



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10822 OF 2023

Dr. Sanghamitra K. Phule @
Sanghamitra M. Gawde .. Petitioner.
v/s.
The State of Maharashtra & Others .. Respondents.

Mr. Pandit Kasar, for the Petitioner.
Ms. A. A. Purav, AGP, for Respondent Nos.1 to 4.
Mr. Om M. Lonkar, for Respondent No.5.

CORAM: SUNIL B. SHUKRE &
FIRDOSH P. POONIWALLA, JJ.
DATE : 31st AUGUST, 2023.

PC:-

The learned Counsel for Respondent No.5 and learned AGP for Respondent No.1-State, both have taken preliminary objections to the maintainability of this Petition relying upon the provisions of Section 15 of the Administrative Tribunal Act, 1985 and the judgment of the Apex Court in the case of *L. Chandra Kumar v/s. Union of India*, reported in (1997) 3 SCC 261..

2 The learned Counsel for the Petitioner submits that if at all this Court decides to relegate the Petitioner to the alternate remedy, the interim protection may be granted to the Petitioner at-least for three days and for this purpose, he seeks leave of the Court to narrate the facts of the case.

3 About the preliminary objection, we find that there is a substance in the submission of the learned AGP and the learned Counsel for Respondent No.5. Section 15 (i) of the Administrative Tribunals Act, 1985 is very clear and it lays down that administrative tribunal has the power to deal with the cases, which have been filed in relation to recruitment, and matters concerning recruitment, to any civil service of the State or any civil post under the State. The dispute involved in this Petition relates to recruitment and matter concerning the recruitment to civil post under the State and, therefore, the Maharashtra Administrative Tribunal would be the forum of the first instance for dealing with the said dispute.

4 In the case of *L. Chandra Kumar* (supra), the Apex Court has held that (paragraph 93) even though the High Court in exercise of its extra ordinary jurisdiction has power under Article 226 of the Constitution of India to deal with such kind of disputes, such jurisdiction should ordinarily be not exercised as if it is a Court of first instance and in such a case, the Administrative Tribunal for the State would be the Court of first instance in respect of the areas of law, for which, it has been constituted. The Apex Court has further held that in such cases, it will not be open for the litigants to directly approach the High Courts even in cases where the vires of a statutory legislation is challenged except where the legislation which creates particular Tribunal, is challenged. The observations of the Apex Court made in this regard are reproduced for the sake of convenience, as below:-

“93:- Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers

of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislation and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the High Court concerned may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. 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.”

5 Thus, the dispute involved in this Petition being the one relating to recruitment and which also concerns the matter of recruitment to a civil post under the State, the law laid down by the Apex Court in the case of **L. Chandra Kumar** (supra) would be squarely applicable to this case and so this Petition cannot be entertained by us directly.

6 As regards the submission that this Court should show some indulgence to the Petitioner in granting protection for a limited period of time, we must say that even this would not be permissible for this Court to do so as the Apex Court has held that it would not be open for the litigants to directly approach the High Court and the prayer is, therefore, rejected.

7 Petition stands dismissed as not maintainable before this Court, as a Court of first instance, with liberty to the Petitioner to approach alternate forum.

8 All questions are kept open.

9 It is made clear that this Court has not observed anything on the merits of the matter.

(FIRDOSH P. POONIWALLA ,J.)

(SUNIL B. SHUKRE,J.)