



\$~28.

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

Judgment reserved on: 19.09.2023

% **Judgment delivered on: 21.09.2023**

+ **LPA 640/2023 & C.M. Nos. 48486-48488/2023**

GOVERNMENT OF NCT OF DELHI & ANR. Appellants

Through: Mr. Kirti Uppal, Senior Advocate
with Mr. Yoginder Handoo,
Mr. Mananjay Mishra, Mr. Ashwin
Kataria, Mr. Shekhar Kumar,
Ms. Riya Gulati & Mr. Himanshu
Bhidhuri, Advocates.

versus

SH. ASHOK KUMAR RAJDEV & ORS. Respondents

Through: Mr. Mohit Mathur, Senior Advocate
with Mr. Wajeeh Shafiq &
Ms. Ramsha Shan, Advocates for
respondents No. 1 to 6.
Mr. Rahul Mehra, Senior Advocate
and Mr. Santosh Kumar Tripathi,
Standing Counsel (Civil) with
Mr. Arun Panwar, Mr. Pradyumn Rao,
Mr. Utkarsh Singh, Mr. Kartik
Sharma, Ms. Prashansa Sharma,
Mr. Rishabh Srivastava, Mr. Chaitanya
Gosain and Mr. Anand, Advocates for
respondent No. 7/ GNCTD.

**CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJEEV NARULA**



J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present Letters Patent Appeal (LPA) is arising out of order dated 15.09.2023 passed by the learned Single Judge in C.M. No. 47812/2023 in W.P.(C.) No. 10923/2023.
2. The undisputed facts of the case reveal that the respondents No.1 to 6 are employees of Central Public Works Department (CPWD)/ Public Works Department (PWD) serving the Government of National Capital Territory of Delhi (GNCTD). They came up before this Court being aggrieved by the show-cause notices dated 19.06.2013 issued by the Directorate of Vigilance seeking explanation from them as to why disciplinary action under the relevant rules/ laws/ manuals/ circulars/ CVC guidelines etc., be not initiated against them.
3. The appellants before this Court have stated that they have taken a preliminary objection in the matter stating that a writ petition is not at all maintainable as the respondents No.1 to 6 are Central Government employees, and for the challenge in respect of disciplinary action, they have to approach the Central Administrative Tribunal constituted under the provisions of the Administrative Tribunals Act, 1985. It has been stated on affidavit that the objection was taken on the first date of hearing, i.e. 17.08.2023.
4. In the LPA, it has been stated that the matter was listed on 17.08.2023 and a Special Counsel was appointed by the GNCTD and the Special



Secretary (Vigilance) to defend the GNCTD through Principal Secretary (Vigilance) and the Special Secretary (Vigilance). However, Standing Counsel for the GNCTD appeared in the matter and stated that the government will not take any coercive steps till the next date of hearing.

5. The facts further reveal that thereafter an application was preferred in the matter, i.e. C.M. No. 47812/2023 under Section 151 of the Code of Civil Procedure, 1908 and it was stated that in spite of the undertaking given by the appellants, they are proceeding ahead with the matter. In those circumstances of the matter, learned Standing Counsel for the GNCTD submitted that no coercive steps have been taken against the respondents. In light of the undertaking given by the learned Standing Counsel (on behalf of respondents No.1 to 5 in the writ petition), the learned Single Judge has finally held that no coercive steps shall be taken by any authority against the petitioners till the next date of hearing and the matter has been listed on 12.10.2023.

6. Mr. Kirti Uppal, learned senior counsel for the appellants has vehemently argued before this Court that the counsels – who have appeared in the matter and who have stated that no coercive action will be taken in the matter against the officers, were not authorized to make such a statement and he has drawn the attention of this Court toward Office Memorandum dated 18.04.2023, which reads as under:

*“F.No.5(669)/LJ&LA/Lit/Advocate Matter/2023/4337-4386
Dated 18/4/2023*

Office Memorandum



It has been noticed that in some cases the Government Counsel(s) empanelled by the Government of National Capital Territory of Delhi have filed affidavits without obtaining written instructions from the concerned Departments. It has also been brought to the notice that in certain cases the Government Counsel(s) have made written and verbal submissions at variance with stand of the concerned Departments. Such instances have cause embarrassment to Government Departments and have been viewed seriously.

2. All Standing Counsel(s)/ Additional Standing Counsel(s) and empanelled Counsel(s) are therefore directed to ensure that the written and verbal submissions made by them shall have to be strictly in consonance with the written instructions given to them with the approval of administrative Secretary of the concerned Department.

3. These instructions are also being brought to the notice of all administrative Secretaries/ HoDs for ensuring compliance.

Sd/-

(Bharat Parashar)

Principal Secretary (Law, Justice & LA) ”

7. He has vehemently argued before this Court that in light of the Office Memorandum dated 18.04.2023 and in light of the Government of National Capital Territory of Delhi Ordinance, 2023, the National Capital Civil Service Authority (NCCSA) is a recommendatory body for initiation of disciplinary proceedings against Group-A Officers, and after issuance of show-cause notice – to which reply has been filed, the matter is to be placed before the NCCSA for further course of action. However, on account of the interim order, the matter cannot be processed further, and hence, the interim order deserves to be vacated.



8. The appellants before this Court in the present LPA has taken a specific stand regarding maintainability of the writ petition stating that the show-cause notice was issued to respondents No.1 to 6 in respect of disciplinary action and the writ petition should have been dismissed at the threshold as respondents No.1 to 6 are Central Government employees and they have a remedy of approaching the Central Administrative Tribunal constituted under the Administrative Tribunals Act, 1985. It has been categorically stated that this objection was taken on the first date of hearing, i.e. 17.08.2023 before the learned Single Judge.

9. This Court has heard learned counsel for the parties at length. However, the moot question before this Court is whether in case of a service dispute relating to a Central Government employee, a writ petition is maintainable or not at the first instance before the High Court. The said issue is no longer *res integra* and the Constitution Bench of the Apex Court in ***L. Chandra Kumar v. Union of India***, (1997) 3 SCC 261, has held as under:

“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.”

10. The aforesaid judgment of the Constitution Bench makes it very clear that in respect of a service dispute, an application has to be preferred under Section 19 of the Administrative Tribunals Act at the first instance, and therefore, the writ petition before the learned Single Judge was not at all maintainable and it should have been dismissed at the threshold.

11. Mr. Mohit Mathur, learned senior counsel appearing for the respondents No.1 to 6/ employees has placed reliance upon the judgments delivered in ***Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai & Ors.***, (1998) 8 SCC 1; and ***Godrej Sara Lee Ltd. Vs. The Excise and Taxation Officer-cum-Assessing Authority & Ors.***, AIR 2023 SC 781.

12. This Court has carefully gone through the judgment delivered in ***Whirlpool Corporation*** (supra) and the said case was relating to Trade and Merchandise Marks Act, 1958 and the Trade Marks Act, 1940. It is true that in the aforesaid case, it has been held that alternative remedy is not a bar in



certain circumstances. However, the fact remains that the in judgment in the case of **L. Chandra Kumar** (supra) – which was specifically in respect of Administrative Tribunals Act, 1985, the Constitution Bench has held that in respect of a service dispute, at the first instance, an application has to be preferred under Section 19 of the Administrative Tribunals Act, and therefore, the judgment in **Whirlpool Corporation** (supra) – relied upon by the respondents No.1 to 6, does not help them in any manner.

13. This Court has also carefully gone through the judgment delivered in **Godrej Sara Lee Ltd.** (supra). It is again true that in exceptional circumstances, a writ petition is maintainable under Article 226 of the Constitution of India, if there is an alternate remedy. However, the fact remains that the Constitution Bench in **L. Chandra Kumar** (supra) – after discussing Article 323A of the Administrative Tribunals Act, has arrived at a conclusion that the Tribunals will continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It is not, therefore, 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 that particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.

14. Therefore, keeping in view the judgment delivered in case of **L. Chandra Kumar** (supra), the petition itself is not maintainable and the writ petition before the learned Single Judge stands disposed of with liberty to respondents No.1 to 6 to approach the Central Administrative Tribunal by filing an Original Application as provided under Section 19 of the Administrative Tribunals Act.



15. Learned counsel for the appellants has also drawn attention of this Court towards the judgment delivered in the case of *Union of India and Another Vs. Kunisetty Satyanarayana*, 2006 (12) SCALE 262.

16. In the considered opinion of this Court, the appellants shall certainly be free to place reliance upon the judgment delivered in the case of *Kunisetty Satyanarayana* (supra) before the Tribunal, in case an Original Application is preferred under Section 19 of the Administrative Tribunals Act in the matter.

17. It is made clear that this Court has not observed anything on merits, except the issue of maintainability of the writ petition in the LPA.

18. With the aforesaid observations, the present LPA stands disposed of. No order as to costs.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SANJEEV NARULA)
JUDGE

SEPTEMBER 21, 2023

B.S. Rohella