



2023:DHC:7758



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

% **Date of order :10th October, 2023**

+ **W.P.(C) 10390/2023**

MR VARUN YADAV

..... Petitioner

Through: **Mr.Manik Ahluwalia, Advocate**

versus

**DEPARTMENT OF WOMEN AND CHILD DEVELOPMENT
GOVT. OF NCT OF DELHI & ORS.**

..... Respondents

Through: **Mr. Tushar Sannu, Ms. Karishma
Rajput, Mr. Naveen Bhati, Advs for
GNCTD**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The petitioner vide the present petition under Article 226 of the Constitution of India, seeks the following reliefs:

“a) Issue a writ of certiorari or any other appropriate writ, order or direction thereby quashing the Impugned Order dated July 21,2023 issued by Respondent No.1;

b) Issue a writ of mandamus or any other appropriate writ, order or direction thereby directing renewal of the contract of the Petitioner and reinstatement of the services of the Petitioner with Respondent No.1;

c) award the costs of the present petition in favour of the



*Petitioners and against the Respondents; and
d) grant such other or further relief(s) in favour of the
Petitioners and against the Respondents as this Hon'ble Court
may deem fit and proper in the facts and circumstances of the
case.”*

2. The petitioner, was working as District Child Protection Officer (hereinafter “DCPO”) with the respondent no. 1 on contractual basis since October 2017.

3. By way of the instant petition, the petitioner has invoked the writ jurisdiction of this Court to set aside the impugned order dated 21st July 2023, passed by the respondent no. 1, whereby, it was held that the contract of the petitioner will not be extended.

4. Learned counsel appearing on behalf of the petitioner submitted that the impugned order is illegal, *mala fide* and malicious thereby implying that the same has been passed arbitrarily, and in violation of the principles of natural justice.

5. It is submitted that the impugned order has been issued in violation of the Juvenile Justice (Care and Protection of children) Act, 2015 (hereinafter “the Act”), in as much as, no internal/departmental inquiry was conducted and opportunity of being heard was provided to the petitioner.

6. It is submitted that the reasons and explanations as mentioned in the impugned order are stigmatic in nature and therefore, warranted an explanation from the petitioner. Since the opportunity of being heard was denied to the petitioner, the same is liable to be set aside as it is contrary to the principles of administrative law as it seeks to affect the rights of the



petitioner.

7. It is submitted that the impugned order wrongly records that the petitioner was on unauthorized leave from 20th June 2023 to 26th June 2023. The terms of employment contract of the petitioner categorically provide that in case of any unauthorized absence for more than 5 days, the services of the petitioner can be terminated. It is submitted that no such action was taken against the petitioner by the respondents; therefore, there was no unauthorized absence on behalf of the petitioner.

8. It is submitted that the impugned order has made stigmatic remarks against the petitioner without giving the petitioner an opportunity of being heard. It is submitted that it is a settled legal position of law that in case of stigmatic remarks, full departmental inquiry has to be done and since the same has not been done in the instant case, the impugned order violates the settled legal principles.

9. It is submitted that impugned order has wrongly relied on the appraisal report and recommendation of the respondent no. 3, without hearing the petitioner.

10. It is submitted that the petitioner continued to perform his duties even after expiry of the period of 21 days till the issuance of the impugned order. The respondents never made any communication indicating that the services of the petitioner will not be renewed.

11. It is submitted that the since the impugned order has been passed after 21 days the petitioner's contract expired, the same warrants a proper departmental inquiry and in the absence of such inquiry, the impugned order



is liable to be set aside.

12. In view of the foregoing submissions, it is submitted that the impugned order may be set aside and the instant petition be allowed.

13. *Per Contra*, learned counsel appearing on behalf of the respondents vehemently opposed the instant petition and submitted that the same is liable to be dismissed at the threshold on the grounds of non maintainability.

14. It is submitted that the instant petition is not maintainable. The petitioner has admitted in paragraph no. 8 of his petition, that he was engaged as a DCPO since October 2017, on contract which was renewed yearly by the Department of Women & Child Development, GNCTD, thus the Petitioner is squarely covered under Section 14 of the Administrative Tribunals Act, 1985 (hereinafter “CAT Act”).

15. It is submitted that as per Section 14 of the CAT Act, for the relief claimed in the present petition, the petitioner has to approach the Central Administrative Tribunal (hereinafter “CAT”), since it is the mandate of the said provision that all the service matters pertaining to the Government of NCT of Delhi are to be dealt with by the CAT.

16. It is submitted that the petitioner is covered under Section 14 (1) (c) of the CAT Act, and as per the said provision the CAT is the Court of first instance to adjudicate upon the dispute concerning the present respondents. It is further submitted that the CAT is not an ‘alternative forum’ instead, it is the only forum available to the petitioner to address his disputes.

17. Learned counsel has placed his reliance upon the judgment passed by the Hon’ble Supreme Court in *L. Chandra Kumar v. Union of India, (1995)*



1 SCC 400, and upon the judgment passed by the Division Bench of this Court in the matter of *State (NCT of Delhi) v. Ashok Kumar Rajdev*, 2023 SCC OnLine Del 5864. As per the said judgments, it is not open to the litigants to directly approach the High Courts in cases of service matters by overlooking the jurisdiction of the Tribunal concerned.

18. It is submitted that in view of the foregoing submissions, the instant petition may be dismissed on the grounds of non maintainability.

19. Heard the parties and perused the record.

20. Before delving into the merits of the instant petition, this Court shall first decide the issue of maintainability of the present writ petition since the respondents have raised a preliminary objection, thereby, alleging that the same cannot be entertained by this Court due to the reason that CAT is the Court of first instance to decide the disputer of the petitioner under Section 14 of CAT Act. In view of the same the petitioner ought to approach the concerned forum, i.e., CAT, New Delhi for adjudication of the present case. In regard to his submissions, the learned counsel appearing on behalf of the respondents has placed reliance upon the judgment passed by the Hon'ble Supreme Court in *L. Chandra Kumar (Supra)* and a judgment passed by the Division Bench of this Court in the matter of *Ashok Kumar Rajdev (Supra)*.

21. Learned counsel appearing on behalf of the petitioner submitted during the course of the arguments that the instant petition is maintainable, and this Court is very well empowered to adjudicate upon the dispute raised by the petitioner herein. It has been submitted that it is settled law that when there is violation of principles of natural justice, a writ petition is certainly



maintainable.

22. In order to strengthen his arguments, the learned counsel appearing for the respondents has placed his reliance upon the judgment passed by the Hon'ble Supreme Court in the matter of **GRIDCO Ltd. v. SadanandaDoloi, (2011) 15 SCC 16**, wherein, the Hon'ble Court held that a writ Court can now examine the validity of a termination order passed by a public authority. Further reliance has been placed upon the judgment passed by a Coordinate Bench of this Court in the matter of **K. Sarojini v. Union of India, 2014 SCC OnLine Del 419**, wherein, this Court held that as far as plea of alternative effective remedy is concerned, this Court is of the opinion that alternative remedy is only a rule of prudence and not a statutory prohibition.

23. In view of the above discussions, this Court shall now examine the issue of maintainability of the instant petition.

24. During the course of arguments, the respondent submitted that the dispute of the petitioner is covered under Section 14 (1) (c) of the CAT Act. The same has been reproduced here under 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 2***) in relation to—*

...

(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 3 [or society] or other body, at the disposal of the Central Government for such appointment....”

25. This Court is of the view that 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:

“88. In R.K. Jain case [(1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464] this Court had, in order to understand how the theory of alternative institutional mechanisms had functioned in practice, recommended that the LCI or a similar expert body should conduct a survey of the functioning of these Tribunals. It was hoped that such a study, conducted after gauging the working of the Tribunals over a sizeable period of more than five years would provide an answer to the questions posed by the critics of the theory. Unfortunately, we do not have the benefit of such a study. We may, however, advert to the Report of the Arrears Committee (1989-90), popularly known as the Malimath Committee Report, which has elaborately dealt with the aspect. The observations contained in the Report, to this extent they contain a review of the functioning of the Tribunals over a period of three years or so after their institution, will be useful for our purpose. Chapter VIII of the second volume of the Report, “Alternative Modes and Forums for Dispute Resolution”, deals with the issue at length. After forwarding its specific



recommendations on the feasibility of setting up “Gram Nyayalayas”, Industrial Tribunals and Educational Tribunals, the Committee has dealt with the issue of Tribunals set up under Articles 323-A and 323-B of the Constitution. The relevant observations in this regard, being of considerable significance to our analysis, are extracted in full as under:

“Functioning of Tribunals

8.63 Several tribunals are functioning in the country. Not all of them, however, have inspired confidence in the public mind. The reasons are not far to seek. The foremost is the lack of competence, objectivity and judicial approach. The next is their constitution, the power and method of appointment of personnel thereto, the inferior status and the casual method of working. The last is their actual composition; men of calibre are not willing to be appointed as presiding officers in view of the uncertainty of tenure, unsatisfactory conditions of service, executive subordination in matters of administration and political interference in judicial functioning. For these and other reasons, the quality of justice is stated to have suffered and the cause of expedition is not found to have been served by the establishment of such tribunals.

8.64 Even the experiment of setting up of the Administrative Tribunals under the Administrative Tribunals Act, 1985, has not been widely welcomed. Its members have been selected from all kinds of services including the Indian Police Service. The decision of the State Administrative Tribunals are not appealable except under Article 136 of the Constitution. On account of the heavy cost and remoteness of the forum, there is virtual negation of the right of appeal. This has led to denial of justice in many cases and consequential dissatisfaction. There appears to be a move in some of the States where they have been established for their abolition.



Tribunals — Tests for Including High Court's Jurisdiction

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* [(1987) 1 SCC 124 : (1987) 2 ATC 82] .) 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 framework 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.

8.66 The overall picture regarding the tribunalisation of justice in our country is not satisfactory and encouraging. There is a need for a fresh look and review and a serious consideration before the experiment is extended to new areas of fields, especially if the constitutional jurisdiction of the High Courts is to be simultaneously ousted. Not many tribunals satisfying the aforesaid tests can possibly be established.”

(emphasis added)

Having expressed itself in this manner, the Malimath Committee specifically recommended that the theory of alternative institutional mechanisms be abandoned. Instead, it recommended that institutional changes be carried out within the High Courts, dividing them into separate divisions for different branches of law, as is being done in England. It stated that appointing more Judges to man the separate divisions while using the existing infrastructure would be a better way of remedying the problem of pendency in the High Courts.

x x x
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 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.

*x**x**x*

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.”

26. The Hon’ble Supreme Court in the abovementioned case observed that the Tribunals created pursuant to Article 323-A or under Article 323-B of the Constitution of 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.

27. Having reviewed the pertinent legal provisions on maintainability, it is important to grasp the fundamental legal concept underlying the principle of alternative remedies available under Article 226 of the Constitution of India. It is an established legal principle that a litigant cannot bypass the initial



Court or Tribunal with jurisdiction and opt for the constitutional remedy under Article 226 of the Indian Constitution as an alternative, unless all available relief from the former forum has been exhausted.

28. 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 passed by the Hon'ble Supreme Court.

29. 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 point which is to be considered by the Court while using its discretion is the existence of any other effective, efficacious, or alternative remedy for the relief. The same was also observed in a recent judgment passed by the Hon'ble Supreme Court in the matter of ***South Indian Bank Ltd. v. Naveen Mathew Philip*, 2023 SCC OnLine SC 435.**

30. This Court is of the view that 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.

31. 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 Department of Women & Child Development, GNCTD, in the instant matter.

32. In view of the abovementioned judgments, this Court is of the considered view that Section 14 (1) (c) of the CAT Act, explicitly states that the CAT shall exercise the jurisdiction, power and authority over the dispute of the petitioners which is concerned with the 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.

33. This Court has perused the material on record and has made observations with 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 CAT Act, there already exists an alternate remedy



2023:DHC:7758



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 petitioner's case herein.

34. 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.

35. It would, however, be open to the petitioner 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.

36. Accordingly, the instant petition stands dismissed. Pending applications, if any, also stand dismissed.

37. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

OCTOBER 10, 2023

SV/RYP/DS

Click here to check corrigendum, if any

Signature Not Verified

Digitally Signed By: SARIKA
BHAMOO VERMA
Signing Date: 21.10.2023
18:11:40

W.P.(C) 10390/2023

Page 15 of 15