

IN THE HIGH COURT OF KARNATAKA

KALABURAGI BENCH

DATED THIS THE 12TH DAY OF JANUARY, 2023

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

W.P.No.200032/2023 (S-RES)

BETWEEN:

AMEENA AFROJ D/O SHAIK ALTAF
(W/O IMRAN KHAN)
AGE: 29 YEARS OCC: NIL
R/O: H NO. 4-3-137/13,
MNG COLONY, ZAHEERABAD
RAICHUR
DIST. RAICHUR-584101.

.... PETITIONER

(BY SRI K.M.GHATE, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
REP. BY UDDER SECRETARY
DEPT. OF PRIMARY AND SECONDARY
EDUCATION 2ND GATE 6TH FLOOR,
M. S. BUILDING
DR. AMBEDKAR VEEDHI,
BANGALORE-560001
2. DEPARTMENT OF PERSONAL AND
ADMINISTRATIVE REFORMS
SECRETARY TO GOVERNMENT
ROOM NO.245, 2ND FLOOR
VIDHAN SOUDHA
BANGALORE-560001

3. CENTRALISED ADMISSION CELL
SPECIAL OFFICER
OPP. CAUVERY BHAVAN
BANGALORE-560002
4. THE DISTRICT OFFICER
BACKWARD CLASSES WELFARE
DEPARTMENT RAICHUR
DIST. RAICHUR-584101
5. DEPUTY DIRECTOR OF
PUBLIC INSTRUCTION
(ADM) DEPT OF PUBLIC INSTRUCTION
OFFICE OF DDPI
DIST. RAICHUR-584101

... RESPONDENTS

**(BY SRI SHIVAKUMAR R. TENGLI, AGA FOR R1, R3, R4 & R5;
SRI SUDHIRSINGH R. VIJAPUR, DSGI, FOR R3)**

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI/ORDER/DIRECTION, QUASHING THE ENDORSEMENT / ORDER ISSUED BY THE 5TH RESPONDENT IN FILE NO. ಸಂಖ್ಯೆ:ಇ2/ಪ್ರಶಾಶಿ-8/ದಾಖಲಾತಿ ಪರಿಶೀಲನೆ / ಇದ್ದುಪಡಿ / ಹಿಂಬರಹ / 2022-23 ON DATED 21.11.2022, VIDE ANNEXURE-A TO THE WRIT PETITION AND ETC.

THIS PETITION COMING ON FOR ORDERS, THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Whether the challenge to the decision, classifying the petitioner as a General Merit candidate, rejecting the petitioner's claim to be under category 2-B/KA-HK, for selection to the post of a government school teacher, is outside the jurisdiction of the Tribunal constituted under the Administrative Tribunals Act, 1985?.

02. The question referred to above has arisen as the decision of the Deputy Director of Public Instructions, Raichur is under challenge in this writ petition under Article 226 of the Constitution of India.

03. Contending that the Tribunal lacks the jurisdiction to consider the question raised above, and justifying the challenge in this writ petition before this court, Sri. K.M. Ghate, the learned counsel for the petitioner made the following submissions.

a) The issue, in this case, is pertaining to the petitioner's caste and income and the same is outside the purview of the Administrative Tribunal (for short 'Tribunal'). This issue has to be considered only by this Court in the exercise of power under Article 226 of the Constitution of India.

b) Assuming that the Tribunal has got the jurisdiction to deal with this matter under Section 15 of the Act, the alternative remedy by itself will not oust the jurisdiction of the High Court under Article 226 of the Constitution of India.

c) The present writ petition is to enforce the petitioner's fundamental right under Article 14 of the Constitution of India as the persons who are similarly placed, are classified in the 2-B/KA-HK category. The petitioner is questioning the discrimination and infringement of her fundamental right under Article 14 of Constitution of India.

04. Sri. K. M. Ghate, the learned counsel for the petitioner would place reliance on the judgment of the Hon'ble Supreme Court in the case of ***Maharashtra State Board of Wakfs vs. Shaikh Yusuf Bhai Chawla and others*** reported in ***(2012) 6 SCC 328*** and also the judgment of this Court in the case of the ***State of Karnataka and others vs. Smt. Yogeshwari and others*** in ***W.P.No.24115/2018 c/w with W.P.No.3390/20218***.

05. It is further urged that in similar circumstances the High Court at Principal Bench as well as the Bench at Dharwad, granted interim order and entertained the writ petition.

06. The learned Additional Government Advocate for the respondents would refer to Sections 4, 15 and 28 of the Act 1985 and submits that the writ petition is not maintainable. He would place reliance on the judgment of ***L. Chandrakumar vs. Union of India***, reported in ***(1997) 3 SCC 261***. He would further submit that the

Division Bench of this Court, in the case of **Shivaprasad Biradar vs. Karnataka Lokayukta** has followed the ratio laid down by the Hon'ble Apex Court in the case of **L. Chandrakumar**, and has held that the dispute relating to service under the State are to be dealt in the first instance by the Tribunal constituted under the Act of 1985.

07. The learned Government Advocate would further submit that the exceptional circumstances where the writ petitions are entertained, despite alternative remedies are not made out by the petitioner.

08. This Court has considered the contentions and also perused the judgments cited.

09. Since the objection is relating to the jurisdiction of the Court to entertain the writ petition on the premise that the remedy is said to be available under the Act, the reference has to be made to the preamble of the Act and the provisions of the Act.

10. The preamble to the Act, 1985 reads as under:-

"An Act 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 any local or other authority within the territory of India or under the control of the Government of India or of 1[any corporation or society owned or controlled by the Government in pursuance of article 323A of the Constitution]and for matters connected therewith or incidental thereto."

11. Preamble referred to above, is explicitly clear as to the object of the Act. The Administrative Tribunals are constituted to try and adjudicate;

- i) the disputes and complaints with respect to recruitment,
- ii) conditions of service of persons appointed to public services and posts specified in the Act,
- iii) and for the matters connected therewith or incidental thereto.

12. Section 15 of the Act deals with the jurisdiction of the Tribunal. Since the controversy involved in this case is covered under Section 15 (1) (a) of the Act, the same is extracted below for ready reference: -

"15. Jurisdiction, powers and authority of State Administrative Tribunals.— (1) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall exercise, on and from the appointed day, all the jurisdiction, powers, and authority exercisable immediately before that day by all courts (except the Supreme Court 3)in relation to—***

- (a) recruitment, and matters concerning recruitment, to any civil service of the State or to any civil post under the State;*
- (b) -----*

13. Under Section 15 (1) (a) of the Act, the Tribunal gets jurisdiction, to deal with matters relating to

(a) *recruitment,*

(b) *matters concerning recruitment*

to any civil service of the State or

to any civil post under the State;

14. The petitioner would contend that the impugned order classifying the petitioner in the General Merit category is passed pursuant to the petitioner's application for the post of a teacher and the impugned order does not deal with 'recruitment' or 'matters concerning recruitment'. The question whether the petitioner is to be considered under the general merit category or category 2-B/KA-HK, cannot be adjudicated by the Tribunal.

15. The answer to this question is to be traced in Section 15 (1) (a) of the Act, keeping in mind the object of the Act. The expression 'recruitment' and 'matters

concerning recruitment' found in Section 15 (1) (a) are not defined in the Act. Thus, the Court has to apply the plain grammatical meaning attached to the above-said expressions, unless such exercise leads to absurdity. The Cambridge dictionary defines the word 'recruitment' as the process of finding people to work for company or become a new member of an organization:

The Oxford dictionary defines the expression 'recruitment' as the act or process of finding new people to join a company, an organization, the armed forces, etc,

16. The plain dictionary meaning of the expression 'recruitment' itself uses the phrase 'the process of finding new people'.

17. In addition to the expression 'recruitment' found in Section 15 (1) (a) in the Act, to remove any ambiguity or difficulty in interpreting the word 'recruitment' or to eliminate the scope for misinterpretation, the Parliament itself has used the expression, 'matters concerning recruitment' in Section 15

(1) (a) of the Act. Said expression undoubtedly has a wider connotation than the expression 'recruitment'. When the word *recruitment* itself is wide enough to cover the act or the process involved in the recruitment, the expression, '*matters concerning recruitment*' found in Section 15 (1) (a) of the Act, leads to only one conclusion that the decision taken in processing the application for the post is a decision relating to recruitment or the matters concerning to recruitment.

18. In the present scheme of our Constitution, recruitment under the State is governed by the reservation policy of the State. The process involves reserving a certain specified percentage of seats based on reservation policy. Thus, the employer is under obligation to process the applications for recruitment based on criteria fixed under the reservation policy. While processing the applications for the posts, if a decision is taken to classify the applicant in a particular category, as happened in the case of the petitioner, 'the decision taken' is indeed a decision taken in the process of *recruitment*.

19. For the reasons assigned above, there is no difficulty to hold that the expressions '*recruitment*' and '*matters concerning recruitment*' found in Section 15 (1) (a) of the Act, are wide enough to cover all the stages of recruitment, starting from the publication of notification inviting applications to the Civil services and Civil Posts, to the scrutiny of applications and the decisions thereon, conducting examinations, announcement of the results and issuance of orders of appointment. Such being the ambit of Section 15 (1)(a) of the Act, the impugned decision to classify the petitioner under the 'General Merit' category is a decision, the correctness of which can be reviewed by the Tribunal.

20. Since this Court is dealing with the question relating to the jurisdiction of the Tribunal and the High court to deal with matters of this nature, it is also necessary to refer to Section 28 of the Act, which reads as under;

"Exclusion of jurisdiction of Courts except for 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 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,

(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.

21. Section 28 of the Act, excludes the jurisdiction of all courts, in respect of matters over which, the Tribunal under the Act, exercises the jurisdiction, except the Supreme Court and the Labour Courts and other authorities under the Industrial Disputes Act.

22. Combined reading of Sections 15 and 28 of the Act, leads to an inevitable conclusion that the High Court cannot exercise the jurisdiction as a Court of first instance in respect of the matters over which the Tribunals under the Act are empowered to exercise the jurisdiction. The Act not only provides for the jurisdiction of the Tribunals under Section 15 but also provides for the exclusion of the jurisdiction of several Courts including the High Court. The Seven Judges Constitution Bench of the Hon'ble Apex Court had an occasion to consider the scope of Sections 15 and 28 of the Act, in the case of **L.Chandrakumar**, and the Apex court has held that the Administrative Tribunals under the Act, have jurisdiction to consider all the matters covered under the Act, *including the constitutional validity*

of the provisions relating to the recruitment of employees and regulations governing service conditions. In terms of the law laid in the aforementioned case, the Tribunal is the forum of first instance in respect of matters covered under the provisions of the Act.

23. Considering the object which is explicit in the preamble and the jurisdiction conferred under Section 15 r/w Section 28 of the Act, there is no room for any doubt that the Administrative Tribunal, has the jurisdiction to consider all matters concerning the recruitment and the matters concerning recruitment which in its ambit includes all decisions from the date of publication of notification inviting applications for the posts to the orders of appointment.

24. The next point for consideration is whether the petitioner has made out a case to entertain the writ petition despite an alternative remedy being available. Well established exceptional circumstances namely,

- a) the vires of a provision of law under challenge,
or
- b) the principles of natural justice being violated,
or
- c) the authority which passed the order, lacked the jurisdiction to pass the order,
or
- d) Where the petition is filed for enforcement of fundamental rights.

25. To entertain a writ petition despite alternative remedy are not made out in this petition. The judgment relied upon by the learned counsel for the petitioner in the case of **Maharashtra State Board of Wakfs** referred supra, does not come to the aid of the petitioner for the reasons stated in paragraph No.157 of the said judgment. Again, in the case of The **State of Karnataka and others vs. Smt. Yogeshwari and another** referred supra, this Court has not held that the High Court can entertain a writ petition as a court of first instance to decide a case of this nature.

26. The learned counsel for the petitioner submits that the orders passed pursuant to the notification dated 21.03.2022, have been questioned before, the Principal Bench at Bengaluru and Bench at Dharwad and in those matters interim orders are passed. It is to be noticed that in those matters, the objections not raised relating to the maintainability of the writ petition, and questions relating to maintainability are not decided in those cases.

27. As far as the contention that the petitioner is enforcing her fundamental right before this court is concerned, this Court is of the view that no such grounds are forthcoming in the writ petition. The Tribunal is competent to deal with all the grounds raised in the petition and in terms of the law laid down in the case of **L. Chandrakumar** referred supra, the Tribunal is the forum of first instance and not the High Court to adjudicate the disputes falling under Section 15 of the Act.

28. For the aforementioned reasons, this Court is of the opinion that the writ petition is not maintainable before this Court. Accordingly, the writ petition is dismissed as not maintainable.

29. The petitioner is at liberty to approach the Tribunal constituted under the Administrative Tribunals Act 1985.

30. The Registry is directed to return the annexures to the writ petition, after retaining the xerox copy if requested by the petitioner.

No order as to cost.

KJJ

**Sd/-
JUDGE**