



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 21st August, 2023**

+ **W.P.(C) 8146/2023**

DEEPAK & ORS.

..... Petitioners

Through: **Ms. Shradha Adhikari and Ms. Shreya
Kukreti, Advocates**

versus

DELHI SUBORDINATE SERVICES SELECTION BOARD &

ANR.

..... Respondents

Through: **Ms. Laavanya Kaushik, Mr. Nitesh
Kumar Singh, Ms. Tania Ahlawat,
Ms. Palak Rohmetra and Ms. Aliza
Alam, Advocates for Mrs. Avnish
Ahlawat, SC for DSSSB
Mr. Harsh Singhal, Advocate for R-2**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

CM APPL. 42763/2023 (Delay in filing short affidavit)

1. The instant application under Section 151 of the Code of Civil Procedure, 1908 has been filed on behalf of the respondent-DSSSB/applicant seeking condonation of delay in filing short affidavit.
2. For the sufficient cause being shown in the application, the same is allowed and the delay of 7 days, in filing the short affidavit on behalf of the



respondent, is condoned. The short affidavit filed on behalf of the respondent-applicant be take on record.

3. Accordingly, the application stands disposed of.

W.P.(C) 8146/2023

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of the petitioners seeking the following reliefs:

“(i) issue an appropriate writ, order or direction thereby directing the respondent No.1/DSSSB to issue an advertisement inviting applications for appointment on the post of Assistant Public Health Inspector (APHI) in MCD in terms of the requisitions sent by the MCD to the DSSSB;

(ii) issue an appropriate writ, order or direction thereby directing the respondent No.2/MCD to fill all the unfilled vacancies of Assistant Public Health Inspector (APHI) through regular/permanent employees;

(iii) allow the present writ petition with costs in favor of the petitioners; and

(iv) pass any such other or further orders as this Hon'ble Court may deem fit and proper in the interest of justice and in favor of the petitioner”

2. The facts that lead to filing of the instant petition are being recapitulated below:

1. The petitioners are having the qualification of Sanitary Inspectors and are seeking appointment to the post of Assistant Public Health Inspector (hereinafter “APHI”) in the Municipal Corporation of Delhi (hereinafter “MCD”).
2. The petitioners filed various RTI Applications to seek details regarding the vacancies in the MCD and if any



advertisement has been issued by the DSSB. In response to the said applications, it was stated that at present there are 81 posts lying vacant in the MCD and no advertisement has been issued since the year 2014.

3. In pursuance to the said replies, the petitioners made numerous representations to the respondents in July 2022, but no decision has been taken by the respondents. Thereafter, the petitioners sent a legal notice dated 17th May 2023, to the MCD. In their representations, the petitioners had requested the DSSB to issue an advertisement for inviting applications for appointment to the above said posts. However, no response was received from the DSSB.
4. Aggrieved by the said inaction on the part of the DSSB in not issuing advertisement for filling the vacant posts of APhi, the petitioners have approached this Court by way of the instant writ petition.

3. Learned counsel appearing on behalf of the petitioners submitted that the petitioners possess the requisite qualification to perform the duties and responsibilities of APhi effectively and the conduct of the DSSSB in not issuing the advertisement to fill the vacant posts is unjustified and against the settled principles of law.

4. It is submitted that at present, out of the 128 sanctioned posts of APhi, there are 81 posts lying vacant with the MCD. Despite the huge number of vacant posts and also an acute shortage of personnel, the DSSB



has been adamant in not issuing an advertisement to fill the said vacant posts.

5. It is submitted that in pursuance to the said vacancies, the MCD sent repeated requests to the DSSSB on 24th June 2021, 31st March 2022, and 12th August 2022, but no advertisement for such appointment has been issued by the DSSSB since the year 2014.

6. It is also submitted that the MCD is in dire need of personnel, required to act upon the duties of APhi which is necessary for better discharge of functions of the MCD, still there has been no action on the part of the respondent.

7. It is further submitted that the petitioners are at the verge of exceeding the required age limit of 27 years for appointment to the post of APhi, as prescribed under the Recruitment Rules and the delay on the part of DSSSB in not issuing any advertisement for inviting the applications for appointment to the post of APhi is causing grave prejudice to the petitioners.

8. Therefore, in view of the foregoing submissions, the petitioners seek that this Court may direct the DSSSB to issue an advertisement, thereby, inviting the applications for appointment to the post of APhi in MCD and hence, allow the instant petition.

9. *Per contra*, the learned counsel appearing on behalf of the respondents vehemently opposed the present writ petition and averments made by the petitioners during the course of the arguments.

10. It is submitted that the instant petition is not maintainable in view of Section 14 of the Administrative Tribunals Act, 1985 (hereinafter “Act,



1985”). It is submitted that as per Section 14 of the Act, 1985, Central Administrative Tribunal (hereinafter “CAT”) is the Court of ‘first instance’ to adjudicate upon the service matters concerned with the affairs of State or any local authority.

11. It is submitted that the same is a statutory requirement for any person having grievances in regard to the service matters, to first approach the CAT, which is the competent authority to adjudicate upon such matters.

12. It is further submitted that the petitioners have not exhausted the alternative remedy that exists under the Act, 1985, and in view of the same, the instant petition is liable to be dismissed on the ground of non-maintainability.

13. It, is therefore, submitted that this petition may be dismissed at the threshold being not-maintainable.

14. Heard the learned counsel for the parties and perused the records.

15. It is the case of the petitioners that despite their being sanctioned posts of Aphi lying vacant in the MCD, the DSSB has not issued any advertisement for appointment to the said posts since the year 2014. It has been contended that there are 81 vacant posts in the MCD as per the response to an RTI Application, filed by one of the petitioners.

16. It has also been contended on behalf of the petitioners that they carry requisite qualifications to be appointed to the posts of Aphi in the MCD and in pursuance to the same, they made representations in July, 2022. However, the DSSB has not been inviting the applications for the said appointment. The respondent No. 1 in its rival submissions has submitted that the instant



petition is liable to be dismissed at the threshold as the same is not maintainable in view of Section 14 of the Act, 1985. The said provision clearly states that the CAT is the court of ‘first instance’ to adjudicate upon the service matters concerning the State or any local authority i.e., the DSSB in the instant case.

17. A preliminary objection has been raised by the respondent No. 1 wherein it is observed that the present petition suffers from the issue of maintainability as the petitioners have not exhausted the statutory alternative remedy that lies with the CAT. It is observed that the petitioner’s grievances are against the DSSB, as allegedly no advertisement has been issued by the DSSB for inviting the applications for the above said appointments, despite there being vacant positions.

18. The respondent DSSB in support of its contentions has drawn the attention of this Court to sub-clause (iii) of clause (b) of sub-section (1) of Section 14 of the Act, 1985. The relevant provision is extracted below for reference:

“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—

(b) all service matters concerning—

(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;”

19. Upon a bare perusal of the language of the abovementioned provision it is evident that the Statute explicitly states the CAT shall exercise the jurisdiction, power and authority over all the service matters concerning the affairs of the State or any local authority i.e., the DSSB in the instant matter.

20. Since, this Court has perused the relevant provision of law regarding the maintainability, it is prudent to understand the basic jurisprudence behind the principle of alternative remedy. It is a settled law that a litigant cannot avoid approaching a Court or a Tribunal which is empowered to exercise the jurisdiction as being the Court of first instance and instead, use the constitutional remedy under Article 226 of the Constitution of India as an alternative, unless the relief before the former forum has been exhausted.

21. The High Court should be conscious of the fact that the powers conferred under Article 226 are wide but are required to be exercised only in extraordinary circumstances. The fundamental principle that the High Court should not entertain a petition under Article 226 if an effective alternative remedy is available to the aggrieved person, has been deliberated in a catena of judgments by the Hon’ble Supreme Court. The same was also observed in



a recent judgement passed by the Hon'ble Court in ***South Indian Bank Ltd. v. Naveen Mathew Philip, 2023 SCC OnLine SC 435.***

22. In the event a Court or a Tribunal which has been constituted under a Statute and is ascribed with the jurisdiction to entertain, and adjudicate upon such disputes, the said jurisdiction has to be exercised in precedence to the extraordinary jurisdiction of the High Court. This view has been supported by the Constitution Bench of the Hon'ble Supreme Court in the case of ***L. Chandra Kumar v. Union of India, (1997) 3 SCC 261.*** The relevant portion of the judgment has been reproduced here 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 legislations 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.

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.”

23. The Hon’ble Supreme Court in the above case observed that the Tribunals created pursuant to Article 323-A or under Article 323-B of Constitution of the India, are the competent authorities to hear and adjudicate matters entrusted upon them. The Tribunals would continue to act as Courts of ‘first instance’ in the areas of law for which they have been constituted by way of statutory provisions. The Hon’ble Court also observed that it will not be open to the litigants to approach the High Court by overlooking and ignoring the jurisdiction of the concerned Tribunal.

24. In the present case, the petitioner has challenged the inaction of the DSSSB in not issuing the advertisement to invite the applications for recruitment to the posts of APhi in the MCD.

25. The above stated principle has also been enunciated by the Division Bench of this Court in ***Yatendra Singh Meena v. Delhi Subordinate Services Selection Board***, 2013 SCC OnLine Del 155. In the said case, the Division Bench was of the view that the CAT is conferred with the jurisdiction to entertain disputes relating to the recruitment in MCD. Similarly, in the instant case, the petitioners have challenged the inaction of



the DSSB in not issuing advertisement for the recruitment to the posts of APHI in the MCD. Thus, the jurisdiction to entertain the present dispute lies with the CAT. The relevant portion of the afore-mentioned judgment is reproduced here below:

“7. We are unable to agree. Section 14(2) of the Act enables the Central Government to, by notification, apply the provisions of Sub-section 3 to local or other authorities within the territory of India or within the control of Government of India, not being a local or other authority owned by a State Government. It is not in dispute that both MCD as well as NDMC, qua recruitment to posts in which this lis is raised, were vide notification dated 1st December, 2008 issued in exercise of powers under Section 14(2) of the Act, included in the Schedule to the earlier notification dated 2.5.1986 as the authorities/organizations to which the provisions of the Act apply with effect from 15th December, 2008. No challenge was/is made in the writ petition or before us to the said notification. Section 14(3) of the Act confers the jurisdiction on the Tribunal to entertain disputes including those relating to recruitment, which before the date of the notifications were entertained by other Courts. Matters concerning recruitment to MCD & NDMC were earlier entertained by this Court and invoking which power the writ petition was filed. Thus, the jurisdiction to entertain disputes relating to recruitment in MCD and NDMC, is clearly of the Tribunal.”

26. In cases where the dispute raised has a question concerning infringement or enforcement of fundamental rights, the High Court has all the powers to entertain the writ, however, in the case of infringement of rights except the fundamental rights, the enforcement of such writ is discretionary. The thing that is to be considered



by the Court while using its discretion is the existence of any effective, efficacious, or alternative remedy for the relief.

27. The common rule regarding the application of the powers under Article 226 is that, if the question of facts is lying under the provision of any particular statute, then the said statute must provide the relief for the enforcement of such right in order to firmly apply the rule of alternative remedy. Under such circumstances where a remedy is available in the statute, the High Court may refuse such a writ petition. The said principle means that in the presence of an appropriate alternative remedy no other things must be done, except resorting to such remedy. The Hon'ble Supreme Court has aptly favored the application of the above said principle of exhaustion of alternative remedy through its various decisions, as noted in the foregoing paragraphs.

28. In view of the abovementioned judgments, this Court is of the considered view that Section 14 (1) (b) (iii) of the Act, 1985, explicitly states that the CAT shall exercise the jurisdiction, power and authority over the dispute of the petitioners which is concerned with the criteria of service matters prescribed in the said provision and hence, the CAT would act as a Court of first instance. Therefore, having regard to the nature of the controversy raised by the petitioners, it is held that their remedy lies in getting their alleged dispute settled by the CAT and the said jurisdiction of CAT cannot be overlooked.

29. This Court has perused the material on record and has made observations in regard to the facts of the instant matter and the preliminary



objections raised by the respondent w.r.t. the issue of non-maintainability. This Court, after considering all the facts and circumstances is of the view that due to the imposition of jurisdiction upon CAT, under Section 14(1) of the Act, 1985, there already exists an alternate remedy which the petitioners have failed to exercise and have approached this Court's extraordinary jurisdiction under Article 226. The CAT is empowered to act as the Court of 'first instance' to adjudication upon the disputes relating to service matters, such as the petitioners' case herein.

30. In view of the above discussions of facts and law, it is held that the instant petition is liable to be dismissed on the ground of not exhausting the alternative remedy and is thus, dismissed at the outset, without going into the merits.

31. It would, however, be open to the petitioners to approach the CAT for determination of their grievances on merit. It is made clear that this Court has not expressed any opinion on the merits of the instant case.

32. Accordingly, this petition is dismissed. Pending applications, if any, also stand dismissed.

33. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

AUGUST 21, 2023

gs/ryp

Click here to check corrigendum, if any