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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 30th August, 2024*

\+ W.P.(C) 10134/2024

VINAY .....Petitioner

Through: Mr. Ashu Bidhuri, Mr. Swapnam Prakash Singh and Mr. Satyansh Gupta, Advocates.

versus

UNION OF INDIA AND ORS .....Respondents

Through: Mr. Nishant Gautam, Ms. Sanjana Mehrotra, Mr. Vinay Kaushik, Mr. Mayank Sharma, Mr. Ajay Kanojiya, Mr. Alok Saxena, Mr. Karan Chauhan, Mr. Arnold Harvey and Mr. Rudra Rout, Advocates also for R-1 and R-3.
Ms. Pankhuri Shrivastava, Mr. Alekshendra Sharma and Ms. Neelam Sharma, Advocates for R-2/NTA.

\+ W.P.(C) 6743/2024

PARIKSHIT GREWAL & ORS. .....Petitioners

Through: Ms. Anushree Kapadda and Ms. Ekta Kundu, Advocates.

versus

UNION OF INDIA & ANR. .....Respondents

Through: Mr. Piyush Beriwal, Mr. Jitendra Tripathi and Ms. Ojasvi, Advocates for R-1/UOI.
Mr. Naresh Kaushik, Senior Advocate with Ms. Pankhuri Shrivastava, Ms. Neelam Sharma, Mr. Alekshendra Sharma and Mr. Anand Singh, Advocates for R-2/NTA.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

CM APPL. 41507/2024 in W.P.(C) 10134/2024
CM APPL. 28122/2024 in W.P.(C) 6743/2024

1. Exemptions allowed, subject to all just exceptions.

2. Applications stand disposed of.

W.P.(C) 10134/2024 and CM APPL. 41506/2024 and
W.P.(C) 6743/2024 and CM APPL. 28121/2024

3. These writ petitions have been preferred on behalf of the Petitioners under Article 226 of the Constitution of India seeking a direction to the Respondents to keep in abeyance the whole joining process of the candidates pursuant to a recruitment process for filling up posts of 'Examiner of Patents & Designs, Group-A (Gazetted)' initiated by Controller General of Patents, Design and Trademark, Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry ('CGPDTM'), for which National Testing Agency ('NTA')/Respondent No.2 was entrusted with the responsibility of conducting the recruitment process. Notice was published by NTA on 11.12.2023 for conduct of the recruitment process and after issuing the admit cards, NTA conducted the preliminary examination on 21.12.2023. The Mains Examination (Paper-I and II) i.e. Phase-2 was conducted on 25.01.2024. Due to technical glitch, certain students missed the Mains Examination and undertook the same on 05.02.2024. Results were declared for the Mains Examination on 26.03.2024 and interviews were scheduled offline between 01.04.2024 to 25.04.2024. NTA issued a public

notice dated 15.06.2024 with the final scorecard of the candidates after the interviews.

4. The grievances of the Petitioners in these writ petitions pertain to alleged irregularities in the process of examination conducted by NTA *viz.* allotment of centres; no clarity on negative marking for Mains Paper-I; non-disclosure of Mains Paper-II question paper or its answer key; non-declaration of results and cut-offs for all examinations, interviews and merit lists etc. In this backdrop, Petitioners seek quashing of the result of the Mains Examination announced on 26.03.2024 as well as the final scorecard announced on 15.06.2024 and final result announced on 16.06.2024, with a direction to the Respondents to conduct the examination again from the stage of Mains Examination.

5. Mr. Naresh Kaushik, learned Senior counsel appearing for NTA in W.P. (C) 6743/2024 and Ms. Pankhuri Shrivastava, learned counsel appearing for NTA in W.P.(C) 10134/2024 took a preliminary objection to the maintainability of these petitions on the ground that the remedy of the Petitioners to challenge the alleged irregularities in the recruitment process lies before the Central Administrative Tribunal ('Tribunal') as the only Court of first instance, in view of Section 14(1) of the Administrative Tribunals Act, 1985 (hereinafter referred to as '1985 Act'), wherein it is provided that in respect of recruitment and matters concerning recruitment to any All-India Service or to any civil post of the Union or a civil post under the Union, the Tribunal shall exercise jurisdiction. Reliance was placed 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 on the judgments in ***Kendriya Vidyalaya Sangathan and Another v.***

Subhas Sharma, (2002) 4 SCC 145 and ***Rajeev Kumar and Another v. Hemraj Singh Chauhan and Others, (2010) 4 SCC 554,*** and judgment of this Court in ***Praveen Sharma v. U.P.S.C., 2007 SCC OnLine Del 2086.***

6. Learned counsels for the Petitioners argued that the writ petitions are maintainable in this Court. By these petitions, Petitioners challenge the examination process conducted by NTA for filling up the posts of Examiner of Patents & Designs. The examination was conducted in three phases and petitions have been filed by candidates who are directly effected stakeholders and participants in the said examination, wherein several irregularities were committed resulting in lack of fairness, transparency and reliability of the entire examination process. The integrity of public examinations is paramount to uphold the standards of recruitment process and ensure equal opportunities for all aspiring candidates.

7. It was argued that there can be no objection to the maintainability of the present petitions in the facts of the present cases wherein the issues involved centre around large scale irregularities and malpractices in the examination process held by NTA. This is not a litigation for individual rights but for upholding rights of Petitioners and similarly placed candidates who have suffered due to the irregularities in the examination process. It was also argued that there is no relationship of employer-employee between the Petitioners and the Respondents and therefore, the grievances raised by the Petitioners are not 'service matters' for the purpose of Section 14 of the 1985 Act and are beyond the jurisdiction of the Tribunal. In ***L. Chandra Kumar (supra)***, the Supreme Court observed that it will not be open to the 'employees' to directly approach the High Courts for service related disputes, but Petitioners are not employees of the Respondents and thus the

judgment will not apply. Moreover, NTA is not notified under Section 14 of the 1985 Act and thus the Tribunal will have no jurisdiction to adjudicate with respect to the examination conducted by NTA and Petitioners cannot file the same case in two different forums.

8. In ***L. Chandra Kumar (supra)*** itself, the Supreme Court observed that in extenuating and exceptional circumstances, the writ petition can be entertained and such circumstances were explained by referring to a decision of the Supreme Court in ***T.N. Rangarajan v. Government of T.N. and Others, (2003) 6 SCC 581***. Present cases fall under extenuating and exceptional circumstances looking at the large scale irregularities in the examination as flagged in the writ petitions such as irregularity in allotment of centres, no clarity on negative marking for Mains Paper-I, non-disclosure of Mains Paper-II question paper or its answer key, non-declaration of results and cut-offs for all examinations, interviews and merit lists etc. In any case, the jurisdiction of the High Court can never be excluded being an inviolable part of basis structure of our Constitution.

9. I have heard learned counsels for the parties and examined their rival contentions with respect to the maintainability of these writ petitions.

10. The questions that this Court is called upon to decide are whether the Tribunal has the jurisdiction to entertain and adjudicate upon the issues which are subject matter of these writ petitions and if so, whether the writ petitions can be entertained under Article 226 of the Constitution of India, despite availability of the remedy to the Petitioners to approach the Tribunal under Section 14(1) of the 1985 Act.

11. There is no dispute that the challenge in the present writ petitions is to the examination conducted by NTA and it is equally undisputed that

examination was conducted for the purpose of recruitment to the posts of Examiner of Patents & Designs. Section 14 of the 1985 Act provides that the Tribunal will exercise jurisdiction in relation to recruitment and matters concerning recruitment to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services being in either case, a post filled by a civilian. The expression 'selection/recruitment' has been subject matter of judicial scrutiny in several cases and it has been held that issue of advertisement is the commencement point of a recruitment/selection process. In ***A.P. Public Service Commission, Hyderabad and Another v. B. Sarat Chandra and Others, (1990) 2 SCC 669***, the Supreme Court observed that process of selection begins with the issuance of advertisement and ends with the preparation of select list for appointment. It consists of various steps like inviting applications, scrutiny thereof and rejection of defective applications and elimination of ineligible candidates, conducting examinations, calling for interview and preparation of list of successful candidates. Therefore, there can be no doubt that the selection/recruitment process begins with the issuance of advertisement and in this context, I may also refer to a judgment of the Division Bench of this Court in ***Ms. Shaloo Batra and Ors. v. High Court of Delhi, 2013 SCC OnLine Del 1745*** and of Madhya Pradesh High Court in ***Kishor v. State of M.P. and Another, 2022 SCC OnLine MP 5442.***

12. Applying the aforesaid principles to the facts of the present cases, the recruitment process began on 11.12.2023 when CGPDTM issued Recruitment Notification and therefore, any challenge relating to any stage of the recruitment process, post the issuance of the advertisement would fall under '*recruitment*' and '*matters concerning recruitment*' under Section 14

of the 1985 Act and the remedy of the Petitioners would lie before the Tribunal as the only Court of first instance. Needless to state that a challenge to an examination on the ground that there are alleged irregularities and malpractices will be a challenge to the recruitment process and no exception can be carved out on the ground that there are large scale irregularities, impacting number of candidates or that the integrity of public examination is paramount to uphold the standards of recruitment process. In ***Praveen Sharma (supra),*** a similar conundrum was resolved by the Court holding that a competitive examination is a condition precedent for appointment to an All-India Service or post or a civil post and the examination, therefore, is a part of the process of recruitment. Reference was made to the decision of the Division Bench of the Allahabad High Court in ***Sudhanshu Tripathi v. Union of India and another, 1988 SCC OnLine All 936,*** where it was held that a dispute arising out of an examination conducted by the UPSC directly concerned the recruitment to All-India service and could be entertained only by the Administrative Tribunals in view of Section 14 of the 1985 Act. Examining the issue, this Court held that the expression used in Section 14 is not just '*recruitment*' but '*recruitment and matters concerning recruitment*' and therefore, disputes concerning eligibility of candidates, etc. in relation to examination processes will be matters within the domain of the Administrative Tribunal as the only Court of first instance. Reliance was also placed by the Court on the earlier decisions of this Court in ***Pranay Kumar Soni v. The Chairman, U.P.S.C. & Anr., 2003 SCC OnLine Del 387*** and ***Neeraj Kansal v. Union Public Service Commission, W.P. (C) Nos.7824-32/2006,*** decided on 05.10.2006. Relevant passages from the judgment in ***Praveen Sharma (supra)*** are as follows:-

"19. It is apparent that the Supreme Court, while keeping the powers conferred on the High Courts under Article 226/227 intact inasmuch as it was part of the inviolable basic structure of the Constitution, observed that the Tribunals may perform a supplemental role in discharging the powers conferred by the aforesaid Articles. The Supreme Court also observed that the decisions of such Tribunals would, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals would, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted and that it would not 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. In this context it becomes necessary to examine the provisions of Section 14 of the Administrative Tribunals Act, 1985 which indicates the areas of law for which the Tribunal has been constituted. The relevant portion of Section 14 of the Administrative Tribunals Act, 1985 reads as under:—

> *"14. Jurisdiction, powers and authority of the Central Administrative Tribunal-*
>
> *(1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal 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 * * *) in relation to -*
>
> *(a) recruitment and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence services, being, in either case, a post filled by a civilian;*
>
> *(b) all service matters concerning -*
>
> *(i) a member of any All-India Service; or*
>
> *(ii) a person [not being a member of an All-India Service or a person referred to in Clause (c)] appointed to any civil service of the Union or any civil post under the Union; or*
>
> *(iii) a civilian [not being a member of an All-India Service or a person referred to in Clause (c)] appointed to any defence services or a post connected with defence, and pertaining to the service of such member, person or civilian, 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 [or society] owned*

or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in Sub-clause (ii) or Sub-clause (iii) or Clause (b), being a person-whose services have been placed by a State Government or any local or other authority or any corporation [or society] or other body, at the disposal of the Central Government for such appointment.

[Explanation : - For the removal of doubts, it is hereby declared that references to "Union" in this sub-section shall be construed as including references also to a Union territory.]

(2) xxxxxxxx

(3) xxxxxxxx"

20. The expression that is relevant in the present case is "recruitment, and matters concerning recruitment". In S. Tripathi v. Union of India, (1988) 2 SLR 688 a Division Bench of the Allahabad High Court (Lucknow Bench) held that the examination conducted by the UPSC for the purposes of the All India Services including the Indian Administrative Service, was part of the recruitment process. The Court held as under:—

"7. It is not disputed that holding of competitive examination is a condition precedent for appointment to an All India Service for which the petitioner had applied and appeared and was ultimately declared not to have succeeded. It is also not disputed that appointment to All India Services, at least, to the Indian Administrative Service as indicated in the petition, is made on the basis of the result of the competitive examination held by the Union Public Service Commission. The examination, therefore, is a part of the process of recruitment.

8. In view of the provisions contained in Section 14, since the dispute raised in the present petition directly concerns the recruitment to All India Service, we are of the opinion that the petition can be entertained only by the Administrative Tribunal."

21. This finding of the Allahabad High Court has been approved by successive learned Single Judges of this Court in Pranay Kumar Soni (supra) and Neeraj Kansal (supra). It is, therefore, clear that the UPSC examination is part of the recruitment process.

22. The question that arises in the present case is whether the issues involved herein can be regarded as relating to the examination conducted by the UPSC. This question emerges in the context that there is no challenge to the examination conducted in 2006. Insofar as the 2005 examinations are concerned, that is over. And, the petitioner does not

stake any claim in respect thereof because he could not complete that examination as a result of circumstances beyond his control. By way of this petition, the petitioner is seeking a direction from this Court declaring his appearance in the 2005 examination to be disregarded as an attempt. The issue here is not so much with regard to the conduct of the examinations but with regard to the petitioner's eligibility to sit in the examination. Had it been a matter where the examination itself was in question, it would clearly fall within the ratio of the decisions in Pranay Kumar Soni (supra) and Neeraj Kansal (supra), which in turn followed S. Tripathi (supra). Here the issue is with regard to eligibility. In my view, the expression used in Section 14 of the Administrative Tribunals Act, 1985 is not just "recruitment" but "recruitment, and matters concerning recruitment". Had the expression only been "recruitment", there could have been some debate as to whether a condition of eligibility was a part of recruitment. But the expression used in Section 14 is of much wider amplitude inasmuch as it also refers to "matters concerning recruitment". An eligibility condition would definitely, in my view, fall within the scope of this expression. The question in the present writ petition is whether the petitioner was eligible or not to sit for the 2006 examinations. That is certainly a matter concerning recruitment. Accordingly, the Central Administrative Tribunal would, in view of the Supreme Court decision in L. Chandra Kumar (supra), have to function like the court of the first instance with regard to the question of eligibility raised in the present case because this is the precise area of law for which the Tribunal has been constituted, as indicated by Section 14 (1) (a) of the Administrative Tribunals Act, 1985. It would, therefore, not be open to the petitioner to directly approach this Court and, therefore, it would be appropriate if the petitioner is directed to first approach the Central Administrative Tribunal which, indeed, has jurisdiction to adjudicate upon the issue of eligibility raised by the petitioner herein."

13. In light of Section 14(1) of the 1985 Act and the observations of the Courts in the aforementioned judgments, this Court is unable to agree with the Petitioners that the disputes arising from the examination conducted by NTA even if it relates to alleged irregularities therein would not be disputes concerning recruitment and matters concerning recruitment and are not amenable to the jurisdiction of the Administrative Tribunal. The second and the only other issue that needs consideration is whether these writ petitions should be entertained in light of the fact that Petitioners' remedy lies in

approaching the Administrative Tribunal. This issue need not detain this Court, in view of the judgment of the Constitution Bench of the Supreme Court in ***L. Chandra Kumar (supra).*** The questions of law framed by the Supreme Court for consideration in the said judgment were as follows:

> *"(1) Whether the power conferred upon Parliament or the State Legislatures, as the case may be, by sub-clause (d) of clause (2) of Article 323-A or by sub-clause (d) of clause (3) of Article 323-B of the Constitution, to totally exclude the jurisdiction of 'all courts', except that of the Supreme Court under Article 136, in respect of disputes and complaints referred to in clause (1) of Article 323-A or with regard to all or any of the matters specified in clause (2) of Article 323-B, runs counter to the power of judicial review conferred on the High Courts under Articles 226/227 and on the Supreme Court under Article 32 of the Constitution?*
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> *(2) Whether the Tribunals, constituted either under Article 323-A or under Article 323-B of the Constitution, possess the competence to test the constitutional validity of a statutory provision/rule?*
>
> *(3) Whether these Tribunals, as they are functioning at present, can be said to be effective substitutes for the High Courts in discharging the power of judicial review? If not, what are the changes required to make them conform to their founding objectives?"*

14. The Supreme Court then set out the legal and historical background to the case and Articles 323-A and 323-B in Part XIV-A of the Constitution inserted through Section 46 of the Constitution (42nd Amendment) Act, 1976 w.e.f. 01.03.1977 as well as Statement of Objects and Reasons of 1985 Act. Article 323-A provides for constitution of the Administrative Tribunals with respect to recruitment and conditions of service of persons appointed to Public Services and posts in connection with the affairs of the Union etc. Relevant part of the judgement is as follows:

> *"7. In pursuance of the power conferred upon it by clause (1) of Article 323-A of the Constitution, Parliament enacted the Administrative Tribunals Act, 1985 (Act 13 of 1985) (hereinafter referred to as "the Act"). The Statement of Objects and Reasons of the Act indicates that it*

was in the express terms of Article 323-A of the Constitution and was being enacted because a large number of cases relating to service matters were pending before various courts; it was expected that "the setting up of such Administrative Tribunals to deal exclusively with service matters would go a long way in not only reducing the burden of the various courts and thereby giving them more time to deal with other cases expeditiously but would also provide to the persons covered by the Administrative Tribunals speedy relief in respect of their grievances".

15. In para 9, the Supreme Court referred to the judgment delivered by the five-Judge Bench in ***S.P. Sampath Kumar and Others v. Union of India and Others, (1985) 4 SCC 458***, wherein the Supreme Court had, in a challenge to the Constitutional validity of Article 323-A, taken a view that though judicial review is a basic feature of the Constitution, the vesting of the said power in an alternative institutional mechanism would not do violence to the basic structure, so long as it is ensured that the mechanism is effective and will be an effective and a real substitute for the High Court. Relevant paragraph is as follows:-

"9. When Sampath Kumar case was finally heard, these changes had already been incorporated in the body and text of the Act. The Court took the view that most of the original grounds of challenge — which included a challenge to the constitutional validity of Article 323-A — did not survive and restricted its focus to testing only the constitutional validity of the provisions of the Act. In its final decision, the Court held that though judicial review is a basic feature of the Constitution, the vesting of the power of judicial review in an alternative institutional mechanism, after taking it away from the High Courts, would not do violence to the basic structure so long as it was ensured that the alternative mechanism was an effective and real substitute for the High Court. Using this theory of effective alternative institutional mechanisms as its foundation, the Court proceeded to analyse the provisions of the Act in order to ascertain whether they passed constitutional muster. The Court came to the conclusion that the Act, as it stood at that time, did not measure up to the requirements of an effective substitute and, to that end, suggested several amendments to the provisions governing the form and content of the Tribunal. The suggested amendments were given the force of law by an Amending Act (Act 51 of 1987) after the conclusion of the case and the Act has since remained unaltered."

16. After examining the provisions of the 1985 Act, the Supreme Court analyzed one of the decisions impugned before it by the Full Bench of the Andhra Pradesh High Court in ***Sakinala Harinath & Ors. v. State of A.P. & Ors., 1993 SCC OnLine AP 195***, wherein Article 323-A (2)(d) was held to be unconstitutional to the extent it empowers the Parliament to exclude the jurisdiction of the High Courts under Article 226 of the Constitution. The Andhra Pradesh High Court held that under the Constitutional scheme, Supreme Court and High Courts are the sole repositories of the power of judicial review. Such a power, including the power to pronounce on the validity of Statutes, actions taken by individuals and State has only been entrusted to the Constitutional Courts. The High Court analyzing the decision in ***Sampath Kumar (supra)*** observed that the theory of alternative institutional mechanism was in defiance of the proposition laid down in ***His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and Another, (1973) 4 SCC 225,*** that Constitutional Courts alone are competent to exercise power of judicial review to pronounce upon constitutional validity, statutory provisions and Rules. In this background, High Court of Andhra Pradesh held that service matters involving constitutionality of Rules or provisions should not be left to be decided by statutorily created adjudicatory bodies. The observations of the Supreme Court further are as follows:

> *"51. The underlying theme of the impugned judgment of the A.P. High Court rendered by M.N. Rao, J. is that the power of judicial review is one of the basic features of our Constitution and that aspect of the power which enables courts to test the constitutional validity of statutory provisions is vested exclusively in the constitutional courts, i.e., the High Courts and the Supreme Court. In this regard, the position in American Constitutional law in respect of courts created under Article III of the Constitution of the United States has been analysed to state that the*

functions of Article III Courts (constitutional courts) cannot be performed by other legislative courts established by the Congress in exercise of its legislative power. The following decisions of the US Supreme Court have been cited for support: National Mutual Insurance Co. of the Distt. of Columbia v. Tidewater Transfer Co. [93 L Ed 1556 : 337 US 582 (1948)], Thomas S. Williams v. United States [77 L Ed 1372 : 289 US 553 (1932)], Cooper v. Aaron [3 L Ed 2d 5 : 358 US 1 (1958)] , Northern Pipeline Construction Co. v. Marathon Pipeline Co. and United States [73 L Ed 2d 598 : 458 US 50 (1982)] .

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54. ……However, what must be emphasised is the fact that Article III itself contemplates the conferment of such judicial power by the US Congress upon inferior courts so long as the independence of the Judges is ensured in terms of Section 1 of Article III. The proposition which emerges from this analysis is that in the United States, though the concept of judicial power has been accorded great constitutional protection, there is no blanket prohibition on the conferment of judicial power upon courts other than the US Supreme Court."

17. Referring to and relying on the observations of the Supreme Court in ***Kesavananda Bharati (supra)***, wherein the doctrine of basic structure was evolved and the case of ***Indira Nehru Gandhi Smt v. Shri Raj Narain and Another, 1975 Supp SCC 1,*** the Supreme Court observed that the power of judicial review over legislative action vested in the Supreme Court under Article 32 and of the High Courts under Article 226/227 is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded and I quote:

"78. The legitimacy of the power of courts within constitutional democracies to review legislative action has been questioned since the time it was first conceived. The Constitution of India, being alive to such criticism, has, while conferring such power upon the higher judiciary, incorporated important safeguards. An analysis of the manner in which the Framers of our Constitution incorporated provisions relating to the judiciary would indicate that they were very greatly concerned with

securing the independence of the judiciary. [See Chapter VII, "The Judiciary and the Social Revolution" in Granville Austin, The Indian Constitution : Cornerstone of a Nation, Oxford University Press, 1972; the chapter includes exhaustive references to the relevant preparatory works and debates in the Constituent Assembly.] These attempts were directed at ensuring that the judiciary would be capable of effectively discharging its wide powers of judicial review. While the Constitution confers the power to strike down laws upon the High Courts and the Supreme Court, it also contains elaborate provisions dealing with the tenure, salaries, allowances, retirement age of Judges as well as the mechanism for selecting Judges to the superior courts. The inclusion of such elaborate provisions appears to have been occasioned by the belief that, armed by such provisions, the superior courts would be insulated from any executive or legislative attempts to interfere with the making of their decisions. The Judges of the superior courts have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations. It is equally their duty to oversee that the judicial decisions rendered by those who man the subordinate courts and tribunals do not fall foul of strict standards of legal correctness and judicial independence. The constitutional safeguards which ensure the independence of the Judges of the superior judiciary, are not available to the Judges of the subordinate judiciary or to those who man tribunals created by ordinary legislations. Consequently, Judges of the latter category can never be considered full and effective substitutes for the superior judiciary in discharging the function of constitutional interpretation. We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Article 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.

79. We also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all courts and tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided."

18. The Supreme Court further held that though the subordinate Judiciary or the Tribunals created under ordinary Legislations, cannot exercise the

power of judicial review of legislative action to the exclusion of the Supreme Court and High Courts, there is no Constitutional prohibition against their performing a supplemental, as opposed to substitutional role in this respect. That such a situation is contemplated within the Constitutional scheme becomes evident by reading Clause (3) of Article 32 of the Constitution. If the power under Article 32 of the Constitution, which has been described as the 'heart' and 'soul' of the Constitution, can be additionally conferred upon "*any other Court*", there is no reason why the same situation cannot subsist in respect of jurisdiction conferred upon the High Court. So long as the jurisdiction of the High Court under Article 226/227 is retained, there is no reason why the power to test the validity of Legislations cannot be conferred upon Administrative Tribunals, created under the 1985 Act or those under Article 323-B of the Constitution. Relevant paragraphs are as under:-

> *"80. However, it is important to emphasise that though the subordinate judiciary or Tribunals created under ordinary legislations cannot exercise the power of judicial review of legislative action to the exclusion of the High Courts and the Supreme Court, there is no constitutional prohibition against their performing a supplemental — as opposed to a substitutional — role in this respect. That such a situation is contemplated within the constitutional scheme becomes evident when one analyses clause (3) of Article 32 of the Constitution which reads as under:*
>
> > *"32. Remedies for enforcement of rights conferred by this Part.—*
> >
> > *(1) x x x*
> >
> > *(2) x x x*
> >
> > *(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)."*
> >
> > *(emphasis supplied)*
>
> *81. If the power under Article 32 of the Constitution, which has been*

described as the "heart" and "soul" of the Constitution, can be additionally conferred upon "any other court", there is no reason why the same situation cannot subsist in respect of the jurisdiction conferred upon the High Courts under Article 226 of the Constitution. So long as the jurisdiction of the High Courts under Articles 226/227 and that of this Court under Article 32 is retained, there is no reason why the power to test the validity of legislations against the provisions of the Constitution cannot be conferred upon Administrative Tribunals created under the Act or upon Tribunals created under Article 323-B of the Constitution. It is to be remembered that, apart from the authorisation that flows from Articles 323-A and 323-B, both Parliament and the State Legislatures possess legislative competence to effect changes in the original jurisdiction of the Supreme Court and the High Courts. This power is available to Parliament under Entries 77, 78, 79 and 95 of List I and to the State Legislatures under Entry 65 of List II; Entry 46 of List III can also be availed of both by Parliament and the State Legislatures for this purpose."

19. The Supreme Court emphasized that there were pressing reasons to preserve the conferment of powers on the Tribunals and the reasons elucidated in paragraphs 82 to 84 of the judgment are as under:-

"82. There are pressing reasons why we are anxious to preserve the conferment of such a power on these Tribunals. When the Framers of our Constitution bestowed the powers of judicial review of legislative action upon the High Courts and the Supreme Court, they ensured that other constitutional safeguards were created to assist them in effectively discharging this onerous burden. The expectation was that this power would be required to be used only occasionally. However, in the five decades that have ensued since Independence, the quantity of litigation before the High Courts has exploded in an unprecedented manner. The decision in Sampath Kumar case [(1987) 1 SCC 124 : (1987) 2 ATC 82] was rendered against such a backdrop. We are conscious of the fact that when a Constitution Bench of this Court in Sampath Kumar case [(1987) 1 SCC 124 : (1987) 2 ATC 82] adopted the theory of alternative institutional mechanisms, it was attempting to remedy an alarming practical situation and the approach selected by it appeared to be most appropriate to meet the exigencies of the time. Nearly a decade later, we are now in a position to review the theoretical and practical results that have arisen as a consequence of the adoption of such an approach.

83. We must, at this stage, focus upon the factual position which occasioned the adoption of the theory of alternative institutional

mechanisms in Sampath Kumar case [(1987) 1 SCC 124 : (1987) 2 ATC 82] . In his leading judgment, Ranganath Misra, J. refers to the fact that since Independence, the population explosion and the increase in litigation had greatly increased the burden of pendency in the High Courts. Reference was made to studies conducted towards relieving the High Courts of their increased load. In this regard, the recommendations of the Shah Committee for setting up independent Tribunals as also the suggestion of the Administrative Reforms Commission that Civil Service Tribunals be set up, were noted. Reference was also made to the decision in Kamal Kanti Dutta v. Union of India [(1980) 4 SCC 38 : 1980 SCC (L&S) 485] where this Court had, while emphasising the need for speedy resolution of service disputes, proposed the establishment of Service Tribunals.

84. The problem of clearing the backlogs of High Courts, which has reached colossal proportions in our times is, nevertheless, one that has been the focus of study for close to half a century. Over time, several Expert Committees and Commissions have analysed the intricacies involved and have made suggestions, not all of which have been consistent. Of the several studies that have been conducted in this regard, as many as twelve have been undertaken by the Law Commission of India (hereinafter referred to as "the LCI") or similar high-level committees appointed by the Central Government, and are particularly noteworthy. [Report of the High Court Arrears Committee 1949; LCI, 14th Report on Reform of Judicial Administration (1958); LCI, 27th Report on Code of Civil Procedure, 1908 (1964); LCI, 41st Report on Code of Criminal Procedure, 1898 (1969); LCI, 54th Report of Code of Civil Procedure, 1908 (1973); LCI, 57th Report on Structure and Jurisdiction of the Higher Judiciary (1974); Report of High Court Arrears Committee, 1972; LCI, 79th Report on Delay and Arrears in High Courts and other Appellate Courts (1979); LCI, 99th Report on Oral Arguments and Written Arguments in the Higher Courts (1984); Satish Chandra Committee Report 1986; LCI, 124th Report on the High Court Arrears — A Fresh Look (1988); Report of the Arrears Committee (1989-90).]"

20. Having held that powers of judicial review of the High Court under Articles 226/227 of the Constitution cannot wholly be excluded and highlighting the need to have Administrative Tribunals for adjudication of service matters as an alternative mechanism, the Supreme Court observed that Tribunals will continue to act as the only Courts of first instance in respect of the areas of law, for which they have been constituted and 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 where the legislation which creates the particular Tribunal is challenged. Relevant paragraphs are 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 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.*
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> *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 aforestated 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 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, 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)

21. The principles that can be broadly culled out from a reading of these passages are:

(a) Power of judicial review of the High Courts under Articles 226/227 cannot wholly be excluded;

(b) Tribunals are competent to hear matters where the vires of statutory provisions and subordinate Legislations are questioned. However, in discharging this duty, they cannot act as substitutes for the Supreme Court and the High Courts, which have under the Constitutional set up specifically been 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 the respective High Courts;

(c) Tribunal shall not entertain any question regarding vires of the parent Statute under which it is created on the principle that being a creature of an Act, it cannot declare that very Act to be unconstitutional. In such cases alone, the High Court concerned may be approached directly; and

(d) The Tribunals shall continue to act as the Courts of first instance in respect of the areas of law for which they had been constituted. It is not open for litigants to directly approach the High Courts even in cases where they question the vires of statutory provisions and Legislations, by overlooking the jurisdiction of the Tribunal.

22. From a reading of the aforementioned judgment of the Constitution Bench, the inexorable and inevitable conclusion is that *albeit* powers of the High Courts under Articles 226/227 are a part of the inviolable basic structure of the Constitution and cannot be excluded, but in 'service matters' as defined under Section 3(q) as also matters relating to recruitment and

concerning recruitment provided under Section 14 of the 1985 Act, Tribunal is the only Court of first instance and with respect to areas of law for which the Tribunals are created, litigants cannot approach the High Courts directly. All decisions of the Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court, within whose jurisdiction Tribunal concerned falls. 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 case, in view of the *binding dictum* of the Supreme Court, the remedy of the Petitioners clearly lies before the Administrative Tribunal.

23. Learned Senior counsel for NTA rightly urged that in the past, whenever the High Courts have entertained writ petitions concerning service matters which fall under the jurisdiction of the Administrative Tribunals, the Supreme Court has held that the High Courts have committed an error in law. In this context, I may allude to the judgment of the Supreme Court in ***Kendriya Vidyalaya (supra),*** relevant passages of which are as follows:-

> *"11. To appreciate the second submission of Mr Ahmed, we extract below relevant portions from paragraphs 93 and 99 of the decision of the Constitution Bench of this Court in L. Chandra Kumar case [(1997) 3 SCC 261 : 1997 SCC (L&S) 577] : (SCC pp. 309 & 311, paras 93 & 99)*
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> > *"93. ... 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.*
> >
> > *99. ... It will not, therefore, 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."

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 Tribunal concerned.

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 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."

24. In ***Rajeev Kumar (supra),*** the Supreme Court observed as under:

"9. The Constitution Bench in L. Chandra Kumar [(1997) 3 SCC 261: 1997 SCC (L&S) 577] held that the power of the High Court under Articles 226 and 227 of the Constitution and of this Court under Article 32 of the Constitution is a part of the basic structure of our Constitution (see paras 78 and 79, pp. 301 and 302 of the Report). The Constitution Bench also held that various tribunals created under Articles 323-A and 323-B of the Constitution, will function as court of first instance and are subject to the power of judicial review of the High Court under Articles 226 and 227 of the Constitution. The Constitution Bench also held that these tribunals are empowered even to deal with constitutional questions and can also examine the vires of statutory legislation, except the vires of the legislation which creates the particular tribunal.

10. In para 93, at p. 309 of the Report, the Constitution Bench specifically held: (L. Chandra Kumar case [(1997) 3 SCC 261 : 1997 SCC (L&S) 577])

> *"93. ... 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."*
>
> *(emphasis added)*

The Constitution Bench explained the said statement of law by reiterating in the next sentence: (L. Chandra Kumar case [(1997) 3 SCC 261 : 1997 SCC (L&S) 577] , SCC p. 309, para 93)

> *"93. ... 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."*

11. On a proper reading of the abovequoted two sentences, it is clear:

(a) The tribunals will function as the only court of first instance in respect of the areas of law for which they have been constituted.

(b) Even where any challenge is made to the vires of legislation, excepting the legislation under which tribunal has been set up, in such cases also, litigants will not be able to directly approach the High Court "overlooking the jurisdiction of the tribunal".

12. The aforesaid propositions have been repeated again by the Constitution Bench (in L. Chandra Kumar case [(1997) 3 SCC 261 : 1997 SCC (L&S) 577]) in the penultimate para 99 at p. 311 of the Report in the following words:

> *"99. ... 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 legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned."*

13. In view of such repeated and authoritative pronouncement by the Constitution Bench of this Court, the approach made to the High Court for the first time by these appellants in respect of their service disputes over which CAT has jurisdiction, is not legally sustainable. The Division Bench of the High Court, with great respect, fell into an error by allowing the appellants to treat the High Court as a court of first instance in respect of their service disputes for adjudication of which CAT has been constituted."

25. I may also refer to several decisions of this Court, both of the Division Benches and the learned Single Judges where writ petitions have not been entertained where Petitioners bypassed the remedy of approaching the Administrative Tribunals in service matters where they were amenable to

the jurisdiction of the Tribunal and illustratively, I may refer to the decisions in ***Government of NCT of Delhi and Another v. Sh. Ashok Kumar Rajdev and Others, 2023 SCC OnLine Del 5864; Piyush Tyagi v. Kendriya Vidyalaya Sangathan, 2023 SCC OnLine Del 6666; Dr. Arun Kumar Mishra v. Union of India, 2021 SCC OnLine Del 3841; Sh. Vinay Brij Singh v. Union of India and Another, 2021 SCC OnLine Del 1369*** and ***Ex. Hav. Ranjit Singh v. Inspector General of Prisons & Ors., W.P. (C) 2128/1997,*** decided on 11.03.2008. Pertinent it is to mention that in one case in ***Akul Bhargava and Others v. Union Public Service Commission and Others, 2020 SCC OnLine Del 1376***, learned Single Judge of this Court had entertained the writ petition on the ground that there was an evident malaise in the selection process and where the Court finds that the selection mechanism is being impeded, it cannot turn a blind eye to the same and interference by a Constitutional Court under Article 226 of the Constitution, is warranted. The decision was upheld by the Division Bench but in an appeal filed by the State of Rajasthan being Civil Appeal No.2553/2022, the Supreme Court observed that the view of the High Court was difficult to sustain since the first designated forum was the Central Administrative Tribunal. Much reliance was placed by learned counsels for the Petitioners on the judgment of this Court in ***Himanshu Kumar and Others v. Union Public Service Commission and Another, 2023 SCC OnLine Del 5636,*** to contend that writ petition was entertained by a detailed judgment overruling the objection of maintainability and notice was issued, despite the Petitioners therein having a remedy before the Tribunal. Mr. Kaushik, however, informed the Court that in LPA 839/2023 titled ***Union Public Service Commission v. Himanshu Kumar and Ors.,*** vide order dated

22.12.2023, the Division Bench has stayed further proceedings in the said case and moreover, in view of the judgment of seven-Judge Bench of the Supreme Court in ***L. Chandra Kumar (supra),*** this Court will be committing an error by entertaining these writ petitions.

26. It was urged by the Petitioners that the main role in the examination, which is under challenge, is of the NTA, which was an agency engaged by CGPDTM for conducting the recruitment and NTA is not notified under Section 14 of the 1985 Act and this by itself is a ground to entertain these writ petitions. This argument, in my view, only deserves to be rejected. The Recruitment Notification, 2023 was issued by the office of the Controller General of Patents, Designs & Trademarks, Department for Promotion of Industry and Internal Trade, which is under the Ministry of Commerce and Industry, Government of India, for filling up posts of Examiner of Patents & Designs. NTA is an autonomous organization under the Department of Higher Education, Ministry of Education, Government of India and was only entrusted with the responsibility of conducting the recruitment process and there is no gainsaying that its role was that of an agent of CGPDTM, which initiated the recruitment process as a principal. It is a settled law that it is the principal who is responsible for the acts of commission and omission of the agent. The question is one of substance over form. Substance here is the department which initiated the recruitment process and deployed NTA as an outsource agent to conduct the examination and form is the agency, which only discharged the said function, for and on behalf of the principal i.e. CGPDTM. Therefore, it is principle which will be responsible and answerable to the allegations levelled by the Petitioners in their challenge to the examination process and there is no dispute that CGPDTM

being under the Ministry of Commerce and Industry, Government of India falls within the jurisdiction of the Tribunal under Section 14 of 1985 Act. Though subtly, it was also argued that the Supreme Court in ***L. Chandra Kumar (supra)*** observed that it will not be open to 'employees' to directly approach the High Courts in service related disputes but Petitioners are not employees and therefore, there is no impediment of their approaching this Court. This contention also deserves to be rejected since the Supreme Court did not use the expression '*employees'* in para 99 of the judgment but observed that "*It will not, therefore, 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."* Even otherwise, this argument has no weightage in view of the provisions of Section 14 of the 1985 Act which provides that even in matters relating to recruitment, the Tribunal will adjudicate as long as the parties to the *lis* are amenable to its jurisdiction otherwise.

27. Accordingly, the objection of maintainability raised on behalf of the Respondents is sustained and the writ petitions are dismissed, with liberty to the Petitioners to approach the appropriate forum in accordance with law, making it clear that this Court has not expressed any opinion on the merits of the cases.

28. Pending applications also stand disposed of.

JYOTI SINGH, J

AUGUST 30, 2024/*kks*