



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

% **Date of order : 24th July, 2023**

+ **W.P.(C) 9677/2023 & CM APPL. 37100/2023**

SH. RAM PAL Petitioner

Through: Appearance not given

versus

M.C.D & ANR. Respondents

Through: Mr. Manu Chaturvedi, Standing
Counsel (Through VC) for R-1/MCD

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

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

“a. Issue appropriate Writ/directions against the Respondent No. 1 & 2 to pay whole of the arrears of capitalized value of Pension amount of Rs. 7,31,561/- (Rupees Seven Lakhs Thirty One Thousands Five Hundred and Sixty One Only) w.e.f. 01.04.2020 with interest on the late payment.

b. Issue appropriate Writ/directions against the Respondent No. 1 & 2 to pay whole of the arrears of capitalized value of the whole value of Gratuity amount w.e.f. 01.04.2020 with interest on the late payment since 01.04.2020.

c. Issue appropriate Writ/directions against the Respondent No. 1 & 2 to pay whole of the arrears of leave encashment w.e.f.



13.03.1960 to 01.04.2020 with interest on the late payment since 01.04.2020.

d. Issue appropriate Writ/directions against the Respondent No. 1 & 2 to pay Group Insurance Scheme (GSLI) and to provide Medical Benefit Card whole of the arrears of leave encashment w.e.f. 13.03.1960 to 01.04.2020, with interest on the late payment.

e. Issue appropriate Writ/directions against the Respondent No. 1 & 2 to provide Medical Benefit Card for which some amount already deducted by the respondent.

f. Issue appropriate Writ/direction against the Respondent No. 1 & 2 to pay an amount approximate amount of Rs. 25 Lakhs with interest w.e.f. 01.04.2020 to till its realization on the payable outstanding arrears of the petitioner to the petitioner.

g. Issue direction to the Respondent No. 1 & 2 not to harass the petitioner in future by holding his monthly pension amount due to filing the present petition. h. Allow costs of litigation to the petitioner.”

2. Learned counsel appearing on behalf of the petitioner submitted that the respondent's action for withholding the statutory due of the petitioner causes severe hardship in getting the marriage of his daughter on the schedule date. It is submitted that the petitioner is legally entitled for the payment of all the dues which have been arbitrarily withheld by the respondents. The entire service record of the petitioner was satisfactory and there was no complaint against the petitioner during his service period.
3. Learned counsel appearing on behalf of the petitioner submitted that after the retirement, the retiral dues which has not been paid by the respondents is arbitrary, illegal, unjust and contrary to the law.
4. Learned counsel appearing on behalf of the petitioner further



submitted that this Court may pass an order or direction to the respondents no. 1 and 2 to pay the arrears of the pension amount of Rs. 7,31,561/- (Rupees Seven Lakhs Thirty One Thousand Five Hundred and Sixty One Only) with effect from 1st April, 2020 with interest on the late payment.

5. *Per contra*, learned counsel appearing on behalf of the respondent no. 1 vehemently opposed the instant petition and submitted that the instant petition is not maintainable as per Section 14 read with Section 3(q) of the Administrative Tribunals Act, 1985 (hereinafter “the Act”). It is further submitted that the instant petition is maintainable to the jurisdiction of the Central Administrative Tribunal; therefore, the instant petition may be dismissed on the ground of maintainability.

6. Heard learned counsel appearing on behalf of the parties and perused the record.

7. The petitioner in the present petition is seeking directions to the Municipal Corporation to allow him to pay whole of the arrears of pension, gratuity, arrears of leave encashment, pay Group Insurance Scheme (GSLI) and to provide Medical Benefit Card. Reliefs sought fall under the definition of ‘service matters’ and therefore, by way of Section 14 read with Section 3(q) of the Act, the petitioner is amenable to the jurisdiction of the Central Administrative Tribunal.

8. Section 3(q) of the Act defines ‘service matters’. The Section explicitly contains the matters of pension, retirement benefits, and leaves under its ambit. The Section 3(q) reads as under:

“(q) “service matters”, in relation to a person, means all



matters relating to the conditions of his service 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, as the case may be, of any corporation 5 [or society] owned or controlled by the Government, as respects—

- (i) remuneration (including allowances), pension and other retirement benefits;*
- (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;*
- (iii) leave of any kind;*
- (iv) disciplinary matters; or*
- (v) any other matter whatsoever; ”*

9. Section 14 of the Act mandates that the Central Administrative Tribunal is to have exclusive jurisdiction for all service matters. Section 14 reads as under:

“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 2***) in relation to—*

- (a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;*
- (b) all service matters concerning—*
 - (i) a member of any All-India Service; or*
 - (ii) a person [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union; or*



(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 3 [or society] owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation [or society] or other body, at the disposal of the Central Government for such appointment.

[Explanation. — For the removal of doubts, it is hereby declared that references to “Union” in this sub-section shall be construed as including references also to a Union territory.]

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations 3 [or societies] owned or controlled by Government, not being a local or other authority or corporation 3 [or society] controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations 1 [or societies].

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section



*apply to any local or other authority or corporation 1 [or society], all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court 2***) in relation to—*

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation 1 [or society]; and

(b) all service matters concerning a person [other than a person referred to in clause (a) or clause (b) of sub-section (1)] appointed to any service or post in connection with the affairs of such local or other authority or corporation 1 [or society] and pertaining to the service of such person in connection with such affairs.”

10. It is relevant for this Court to peruse the judgment of Hon’ble Supreme Court in ***L. Chandra Kumar v. Union of India and Ors., (1997) 3 SCC 261***, wherein the Court has explained that how a Tribunal must not be less efficacious than a High Court and should render confidence and public esteem. The Court also held that the tribunals cannot act as the substitutes for the High Courts and the Supreme Court, which have been established under specific obligation. Furthermore, the court held that the function of the tribunal is supplementary in nature which can be challenged/scrutinized before a division bench of the High Court. At the same time, it was also held that the tribunals also have powers to test vires of the subordinate legislations and rules except testing the legitimacy of their parent statute. The relevant paragraphs are reproduced herein:

“8.65 A Tribunal which substitutes the High Court as an alternative institutional mechanism for judicial review must be no less efficacious than the High Court. Such a tribunal must



inspire confidence and public esteem that it is a highly competent and expert mechanism with judicial approach and objectivity. What is needed in a tribunal, which is intended to supplant the High Court, is legal training and experience, and judicial acumen, equipment and approach. When such a tribunal is composed of personnel drawn from the judiciary as well as from services or from amongst experts in the field, any weightage in favour of the service members or expert members and value- discounting the judicial members would render the tribunal less effective and efficacious than the High Court. The Act setting up such a tribunal would itself have to be declared as void under such circumstances. The same would not at all be conducive to judicial independence and may even tend, directly or indirectly, to influence their decision-making process, especially when the Government is a litigant in most of the cases coming before such tribunal. See S.P. Sampath Kumar v. Union of India reported in : (1987)ILLJ128SC . The protagonists of specialist tribunals, who simultaneously with their establishment want exclusion of the Writ jurisdiction of the High Courts in regard to matters entrusted for adjudication to such tribunals, ought not to overlook these vital and important aspects. It must not be forgotten that what is permissible to be supplanted by another equally effective and efficacious institutional mechanism is the High Courts and not the judicial review itself. Tribunals are not an end in themselves but a means to an end; even if the laudable objectives of speedy justice, uniformity of approach, predictability of decisions and specialist justice are to be achieved, the frame work of the tribunal intended to be set up to attain them must still retain its basic judicial character and inspire public confidence. Any scheme of decentralisation of administration of justice providing for an alternative institutional mechanism in substitution of the High Courts must pass the aforesaid test in order to be constitutionally valid.

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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 setup, 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 concerned High Court 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 concerned Tribunal.”

11. Hence, in view of the judgment of **L. Chandra Kumar v. Union of India and Ors. (Supra)** and the mandates of Sections 3(q) and 14 of the Act, this Court is of the view that the Tribunal is an efficacious alternative



remedy, excluding the jurisdiction of this Court. Hence, the writ petition is not maintainable before this Court and cannot be entertained.

12. Accordingly, the instant petition stands dismissed along with pending applications, if any.

13. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JULY 24, 2023

gs/ds

Click here to check corrigendum, if any