

HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND
HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
Writ Appeal No.789 of 2007

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Between:

The Director of Treasuries and Accounts,
Hyderabad & others

... Appellants

And

Pativada Polayya and another

... Respondents

Counsel for the appellants: Government Pleader for
Finance and Planning

Counsel for respondent No.1 : Shri M. Kanaka Raju for
Shri K. Subrahmanyam

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::JUDGMENT::
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September 28, 2007

Per G.S. Singhvi, CJ

Whether the High Court can, in exercise of power under Article 226 of the Constitution of India, directly entertain writ petition filed by an employee of the Government of Andhra Pradesh in relation to his

service matter is the question which arises for determination in this appeal filed by the Director of Treasuries and Accounts, Andhra Pradesh and three others against order dated 05.7.2006 passed by the learned Single Judge in Writ Petition No.3432 of 1999, whereby he directed the appellants herein to pay interest at the rate of 9% on the amount of pension payable to respondent No.1 after his retirement on medical grounds.

It is borne out from the record that respondent No.1 retired from service with effect from 1.12.1995 on medical grounds. However, he was not paid pension and other retiral dues in view of the orders of attachment passed on 8.5.1995 and 18.5.1995 by IV Additional District Munsif, Visakhapatnam in E.P.No.238 of 1995 in O.S.No.104 of 1993 and E.P.No.233 of 1995 in O.S.No.105 of 1993 respectively. The first attachment order was passed for the loan obtained by respondent No.1 from State Bank of India, Maharanipeta Branch, Visakhapatnam and the second attachment order was issued for the loan taken by Shri J. Appa Rao, Junior Accountant, District Treasury, Visakhapatnam for which the petitioner stood surety. The officers of the Treasuries Department felt that in view of the attachment orders, they may have to deposit the amount of retiral dues in the Court and under that impression they did not release pension etc. payable to respondent No.1.

In the writ petition filed by him, respondent No.1 prayed for issue of a mandamus to the non-petitioners (the appellants herein) and respondent No.2 to pay him his retiral dues. By an interim order dated 21.4.1999 passed in WPMP No.4269 of 1999, the non-petitioners were directed to release provisional pension to

respondent No.1. After taking cognizance of the fact that the petitioner has been paid provisional pension and his pension has been finally fixed by an order dated 3.2.2006 passed by Deputy Director, District Treasury, Visakhapatnam, the learned Single Judge disposed of the writ petition with a direction to the appellants herein to pay interest @ 9% from the date of retirement till the date of actual payment of arrears.

We have heard learned Government Pleader for Finance and Planning, learned counsel for respondent No.1 and scrutinised the record.

Although we have sympathy for the cause of respondent No.1, who appear to have been denied the retiral dues without any tangible cause, it is not possible for this Court to overlook the bar contained in Section 28 of the Administrative Tribunals Act, 1985 (for short, 'the Act') as interpreted by the seven-judges Bench of the Supreme Court in **L. Chandra Kumar v. Union of India**^[1].

Section 28 of the Act reads as under:

28. Exclusion of Jurisdiction of Courts except the Supreme Court under Art. 136 of the Constitution:

On and from the date from which any jurisdiction, power and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matter concerning recruitment to any service or post or service matters concerning members of any service or persons appointed to any - vice 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 requirement or such service matters.

In **L. Chandra Kumar**'s case (supra), the larger Bench of the Supreme Court over-ruled the earlier judgment of the Constitution Bench in **S.P. Sampath Kumar v. Union of India**^[2] and held that the power vested in the Tribunal to decide the disputes relating to service matters is supplemental to the constitutional power vested in the High Court under Article 226 of the Constitution of India, but at the same time declared that a writ petition cannot be filed directly in such matters in the High Court and the power of judicial review under Article 226 of the Constitution can be exercised only after adjudication of the dispute by the Tribunal.

In view of the above stated legal position, the order under challenge is set aside and the writ petition filed by respondent No.1 is dismissed. However, liberty is given to him to file application under Section 19 of the Act along with an application for condonation of delay under Section 21 (3) of the Act.

Since the matter has remained pending before this Court for a period of eight years and respondent No.1 appears to have suffered for more than one decade, we deem it proper to direct the Tribunal to entertain and accept the application for condonation of delay and decide the grievance of respondent No.1 on merits as early as possible, but latest within six months of the service of notice of the application.

G.S. SINGHVI, CJ

September 28, 2007

C.V. NAGARJUNA REDDY, J

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[\[1\]](#) AIR 1997 SC 1125

[\[2\]](#) AIR 1987 SC 386