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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 8555/2017 & CM APPL. 21134/2018, 21226/2018 and 47841/2019

AHMED RASHEED SIDDIQUI

.....Petitioner

Through: Mr. N.D.Pancholi, Mr. Deepak Mayur
and Ms. Kirti Kumari, Advocates.

versus

INDIAN RED CROSS SOCIETY & ORS

.....Respondents

Through: Mr. L.R.Khatana, Advocate for R-1.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

03.10.2024

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1. This writ petition has been preferred by the Petitioner under Article 226 of the Constitution of India read with Articles 14 and 21 of the Constitution of India, seeking the following reliefs:-

“(a) to issue a writ of certiorari or any appropriate writ, direction, order quashing the impugned order of termination of services of the petitioner dt.05.01.2017 Annexure P-1 as mala fide, arbitrary, colorable exercise of power and void-ab-initio and directing the managing committee of the respondents society to reinstate the petitioner with full back wages and continuity of services;

(b) to issue a writ of prohibition or any appropriate writ or direction or order restraining the management of the Indian Red Cross Society respondent No.1 from appointing the new Secretary General in the Respondent Society on the basis of new terms and conditions as advertised dated 31.07.2016 (Annexure P-22) which are in violation of the earlier established rules regarding the appointment of the Secretary General in the Respondent Society, under which the appointments of past three Secretary General were appointed in the Respondent Society no: 1;

(c) to issue a writ of prohibition or any appropriate writ or direction or order restraining the management of the Indian Red Cross Society respondent No.1 from processing various appointments to different posts as advertised vide advertisement in Hindustan Times (English) dt.



22.08.2017 (Annexures P-29 and P-30) as this advertisement is silent on candidature of those applicants, who had applied earlier and have become over-aged due to delay in process of issuing re-advertisement by the Respondent Society no: 1;

(d) To issue a writ of mandamus or any other appropriate writ, direction, order directing the management of the respondent No.1 society to frame reasonable limitation of age and tenure of office and service for the office bearers and employees of the respondent society so that no office bearers/employee is able to continue in service for than 65 years and no office bearer of the management committee is entitled to serve in the office continuously for more than two terms;

(e) To issue a writ of mandamus or any other appropriate writ, direction, order directing the management of the respondent No.1 society to initiate inquiries into the various complaints made by the petitioner from time to time, especially the complaints as mentioned in para 25(i) to (xii) above , to take action against those who are found guilty and to make recoveries of the amount from the concerned officials/employees/legal heirs of the deceased employees who are found to have drawn the amount from the funds of the respondent society in unlawful and unauthorized manner in violations of the rules and quash unlawful appointments;

(f) To restrain the implementation of managing body members decisions taken in the matters raised by the petitioner in managing body meeting held on 29.03.2016 and 25.08.2016;

(g) To provide protection to the rights, life and livelihood of the petitioner as a whistleblower.”

2. When the writ petition came up for admission on 25.09.2017, counsel for the Petitioner had conceded that some of the reliefs prayed for were in the nature of public interest and had restricted his claim to relief claimed in prayer (a) and as the order indicates, Court had issued notice only to Respondent No.1/Indian Red Cross Society, limited to prayer (a). Liberty was granted to the Petitioner to seek appropriate remedies in respect of the other reliefs claimed. Short affidavit was filed on behalf of Respondent No.1 in which a preliminary objection is taken to the maintainability of this writ petition on the ground that the subject matter of the writ petition is in the nature of ‘service matters’ and by virtue of Notification dated 01.12.2008



issued by Ministry of Personnel, Public Grievances and Pensions ('DoPT'), Indian Red Cross Society has been notified under Section 14 of the Administrative Tribunals Act, 1985 ('1985 Act') and appears at Serial No. 190 of the list of organisations amenable to the jurisdiction of the Central Administrative Tribunal ('Tribunal').

3. Mr. Pancholi, learned counsel for the Petitioner submits that *albeit* Petitioner challenges an order dated 05.01.2017, whereby his services were terminated by Respondent No. 1, during the pendency of this writ petition, Petitioner has filed an application under Order VI Rule 17 CPC seeking amendment of the writ petition to lay a challenge to Notification dated 01.12.2008 on the ground that Central Government has no power or competence to apply provisions of 1985 Act to Respondent No. 1 which is a Society registered under the Societies Registration Act, 1860. The argument is that the Tribunal will have no jurisdiction to entertain this petition since the challenge is laid to the very Notification by which Respondent No. 1 has been notified and brought under the purview of the 1985 Act.

4. Mr. Khatana, *per contra*, submits that since challenge is laid to a termination order and Respondent No. 1 is amenable to the jurisdiction of the Tribunal, this writ petition cannot be entertained in view of the judgment of Constitution Bench of the Supreme Court in ***L. Chandra Kumar v. Union of India and Others*, (1997) 3 SCC 261**. As for the argument that the Tribunal cannot adjudicate on the challenge to the Notification bringing Respondent No. 1 within the purview of the 1985 Act, learned counsel submits that in ***L. Chandra Kumar (supra)***, Supreme Court has held that the Administrative Tribunals will have the power to test the vires of statutory legislations except where the legislation which creates the Tribunal is



challenged and therefore, there can be no impediment in the Petitioner approaching the Tribunal.

5. I have heard learned counsels for the parties and examined their submissions.

6. Indisputably, the relief claimed in the present writ petition pertains to a challenge to termination order dated 05.01.2017 and is in the nature of a service matter. It is equally undisputed that vide Notification dated 01.12.2008, DoPT has notified Respondent No. 1 within the purview of the 1985 Act and therefore, remedy of the Petitioner lies before the Central Administrative Tribunal, as the only Court of first instance, in view of the judgment of Constitution Bench of the Supreme Court in ***L. Chandra Kumar (supra)***, wherein the Supreme Court observed that *albeit* powers of the High Courts under Articles 226/227 of the Constitution of India are part of inviolable basic structure of the Constitution and cannot be excluded but Tribunals will be the only Court of first instance with respect to areas of law for which they are created and litigants cannot approach the High Courts directly. Mr. Pancholi's argument that Tribunal does not have the competence and power to adjudicate on the Notification by which Respondent No. 1 has been notified and brought within the purview of the 1985 Act cannot be accepted. The Supreme Court in ***L. Chandra Kumar (supra)***, has held that it will not be open for litigants to directly approach the High Court in respect of areas of law for which the Tribunals have been constituted even in cases where they question the vires of statutory legislations, save and except, where legislation which creates the particular Tribunal is challenged. Mr. Pancholi does not dispute that there is no challenge to the provisions of the 1985 Act and the challenge is limited to a



Notification issued by DoPT, which can be adjudicated upon by the Tribunal. Relevant paragraphs of the judgment are as follows:-

*“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.***

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*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)

7. In view of the aforesaid, this writ petition cannot be entertained by this Court. Ordinarily, I would have directed/permitted the Petitioner to withdraw the writ petition to approach the Central Administrative Tribunal afresh, however, considering that the writ petition was filed in 2017, it would be in the interest of justice to transfer this petition to the Tribunal for further proceedings.

8. Accordingly, this petition is transferred to the Central Administrative Tribunal, where it shall be listed on 11.11.2024, before the learned Registrar. Registry is directed to transmit the entire record of this writ petition to the Tribunal before the next date of hearing.

JYOTI SINGH, J

OCTOBER 3, 2024

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