

05.12.2023.
Court No.13
Item No. 10
ap

W.P.A. No. 7540 of 2023

**Sangita Panja & Ors.
Versus
The State of West Bengal & Ors.**

Mr. Amritam Mandal,
Ms. Ananya Chakraborty,
Ms. Shipra Naskar

...For the petitioners.

Mr. Tapan Kumar Mukherjee, Id. AGP,
Mr. Pinaki Dhole,
Mr. Somnath Naskar.

...For the State.

1. The petitioners are aggrieved by cancellation of a panel dated 1st March, 2023 in which he featured for recruitment to the post of Pharmacist Grade-III with the West Bengal Health Recruitment Board.

2. It is submitted that a fresh panel was published deleting the petitioners' names and no reasons have been assigned by the respondents for cancellation of the panel in question.

3. Mr. Mukherjee, Counsel for the State, has raised the question of entertainability of the writ petition in view of the availability of West Bengal State Administrative Tribunal constituted under the Administrative Tribunal Act, 1985.

4. This Court is of the view that notwithstanding the strenuous and earnest arguments made by the Counsel for the petitioner and in view of the fact that the service in question is directly under the State,

such service would be covered within the meaning of Section 15(1)(a) of the Administrative Tribunal Act, 1985.

5. In view of the dicta of the Hon'ble Supreme Court of India in the case of **L. Chandrakumar – Vs. – Union of India & Ors.** reported in **(1997) 3 SCC 261**, particularly Paragraph 99 thereof, the petitioners must approach the Administrative Tribunal first, and thereafter, if aggrieved by the orders of the Tribunal, may approach the High Court under Articles 226/227 of the Constitution of India. 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.

6. It is made clear that this Court has not entered into the merits of the claim of the petitioners in any way.

7. With the aforesaid observations, the instant writ petition is disposed of.

8. There will be no order as to costs.

9. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)