

Serial no. 8
Supplementary list (Video Conference)

**HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR**

**EMG-CM No. 50-A/2020 in
WP (C) no. 47-A/2020
EMG-CM no. 51-A/2020**

Fehmeeda Akhter

....Petitioner..

Through: Mr M. I. Dar, Advocate

vs.

UT of J&K and others

**Through: Mr D. C. Raina, Advocate General with
Mr Shah Aamir, AAG
Mr Aseem Sawhney, AAG
Mr, T. M. Shamsi, ASGI
Mr Vishal Sharma, ASGI**

CORAM

Hon'ble Mr Justice Ali Mohammad Magrey, Judge

Whether the order is reportable Yes

ORDER

1/- By the present writ petition, the petitioner seeks to assail the Order No. CMOB/3235-38 dated 06.04.2020, for short impugned order, issued by the respondent no. 4, by virtue of which the transfer order of the petitioner being Order No. CMOB/3300-03 dated 03.04.2020 has been rescinded/ cancelled.

2/- The grievance projected by the petitioner in nutshell is that she has been performing her duties as a Community Health Officer, CHO, at Primary Health Centre, PHC, Narbal, and during her posting as such an order bearing No. CMOB/3300-03 dated 03.04.2020 came to be issued by the respondent no. 4 whereby the petitioner was transferred to PHC Ichgam and upon her joining at the said place the impugned order was issued just after three days rescinding/ cancelling the order of transfer dated 3rd April, 2020, without any rhyme or reason. She being aggrieved

of the said act of the respondent no. 4, challenges the same by the petition in hand.

3/- At the very outset Mr D. C. Raina, learned Advocate General, raised an objection about the maintainability of the writ petition before this Court in view of the fact that pursuant to the abrogation of Article 370 of the Constitution of India, and formation of the Union Territory of Jammu & Kashmir and Ladakh in terms of the provisions of The Jammu and Kashmir Reorganization Act, 2019, all service matters of the Government Employee(s) in the said Union Territories, upon issuance of the Notification dated 29th April, 2020, issued by the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), are required to be heard and considered only by the Central Administrative Tribunal, Chandigarh, “hereinafter for short as CAT” within whose jurisdiction the matter now falls.

4/- Confronted with the said position, the learned counsel for the petitioner submits that changed scenario does not take away the jurisdiction of this court as the same is protected in terms of the mandate of the judgments rendered by the Constitutional Bench of the Hon’ble Supreme Court in case titled *L. Chandra Kumar v. Union of India and others reported as (1997) 3 SCC p. 261* and in case titled *Kendriya Vidyalaya Sangathan and another v. Subhash Sharma etc. reported as AIR SCW 2002 (2) p. 1105*.

5/- The learned counsel for the petitioner further submits that this Court has the jurisdiction to consider the case in terms of clause (b) of sub-section (2) of Section 1 of The Administrative Tribunals Act, 1985.

6/- The learned counsel for the petitioner further contends that in view of the Full Bench judgment of this court rendered in *Kuldeep Khoda & Others v. Masood Ahmad Choudhary & Others (1994) JKLR p. 25*, the CAT has the additional or an alternative jurisdiction and not the exclusive one and in that view of the matter the jurisdiction of this Court is not deposited. The learned counsel for the petitioner heavily emphasized on paragraph no. 4 of the judgment of Hon’ble Supreme Court delivered in

case titled “*Kendriya Vidyalaya Sangathan v. Subhash Sharma*” in support of his submissions.

7/- The learned Advocate General, submits that the court may appreciate that there are two sides to the story one that is being referred to by the learned counsel for the petitioner relates to the period when Article 370 of the Constitution of India was subsisting and the Jammu & Kashmir was having the status of a State and the other part of the story relates to the present era when the Jammu & Kashmir has been formed into two Union Territories and the Article 370 of the Constitution of India is abrogated. The learned Advocate General further submits that clause (b) of sub-section 2 of the Section 1 of The Administrative Tribunals Act, 1985 also relates to the pre-abrogation era of Article 370, therefore, not applicable. He submits that the judgments referred to by the learned counsel also relate to the same period, therefore, are not applicable to the case in hand.

8/- I have heard learned counsel for the parties and considered the submissions made.

9/- Admittedly, the petitioner is a Government Employee in the Union Territory of Jammu and Kashmir. Article 323-A and Article 323-B for the establishment of various Tribunals was introduced in the Constitution by its (42nd Amendment) Act, 1976. Under Article 323-A of the Constitution, Central Administrative Tribunal Act, 1985 was established. Article 323-A (2) (d) excludes the jurisdiction of all Courts, except that of the Supreme Court under Article 136, with respect to the dispute or complaints referred to in clause (1).

10/- In order to appreciate the submissions made by the learned counsel for the parties, it has become necessary to take a look at the relevant provisions of law governing the subject. In the first instance, clause (b) of sub-section (2) of Section 1 of the Administrative Tribunals Act, 1985 is taken note of hereunder:

“1. Short title, extend and commencement.-....

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

11/- The plain reading of the provision of law makes it clear that the same talks of the State of Jammu and Kashmir which now stands formed into two different Union Territories, therefore, the submission made by the learned counsel that the Act is not applicable to the Jammu and Kashmir is unfounded, therefore, rejected.

12/- The other submission of the learned counsel for the petitioner that in view of the Full Court judgment of this Court delivered in case titled *Kuldip Khuda & Ors v. Masud Ahmad Choudhary & Ors*, the jurisdiction of this Court is protected, is not only misconceived but misdirected also, in that, the judgment rendered in the case is passed prior to the abrogation of Article 370 of the Constitution in terms whereof the Union Territory of Jammu and Kashmir and Union Territory of Ladakh were a State with special privileges. It needs no emphasis to record that on the application of the Jammu and Kashmir Re-organization Act, 2019, all the Central Laws have been made applicable to the erstwhile State of Jammu and Kashmir. Therefore, the judgment referred to by the learned counsel is no-more applicable.

13/- Now coming to another submission of the learned counsel for the petitioner referring to paragraph 4 of the Kendriya Vidyalaya case *supra*. The case, in my opinion, is based on entirely different set-up and would be of no help to the petitioner in any case as the case pertains to an Institution that is run and controlled directly by the Government of India. In the paragraph no. 4 of the said judgment the Hon'ble Supreme Court has only recorded what the High Court has done in the case in appeal before the Supreme Court. The Hon'ble Supreme Court in the same judgment, while taking note of the fact that the appellant institution is an autonomous body and controlled by the Government of India, has held that the Administrative Tribunal has the jurisdiction. Ultimately, the Hon'ble Supreme Court, has set-aside the judgment of the Full Bench of

this Court. Paragraph no. 12 and 13 being relevant are extracted hereunder for facility of reference, thus:

“12. 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.

13. 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.”

14/- Section 28 of the Administrative Tribunals Act, 1985, deals with the exceptional jurisdiction, therefore, is taken note of herein:

“28. Exclusion of jurisdiction of courts except the Supreme Court under Article 136 of the Constitution.- On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or post or service matters concerning members of any Service or persons appointed to any Service or post, [no court except-
(a) The Supreme Court; or

(b) Any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 (14 of 1947) or any other corresponding law for the time being in force, shall have], or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters.”

15/- While the Act makes it clear that it is the Tribunal, the forum of first instance to consider and decide the services matters of employees of Central Government and the Union Territories, it also provides for exemption of few where the Act will not apply. The section 2, for facility of reference, is taken note of hereunder:

“2. Act not to apply to certain persons._ The provisions of this Act shall not apply to_

(a) Any member of the naval, military or air forces or of any other armed forces of the Union;

(c) Any officer or servant of the Supreme Court or of any High court [or courts subordinate thereto];

(d) Any person appointed to the secretarial staff of either House of Parliament or to the secretarial staff of any State Legislature or a House thereof or, in the case of Union Territory having a Legislature, of that Legislature.”

16/- From the above discussion what emerges is that this Court, cannot entertain a petition raising a service dispute of the employee in the service of the Government of India or the Government of Union Territory of Jammu and Kashmir and Ladakh.

17/- During the course of arguments the learned counsel for the petitioner had further made a submission that the Notification dated 29th April, 2020, which provides for hearing and consideration of services matters of Union Territories or Jammu and Kashmir and Ladakh by the Chandigarh Bench of CAT, is not applicable to the instant case as the

order impugned is dated 6th April, 2020 and the petition is filed much earlier to the notification date.

18/- The learned Advocate General resisted the submission by contending that the relevant date for determining such issue would be the date of consideration of the case before the Court and not the date of filing.

19/- Since the petition is listed before this Court for the first time and the remedy is already available for consideration, therefore, this submission of the learned counsel for the petitioner, having no merit, shall stand rejected.

20/- While hearing the learned counsel for the parties through Video Conferencing mode the learned Advocate General submitted that a Notifications dated 2nd May, 2020, read with 17th May, 2020, copy whereof has been made available which is made part of the file, has been issued by the Principal Registrar Principal Bench, CAT, spelling out the mode/ procedure in which the cases are being regulated in these times of Covid-19 crisis.

21/- Let the petitioner approach the CAT today itself. Given the urgency involved in the matter the CAT Bench, Chandigarh is expected to hear the matter on priority preferably tomorrow or the day after.

22/- The learned counsel for the petitioner submits that it would be very inconvenient for the petitioner to approach the CAT Bench Chandigarh which is a far-off place from Srinagar and the ends of justice would get defeated by not making available the Bench at Srinagar. Mr Vishal Sharma, ASGI, in response, on the strength of instructions conveyed to him by the Government of India, submits that already a statement has been made by him before the Division Bench of this Court at Jammu, in case PIL no. 3/2020 titled Aditya Sharma and another v. Union of India and others on 19.05.2020 to the effect that immediate steps are being taken to constitute bench of CAT in Union Territory of Jammu and Kashmir and Union Territory of Ladakh to be stationed in the Jammu and Kashmir only. Therefore, very likely a permanent CAT Bench would soon be made available for hearing the service matters of the employees of Union

Territory of J&K and Ladakh and of those Central Government Employees who are posted in these Union Territories.

23/- Needless to mention that making available the Bench for the litigants of the Union Territory of Jammu and Kashmir and Ladakh is for the Government of India to decide and the Court being conscious of its constitutional limitations cannot pass any direction in respect of constitution/ sitting of the CAT Benches.

24/- Mr Mohammad Iqbal Dar, learned counsel for the petitioner, submits that petitioner may be given liberty to file a representation before the Director, Health Services Kashmir, for redressal of her grievances.

25/- There would be no harm in so doing, therefore, the petitioner is at liberty to file a representation before the Director Health Services Kashmir for redressal of her grievances.

26/- The court, in view of above, holds that this Court has no jurisdiction to entertain the petition and the same be, instead, presented before the CAT Chandigarh that has the jurisdiction.

27/- While so holding, the following directions are made for dealing with similar kind of cases in future:

- a) Registrar Judicial of the High Court wing Srinagar/ Jammu are directed not to entertain the writ petitions relating to service disputes of the employees of the Union Territory of Jammu and Kashmir and Union Territory of Ladakh and those Central Government Employees who are posted and stationed in these two Union Territories, for which the remedy is with CAT Bench Chandigarh subject to further availability of a Bench at Union Territory of Jammu and Kashmir and Ladakh.
- b) Registrar Judicial Srinagar wing shall ensure wide publicity of this judgment for the information of all concerned through Electronic/ Print Media and its uploading on the website.

28/- Registry to furnish copy of the order to the learned counsel for the parties through e-mail and a copy of it be made available to the Chairman CAT, Principal Bench, New Delhi for information, besides furnishing one to the Chief Secretary, Union Territory of J&K.

29/- Disposed of.

(Ali Mohammad Magrey)
Judge

Srinagar
20.05.2020
Amjad lone PS