

Delhi State Contractual Employees ... vs Govt Of Nct Of Delhi And Ors on 6 September, 2024

Author: Jyoti Singh

Bench: Jyoti Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
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+ W.P.(C) 12117/2023 & CM APPL. 12674/2024
DELHI STATE CONTRACTUAL
EMPLOYEES ASSOCIATION

Through: Mr. Saurabh Kirpa
with Ms. Filza Moonis and

GOVT OF NCT OF DELHI AND ORS.

Through: Mrs. Avnish Ahlawat
Counsel with Ms. Laavanya K
Alam and Mr. Mohnish Sehraw
GNCTD.

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+ W.P.(C) 12669/2023 & CM APPL. 49932/2023
AJAY KUMAR & ORS.

Through:

GOVT.OF NCT OF DELHI & ORS.

Through: Mrs. Avnish Ahlawat
Counsel with Ms. Laavanya K
Alam and Mr. Mohnish Sehraw
GNCTD.

CORAM:

HON'BLE MS. JUSTICE JYOTI SINGH

% 06.09.2024

1. W.P.(C) 12117/2023 has been preferred on behalf of the Petitioner under Article 226 of the Constitution of India, seeking the following reliefs:

"i) Issuance of a Writ in the nature of Mandamus or any appropriate Writ declaring the impugned circular/order dated 24.08.2023 passed by the This is a digitally signed order.

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Deputy Secretary of HR-PARAMEDICAL Branch in File No. F1 (1036) HR-PARA/H&FW/2023/2969-3009, the advertisement dated 31.07.2023 and O.M. Dated 11.10.2020 as erroneous, unjustified, discriminatory, and unsustainable in the eyes of law;

ii) Set aside the impugned decision/order dated 24.08.2023 passed by the Deputy Secretary of HR-PARAMEDICAL Branch in File No. F1 (1036) HR-PARA/H&FW/2023/2969-3009 the advertisement dated 31.07.2023 and O.M. Dated 11.10.2020 as being erroneous, unjustified and unsustainable in the eyes of law."

2. W.P.(C) 12669/2023 has been preferred on behalf of the Petitioners under Article 226 of the Constitution of India, seeking the following reliefs:

"(A) Issue a Writ in the nature of Mandamus or any appropriate Writ, order or direction setting aside the impugned O . M . No . F.8/279/H&W/Nursing/2016/1463339 dated 11.10.2020 issued by Dy.

Secretary (HR-Nursing) of Health & Family Welfare Department with the approval of the respondent no.2, the advertisement dated 31.07.2023 issued by the respondent no.4 and the impugned circular / order No. F1 (1036) HR-PARA/H&FW/2023/2969-3009 dated 24.08.2023 issued by the Deputy Secretary of HR-PARAMEDICAL Branch with approval of the respondent no.2, all being erroneous, unjustified, arbitrary, discriminatory, and unsustainable in the eyes of law;

(B) issue a writ in the nature of Mandamus or any other writ, order or direction, thereby directing the Respondents no. 1 and 2 to declare the petitioner employees as deemed "Regular Appointees/Employees" and consider them for confirmation on the respective posts as held by them since last more than 10 years, on the basis of their service record with all consequential benefits, thereto."

3. Preliminary objection is taken by the Respondents to the maintainability of these writ petitions on the ground that the reliefs sought are in the nature of 'service matters' as defined under Section 3(q) of Administrative Tribunals Act, 1985 ('1985 Act') and therefore, by virtue of Section 14(1) of 1985 Act, the Central Administrative Tribunal ('Tribunal') shall be the only Court of first instance to adjudicate the issues raised by the Petitioners in view of the fact that the reliefs claimed are against This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 21/09/2024 at 02:00:32 Government of National Capital Territory of Delhi ('GNCTD'), which is notified under Section 14 of 1985 Act. To buttress this submission, Mrs. Ahlawat, appearing for the Respondents relies on the judgment of the Constitution Bench of the Supreme Court in L. Chandra Kumar v. Union of India and Others, (1997) 3 SCC 261 as well as judgments of this Court in Nanak Ram v. Delhi Skill and Entrepreneurship University through its Registrar and Ors., W.P.(C) 1793/2023, decided on 25.07.2023; Prabhat Ranjan Deo v. Union Public Service Commission and Others, 2020 SCC

OnLine Del 738; Dr. Nitesh Kumar Tripathi v. Union Public Service Commission and Another, 2017 SCC OnLine Del 13010; Praveen Sharma v. U.P.S.C., 2007 SCC OnLine Del 2086; Sh. Pawan Kumar v. Union of India and Ors., 2015 SCC OnLine Del 6688; Mr. Shahin Rustam & Anr. v. Indira Gandhi National Open University and Ors., 2014 SCC OnLine Del 4127 and Varre Sai Pranav Sudhanshu v. Union of India & Anr., W.P.(C) 9744/2024, decided on 30.08.2024.

4. In response to the preliminary objection, Mr. Saurabh Kirpal, learned Senior Counsel appearing on behalf of the Petitioner in W.P.(C) 12117/2023 candidly admits that the legal remedy available to the Petitioner was to approach the Tribunal, however, considering that some similarly placed persons had earlier approached the Tribunal and their original application had not been entertained, Petitioner invoked the jurisdiction of this Court under Article 226 of the Constitution of India, which is an inviolable part of our Constitution.

5. Having heard learned Senior Counsel for the Petitioner in W.P.(C) 12117/2023 and other counsels for the respective parties, this Court finds merit in the preliminary objection raised by the Respondents.

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6. From a reading of the writ petitions and the reliefs sought therein, there is no trace of doubt that they are in the nature of 'Service Matters' as defined under Section 3(q) of the 1985 Act. Government of NCT of Delhi is notified under Section 14 of the 1985 Act, which provides that from the appointed day, the Tribunal shall exercise all the jurisdiction, powers and authority exercisable immediately before that day by all Courts, except the Supreme Court, in relation to recruitment and matters concerning recruitment to any all India service or to any civil service of the Union or civil post under the Union and as well as in respect of all service matters as mentioned in Section 14(1)(b) and (c). The Constitution Bench of the Supreme Court in L. Chandra Kumar (supra) observed as follows:

"90. We may first address the issue of exclusion of the power of judicial review of the High Courts. We have already held that in respect of the power of judicial review, the jurisdiction of the High Courts under Articles 226/227 cannot wholly be excluded. It has been contended before us that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations is questioned, and that they should restrict themselves to handling matters where constitutional issues are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings and may cause avoidable delay. If such a view were to be adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals. Moreover, even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14,

15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted. On the other hand, to hold that all such decisions will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls will serve two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Articles 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 21/09/2024 at 02:00:33 the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter.

91. It has also been contended before us that even in dealing with cases which are properly before the Tribunals, the manner in which justice is dispensed by them leaves much to be desired. Moreover, the remedy provided in the parent statutes, by way of an appeal by special leave under Article 136 of the Constitution, is too costly and inaccessible for it to be real and effective. Furthermore, the result of providing such a remedy is that the docket of the Supreme Court is crowded with decisions of Tribunals that are challenged on relatively trivial grounds and it is forced to perform the role of a first appellate court. We have already emphasised the necessity for ensuring that the High Courts are able to exercise judicial superintendence over the decisions of the Tribunals under Article 227 of the Constitution. In R.K. Jain case [(1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464] , after taking note of these facts, it was suggested that the possibility of an appeal from the Tribunal on questions of law to a Division Bench of a High Court within whose territorial jurisdiction the Tribunal falls, be pursued. It appears that no follow-up action has been taken pursuant to the suggestion. Such a measure would have improved matters considerably. Having regard to both the aforesaid contentions, we hold that all decisions of Tribunals, whether created pursuant to Article 323-A or Article 323-B of the Constitution, will be subject to the High Court's writ jurisdiction under Articles 226/227 of the Constitution, before a Division Bench of the High Court within whose territorial jurisdiction the particular Tribunal falls.

92. We may add here that under the existing system, direct appeals have been provided from the decisions of all Tribunals to the Supreme Court under Article 136 of the Constitution. In view of our above- mentioned observations, this situation will also stand modified. In the view that we have taken, no appeal from the decision of a Tribunal will directly lie before the Supreme Court under Article 136 of the Constitution; but instead, the aggrieved party will be entitled to move the High Court under Articles 226/227 of the Constitution and from the decision of the Division

Bench of the High Court the aggrieved party could move this Court under Article 136 of the Constitution.

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 their respective High Courts. This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 21/09/2024 at 02:00:34 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.

94. The directions issued by us in respect of making the decisions of Tribunals amenable to scrutiny before a Division Bench of the respective High Courts will, however, come into effect prospectively i.e. will apply to decisions rendered hereafter. To maintain the sanctity of judicial proceedings, we have invoked the doctrine of prospective overruling so as not to disturb the procedure in relation to decisions already rendered.

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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, This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 21/09/2024 at 02:00:35 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. Mrs. Ahlawat has also rightly placed reliance on the judgments of this Court, aforementioned, wherein on account of existence of legal remedy to approach the Tribunal, this Court had declined to exercise jurisdiction under Article 226 of the Constitution of India. There is no doubt that where there is a right there is a remedy 'ubi jus ibi remedium' and often the path to remedy is a vexed and complex question, but in the present cases, in view of the binding dictum of the Supreme Court, the remedy of the Petitioners clearly lies before the Central Administrative Tribunal.

8. Ordinarily, the Court would have directed the Petitioners to withdraw these writ petitions and approach the Tribunal afresh. However, considering that these writ petitions have been pending before this Court for some time, it would be unfair to direct the Petitioners to file fresh applications and therefore, these writ petitions are transferred to the Central Administrative Tribunal, where they shall be listed before the learned Registrar on 03.10.2024.

9. Registry is directed to transmit the records of both the writ petitions to the Tribunal before the next date.

10. At this stage, Mr. Saurabh Kirpal, learned Senior Counsel submits that the Petitioners apprehend that the Respondents may notify the examination in the near future to fill up the vacancies on which the Petitioners lay a claim for regularization and other benefits and therefore,

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11. There is no gainsaying that it is the prerogative and right of the Petitioners to prefer applications before the Tribunal to seek interim reliefs, in accordance with law, as and when circumstances call for and no liberty is required. However, looking at the nature of reliefs sought, the Tribunal is requested to endeavour to take up these petitions as expeditiously as possible.

JYOTI SINGH, J SEPTEMBER 6, 2024 DU This is a digitally signed order.

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