

CASE NO.:

Appeal (civil) 5448 of 2000

Appeal (civil) 5021 of 2001

PETITIONER:

KENDRIYA VIDYALAYA SANGATHAN & ORS.

Vs.

RESPONDENT:

SUBHAS SHARMA

DATE OF JUDGMENT: 07/03/2002

BENCH:

P. Venkatarama Reddi

JUDGMENT:

P.Venkatarama Reddi, J.

While I concur with the conclusion reached and the order made by my learned brother, I would like to append this brief supplement, mainly with a view to squarely meet the argument based on the Full Bench decision of J&K High Court on which reliance has been placed in the impugned order giving rise to the appeal. In Kuldip Khud vs. Masud Ahmad (1994 SLJ 287A), the Full Bench, speaking through Saghir Ahmad, CJ (as he then was) took the view that the Constitution (42nd Amendment) Act, whereby Article 323-A was introduced, does not apply to the State of Jammu and Kashmir for the reason that the mechanism prescribed in Article 370 was not resorted to. It was, therefore, held:

"Since, Article 323-A does not apply to this State, any law made by the Parliament under that Article taking away Constitutional jurisdiction of the High Court in issuing Writs in service matters as specified in that article would not affect the Constitutional jurisdiction of the High Court of this State."

Again at paragraph 39, it was highlighted:

"We have already indicated that the Administrative Tribunal 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 and Kashmir may have been provided a forum for quick and early disposal of their grievances 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 full Bench of the High Court then observed, in keeping with what

was stated above, that the Tribunal will be an additional or alternative forum and not an exclusive forum. Availability of remedy in an alternative forum does not have the effect of ousting the jurisdiction of the High Court under Section 103 of J & K State Constitution.

We shall proceed on the assumption that the view of the Full Bench regarding the applicability of Article 323-A to J & K State is correct. If so, as pointed out by the Full Bench, the bar contained in Clause 2(d) of Article 323-A excluding the jurisdiction of all courts except the jurisdiction of the Supreme Court under Article 136 with respect to the service matters of persons appointed to public services and posts in connection with the affairs of the Union and others specified in Clause (1) will not apply and in such a case, the J & K High Court could entertain the Writ Petitions filed by such public servants subject, of course, to the usual self-imposed limitations such as the existence of alternative remedy. Whether the reasoning of the Full Bench of the High Court is correct or not need not be gone into in view of the Constitution Bench decision of this Court in Chandra Kumar's case (1997) 3 SCC 261 wherein this Court struck down the Clause 2(d) of Article 323-A on the ground that it offends one of the basic and essential features of the Constitution, viz., the power of judicial review vested in the High Court and the Supreme Court. Thus the embargo on the Constitutional jurisdiction of the High Court stands lifted by virtue of the decision in Chandra Kumar's case. The offending provision in Article 323-A eroding the Constitutional powers of High Courts goes out of existence. The High Courts, under Article 226/227 of the Constitution of India or the corresponding provisions in J & K Constitution, namely, Section 103/104 will, therefore, retain their jurisdiction even in relation to the service matters falling within the sweep of Clause (1) of Article 323-A. To this extent, the ultimate conclusion reached by the Full Bench of the J & K High Court on an entirely different ground accords with the Constitution Bench Judgment in Chandra Kumar's case. But, then, the effect and implications of the ruling in Chandra Kumar's case have to be considered in order to see whether the impugned order of the High Court can be sustained. This Court having struck down the offending Clause of Article 323-A proceeded to hold that the power conferred on the Administrative Tribunals should be preserved without sacrificing the judicial review power of the High Court and the Supreme Court inhering from Articles 226/227 and 32 respectively. With this objective in view, to keep the mechanism of Administrative Tribunals in tact, this Court deemed it expedient to impose certain restraints on the entertainment of petitions under Article 226/227. The Court held that an Administrative Tribunal can still perform its supplementary role in relation to the service matters and it can even test the Constitutional validity of the statutory provision or rule except the Act or the rule under which it was created. It was laid down that the Tribunal will continue to act as Court of first instance in respect of matters falling within its jurisdiction and it was not open to the aggrieved person to directly approach the High Court by overlooking the jurisdiction of the Tribunal concerned. In this context, my learned brother has quoted the relevant passage from the decision in Chandra Kumar's case.

I must say that the decision in Chandra Kumar's case is a product of judicial craftsmanship and a landmark in the development of Constitutional law in our republic. Even if this Judgment does not ipso facto apply to the J & K State Constitution, there is no apparent reason why the ratio of this Judgment should not be applied to the exercise of jurisdiction by J & K High Court under Sections 103 and 104 of J & K Constitution. The wholesome principle evolved by this Court in CHANDRA KUMAR, could be extended to Section 103 and 104 as well; otherwise it would lead to an anomalous result of the Central Government servants/employees of Central Government controlled corporations, etc. working in J & K being left with the option of bypassing the Tribunal, without falling in line with their counterparts working elsewhere.

As regards the territorial operation of the Administrative Tribunals Act, as my learned brother has pointed out, it extends to whole of India including Jammu and Kashmir. The Full Bench of the High Court has also

recognised this position and clarified that the Tribunal will function as an additional or alternative forum without affecting the Constitutional jurisdiction of the High Court. Therefore, the contention that the machinery under the Administrative Tribunals Act to decide the disputes or complaints specified therein cannot function within the State of J & K does not deserve further consideration. However, it is clarified that in the light of the pronouncement in Chandra Kumar's case, Section 28 of the Act does not have the effect of affecting the power of judicial review of Constitutional Courts. At the same time, as laid down in CHANDRA KUMAR, the High Court ought not to permit the aggrieved person to bypass the remedy of moving the Administrative Tribunal in the first instance.

..J.
(P. Venkatarama Reddi)

March 7, 2002.

JUDIS