

CASE NO.:

Appeal (civil) 5448 of 2000

Appeal (civil) 5021 of 2001

PETITIONER:

KENDRIYA VIDYALAYA SANGATHAN & ANR.

Vs.

RESPONDENT:

SUBHAS SHARMA

DATE OF JUDGMENT: 07/03/2002

BENCH:

S.N. Phukan

JUDGMENT:

Phukan, J.

In these two appeals by special leave, two orders of the High Court of Jammu & Kashmir at Jammu have been assailed. By the impugned orders the High Court rejected two applications filed by the appellants for transfer of the writ petitions to the Central Administrative Tribunal, Chandigarh Bench. As the points involved are the same, they were heard together and by this judgment both the appeals are disposed of.

The appellants are the Kendriya Vidyalaya Sangathan (for short 'Kendriya Vidyalaya') and its officials. The respondent No.1 in Civil Appeal No.5021 of 2001 and the sole respondent in Civil Appeal No.5448 of 2000 are the employees of the Kendriya Vidyalaya and as some dispute arose regarding their service conditions, they filed two writ petitions under Article 226 of the Constitution before the High Court for adjudication. In the above two writ petitions the Kendriya Vidyalaya filed two separate applications for transfer of the writ petitions to the Central Administrative Tribunal on the ground that under the Administrative Tribunals Act, 1985 (for short 'the Act') the Tribunal has got jurisdiction to decide the disputes. By the impugned orders, both the applications were dismissed.

By order dated January 24, 2002, this Court after hearing the counsels for the parties issued notice to the learned Attorney General of India and the Advocate General of the State of Jammu and Kashmir. The learned Advocate General did not respond. Mr. Altaf Ahmed, learned Additional Solicitor General has appeared on behalf of the learned Attorney General to assist this Court.

The High Court relying on a Full Bench decision of the same High Court in *Kuldip Khud versus Masud Ahmad Chodhry & Others* [1994 JKLR 25] held that the writ court has jurisdiction to decide service disputes of the present nature and, therefore, rejected the prayer for transfer holding that the writ petitions were maintainable. The High Court extracted the following paragraph from the judgement of the Full Bench:

"We have already indicated that the Administrative Tribunals Act, 1985 though

extends to whole of India, would still not affect the constitutional jurisdiction of this court in entertaining the writ petitions concerning the service matters of the employees of the central government. Applicability of the Act is different than the destruction of the Constitutional jurisdiction of this court by the Act. While the employees of the central government etc. posted in the state of Jammu & Kashmir may have been provided in respect of service matters, they still retain the choice to approach this court under section 103 of the State constitution by filing a writ petition and praying for an appropriate writ order or direction for the redressal of their grievances. The Tribunal in these circumstances will be an additional or alternative forum and not an exclusive forum."

Mr. Altaf Ahmed has made the following submissions: -

(1) In view of clause (a) of sub-section (2) of Section 1 of the Act, the Act extends to the State of Jammu and Kashmir and as the respondents are employees of the Kendriya Vidyalaya, which is an autonomous body registered under the Societies Registration Act and controlled by the Government of India, such disputes regarding service matters are exclusively within the jurisdiction of the Central Administrative Tribunal.

(2) According to Mr. Ahmed though the High Court under Article 226 of the Constitution or Section 103 of Jammu and Kashmir Constitution has wide power, but in view of the restraint imposed by the judgment of the Constitution Bench of this Court in L. Chandra Kumar versus Union of India and Others [1997 (3) SCC 261], High Court ought not to have entertained the writ petition.

Mr. Gaurishankar, learned senior counsel and Mr. Rajappa and Mr. Kapur, learned counsels appearing for the appellants have adopted the submissions of Mr. Altaf Ahmed. In reply Mr. B.D. Sharma, learned counsel appearing for the respondent No.1 in Civil Appeal No.5021 of 2001 has submitted that in view of Article 370 of the Constitution and the constitution of the State of Jammu and Kashmir, the Act does not apply to the State. Though, notice was served, the respondent in Civil Appeal No.5448 has not appeared.

Regarding applicability of the Act to the State of Jammu and Kashmir, Mr. Ahmed has drawn our attention to clause (a) of sub-section (2) of Section 1 of the Act. The said sub-section runs as follows: -

"(2) It extends, -

(a) in so far as it relates to the Central Administrative Tribunal, to the whole of India.

(b) in so far as it relates to Administrative Tribunals for States, to the whole of India, except the State of Jammu and Kashmir."

In view of the above legal provision, we hold that the Act applies to all categories of central government servants and others posted to work in the State of Jammu and Kashmir as well. We are, therefore, of the opinion that the contention of Mr. B.D. Sharma,

learned counsel for the respondent has no force. We may add here that the Full Bench of the High Court in Kuldip Khud (supra) has also taken the view that the Act extends to the whole of India which includes the State of Jammu and Kashmir.

In support of his contention that the Central Administrative Tribunal has exclusive jurisdiction in respect of service matters of the employees of the Kendriya Vidyalaya, Mr. Ahmed has drawn our attention to sub-clause (iii) of clause (b) of sub-section (1) of Section 14 of the Act. The said provision is extracted below: -

"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).....

(b) all service matters concerning-

(i)
(ii)

(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." (emphasis supplied)

The Kendriya Vidyalaya is an autonomous body registered under the Societies Registration Act and controlled by the Government of India and that being the position the Administrative Tribunal has jurisdiction concerning service matters of the employees of the Kendriya Vidyalaya in view of sub-clause (iii) of Section 14(1)(b). In this connection, the learned Additional Solicitor General has also drawn our attention to the notification of the Government of India dated 17th December, 1998 issued under sub-section (2) of Section 14 of the Act by which the Central Government specified that the Act shall apply to the organisations mentioned in the schedule to the notification and the Kendriya Vidyalaya has also been included in the said notification at item no.34. Therefore, Mr. Ahmed has rightly submitted that the service disputes concerning the employees of the Kendriya Vidyalaya would come under the jurisdiction of the Central Administrative Tribunal. It does not make any difference that the institution is located in Jammu and Kashmir and the respondent is working there.

To appreciate the second submission of Mr. Ahmed we extract below relevant portions from paragraphs 93 and 99 of the

decision of the Constitution Bench of this Court in L. Chandra Kumari's case (supra): -

"(93).....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).....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."

The Constitution Bench of this Court has clearly held that Tribunals set up under the Act shall continue to act as the only courts of first instance 'in respect of areas of law for which they have been constituted'. It was further held that it will not be open for litigants to directly approach the High Court even in cases where they question the vires of statutory legislation (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal.

In view of the clear pronouncement of this Court, the High Court erred in law in directly entertaining the writ petitions concerning service matters of the employees of the Kendriya Vidyalaya as these matters come under the jurisdiction of the Administrative Tribunal. We, therefore, hold that the High Court committed an error by declining to transfer the writ petition to the Central Administrative Tribunal. Consequently, we set aside the impugned orders and direct the High Court to transfer both the writ petitions to the Central Administrative Tribunal, Chandigarh Bench which may, in its turn, make over the case to the circuit bench in the State of Jammu and Kashmir for disposal in accordance with law.

We record our appreciation for the valuable assistance rendered by Mr. Altaf Ahmed.

In the result both the appeals are allowed. Parties to bear their own costs.

.J.
[S.N. PHUKAN]

March 07, 2002