

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE PRASENJIT BISWAS

WPST 267 of 2012
With
CAN 2 of 2023

West Bengal Veterinary Alumni Association & Ors.
Vs.
The State of West Bengal & Ors.

Appearance:

For the Petitioner	:	Mr. Sandip Ghose, Adv.
		Mr. Jaya Brata Ghose, Adv.
		Mr. Debayan Ghosh, Adv.
For the Respondent	:	Mr. Sandip Kumar Bhattacharyya, Adv.
		Mr. Subrata Das, Adv.

Judgment On : **10.05.2023**

Prasenjit Biswas, J. :

The moot question involved in this application is whether a non-party to a Tribunal proceeding can straightaway approach the High Court seeking addition in a writ proceeding without exhausting their remedy provided under the Administrative Tribunal Act.

Learned Counsel for the applicants made earnest attempt to submit that the tenet of the order is such that it adversely affects their rights and as they are the aggrieved persons, they would be treated as necessary and proper party in the instant proceeding. Since the applicants are the members of the Writ Petitioner No. 1 and all have retired on superannuation, they have got a common interest with the writ petitioners of the present proceeding.

The tribunal order dated February 27, 2012 passed in O.A. No. 53 of 2010 has been challenged by the writ petitioners in the instant proceeding. Before hand, the present writ petitioners also preferred an application before the Tribunal being O.A. No. 8363 of 1998 with prayers for giving direction upon the respondents to grant revised scale of pay corresponding to Scale No. 16 and non-practicing allowances at par with the state Allopathic Medical Officers but it was rejected by the tribunal by passing an order dated 11th May, 1999 on the grounds that the self-same issue had already been decided by the Tribunal on 20th November, 1998 in connection with T.A. No. 506 of 1996.

The writ petitioners preferred two applications before this Court being W.P.S.T. No. 52 of 1999 and W.P.S.T No. 271 of 1999 challenging the tribunal orders dated 20th November, 1998 passed in T.A. No. 506 of 1996 and 11th May, 1999 passed in O.A. No. 8363 of 1998. The Tribunal disposed of those two writ petitions by passing a common order dated October 8, 2002 inter alia holding that the writ petitioners already got the scale of benefit of revised scale No. 16 and non-practicing allowances at par with the Allopathic, Homeopathic and Ayurvedic Medical Officers of the State w.e.f 01.01.1986

notionally and actually from 01.01.1998. The matter travelled to the Apex Court and by order dated 12th November, 2009 the Supreme Court set aside the order passed by this court.

That in terms of the order of the Supreme Court the writ petitioners challenged the impugned notification dated October 17, 2000 before the tribunal being O.A. No. 53 of 2010 which was dismissed by the Tribunal by passing the impugned order dated 27th February, 2012. The writ petitioners challenged the said Tribunal order by preferring this instant writ application before this court.

An objection has been taken by Mr. Sandip Kumar Bhattacharyya appearing for the respondent No. 4 by submitting that the persons seeking their addition for the first time in instant writ petition have no locus to maintain the said application.

In this junction the effect of pronouncement of Hon'ble Apex Court in ***Rajeev Kumar and Anr. vs. Hemraj Singh Chauhan*** reported in **(2010) 4 SCC 554** needs to be considered wherein the identical issue cropped up and the Apex Court held that allowing an application for impleadment in a writ proceeding filed before the High Court which originated from the order of the Administrative Tribunal is impermissible. We say this because, in Rajeev Kumar categoric statement of the Apex Court is that-

“The approach made to the High Court for the first time by these appellants in respect of their service disputes over which CAT has jurisdiction, is not legally sustainable.” It was also held that the

Division Bench of the High Court fell into an error by allowing to treat the High Court as a court of first instance in respect of their service disputes for adjudication for which CAT has been constituted.

In Rajeev Kumar's case (*supra*), the Supreme Court, after quoting the statements made in paragraphs 93 and 99 of the judgment in Chandra Kumar's case (*supra*), culled out the ratio of the decision in Chandra Kumar's case in the following words:-

“11. On a proper reading of the above quoted two sentences, it is clear that :

(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.”

After making aforesaid pronouncement, the Supreme Court made the following observations:-

“13. In view of such repeated and authoritative pronouncement by the Constitution Bench of this Court, the approach made to the High Court for the first time by these appellants in respect of their service disputes over which CAT

has jurisdiction, is not legally sustainable. The Division Bench of the High Court, with great respect, fell into an error by allowing the appellants to treat the High Court as a court of first instance in respect of their service disputes for adjudication of which CAT has been constituted.”

In case of Rajeev Kumar (*supra*) the Supreme Court made it clear that in view of law laid down by the Constitution Bench in L. Chandra Kumar (*supra*), the approach of the High Court treating itself as the court of first instance overlooking the jurisdiction of the tribunal was unacceptable.

It would be apposite and profitable to quote the relevant observations from the judgment rendered by the Apex Court in Rajeev Kumar (*supra*) which runs thus:

*“14. The grievances of the appellants in this appeal are that they were not made parties in proceedings before the Tribunal. But in the impleadment application filed before the High Court it was not averred by them that they were not aware of the pendency of the proceeding before the Tribunal. Rather from the averments made in the impleadment petition it appears that they were aware of the pendency of the proceedings before the Tribunal. It was therefore, open for them to approach the Tribunal with their grievances. Not having done so, they cannot, in view of the clear law laid down by the Constitution Bench of this Court in Chandra Kumar (*supra*), approach the High Court and treat it as the Court of first instance in respect of their*

grievances by 'overlooking the jurisdiction of the Tribunal'. The C.A.T. also has the jurisdiction of Review under Rule 17 of CAT (Procedure) Rules, 1987. So, it cannot be said that the appellants were without any remedy.

15. As the appellants cannot approach the High Court by treating it as a Court of first instance, their Special Leave Petition before this Court is also incompetent and not maintainable.”

Having carefully gone through the decisions of the Supreme Court in L. Chandra Kumar (*supra*) as well as Rajeev Kumar (*supra*) we are of the view that this Court will not exercise the jurisdiction to entertain a petition as a Court of first instance where Administrative Tribunal has been conferred such jurisdiction under the provisions of the Administrative Tribunals Act, 1985 enacted in exercise of the powers under Article 323A of the Constitution.

We are, therefore of the view that the legal position as enunciated in Rajeev Kumar directly applies as the precedent to the case in hand. For the aforesaid reasons, we refuse to examine the merits or demerits of the contentions raised in this petition and leave the present applicants to seek remedies as otherwise available in accordance with law.

In view of the law as expounded in the above noted decision we are of the view that the applicants of the instant application cannot be permitted to intervene in the instant proceeding having stranger to the Tribunal proceeding and therefore the application being **CAN 2 of 2023** filed in **W.P.S.T. 267 of 2012** is hereby dismissed.

No order as to costs.

Urgent Photostat certified copies of this order, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)