, since deceased (hereafter "Ibrahim", for short) was serving as a Senior Telecom Officer in the Telecom Department of Bharat Sanchar Nigam Limited (hereafter, "BSNL", for short), the respondent no. 3. Ibrahim had married the petitioner on 16th February 1998 at Solapur. Marriage certificate was issued by the Government Gazetted Kazi, Solapur, which is at Exhibit 'A'.

2. It is not in dispute that differences between Ibrahim and the petitioner led to filing of an application by the petitioner under section 125 of the Criminal Procedure Code, 1973

before the Judicial Magistrate, First Class, 7th Court at Solapur. The application for maintenance succeeded before the Magistrate who, by an order dated 26th April 2002, had directed Ibrahim to pay Rs.1200/- per month to the petitioner as maintenance. Failure on the part of Ibrahim led to filing of an application for execution, which led to passing of an order dated 7th February 2003 by the Magistrate directing the employer of Ibrahim to attach 1/3rd of his salary.

3. It is claimed by the petitioner that to avoid payment of maintenance as directed by the Magistrate, Ibrahim had applied for voluntary retirement in the year 2005-2006. Ibrahim breathed his last on 4th May 2017.

4. It is also not in dispute that before the marriage between the petitioner and Ibrahim was solemnized, the latter had married the respondent no.2. On the death of Ibrahim, the respondent no. 2 filed an application before the Civil Judge, Senior Division, Solapur and obtained an heirship certificate. Pursuant to such certificate being granted, the respondent no. 2 claimed pension and was in receipt thereof.

5. According to the petitioner, such heirship certificate was obtained by the respondent no. 2 suppressing material facts from the Civil Judge as regards the petitioner's marriage with Ibrahim on 16th February 1998 as per Muslim law.

6. The petitioner had applied before the BSNL on 18th September 2017 claiming pension and other benefits. It appears from the averments in the writ petition that the respondent no. 2 and the petitioner filed a joint pursis in the proceedings before the Civil Judge and in terms thereof, a fresh heirship certificate was issued by the order dated 28th

October 2018. Thereby, it was certified that both the respondent no. 2 as well as the petitioner are recognized heirs of Ibrahim. It was agreed by and between the petitioner and the respondent no. 2 that they would share the pension and pensionary benefits equally as might accrue on the death of Ibrahim.

7. Armed with the heirship certificate, the petitioner approached BSNL with a representation dated 30th July 2020 for division and disbursement of family pension and equal share between the petitioner and the respondent no.2 as per rule 54(7)(a) of the Central Civil Services (Pension) Rules (hereafter "Pension Rules", for short). Such representation was considered, whereupon the respondent no. 4, the Accounts Officer of BSNL, by a communication dated 1st October 2020, informed the petitioner to the following effect:

"It is to intimate you that Late Shri I M Pathan has not mentioned your name as wife in the Form 3 (i.e. Details of Family) submitted by him along with pension papers which is to be furnished as per 54(12)(a)(i) & 54(12)(d)(i) & (ii) CCS Pension Rules.

It is also to mention that late Shri I M Pathan never accepted/intimated your name as legally wedded wife during his life period.

Grant of Family Pension as requirement under Rule 54 of CCS Pension Rule are not fulfilled.

As the family Pension can be authorized to the eligible Family members. The deceased pensioner mentioned details of family as Nil.

So your Family Pension Claim cannot be entertained."

8. Questioning the communication dated 1st October 2020, the petitioner instituted this writ petition on 10th November 2020 seeking twin relief: an order quashing the

communication dated 1st October 2020, with further direction upon the respondents 3 and 4 to grant pension and pensionary benefits to the petitioner as per the provisions of the Pension Rules.

9. By an order dated 25th January 2021, a coordinate Bench of this Court directed the parties to exchange their affidavits. An affidavit-in-reply of BSNL is on record, wherein no objection to the maintainability of the writ petition has been raised. However, the affidavit-in-reply filed on behalf of the respondent no. 4 raises a specific objection that the writ petition before this Court, at this stage, is not maintainable and that the remedy of the petitioner lies in pursuing her remedy before the Central Administrative Tribunal, Mumbai (hereafter "CAT", for short).

10. The point of maintainability of the writ petition was raised on the onset of hearing by Ms. Neeta Masurkar, learned advocate for the respondent no.4. She invited our attention to a notification issued under sub-section (2) of section 14 of the Administrative Tribunals Act, 1985 (hereafter "the 1985 Act", for short) which has specified that on and from 10th November 2008, the provisions of sub-section (3) of section 14 would apply to BSNL (at Sr. No. 154).

11. Mr. Kumbhakoni, learned advocate for the petitioner sought to counter the preliminary objection by placing before us the provisions contained in Article 323-A of the Constitution of India, the relevant provisions of the 1985 Act, the decision of a coordinate Bench of this Court in **Bashnurbi wd/o Sherkhan vs. Divisional Accounts Officer, M. G.**

South Central Railway, Secunderabad¹, the decision of a Single Judge of the Andhra Pradesh High Court in **SK. Mastan Bee vs. Union of India**² as well as the decision of the Supreme Court in **Dr. Duryodhan Sahu and Ors. Vs. Jitendra Kumar Mishra and Ors.**³ to support his contention that the writ petition is well-nigh maintainable before this Court. Referring to **Dr. Duryodhan Sahu** (supra), it was specifically argued by Mr. Kumbhakoni that no application under section 19 of the 1985 Act would lie before the CAT at the instance of a stranger.

12. Drawing from our judicial experience, we have noticed that applications under section 19 of the 1985 Act are entertained and tried by the Administrative Tribunals on a regular basis whenever they are approached by the spouse of a pensioner for family pension. We inquired of Ms. Masurkar and were informed that several original applications filed by applicants, who are widows of pensioners, seeking adjudication of their respective claims for family pension by the Tribunals have either been disposed of finally or are pending before the Tribunals. The decision in **Bashnurbi** (supra), therefore, seemed to us to be an exception.

13. Faced with a dilemma, we had requested Mr. Anil Anturkar, learned senior advocate to assist us as an *amicus curiae*.

14. Mr. Anturkar filed 2 (two) compilations. One of the compilations included a "Note", the decision in **Bashnurbi** (supra) and **SK. Mastan Bee** (supra) together with a

¹ 1992 (1) Mh. L. J. 14

² MANU/AP/1281/1999

³ (1998) 7 SCC 273

coordinate Bench decision of this Court in **Janbee vs. Union of India**⁴, the decision in **S. K. Mastan Bee vs. General Manager, South Central Railway and Anr.**⁵ [a decision arising out of **SK. Mastan Bee** (supra)] and the decision of a Division Bench of the Calcutta High Court in **Anjali Mukherjee vs. The Commissioner of Police and Ors.**⁶. The other compilation contained, *inter alia*, his proposition against entertainment of a writ petition by this Court without the petitioner pursuing her remedy before the CAT at the first instance.

15. Relying on the note, Mr. Anturkar contended that certain sections of the 1985 Act are required to be taken into consideration, viz. section 3(q) (definition of service matters), section 14 (Jurisdiction, Powers and Authority of the Central Administrative Tribunals), section 15 (Jurisdiction, Powers and Authority of the State Administrative Tribunals) and section 19 (Application to Tribunal). A bare reading of the note would suggest a view point favouring the petitioner.

16. Referring to the second compilation containing propositions, Mr. Anturkar made a deviation from the stand taken in his note earlier and contended that the Court may consider either view for the purpose of a decision. Left to him, he felt that the decision of the Calcutta High Court in **Anjali Mukherjee** (supra) lays down the correct law.

17. The 7 (seven) propositions advanced by Mr. Anturkar are quoted from his compilation, hereinbelow:

⁴ 1992 Lab IC 981

⁵ (2003) 1 SCC 184

⁶ MANU/WB/0329/2007

I

"1. The argument that the general principle that Civil Court's jurisdiction should be guarded meticulously and should not be easily ousted and the argument that this will apply with **more force** to the Constitutional Courts with plenary jurisdiction is ill founded, because that proposition will not apply, when the **intention of the legislature** as reflected in the Statement of Objects and Reasons clearly provides for **exclusion of the Courts Jurisdiction**, including that of High Court but excluding that of the Honourable Supreme Court and therefore, that interpretation which would advance **this** legislative object is required to be preferred.

II

2. Although the jurisdiction of the High Court under Article 226 is held to be a part of Basic Structure and therefore, cannot be exclude fully, either by legislative enactment like. Administrative Tribunal Act or by constitutionally (Amendment) Act by Article 323A(3) is inserted, it is submitted, that without touching the discretionary power of the High Court, in an appropriate case to entertain the matters covered by the Administrative Tribunal Act also, the legislative object as reflected in SOR cannot be completely disregarded and every attempt should be made, to achieve that object and not to guard the Court's Jurisdiction.

III

3. The aforesaid proposition would apply with **more force** because of the provision of Article 323-A(3) which provides for non obstante clause, which inter alia, includes Article 226.

It is submitted that the said provision of Article 323A(3) of the Constitution of India is declared unconstitutional by L. Chandra Kumar.

Therefore, the Statement of Objects and Reason even of the Constitutional amendment Act is also required to be given effect to while interpreting the definition of the word 'Service Matter'.

IV

4. Jurisdiction can be either "territorycentric" or it can be "valuationcentric" or it can be "subjectcentric".

It can never be "personcentric".

The argument made in the note is (sic, if) accepted, that the Government servant (sic, can) go to Tribunal but his widow cannot go to the Tribunal, although the **subject matter is the same**, will make the jurisdiction **"personcentric"** and not "mattercentric".

V

5. If the Tribunal has subjectmattercentric jurisdiction, then it does not die, with the person who could have invoked the original jurisdiction of the Tribunal.

Even after his death also the Tribunal will continue to have the jurisdiction and will not loose (sic, lose) its jurisdiction.

If the argument in the note is accepted it would result in an absurd situation that the original petition is filed by the Government servant for pension and is pending and after his demise the Tribunal will have **no jurisdiction** and the widow will have to start **afresh** before a **different** forum viz. the High Court.

VI

6. The Tribunal is equipped with the unison of judicial training through the legal member and the administrative acumen, through the administrative member.

The later member is absent in the High Court.

The administrative Tribunal is more equipped to deal with such type of problems.

If multiplicity of the forum, for the **same** subject matter, but depending upon who is the Petitioner, is upheld, it would resulted complete chaotic situation, where there will be contradictory findings by the High court and the Tribunal on the **same subject matter** or where the Tribunal withhold the progress of the cases, pending before it because of the pendency of the same issue, through the widow pending before the High Court, which would completely result in frustrating the

very aim and object of establishment of the Tribunal and making constitutional amendment.

VII

7. It may therefore, be held that although undoubtedly High Court has the plenary jurisdiction to entertain the service matter of the Government servant, filed by either themselves or by their legal heirs after their death, yet considering the object of Constitutional Amendment and the object of Administrative Tribunal Act, as reflected in the SORs, it may be held that petition may not be entertained by the High Court on account of self imposed restrictions and the parties should be relegated to the remedy of approaching the Tribunal."

(emphasis in original)

18. We have heard Mr. Kumbhakoni, Ms. Masurkar and Mr. Anturkar at some length.

19. It would be appropriate to start our discussion by taking a look at the Statements of Objects and Reasons (hereafter "SOR", for short) for introduction of the Constitution (Forty-second Amendment) Act, 1976. The SOR reads thus: -

STATEMENT OF OBJECTS AND REASONS

A Constitution to be living must be growing. If the pediments to the growth of the Constitution are not removed, the Constitution will suffer a virtual atrophy. The question of amending the Constitution for removing the difficulties which have arisen in achieving the objective of socio-economic revolution, which would end poverty and ignorance and disease and inequality of opportunity, has been engaging the active attention of Government and the public for some years now.

2. The democratic institutions provided in the Constitution are basically sound and the path for progress does not lie in denigrating any of these institutions. However, there could be no denial that these institutions have been subjected to considerable stresses and strains and that vested interests have been trying to promote their selfish ends to the great detriment of public good.

3. It is, therefore, proposed to amend the Constitution to spell out expressly the high ideals of socialism, secularism and the integrity of the nation, to make the directive principles more comprehensive and give them precedence over those fundamental rights which have been allowed to be relied upon to frustrate socio-economic reforms for implementing the directive principles. It is also proposed to specify the fundamental duties of the citizens and make special provisions for dealing with anti-national activities, whether by individuals or associations.

4. Parliament and the State Legislatures embody the will of the people and the essence of democracy is that the will of the people should prevail. Even though article 368 of the Constitution is clear and categorical with regard to the all inclusive nature of the amending power, it is considered necessary to put the matter beyond doubt. It is proposed to strengthen the presumption in favour of the constitutionality of legislation enacted by Parliament and State Legislatures by providing for a requirements (sic) as to the minimum number of Judges for determining questions as to the constitutionality of laws and for a special majority of not less than two-thirds for declaring any law to be constitutionally invalid. It is also proposed to take away the jurisdiction of High Courts with regard to determination of Constitutional validity of Central laws and confer exclusive jurisdiction in this behalf on the Supreme Court so as to avoid multiplicity of proceedings with regard to validity of the same Central law in different High Courts and the consequent possibility of the Central law being valid in one State and invalid in another State.

5. To reduce the mounting arrears in High Courts and to secure the speedy disposal of service matters, revenue matters and certain other matters of special importance in the context of the socio-economic development and progress, it is considered expedient to provide for administrative and other tribunals for dealing with such matters while preserving the jurisdiction of the Supreme Court in regard to such matters under article 136 of the Constitution. It is also necessary to make certain modifications in the writ jurisdiction of the High Courts under article 226.

6. It is proposed to avail of the present opportunity to make certain other amendments which have become necessary in the light of the working of the Constitution.

7. The various amendments proposed in the Bill have been explained in the notes on clauses.

8. The Bill seeks to achieve the above objects.

20. After Article 323-A was inserted in the Constitution enabling the Parliament to provide, by law, for the adjudication or trial by the Administrative Tribunals all disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts 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 owned or controlled by the Government, the 1985 Act was enacted by the Parliament. The 1985 Act, which received the assent of the President on 27th February 1985, intended to give effect to Article 323-A. We do not refer to the long title of the 1985 Act since the same is more or less similarly worded as the opening words of Article 323-A. While section 2 of the 1985 Act specifically excludes the applicability of the provisions of the 1985 Act to members/officers/servants/persons mentioned therein, clause (q) of section 3 defines service matters as follows: -

"3(q) 'service matters', in relation to a person, means all matters relating to the conditions of his service 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, as the case may be, of any corporation or society owned or controlled by the Government, as respects -

- (i) Remuneration (including allowances), pension and other retirement benefits;
- (ii) Tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
- (iii) Leave of any kind;
- (iv) Disciplinary matters; or
- (v) Any other matter whatsoever.”

21. Moving on to the aspect of jurisdiction of the Administrative Tribunals under the 1985 Act, what we find from section 19 is that the jurisdiction of an Administrative Tribunal may be invoked, subject to the other provisions thereof, by a person who is aggrieved by any order pertaining to any matter within the jurisdiction of the Administrative Tribunal, for the purpose of redressal of his grievance.

22. Since jurisdiction of the Administrative Tribunal is provided under section 14 of the 1985 Act, we consider it appropriate to reproduce such provision in its entirety hereinbelow:

“14. Jurisdiction, powers and authority of the Central Administrative Tribunal.- (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, 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.

Explanation.—For the removal of doubts, it is hereby declared that references to “Union” in this sub-section shall be construed as including references also to a Union territory.]

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations or societies owned or controlled by Government, not being a local or other authority or corporation or society controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations or societies.

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation or society, all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court) in relation to—

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation or society; and

(b) all service matters concerning a person [other than a person referred to in clause (a) or clause (b) of sub-section (1)] appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs.”

23. Since BSNL is an ‘other authority’, to which the provisions of the 1985 Act does apply w.e.f. 10th November 2008, as per notification dated 31st October 2008, it is sub-section (3) of section 14 that would be relevant for deciding the controversy before us on the aspect of maintainability.

24. For the purposes of the present case, what follows from a conjoint reading of sub-section (3) of section 14, sub-section (1) of section 19 and clause (q) of section 3 is that any dispute, *inter alia*, arising out of the conditions of service of an appointee in connection with the affairs of, *inter alia*, an ‘other authority’ within the territory of India or under the control of the Government of India, have to be instituted before the Administrative Tribunal by any person aggrieved. Particularly in regard to pension and other retirement

benefits, such grievance could either be with regard to rejection of a claim for pension, or non-payment of pension despite sanction or non-payment of appropriate amount of pension, or the like. If indeed there were a dispute between Ibrahim and his employer, i.e., BSNL, Ibrahim would have had to necessarily approach the CAT for relief. This legal position has not been disputed by Mr. Kumbhakoni. However, the situation does not change *qua* the petitioner merely because she was not an employee of BSNL and is only claiming family pension as per the Pension Rules. The claim for family pension has its origin in the service rendered by Ibrahim, whose one condition of service was undoubtedly pension having regard to the Pension Rules.

25. The Supreme Court, in its decisions in **State of M.P. vs. Shardul Singh**⁷ and **State of Punjab vs. Kailash Nath**⁸, has made the position as to what would constitute conditions of service too clear to require any further elaboration. Suffice it to note, 'pension' is also a condition of service of a Government servant. Once it becomes clear that the Administrative Tribunal's jurisdiction could be invoked by a person aggrieved with regard to any 'service matters' as defined in clause (q) of section 3 of the 1985 Act and in view of the jurisdiction conferred on the CAT to determine questions concerning 'service matters' in relation to the conditions of service of a person appointed to a service or a post in connection with the affairs of an 'other authority', coupled with the undeniable position that right of the

⁷ (1970) 1 SCC 108

⁸ (1989) 1 SCC 321

petitioner to claim family pension has its origin in the service rendered by Ibrahim under BSNL, the conclusion seems to be inescapable that Propositions IV and V advanced by Mr. Anturkar would merit acceptance, pushing the petitioner to pursue her remedy before the CAT at the first instance. This line of reasoning would be in conformity with the reasons for introduction of Article 323-A in the Constitution of India as well as the enactment of the 1985 Act. We, thus, share the view expressed by the Calcutta High Court in the decision in **Anjali Mukherjee** (supra).

26. We also agree with Mr. Anturkar that in regard to matters before the Administrative Tribunal, it is the subject-centric jurisdiction of the Administrative Tribunal that would be relevant and not the person-centric jurisdiction. It is an undeniable fact that conditions of service would necessarily pertain to a person in service but that would not make the jurisdiction person-centric. The Administrative Tribunal would assume jurisdiction only if the dispute brought before it pertains to any of the enumerated 'service matters' concerning the relevant posts and services and is at the instance of a person aggrieved. While deciding an original application before it, the Administrative Tribunal ought not to really decide a dispute brought before it bearing in mind who the original applicant is, except for the limited purpose that the original applicant, whoever he/she is, must necessarily satisfy the condition of having raised a dispute of the nature covered by section 3(q) read with section 14 of the 1985 Act. If this condition is not satisfied, the Administrative Tribunal would have no jurisdiction.

27. Evidently, the view that we propose to take is not in conformity with the view taken by the coordinate Bench in **Bashnurbi** (supra) and, therefore, propriety would demand reference of the issue of maintainability of this writ petition to a larger Bench. However, perusal of the decision in **Bashnurbi** (supra) would reveal the question that the coordinate Bench was precisely seized of. Paragraph 5 of the decision reads as follows:

“5. We are at the question of interpreting a statutory provision which is relied on as excluding the jurisdiction of a Court, of the High Court in this case. It is well settled that such provisions which seek to exclude the jurisdiction of Courts have to be subjected to closer scrutiny for finding out a clear exclusion. Even otherwise, on a literal interpretation on the definition of ‘service matters’ alluded to above, we are clear in our mind that it has to be linked with the person who is seeking relief. In the present case, it is not a service benefit of the widow that is sought to be enforced. Consequently, it is not a service matter of an employee, that forms the subject matter of the writ petition.”
(emphasis ours)

28. We put a specific question to Mr. Kumbhakoni as to whether the petitioner before us seeks to enforce a service benefit. The answer was in the affirmative. This being the case of the petitioner, it is clear that the decision in **Bashnurbi** (supra) is distinguishable.

29. In any event, the decision in **Bashnurbi** (supra) was rendered prior to the Constitution Bench decision in **L. Chandra Kumar vs. Union of India & Ors**⁹. At the time **Bashnurbi** (supra) was rendered, the jurisdiction of the High Courts to adjudicate service disputes of the nature covered by

⁹ (1997) 3 SCC 261

sections 14 and 15 of the 1985 Act read with section 3(q) thereof was completely excluded by Article 323-A of the Constitution as well as the other provisions in the 1985 Act. The decision in **L. Chandra Kumar** (supra) brought about a sea change in the law concerning the power of judicial review of the High Court under Articles 226 and 227. It was acknowledged in such decision that the jurisdiction conferred by such articles on the High Courts form part of the basic structure of the Constitution. After a decision is rendered by the Administrative Tribunal under the 1985 Act on any dispute enumerated in 'service matters', the party aggrieved by the order of the Administrative Tribunal may approach the High Court exercising jurisdiction over such Tribunal. However, a direct approach to this Court without exhausting the remedy before the Administrative Tribunal is not permissible as held by 2 (two) other coordinate Benches of this Court in **Vijay Ghogare & Ors. vs. State of Maharashtra & Ors**¹⁰ and **Gaurav Ganesh Das Daga & Ors. vs. Maharashtra Public Service Commission**¹¹.

30. The scheme of the 1985 Act read in the light of the SOR for introduction of Article 323-A in the Constitution would leave none in doubt that the jurisdiction of the Administrative Tribunals constituted under the 1985 Act can also be invoked by persons who are yet to be appointed and it is not restricted only to persons who have been appointed. What is required of the original applicant is to establish that the dispute pertains to any of the 'service matters' as defined in clause (q) of

¹⁰ 2013 SCC OnLine Bom 1764 : (2013) 4 Bom CR 724

¹¹ Writ Petition No. 2270 of 2021 decided on 4th March, 2022.

section 3 and that the claim has a rational nexus with the post and services of the nature referred to in section 14 read with clause (q) of section 3.

31. The decision in **Dr. Duryodhan Sahu** (supra) has no applicability in the present case. The Supreme Court in such decision was considering a question whether the Administrative Tribunal could entertain a litigation instituted in public interest. The question was answered in the negative. It is the process of answering the question that the Court held that any proceeding before the Administrative Tribunal at the instance of a stranger is not maintainable.

32. The petitioner is certainly not a stranger. If indeed Ibrahim in his lifetime had married the petitioner and she is in a position to prove it before the CAT, she ought to deserve appropriate relief in accordance with law.

33. SK. Mastan Bee (supra) was a decision of the Andhra Pradesh High Court on proceedings which were in the nature of a public interest litigation. The facts being entirely different, we have failed to comprehend the materiality of such decision to the facts of this case.

34. The appellate decision of the Supreme Court in **S. K. Mastan Bee** (supra) does not advance the cause of the petitioner. The question that we are seized of did not arise for decision there. Hence, such decision also does not come to the rescue of the petitioner.

35. We hold, on a conspectus of the text of the relevant statute and the judicial authorities relevant to the issue, that a claim for family pension has to be raised before the Administrative Tribunal at the first instance and not before the

High Court as an original proceeding, notwithstanding that the claimant himself/herself was never an employee of the organizations/institutions covered by the notification dated 31st October 2018.

36. For the reasons aforesaid, we uphold the preliminary objection to the maintainability of the writ petition before this Court, at this stage. The petitioner is free to explore her remedy before the CAT in accordance with law. The period spent in pursuing the writ remedy before this Court shall be excluded for the purpose of computing the period of limitation to approach the CAT under section 21 of the 1985 Act, 1963.

37. Since the petitioner is claiming a part of family pension that has accrued on the death of Ibrahim in terms of the Pension Rules, it is clarified that if she approaches the CAT availing the liberty granted by this Court within a month from date, we expect the CAT to endeavour to dispose of her claim in accordance with law as early as possible thereafter.

38. The writ petition stands dismissed with the aforesaid observations. No costs.

39. Needless to observe, all contentions on merits are left open.

40. Before parting, we express our sincere appreciation for the valuable assistance rendered by Mr. Anturkar within the short time given to him by us.

SALUNKE
J V

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by SALUNKE J V
Date: 2022.09.28
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(MADHAV J. JAMDAR, J.)

(CHIEF JUSTICE)