

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12001 OF 2024

Pallavi Vasantao Chavhan And Ors

...Petitioners

Versus

The State Of Maharashtra And Ors

...Respondents

Mr. Pawan Kumar Tiwari i/b. Mr. Shantanu Kalekar for the Petitioners.
Ms Pooja Joshi Deshpande, AGP for the Respondent Nos. 1 to 3-State

CORAM : NITIN JAMDAR &
M. M. SATHAYE, JJ.

DATED : 2 SEPTEMBER 2024

P.C.:

1. The Petitioners are working as medical officers in the services of the State of Maharashtra. They have challenged certain clauses of the Government Resolution dated 7 August 2012 and directions to the Respondent-authority to extend the facility of giving an option to the Petitioners to accept NPA in lieu of private practice or to do private practice, while in government service.

2. The Petitioners in the Petition have made no reference to the fact that for the resolution of dispute relating to the services of the State, the forum is the Administrative Tribunal. In fact the Petitioners have asserted that the Petitioners have no alternate remedy. This Petition, therefore, is filed in ignorance of law laid down by the Constitution Bench in case of *L. Chandra*

*Kumar vs. Union of India & Ors.*¹, which has observed thus:

“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.”

(emphasis supplied)

It is clear therefore that the Court of first instance is the Administrative Tribunal and the parties not entitled to approach High Court directly as to disputes within the services of the State and the parties

¹ (1997) 3 SCC 261

will have to approach the Administrative Tribunal.

3. The Petitioners have sought to contend that there are identical Petitions pending in this Court and therefore, this Petition be heard alongwith the same and kept pending and the interim orders be granted. It is not shown to us as to whether the interim orders have made reference to the law laid down in case of *L. Chandra Kumar* (Supra).

4. The appropriate course of action for the Petitioners, therefore, is to approach the Administrative Tribunal. It is open to the Administrative Tribunal to either decide the proceedings or keep them pending in light of the pendency of the Writ Petitions raising identical legal issue in this Court and to consider grant of identical interim order operating in these Petitions. Ultimately it is for the Administrative Tribunal to decide the course of action.

5. The Writ Petition is accordingly disposed of.

(M. M. SATHAYE, J.)

(NITIN JAMDAR, J.)