

Rajeev Kumar & Anr vs Hemraj Singh Chauhan & Ors on 23 March, 2010

Equivalent citations: AIR 2010 SUPREME COURT 1679, 2010 (4) SCC 554, 2010 AIR SCW 2238, (2010) 125 FACLR 403, (2010) 2 SCT 429, 2010 (3) SCALE 282, (2010) 2 SERVLJ 218, (2010) 2 ESC 233, (2010) 168 DLT 158, (2010) 4 SERVLR 506, (2010) 4 MAD LJ 380, (2010) 88 ALLINDCAS 62 (SC), (2010) 3 SCALE 282

Bench: Asok Kumar Ganguly, R.V. Raveendran

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2653-54 OF 2010
(Arising out of SLP(C) No.7686-7687/2009)

Rajeev Kumar & Another

..Appellant(s)

Versus

Hemraj Singh Chauhan & Others

..Respondent(s)

J U D G M E N T

GANGULY, J.

1. Leave granted.

2. The appellants in these appeals are Non-State Civil Service Officers (hereinafter referred to as the "Non-SCS Officers"). They filed an impleadment application in the Delhi High Court for being impleaded as respondents in Writ Petition No.19103-04 of 2008 filed by Hemraj Singh Chauhan and Others before the High Court whereupon the High Court by an order dated 23rd April 2008 allowed them to intervene and further allowed them to make submissions at the time of hearing of the writ petition. They were also given liberty to file affidavits.

3. Pursuant to the said order of the Hon'ble High Court, these appellants filed affidavits. After the High Court passed its impugned judgment dated 14.11.08 they have filed these appeals assailing the said judgment.

4. At the outset of their arguments this Court wanted learned counsel for the appellants to satisfy this Court about their locus to participate in the controversy at the stage when the matter was before the High Court in view of the fact that admittedly these appellants were not parties before the Central Administrative Tribunal (hereinafter, 'C.A.T.').

5. Before the C.A.T. there were three applicants namely, Hemraj Singh Chauhan, Anwarul Haque and Ram Nawal Singh who were common both in O.A. No.1097/06 and O.A. No.1137/06. Apart from those three persons, Ramesh Chandani and K.K. Shukla were also applicants in O.A. No. 1137/06. Both the original applications were heard together.

6. The C.A.T. in its judgment dated 15.12.2006 held that O.A. No.1097/06 was without merit and dismissed the same and O.A. No.1137/06 was partly allowed and the respondents were directed to convene the meeting of D.P.C. Selection Committee to fill-up the posts which ultimately remain unfulfilled in 2001, 2002 and 2004 and to consider all eligible SCS Officers in the zone of consideration in the respective years including the Officers who were put in the select list of those years but could not be appointed in the absence of integrity certificate. The C.A.T. directed that the said order be complied within the period of four months.

7. However, on the said judgment being challenged before the High Court by Hemraj Singh Chauhan, the High Court set aside the judgment of the C.A.T. and the Central Government and the State Government were directed to undertake the cadre reviewing exercise with reference to the vacancy position as on 1st January 2004 in the manner indicated in the High Court judgment within eight weeks from date.

8. However, while answering the objection on their locus standi, the appellants referred to the decision of the Constitution Bench of this Court in the case of L. Chandra Kumar v. Union of India and others - (1997) 3 SCC 261 and in particular to paragraph 99, page 311 at placitum f & g of the report and contended that in view of the law declared in Chandra Kumar (supra), they can come before the High Court and raise their grievances against the judgment of C.A.T. as their interests have been affected by that judgment even though they were not parties to the proceedings in which the said judgment was rendered.

9. This Court is of the view that the understanding of the ratio in Chandra Kumar (supra) by the learned counsel for the appellants in this case is not correct and the ratio in Chandra Kumar (supra) is just to the contrary.

10. The Constitution Bench in Chandra Kumar (supra) held that the power of the High Court under Articles 226 and 227 of the Constitution and of this Court under Article 32 of the Constitution is a part of the basic structure of our Constitution (See paragraphs 78 & 79, pages 301 and 302 of the report). The Constitution Bench also held that various Tribunals created under Articles 323-A and

323-B of the Constitution, will function as Court of first instance and are subject to the power of judicial review of the High Court under Articles 226 and 227 of the Constitution. The Constitution Bench also held that these Tribunals are empowered even to deal with constitutional questions and can also examine the vires of statutory legislation, except the vires of the legislation which creates the particular Tribunal.

11. In paragraph 93, at page 309 of the report, the Constitution Bench specifically held:

"...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...."

(Emphasis added)

12. The Constitution Bench explained the said statement of law by reiterating in the next sentence:

"..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.

13. On a proper reading of these two sentences, it is clear:

(a) The Tribunals will function as the only Court of first instance in respect of the areas of law for which they have been constituted.

(b) Even where any challenge is made to the vires of legislation, excepting the legislation under which Tribunal has been set up, in such cases also, litigants will not be able to directly approach the High Court 'overlooking the jurisdiction of the Tribunal'.

14. The aforesaid propositions have been repeated again by the Constitution Bench in the penultimate paragraph 99 at page 311 of the report in the following words:

"...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...."

15. In view of such repeated and authoritative pronouncement by the Constitution Bench of this Court, the approach made to the High Court for the first time by these appellants in respect of their service disputes over which C.A.T. has jurisdiction, is not legally sustainable. The Division Bench of the High Court, with great respect, fell into an error by allowing the appellants to treat the High

Court as a Court of first instance in respect of their service disputes, for adjudication of which C.A.T. has been constituted.

16. The grievances of the appellants in this appeal are that they were not made parties in proceedings before the Tribunal. But in the impleadment application filed before the High Court it was not averred by them that they were not aware of the pendency of the proceeding before the Tribunal. Rather from the averments made in the impleadment petition it appears that they were aware of the pendency of the proceedings before the Tribunal. It was therefore, open for them to approach the Tribunal with their grievances. Not having done so, they cannot, in view of the clear law laid down by the Constitution Bench of this Court in Chandra Kumar (supra), approach the High Court and treat it as the Court of first instance in respect of their grievances by 'overlooking the jurisdiction of the Tribunal'. The C.A.T. also has the jurisdiction of Review under Rule 17 of CAT (Procedure) Rules, 1987. So, it cannot be said that the appellants were without any remedy.

17. As the appellants cannot approach the High Court by treating it as a Court of first instance, their Special Leave Petition before this Court is also incompetent and not maintainable.

18. The principles laid down in the case of Chandra Kumar (supra) virtually embody a rule of law and in view of Article 141 of the Constitution the same is binding on the High Court. The High Court fell into an error by allowing the appellants to approach it in clear violation of the Constitution Bench judgment of this Court in Chandra Kumar (supra).

19. For the reasons aforesaid the appeals are dismissed as not maintainable. No costs.

.....J. (R.V. RAVEENDRAN)J. (ASOK KUMAR GANGULY) New Delhi
March 23, 2010