



W.A.No.2121 of 2024

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2025:KER:251

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ANIL K. NARENDRA

&

THE HONOURABLE MR.JUSTICE MURALEE KRISHNA S.

MONDAY, THE 6TH DAY OF JANUARY 2025 / 16TH POUSHA, 1946

W.A.NO.2121 OF 2024

AGAINST THE JUDGMENT DATED 05/12/2024 IN WP(C) NO.43038 OF

2024 OF THE HIGH COURT OF KERALA

APPELLANT/PETITIONER:

SADHIQ M.M. ,
AGED 44 YEARS,
SON OF MR.MOHAMMED. M.K. , MATHILAKATHVEETIL HOUSE,
KOTTANELLUR. (PO) , PATTEPADAM, THRISSUR DISTRICT,
PIN - 680662

BY ADVS.SHAJI CHIRAYATH
SAVITHA GANAPATHIYATAN
JIJI M. VARKEY
M.K.SAFEELA BEEVI
M.M.SHAJAHAN

RESPONDENTS/RESPONDENTS:

- 1 STATE OF KERALA,
REPRESENTED BY THE SECRETARY, DEPARTMENT OF REVENUE,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM,
PIN - 695001.
- 2 ADDITIONAL CHIEF SECRETARY,
DEPARTMENT OF REVENUE (D) , GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001.
- 3 SUSPENSION AND REVIEW COMMITTEE (VIGILANCE
DEPARTMENT) , REPRESENTED BY ITS CHAIRMAN, CHIEF



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SECRETARY TO GOVERNMENT OF KERALA, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001.

4 DISTRICT COLLECTOR,
THRISSUR DISTRICT, CIVIL STATION, AYYANTHOLE,
THRISSUR, PIN - 680003.

BY SMT.NISHA BOSE, GOVT.PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 06.01.2025,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



JUDGMENT

"CR"

Anil K. Narendran, J.

The appellant filed W.P.(C)No.43038 of 2024, invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India, seeking an order directing the 3rd respondent Suspension and Review Committee (Vigilance Department) to consider Ext.P3 application dated 17.04.2024, which is one filed seeking review of Ext.P2 order of suspension dated 18.01.2024 issued by the 4th respondent District Collector, Thrissur, whereby the appellant-writ petitioner, who was working as the Village Officer, Thekkumkara Village, under the Revenue Department of the State, was placed under suspension with effect from 15.01.2024, invoking the provisions under Rule 10(1)(b) of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 since he was arrested by the Deputy Superintendent of Police, Vigilance and Anti-Corruption Bureau, Thrissur, on 15.01.2024 at 02.50 p.m., in Vigilance Case No.01/2024/TSR registered under Section 7(a) of the Prevention of Corruption Act, 1988 and Section 34 of the Indian Penal Code, 1860.



2. The learned Single Judge, by the impugned judgment dated 05.12.2024 dismissed the writ petition. Since the appellant-writ petitioner has already been issued with a charge sheet in the disciplinary proceedings, the learned Single Judge found no ground, at this stage, to entertain the writ petition. Feeling aggrieved, the appellant has filed this writ appeal, invoking the provisions under Section 5(i) of the Kerala High Court Act, 1958.

3. Heard the learned counsel for the appellant-writ petitioner and the learned Senior Government Pleader for the respondents on the question of maintainability of a writ petition under Article 226 of the Constitution of India concerning recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of Union or of any State.

4. As already noticed hereinbefore, the only relief sought for in the writ petition is a writ of mandamus commanding the 3rd respondent to consider Ext.P3 application dated 17.04.2024 made by the appellant, who was working as the Village Officer, Thekkumkara Village, in the Revenue Department of the State.



The said application is one filed by the appellant seeking review of Ext.P2 order of suspension dated 18.01.2024 issued by the 4th respondent District Collector. Since the appellant was arrested by the Deputy Superintendent of Police, Vigilance and Anti-Corruption Bureau, Thrissur, on 15.01.2024 at 02.50 p.m., in Vigilance Case No.01/2024/TSR registered under Section 7(a) of the Prevention of Corruption Act, 1988 and Section 34 of the Indian Penal Code, he was placed under suspension by Ext.P2 order dated 18.01.2024, with effect from 15.01.2024, invoking the provisions under Rule 10(1)(b) of the Kerala Civil Services (Classification, Control and Appeal) Rules.

5. Article 323A of the Constitution of India deals with the constitution of Administrative Tribunals for the adjudication or trial of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts 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 owned or controlled by the Government. Article 323B deals with



the constitution of the Tribunal for other matters, i.e., for the adjudication or trial of any disputes, complaints or offences with respect to all or any of the matters specified in clause (2) of the said Article, with respect to which such Legislature has the power to make laws.

6. The Parliament enacted the Administrative Tribunals Act, 1985 to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts 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 owned or controlled by the Government and for matters connected therewith or incidental thereto. By Section 2 of the Administrative Tribunals (Amendment) Act, 1986, in the long title of the Principal Act, for the words "any corporation owned or controlled by the Government" the words, figures and letter "any corporation or society owned or controlled by the Government in pursuance of Article 323A of the Constitution" were substituted.



7. The provisions of the Administrative Tribunals Act, 1985, in so far as they relate to the Central Administrative Tribunals came into force on 01.07.1985, vide notification G.S.R. No.527(E) dated 01.07.1985. The provisions of the said Act, in so far as they relate to the State Administrative Tribunal for Kerala came into force on 01.01.1986, vide notification G.S.R. No.956(E) dated 31.12.1985.

8. In **L. Chandra Kumar v. Union of India [(1997) 3 SCC 261]** the Constitution Bench of the Apex Court held that clause 2(d) of Article 323A and clause 3(d) of Article 323B of the Constitution of India, 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 Administrative Tribunals Act, 1985 and the 'exclusion of jurisdiction' clauses in all other legislations enacted under the aegis of Articles 323A and 323B of the Constitution 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.

9. In **L. Chandra Kumar [(1997) 3 SCC 261]** the Constitution Bench held that the Tribunals created under Article 323A and Article 323B 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, be open for litigants to directly approach the High Courts 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 Tribunal concerned.

10. Section 28 of the Administrative Tribunals Act deals



with the exclusion of jurisdiction of courts except the Supreme Court under Article 136 of the Constitution. As per Section 28, on and from the date from which any jurisdiction, powers and authority becomes exercisable under the 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 the Supreme Court; or any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 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.

11. In **L. Chandra Kumar [(1997) 3 SCC 261]**, after holding that Section 28 of the Administrative Tribunals Act, 1985 and the 'exclusion of jurisdiction' clauses in all other legislations enacted under the aegis of Articles 323A and 323B of the Constitution, 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, the Apex Court held that it will not be open for litigants to directly approach the High Courts 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 Tribunal concerned.

12. In **Kendriya Vidyalaya Sangathan v. Subhas Sharma [(2002) 4 SCC 145]** a Two-Judge Bench of the Apex Court was dealing with a case in which the 1st respondent in Civil Appeal No.5021 of 2001 and the sole respondent in Civil Appeal No. 5448 of 2000 were the employees of Kendriya Vidyalaya Sangathan and as some dispute arose regarding their service conditions, they filed two writ petitions under Article 226 of the Constitution of India before the High Court of Jammu and Kashmir for adjudication. In the said writ petitions, 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, the Tribunal has got jurisdiction to decide the disputes. By the impugned orders, both



the applications were dismissed. The High Court, relying on a Full Bench decision in **Kuldip Khud v. Masud Ahmad Chodhry [1994 JKLR 25 : 1994 SLJ 287]** 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. Before the Apex Court, it was contended that in view of clause (a) of sub-section (2) of Section 1 of the Administrative Tribunals Act, the said Act extends to the State of Jammu and Kashmir and as the respondents are employees of 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. It was contended further that though the High Court under Article 226 of the Constitution of India or Section 103 of the Jammu and Kashmir Constitution has wide powers, in view of the restraint imposed by the judgment of the Constitution Bench of the Apex Court in **L. Chandra Kumar [(1997) 3 SCC 261]** the High Court ought not to have entertained the writ petition.



13. In **Subhas Sharma [(2002) 4 SCC 145]** the Apex Court found that 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 Central Administrative Tribunal has jurisdiction concerning service matters of the employees of Kendriya Vidyalaya, in view of sub-clause (iii) of Section 14(1)(b) of the Administrative Tribunals Act, read with the notification of the Government of India dated 17.12.1998 issued under sub-section (2) of Section 14 of the Act. Therefore, service disputes concerning the employees of 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 respondents are working there.

14. In **Subhas Sharma [(2002) 4 SCC 145]** the Two-Judge Bench noticed that the Constitution Bench in **L. Chandra Kumar [(1997) 3 SCC 261]** has clearly held that the Tribunals set up under the Administrative Tribunals Act shall continue to act as the 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 Tribunal concerned. In view of the clear pronouncement of the Constitution Bench, the High Court erred in law in directly entertaining the writ petitions concerning service matters of the employees of Kendriya Vidyalaya, as these matters come under the jurisdiction of the Central Administrative Tribunal. Therefore, the Two-Judge Bench held that the High Court committed an error by declining to transfer the writ petition to the Central Administrative Tribunal. Consequently, the Apex Court set aside the impugned orders of the High Court and directed 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.

15. In view of the law laid down by the Constitution Bench



in **L. Chandra Kumar [(1997) 3 SCC 261]**, the Central Administrative Tribunal, Ernakulam Bench and the Kerala Administrative Tribunal will act like courts of first instance in respect of the areas of law for which they have been constituted. Therefore, 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 Tribunal concerned. However, the Central Administrative Tribunal, Ernakulam Bench or the Kerala Administrative Tribunal shall not entertain any question regarding the vires of their parent statute, i.e., Administrative Tribunals Act, since the said Tribunals, which are creatures of the said statute, cannot declare the very Act to be unconstitutional. In such cases alone, the litigants can approach the High Court concerned directly.

16. In the instant case, matters concerning recruitment and conditions of service of persons appointed in the Revenue Department, in connection with the affairs of the 1st respondent



State of Kerala, would come under the jurisdiction of the Kerala Administrative Tribunal established by the Central Government, vide the notification issued under sub-section (2) of Section 4 of the Administrative Tribunals Act. In such circumstances, the learned Single Judge erred in law in directly entertaining the writ petition concerning the service matter of the appellant-petitioner, who was working as the Village Officer, Thekkumkara Village, by permitting him to bypass the remedy of moving the Kerala Administrative Tribunal at the first instance. Seeking an order directing the 3rd respondent Suspension and Review Committee (Vigilance Department) to consider Ext.P3 application dated 17.04.2024 made for review of Ext.P2 order of suspension dated 18.01.2024 issued by the 4th respondent District Collector, the appellant has to approach the Kerala Administrative Tribunal, invoking the provisions under Section 15 of the Administrative Tribunals Act, in an original application filed under Section 19 of the said Act. In that view of the matter, we find no grounds to interfere with the impugned judgment of the learned Single Judge dated 05.12.2024 in W.P.(C)No.43038 of 2024 to the extent the



said writ petition stands dismissed.

In the result, this writ appeal fails and the same is accordingly dismissed; however, leaving open the legal and factual contentions raised by the appellant and without prejudice to the right of the appellant to approach the Kerala Administrative Tribunal, invoking the provisions under Section 15 of the Administrative Tribunals Act, in an original application filed under Section 19 of the said Act, seeking appropriate reliefs.

Sd/-

ANIL K. NARENDRAN, JUDGE

Sd/-

MURALEE KRISHNA S., JUDGE