

J U D G E M E N T

1. The instant application has come before us as a Transfer Application from the Single Bench of Hon'ble High Court, Calcutta. However, during the course of hearing for admission, the counsel for the respondent has objected to entertain the instant TA application on the ground that the applicant had earlier approached this Tribunal in OA 295 of 2005, which was dismissed for want of jurisdiction by a detailed order against which no appeal has been preferred before Hon'ble High Court. Therefore, on the self same cause of action, this TA cannot be entertained since the instant application is barred by res judicata.
2. However, the counsel for the applicant has submitted that they were appointed on contractual basis to the post of Medical Technologists in State Blood Transfusion Council, West Bengal and their wages were paid by the Government of West Bengal. Therefore, they are very much within the jurisdiction of this Tribunal.
3. We have heard both the parties and perused the records. It is noted that the applicants are working under the State Blood Transfusion Council, West Bengal and had approached this Tribunal in OA 295 of 2005. This Tribunal, however, vide their order dated 10.6.2005 dismissed the OA by holding inter alia:

“At the time of admission of the said application the moot question has come up for deciding whether the status of the applicants comes within the purview of this Tribunal or not.

The ld. Adv. For the petitioners at the time of hearing submitted that the applicants are appointed by the State Blood Transfusion Council, West Bengal. Their salary is paid by the Govt. The applicants also relied several correspondences between the said State Council and the Director of Health Services and submitted that the status of the applicants comes under the purview of this Tribunal.

The jurisdiction of this Tribunal has been laid down under section 15 of the Act. Section 15(3) provides “save as otherwise as explicitly provided in this Act, Administrative Tribunal for a State shall also exercise on and from the date with effect from which the provision of this sub-section apply to any local or other authority or corporation or society”. So, the Tribunal gets jurisdiction over such society or council only if under sub-

section 2 & 3 of Section 15 of the Act, a notification is issued extending the jurisdiction of the Tribunal over the Council/Society. Ultimately, no such notification has been issued so far and in the absence of such notification the jurisdiction of the Tribunal extends only over matters covered by sub-section (1) of section 15 of the Act which relates to State Civil Service. Service in connection with the affairs of the council like the Blood Transfusion Council is not and cannot be the civil service of the State even if the Council is owned or controlled by the Govt. fall within the purview of sub-section (2) of Section 15 of the Act and not within the purview of sub-section (1) as no notification as contemplated by sub-section (2) of Section 15 has been issued the Tribunal has no jurisdiction to entertain this application. The application could not be admitted for adjudication due to lack of jurisdiction. Hence it is dismissed. No cost is ordered. Plain copy to both the parties under signature of authorized officers under the SAT.”

4. However, the applicant without challenging the aforesaid order had approached the Hon’ble High Court, Calcutta Division Bench in WPST No.231 of 2009 with WPST No.234 of 2009. The said writ petitions were disposed of by the Division Bench of the Hon’ble High Court, Calcutta on 27.08.2010, wherein the following order was passed;

“Mr. Kishore Dutta, learned Advocate representing the petitioners submits that the present writ petitions have been filed claiming regularization of the appointments of the petitioners by absorbing them in the permanent posts under the respondent authorities.

Mr. Dutta further submits that the instant writ petitions have not been filed challenging any order passed by the State Administrative Tribunal and no relief has also been claimed against any decision passed earlier by the said State Administrative Tribunal.

From the records we find that before the learned Single Judge it was specifically submitted by the learned Advocate of the petitioners that these writ petitions have been filed challenging the orders passed by the learned State Administrative Tribunal and since the same were

erroneously moved before the Learned Single Judge, liberty was prayed for to withdraw the said writ petitions in order to move afresh.

Pursuant to the aforesaid submissions, Learned Single Judge by the order dated 19th January, 2009 granted liberty to the petitioners to file 2nd judge's copy so that the writ petitions can be listed before the Division Bench. Now on examination of the writ petitions, we find that being aggrieved by and dissatisfied with the action and/or inaction of the respondent authorities, the instant writ petitions have been filed at the instant of the writ petitioners. The said writ petitioners did not challenge any order passed by the learned State Administrative Tribunal in both the present writ petitions.

Scrutinizing the writ petitions we are satisfied that these writ petitions are not arising out of the orders passed by the learned Tribunal constituted under Article 323A of the Constitution of India and, therefore, the Division Bench of this Court cannot entertain these petitions and the same should be heard by the Learned Single Judge of this Court taking matters relating to service under Group-VI.

Accordingly, we release both the writ petitions so that the same can be listed before the Learned Single Judge of this Court having determination to entertain matters relating to service under Group VI.

Let Xerox plain copy of this order duly counter-signed by the Assistant Registrar (Court) be given to the learned Advocates of the parties on the usual undertaking.”

5. Thereafter, the applicant approached the Single Bench of the Hon'ble High Court, Calcutta in WP No.14596(W) of 2005. However, it seems one WP 14596(W) of 2005 along with WP 9144(W) of 2005 was disposed of by the Hon'ble Single Bench on 05.01.11, wherein the Hon'ble Single Bench has observed and directed inter alia:

“This case has been listed at the instant of the learned Counsel for the petitioners pursuant to the order passed by the Division Bench dated 27.08.2010 whereby and where under the said Division Bench directed that since the Writ Petition did not arise out of any Order

passed by the Tribunal under Article 323A of the Constitution of India, the matter should be decided by the Single Judge and not by a Division Bench.

In the Writ Petition, the Petitioners have prayed for an Order directing the Respondents-State Authorities to either absorb them on permanent posts or to frame a scheme for purposes of regularization. It appears that the petitioners were initially appointed by the State Blood Transfusion Council but their cause of action arose on 10.09.1998 when the Government of West Bengal invited an Advertisement for preparation of a panel of Medical Officers and Medical Technologists (Lab) for Kolkata and other Districts. It appears that thereafter the petitioners filed O.A. 428 of 2005 before the West Bengal State Administrative Tribunal and by Order dated 10.06.2005 (see Page-176 of the Writ Petition No.14596(W) of 2005), the said Tribunal came to the conclusion that since a Notification has not been issued extending the applicability of the Tribunal over the said State Blood Transfusion Council, it (the said Tribunal) therefore lacked necessary jurisdiction.

In the opinion of this Court, the grievance of the Petitioners arose only when the State Government came out with a Notification on 10.9.1998 and the Petitioners prayed that they should be permanently absorbed by the State or necessary Scheme should be framed for their regularization by the State.

Under Section 15 of the Administrative Tribunals Act, 1985, matters pertaining even to the "affairs of the State" qua service matters, falls under the jurisdiction of the State Administrative Tribunal.

Under such circumstances, this Court is of the view that the matter could be decided by the State Administrative Tribunal. Accordingly, both the cases be released from this Court, so that the same can be taken up and decided by the said Tribunal.

If urgent certified copy of this Order, duly photocopied, is applied for by the Parties, the same should be given expeditiously."

From the perusal of both the orders of the Hon'ble High Court, it transpires that the Hon'ble High Court has clearly observed on the basis of submission made by on behalf of the counsel of the applicant that they did not challenge the order of this Tribunal whereby the Tribunal dismissed the earlier OA for want of jurisdiction. Therefore, as neither the earlier order was challenged by the applicant nor the order dated 10.6.2005 has been quashed by the Hon'ble High Court. Thus, on the self same ground the instant TA application cannot be entertained as it is barred by resjudicata. Accordingly, the OA is dismissed on the ground of being barred by resjudicata with no order as to cost.

P. RAMESH KUMAR
MEMBER (A)

URMITA DATTA (SEN)
MEMBER (J)