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

+ **W.P.(C) 2561/2024 & CM APPL. 10491/2024**

SH. DHANI RAM MEHTO

..... Petitioner

Through: Mr. Manoranjan, Adv.
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manoranjanadvocate@outlook.co
m

versus

DELHI DEVELOPMENT AUTHORITY Respondent

Through: Mr. Arun Birbal & Mr. Sanjay
Singh, Advs.
M: 9958118327

%

Date of Decision: 21st February, 2024

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MINI PUSHKARNA, J: (ORAL)

1. The present writ petition has been filed with the following prayers:

“xxx xxx xxx

i. Issue an appropriate writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondent in withholding of Pension and Gratuity in full, permanently with immediate effect, of the petitioner vide Order Dt. 21.09.2023 vide letter bearing No. F.25(04)2017/Vig./ACB/4492 Dt. 17.10.2023 as illegal, arbitrary and violative of Article 21 and 300A of the Constitution of India and consequently direct the respondent to release provisional pension and all other benefits including commutation of pension to the petitioner forthwith with 12% interest from the date of the amounts are due, till the finalization of pending judicial proceedings before the Hon'ble High Court



of Delhi by way of CRL. A. No. 102/2023;

ii. Issue an appropriate Writ directing the Respondent to pay the Cost to the Petitioner;

iii. Any other or further relief(s) that the Hon'ble Court may deem fit and proper, in the interest of justice"

2. At the outset learned Standing Counsel appearing for the respondent on advance notice submits that considering the prayer made in the present petition, which pertains to the question of withholding of pension and gratuity of the petitioner, the present petition would not be maintainable. He relies upon the judgment of the Supreme Court in the case of ***L. Chandra Kumar Versus Union of India and Others, (1997) 3 SCC 261.***

3. Per contra, learned counsel appearing for the petitioner has relied upon certain judgments from other States, wherein orders were passed in favour of the petitioners in the pending judicial proceedings therein.

4. Having heard learned counsels for the parties, at the outset this Court notes the provisions of The Administrative Tribunals Act, 1985.

5. The Administrative Tribunals Act, 1985 in Section 3(q) defines the service matters which are under the jurisdiction of the Central Administrative Tribunal, which reads as under:

"3. Definitions.—In this Act, unless the context otherwise requires,—

.....

(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 14[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;
- xxx xxx xxx”

6. Perusal of the aforesaid clearly shows that service matters include all the matters pertaining to remuneration, including allowances, pension and other retirement benefits.

7. This Court also notes Section 14 of The Administrative Tribunals Act, 1985 which deals with the jurisdiction, powers and authority of the Tribunals, 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 [* * *]) 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 [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 [or societies] owned or controlled by Government, not being a local or other authority or corporation [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 [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 [or society], all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court [* *]) 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 [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 [or society] and pertaining to the service of such person in connection with such affairs.”

8. Reading of the aforesaid clearly demonstrates that all the matters pertaining to service, including matters related to pension and gratuity, fall within the jurisdiction of the Central Administrative Tribunal.

9. This Court also notes Article 323 A of the Constitution of India, which reads as under:

“323-A. Administrative tribunals.—(1) Parliament may, by law, provide for the adjudication or trial by administrative tribunals of



disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts 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 owned or controlled by the Government.

(2) A law made under clause (1) may—

.....

(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;

.....

(d) exclude the jurisdiction of all courts, except the jurisdiction of the Supreme Court under Article 136, with respect to the disputes or complaints referred to in clause (1);

xxx xxx xxx”

10. Thus, it is clear that the jurisdiction of the High Court has been excluded as far as service matters are concerned, as the jurisdiction vests with the Central Administrative Tribunal. However, against the order passed by the Central Administrative Tribunal, petitions before a Division Bench of this Court can be filed.

11. This Court also notes the judgment in the case of ***L. Chandra Kumar Versus Union of India and Others, (1997) 3 SCC 261***, relevant portions of which read as under:

“xxx xxx xxx

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.

(Emphasis supplied)

xxx xxx xxx”

12. Considering the aforesaid, this Court is of the view that the present petition is not maintainable before this Court.

13. At this stage, learned counsel appearing for the petitioner submits that liberty may be granted to the petitioner to approach the learned Central Administrative Tribunal.

14. Accordingly, in view of the aforesaid, the present petition is dismissed, with liberty to the petitioner to approach the learned Central Administrative Tribunal.

MINI PUSHKARNA, J

FEBRUARY 21, 2024/kr