

01.02.2023
DL-17
(PP)
Ct.21

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 14893 of 2022

Debi Chakraborty
Vs.
State of West Bengal & Ors.

Mr. Abhijit Chakraborti (2)
....for the petitioner.

Mr. Tapan Kumar Mukherjee, AGP,
Ms. Debdooti Dutta
....for the State.

The petitioner prays for regularisation of her service as a Group – ‘D’ employee and for release of all the service benefits in her favour. The petitioner is now working as a Cook in the Women’s Polytechnic Hostel, Hastings under Government of West Bengal.

A point of maintainability of the writ petition has been urged by Mr. Mukherjee, learned Additional Government Pleader on the ground that the writ petition is not maintainable since the Technical education and training college is directly under the control of the State of West Bengal. He submitted that under Section 15 of the Administrative Tribunals Act, 1985 all the matters of recruitments and matters concerning recruitment to any civil service of the State or to any civil post under the State has to be considered by the tribunal constituted for the said purpose.

Mr. Chakraborty, learned counsel, appearing on behalf of the petitioner submits that in cases of violation of natural justice or arbitrariness, writ is maintainable. He refers to a judgment reported in AIR 2008 SC 2553 (**Rajasthan S.R.T.C. & Ors. Vs. Mohar Singh**). He also refers to a judgment reported in AIR 2012 SC 2915 (**M/s. Michigan Rubber (India) Ltd. Vs. State of Karnataka & Ors.**). Further he refers to a judgment reported in AIR 1996 SC 1 (**State of Maharashtra Vs. Manubhai Pragaji Vashi & Ors.**)

In support of his contention that the writ petition is not maintainable, Mr. Mukherjee, learned Additional Government Pleader cited the decision of the Apex Court reported in (2010) 4 SCC 554 (**Rajeev Kumar & Anr. Vs. Hemraj Singh Chauhan**)

Having considered the rival submissions of the parties and the materials placed on record, this Court is of the view that the decision of **Mohar Singh** (supra) is not applicable to the present case since it has been held by the Apex Court in the said case that a civil court may have limited jurisdiction in service matters and it could not be said that the Civil Court had no jurisdiction at all to entertain the service matters in a suit. A suit Court may not be entitled to sit in appeal over an order passed in a disciplinary proceeding or the quantum of punishment, but the

civil court would have the jurisdiction to entertain a suit for the protection of the right of a plaintiff that is claimed in terms of a common law or under a statute other than the one which created a new right for the first time when a forum has also been created for enforcing the said right.

It is beyond doubt that under the 1985 Act, a forum has been created for enforcing the rights of a State Government employee at the first instance. Therefore, the aforesaid case does not come to the aid of the petitioner.

The decision in **Michigan Rubber (India) Ltd.** (supra) does not come to the aid of the writ petitioner since the same was passed on the issue of enforcement of contractual rights of the petitioner. It has been held in that decision that an element of fair play was required to be exercised when Government is functioning in the administrative sphere or quasi-administrative sphere. The decision of the Government has to be free from arbitrariness and not affected by bias or actuated by mala fides.

The Apex Court dismissed the appeal on the ground that the two conditions incorporated in the pre-qualification criteria of a tender floated by Karnataka State road Transport Corporation (KSRTC) were neither discriminatory/unreasonable nor

against public interest. The writ Court does not usually interfere with a policy decision of awarding a contract by the State.

There is no dispute with regard to the proposition that even in the contractual field the Government must act fairly and without being actuated by mala fides or being affected by bias. The conduct of the Government should be free from arbitrariness. The said decision does not lay down the proposition that even if a forum/tribunal has been constituted for adjudicating certain grievances of the citizens still the writ Court can adjudicate the same at the first instance.

The decision of **Manubhai Pragaji Vashi** (supra) also does not come within the scope of dispute in the present case. In that case it was held that non-extension of grant-in-aid by the State to non-Government law colleges and extension of the same to non-Government colleges with Arts, Science, Commerce, Engineering and Medicine was patently discriminatory. The State could not mete out differential treatment to different non-Government colleges. Without proper justification or reason the private law colleges were singled out for a hostile discriminatory treatment. The said case also cannot be held to be an authority for the proposition that a

writ is maintainable at the first instance when a different forum/tribunal has been constituted by a statute for adjudication of disputes relating to the same subject matter.

This Court relies on the decision in **L. Chandra Kumar Vs. Union of India & Ors.** reported in (1997) 3 SCC 261 for coming to the finding that the tribunals will continue to act as the *only courts of first instance* in respect of areas of law for which they have been constituted. The Constitution Bench in **L. Chandra Kumar** (supra) decided that it will not be open for the litigants to directly approach the High Courts even in cases where they question the vires of the statutory legislation (except where the legislation which created a particular tribunal is challenged) by overlooking the jurisdiction of the tribunal concerned. The same view has been reiterated in **Rajeev Kumar** (supra) and is accepted by this Court.

In the light of the discussions above, this Court has no hesitation to hold that the tribunal constituted under the Administrative Tribunals Act 1985 should act as the court of first instance.

Therefore, **WPA 14893 of 2022** is **dismissed** as not maintainable.

However, it is made clear that this Court has not gone into the merits of the instant case and the

parties will be at liberty to approach the appropriate forum, if so advised.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

(Lapita Banerji, J.)