



GAHC010106632018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/167/2018

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE CHIEF SECY. TO THE GOVT. OF ASSAM, DISPUR,
GUWAHATI 781006

2: THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM

PERSONNEL (A) DEPTT.
DISPUR
GUWAHATI-6

3: THE JOINT SECY. TO THE GOVT. OF ASSAM
PERSONNEL (A) DEPTT.
DISPUR
GUWAHATI-6

4: THE SELECTION COMMITTEE FOR THE SELECTION OF NON SCS
OFFICERS TO THE POST OF IAS
DISPUR
GUWAHATI 78100

VERSUS

ASSAM CIVIL SERVICE OFFICERS ASSOCIATION AND 14 ORS
HAVING ITS REGISTERED OFFICE NEAR STATE FIRE AND EMERGENCY
SERVICES , DISPUR, GUWAHATI -6, REPRESENTED BY ITS GENERAL SECY.

2:SRI MRIDUL KUMAR MAHANTA
GENERAL SECY.
ACS OFFICERS ASSOCIATION
DISPUR
GUWAHATI 6

3:THE UNION OF INDIA
REPRESENTED BY THE SECY. TO THE GOVT. OF INDIA



DEPTT. OF PERSONNEL AND TRAINING
MINISTRY OF PERSONNEL PUBLIC GRIEVANCES AND PENSION
NORTH BLOCK
NEW DELHI 110001

4:THE UNDER SECY.

DEPTT. OF PERSONNEL AND TRAINING
MINISTRY OF PERSONNEL
PUBLIC GRIEVANCES AND PENSION
NORTH BLOCK
NEW DELHI 110001

5:THE UNION PUBLIC SERVICE COMMISSION

REPRESENTED BY ITS CHAIRMAN
DHOLPUR HOUSE
SHAHJAHAN ROAD
NEW DELHI 110069

6:SMT. MANJULA SAIKIA BHUYAN
ADDL. COMMISSIONER
INDUSTRIES AND COMMERCE
UDYOG BHAWAN
BAMUNIMAIDAM
GUWAHATI 781021

7:SRI RAKESH AGARWALA
JOINT COMMISSIONER OF TAXES
KAR BHAWAN
GANESHGURI
GUWAHATI 781006

8:SMTI ARUNIMA CHOUDHURY
ASST. COMMISSIONER OF TAXES
KAR BHAWAN
GANESHGURI
GUWAHATI 781006

9:SRI BINOD AGARWALA
JOINT ZONAL REGISTRAR OF COOPERATIVE SOCIETIES
TEZPUR ZONE
TEZPUR
ASSAM.

10:DR. DEEPI REKHA KULI
DIRECTOR
DIRECTORATE OF ARCHEOLOGY



AMBARI
GUWAHATI 781001

11:SRI GHANA PEGU
JOINT REGISTRAR FO COOPERATIVE SOCIETIES
KHANAPARA
GUWAHATI 781022

12:SRI HEMANTA KR. DEWRI

DIRECTOR
FINANCE (ECONOMIC AFFAIRS)
ASSAM
SECRETARIAT
DISPUR
GUWAHATI 781006

13:SRI RAJIB KR. SAIKIA
CHIEF PUBLIC RELATION OFFICER
ASSAM POLICE HEADQUARTER
ULUBARI
GUWAHATI 781007

14:DR. RUNU DUTTA

DIRECTOR (PC DIVISION) TRANSFORMATION AND DEVELOPMENT
DEPTT.
BLOCK F. JANATA BHAWAN
DISPUR 781006

15:SRI SIMANTA TALUKDAR
SUPERINTENDENT OF POLICE (COMMUNICATION)
SB HQ
KAHILIPAR

Advocate for the Petitioner : MR. D NATH

Advocate for the Respondent : MR. D CHOUDHURY

Linked Case : WA/165/2018

SRI RAKESH AGARWALA
S/O SRI LAKSHMINARAYAN AGARWALA



C/O ACHYUT PARADISE
SIKARIA COMPOUND CHRISTIAN BASTI
G.S. ROAD
GHY-5
KAMRUP (M)
ASSAM.

VERSUS

ASSAM CIVIL SERVICE OFFICERS ASSOCIATION AND 17 ORS
HAVING ITS REGISTERED OFFICE NEAR STATE FIRE AND EMERGENCY
SERVICES
DISPUR
GUWAHATI 781006 REPRESENTED BY ITS GENERAL SECY.

2:MRIDUL KUMAR MAHANTA

GENERAL SECY.
ACS OFFICERS ASSOCIATION
DISPUR
GUWAHATI 781006
3:THE UNION OF INDIA

REPRESENTED BY THE SECY. TO THE GOVT. OF INDIA
DEPTT. OF PERSONNEL AND TRAINING
MINISTRY OF PERSONNEL
PUBLIC GRIEVANCES AND PENSION
NORTH BLOCK
NEW DELHI 110001
4:THE UNDER SECY.

DEPTT. OF PERSONNEL AND TRAINING
MINISTRY OF PERSONNEL
PULBIC GRIEVANCES AND PENSION
NORTH BLOCK
NEW DELHI-110001
5:THE UNION PUBLIC SERVICE COMISSION

RPRESENTED BY ITS CHAIRMAN
DHOLPUR HOUSE
SHAHJAHAN ROAD
NEW DELHI 110069
6:THE STATE OF ASSAM

REPRESENTED BY THE CHIEF SECY. TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI 781006



7:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM

PERSONNEL (A) DEPTT.

DISPUR

GUWAHATI 781006

8:THE JOINT SECY. TO THE GOVT. OF ASSAM

PERSONNEL (A) DEPTT.

DISPUR

GUWAHATI 781006

9:THE SELECTION COMMITTEE FOR SELECTION OF NON SCS OFFICERS
TO THE POST OF IAS

DISPUR

GUWAHATI-06

10:SMTI MANJULA SAIKIA BHUYAN

ADDITIONAL COMMISSIONNER

INDUSTRIES AND COMMERCE

UDYOG BHAWAN

BAMUNIM Aidam

GUWAHATI 781021

11:SMTI ARUNIMA CHOUDHURY

ASSTT. COMMISSIONER OF TAXES

KAR BHAWAN

GANESHGURI

GUWAHATI 781006

12:SRI BINOD KR. AGARWALA

JOINT ZONAL REGISTRAR OF COOPERATIVE SOCIETIES

TEZPUR ZONE

TEZPUR

ASSAM.

13:DR. DEEPI REKHA KULI

DIRECTOR

DIRECTORATE OF ARCHEOLOGY

AMBARI

GUWAHATI 781001

14:SRI GHANA PEGU

JOINT REGISTRAR OF COOPERATIVE SOCIETIES

KHNAPARA

GUWAHATI 781022

15:SRI HEMANTA KR. DEWRI

DIRECTOR

FINANCE (ECONOMIC AFFAIRS)

ASSAM SECRETARIAT

DISPUR

GUWAHATI 781006



16:SRI RAJIB KR. SAIKIA
CHIEF PUBLIC RELATION OFFICER
ASSAM POLICE HEADQUARTER
ULUBARI
GUWAHATI 781007

17:DR. RUNU DUTTA
DIRECTOR (PC DIVISION)
TRANSFORMATION AND DEVELOPMENT DEPARTMENTS
BLOCK-F
JANATA BHAWAN
DISPUR-781006

18:SRI SRIMANTA TALUKDAR
SUPERINTENDENT OF POLICE (COMMUNICATION) SB HQ KAHILIPARA

Advocate for : MR. B CHOUDHURY
Advocate for : ASSTT.S.G.I. appearing for ASSAM CIVIL SERVICE OFFICERS
ASSOCIATION AND 17 ORS

Linked Case : WA/166/2018

SMTI MANJULA SAIKIA BHUYAN
ADDITIONAL DIRECTOR
INDUSTRIES AND YOG BHAWAN
BAMUNIMAIDAN
GUWAHATI 781021

VERSUS

ASSAM CIVIL SERVICE OFFICERS ASSOCIATION AND 16 ORS
HAVING ITS REGISTERED OFFICE NEAR STATE FIRE AND EMERGENCY
SERVICES
DISPUR
GUWAHATI 781006 REPRESENTED BY ITS GENERAL SECY.

2:MRIDUL KUMAR MAHANTA
GENERAL SECY.
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GUWAHATI 781006

3:THE UNION OF INDIA

REPRESENTED BY THE SECY. TO THE GOVT. OF INDIA
DEPTT. OF PERSONNEL AND TRAINING
MINISTRY OF PERSONNEL
PUBLIC GRIEVANCES AND PENSION



NORTH BLOCK
NEW DELHI 110001
4:THE UNDER SECY. DEPTT. OF PERSONNEL AND TRAINING
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5:THE UNION PUBLIC SERVICE COMMISSION
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DHOLPUR HOUSE
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10:SRI RAKESH AGARWAL
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13:DR. DEEPI REKHA KULI
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GUWAHATI 781006
18:SRI SRIMANTA TALUKDAR
SUPERINTENDENT OF POLICE (COMMUNICATION) SB HQ
KHANAPARA

Advocate for : MR D DAS
Advocate for : ASSTT.S.G.I. appearing for ASSAM CIVIL SERVICE OFFICERS
ASSOCIATION AND 16 ORS

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

JUDGMENT & ORDER (CAV)

Date of hearing : 23.04.2024.

Date of judgment : 03.05.2024



(Suman Shyam.J)

Heard Mr. D. Saikia, learned Advocate General, Assam assisted by Mr. D. Nath, learned Senior Government Advocate, Assam appearing for the appellants in Writ Appeal No.167/2018 and Mr. D. Das, learned senior counsel assisted by Ms. S. Sharma, learned counsel appearing for the appellants in Writ Appeal Nos.165/2018 and 166/2018. We have also heard Mr. K. N. Choudhury, learned senior counsel assisted by Mr. T. Chakraborty, learned counsel appearing for the respondents/writ petitioners in all the three Writ Appeals.

2. These three intra-court appeals arise out of the common judgment and order dated 26.04.2018 passed by the learned Single Judge in WP(C) No.1149/2018 involving common question of law and facts and therefore, these appeals are being disposed of by a common order. The facts and circumstances, giving rise to the filing of these Writ Appeals are briefly narrated here-in-below.

3. The respondent No.1 viz., Assam Civil Service Officers Association, which is an association of Assam Civil Service Officers, along with its General Secretary, had instituted WP(C) No.1149/2018 being aggrieved by the decision of the Government of Assam to recommend the names of 10 officers belonging to the non-State Civil Service (SCS) category, for nomination to the Indian Administrative Service (IAS) by contending that the recommendations are in complete violation of the norms as well as the provisions of the rules. As per the case projected by the writ petitioners, on 28.02.2017 the Secretary to the Government of Assam, Personal (A) Department had



issued a communication addressed to all the Additional Chief Secretaries, Principal Secretaries as well as the Commissioner and Secretaries to the Government of Assam, requesting each of them to forward names of not more than two officers for appointment to the IAS as per regulation 4 of the IAS (Appointment by Selection) Regulation, 1997. Pursuant to the communication dated 28.02.2017 names were forwarded, whereafter a Screening Committee/Selection Committee, headed by the Chief Secretary, Assam, as its Chairman, constituted for the purpose of selecting and recommending the candidates, had considered the names of 15 non-SCS officers and thereafter, recommended the names of as many as 10 officers including the private respondent Nos.8 and 9 in the writ petition. Thereafter, on 27.10.2017, the Secretary to the Government of Assam, Personal (A) Department had issued a notification notifying as many as eight (8) different posts in the non-SCS cadre officers declaring them to be equivalent to the rank of Deputy Collector of the State Civil Service. Being *inter-alia* aggrieved by the minutes of meeting of selection committee dated 18.09.2017 as well as the equivalence notification dated 27.10.2017, the Association of Civil Service Officers of the State, along with its General Secretary, had approached this Court by filing WP(C) No.1149/2018.

4. The primary contention of the writ petitioners, reduced to its essence, are as follows. Firstly, the private respondents, who were recommended for nomination to IAS, did not hold posts equivalent to Deputy Collector in the State Civil Service, as is required under regulation 4(1)(iii) of the Indian Administrative Service (Appointment by Selection) Regulations, 1997 and as such, none of them could have been recommended by the Selection Committee for nomination/appointment to the IAS



cadre. Secondly, the recommendations of the DPC having been made on 18.09.2017 i.e. prior to declaration of the equivalence of the posts on 27.10.2017 and there being no corresponding amendment to Schedule-I of Assam Civil Service Rules, 1998, such recommendations were invalid in the eyes of law. To that extent, the notification dated 27.10.2017 has also been put under challenge in the Writ Petition. Thirdly, the total number of vacancies being 7 (seven) and in view of Rule 8 of the Indian Administrative Service (Recruitment) Rules, 1954 not more than 15% of the vacancies could have been reserved for non-SCS category officers, meaning thereby that not more than 1 (one) post could have been filled up by nominating any officer from the non-SCS category. As such, by filling up two vacancies from the officers belonging to the non-SCS category, the respondents have acted without jurisdiction. It is also the case of the writ petitioners that none of the officers from the non-SCS category, recommended by the selection committee vide its resolution dated 18.09.2017, had rendered 8 (eight) years of service in the relevant post which was a mandatory requirement of the Rules. On such count the petitioners have sought interference not only with the minutes of the selection committee dated 18.09.2017 but also the equivalence notification dated 27.10.2017.

5. On 28.02.2018 the learned Single Judge, while issuing notice to the respondents in the writ petition, had passed an interim order, the operative part of which is reproduced herein below for ready reference :-

“7. In the interim, the upgradation of the private respondents to the IAS should not be made, if the equivalent of their post declared later under the notification dated 27.10.2017 (Annexure-7)”



6. It appears that notwithstanding the interim order dated 28.02.2018, the respondent Nos.8 and 9 in the writ petition, viz., Smti. Manjula Saikia Bhuyan and Sri Rakesh Agarwala respectively, were nominated to the IAS cadre.

7. The respondents in the writ petition, had questioned the maintainability of the writ petition by contending that in view of the decision of the Hon'ble Supreme Court rendered in the case of **L. Chandra Kumar Vs. Union of India and others** reported in **(1997)3 SCC 261** as well as the decision of this Court in the case of **Tajuk Charu Vs. Union of India and others** reported in **2015 (1) GLT 588** it was incumbent upon the writ petitioners to approach the Central Administrative Tribunal (CAT for short) before approaching the High Court. As such, the writ petition was not maintainable. The learned counsel for the respondent Nos.8 and 9 had also questioned the *locus standi* of the petitioners to challenge the selection and/or nomination of his clients to the IAS on the ground that the writ petitioners were not the aggrieved persons due to the appointment of the respondent Nos.8 and 9 to the IAS cadre and hence, did not have the *locus* to institute the writ petition.

8. After hearing the submissions advanced by learned counsel for both the sides and after discussing the propositions of law, as cited at the Bar, the learned Single Judge had passed order dated 26.04.2018 holding that the writ petition was maintainable. The relevant findings and observations of the learned Single Judge, on the point of maintainability of the writ petition, are reflected in paragraph Nos.18 and 19 of the order dated 26.04.2018, are reproduced herein below for ready reference :-

“18. Let us now examine whether the writ court should entertain this case or



whether the CAT is the only forum available for the aggrieved party. In *L. Chandra Kumar Vs. Union of India* reported in (1997)3 SCC 261, the Supreme Court even while declaring that the Tribunals will act as the Court of first instance in respect of areas of law for which they have been constituted, unequivocally declared that the Tribunals **cannot act as substitute for the High Courts or the Supreme Court**. It was also held that the power of juridical review over legislative action, is an **integral and essential feature of the Constitution**.

19. On the issue of appropriate forum, it will bear repetition that the **key challenge here is to the equivalence declaration to posts held by** the private respondents by the impugned notification dated 27.10.2017 (Annexure-7). The post of Superintendent of Taxes, held by the respondent No.9, is governed by the Assam Taxation Service Rules, 1995. Similarly, the Assam Industrial Service Rules, 1997 covers the post of Joint Director of Industries and Commerce, held by the respondent No.8. As can be seen, the posts which are equivalent to a post in any other cadre, are included in the Schedule-I of the Assam Civil Service Rules, 1998 and it is apparent that the two posts of the Non-SCS category where the respondent Nos.8 and 9 have served, are not declared to be equivalent to the post of Deputy Collector, in exercise of power under Rule 3(3) of the Assam Civil Service Rules, 1998. The concerned Service Rules covering those posts held by the respondents, were made in exercise of powers conferred by the proviso to Article 309 of the Constitution of India and undoubtedly they are in the domain of **legislative function of the State**. Therefore if any change is to be made to the concerned Service Rules, the **role of the State will surely be legislative in character**. Logically therefore, even under the ratio of *L. Chandra Kumar (supra)*, **the power of judicial review vested in the High Court under Article 226 of the Constitution**, over legislative action of the State, cannot in my considered assessment, **be ousted in this matter.**”

9. Having held as above, the learned Single Judge went on to make the



following observations in paragraph 21 of the impugned order, which are as follows :-

“21. The adjudication on disputes which arise out of exercise of power by the State in the legislative domain relating to changes in the Service Rules framed under the proviso to Article 309, should best be decided by the High Court. Even in matters pertaining to recruitment to All India Service, where the Central Administrative Tribunal is otherwise competent to exercise jurisdiction under Section 14 of the Tribunals Act, 1985, the assumption of jurisdiction by the Tribunal will have to be preceded by certain acts to be done by the State Government. If those very acts of the State Government in the domain of the legislative function, bring an undeserving Non-SCS incumbent, to the arena of recruitment to the All India Service and the aggrieved party challenges the State's action, the writ court in my considered opinion, would surely be the better forum to adjudicate on the issue.”

10. The learned Single Judge was, therefore, of the view that availability of alternative remedy is a rule of discretion and not one of compulsion and as such, in an appropriate case, even when alternative remedy or forum is available, the writ court may exercise its discretionary jurisdiction of judicial review if the contingencies laid down by the Supreme Court in the case of **M. P. State Agro Industries Development Corporation Ltd. Vs. Jahan Khan** reported in **(2007)10 SCC 88** are available.

11. On the question of validity of the process of recommendation and short listing of the 10 officers for nomination to IAS as well as the publication of the equivalence declaration notification dated 27.10.2017, the learned Single Judge had found the process to be seriously flawed on the face of the record and hence, had issued a direction to the State to respond to the facets of the challenge in the writ petition by



filing counter-affidavit within four weeks. By the impugned order dated 26.04.2018, the learned Single Judge has also declined the prayer made by the respondent Nos.8 and 9 in the writ petition to vacate the interim order dated 28.02.2018.

12. Assailing the impugned order dated 26.04.2018 Mr. D. Saikia, learned Advocate General, Assam has argued that in **L. Chandra Kumar** (*supra*) it was held that in service matters, only the Tribunal would have the jurisdiction and power to entertain the matter and therefore, it would not be open for the litigants to directly approach the High Court by invoking the jurisdiction under Article 226 of the Constitution. Mr. Saikia submits that such restriction laid down by the Apex Court would include even those cases where the *vires* of legislation are under challenge.

13. Referring to the decision of this Court in the case of **Tajuk Charu** (*supra*) Mr. Saikia has argued that in the said decision, in a similar fact situation pertaining to selection and recommendation of suitable candidates from the non-SCS category for nomination to IAS, the learned Single Judge had refused to entertain the challenge made by an unsuccessful candidate by accepting the objection that after the decision of the Supreme Court in the case of **L. Chandra Kumar** (*supra*), a writ petition would not be maintainable and accordingly, the petitioner was asked to seek remedy before the CAT. Mr. Saikia therefore, submits that the decision of the coordinate Bench in **Tajuk Charu** (*supra*) was binding upon the learned Single Judge in this case. Notwithstanding the same, the learned Single Judge has not followed the said decision without assigning proper reasons and has erroneously held the writ petition to be maintainable.



14. Mr. Saikia has further submitted that the respondent Nos.8 and 9 have not only been nominated to the IAS during the pendency of the writ petition but they have also retired from service on attaining the age of superannuation. As such, save and except the issue of validity of the equivalence declaration notification dated 27.10.2017, no other live issue survives in the writ petition. Contending that if the petitioners confine their challenge in the writ petition only to the question of legality and validity of the equivalence declaring notification dated 27.10.2017, then in that event, the State would not have any objection as to the maintainability of the writ petition.

15. Mr. Saikia further submits that the learned Single Judge has recorded elaborate findings on the merit of the claim of the writ petitioners thus, virtually deciding the writ petition on merits even before the respondents could file their counter-affidavits. As such, the impugned order is liable to be set aside on such count as well.

16. Mr. D. Das, learned senior counsel appearing for the appellants in Writ Appeal Nos.165/2018 and 166/2018 preferred by respondent Nos.8 and 9 in the writ petition, respectively, has more or less supported the stand of the State in the matter and has also forcefully assailed the maintainability of the writ petition on similar grounds as urged by the learned Advocate General, Assam. In addition to the above, Mr. Das has also questioned the *locus standi* of the writ petitioners to file the writ petition by contending that the petitioners are not the aggrieved persons in these matters and therefore, they had no *locus standi* to approach the court by filing the writ petition. In



support of his arguments Mr. Das has relied upon the decision rendered in the case of **Rajeev Kumar and another Vs. Hemraj Singh Chauhan and others** reported in **(2010)4 SCC 554** and the decision of the Bombay High Court in the case of **Gaurav Ganesh Das Daga and others Vs. Maharashtra Public Service Commission and another** reported in **2022 SCC OnLine Bom 476** to submit that viewed from any angle, the writ petition was not maintainable in the eyes of law. As such, the impugned order dated 26.04.2018 is unsustainable in law and hence, liable to be set aside by this Court.

17. Mr. K. N. Choudhury, learned senior counsel appearing for the writ petitioners/respondent Nos.1 and 2, on the other hand, has opposed the submissions of the appellants' counsel, by contending that the learned Single Judge has recorded adequate and sufficient reasons in the impugned order dated 26.04.2018 so as to justify the order holding the writ petition to be maintainable. According to Mr. Choudhury, the reasons recorded in the impugned order do not call for any interference by this Court. On the question of findings recorded in the impugned order, touching upon the merit of the case, Mr. Choudhury has argued that those findings are tentative in nature and have been recorded merely for the purpose of deciding the issue of maintainability of the writ petition. However, he would not have any objection if this Court clarifies that any findings recorded in the impugned order dated 26.04.2018 on the merit of the case would not have any bearing in the outcome of the writ petition at the stage of final hearing.

18. We have considered the submissions advanced by learned counsel for both the sides and have meticulously gone through the materials available on record.



19. As noted above, the impugned order dated 26.04.2018 has been assailed by the Writ Appellants primarily on the ground that in view of the decision of the Supreme Court rendered in the case of **L. Chandra Kumar** (*supra*) the Writ Petition was not maintainable. That apart, the appellants in Writ Appeal Nos.165/2018 and 166/2018 have also urged that the petitioner association did not have the *locus* to maintain the writ petition. Since the issues raised in all the three appeals are basically on the point of maintainability of the writ petition, we make it clear that our determination in this order would also be confined only to the questions raised in these appeals and no further.

20. The Administrative Tribunals Act, 1985 (hereinafter the Act of 1985) provides for setting up of Central Administrative Tribunal (CAT). Section 14 of the Act of 1985 lays down the jurisdiction, power and authority of Central Administrative Tribunal. For the sake of ready reference, Section 14 is reproduced herein below :-

“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^{1***}) 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 or in the 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 corporation²[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) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation²[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) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations²[or societies] owned or controlled by Government, not being a local or other authority or corporation [or society] controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of



different classes of, or different categories under any class of, local or other authorities or corporations ²[or societies].

(3) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation [or society], all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court) in relation to--

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation ⁴[or society]; and

(b) all service matters concerning a person [other than a person referred to in clause (a) or clause (b) of sub-section (1)] appointed to any service or post in connection with the affairs of such local or other authority or corporation ⁴[or society] and pertaining to the service of such person in connection with such affairs."

21. In **L. Chandra Kumar** (*supra*) the Supreme Court had the occasion to examine the doctrine of basic structure of the Constitution, as propounded in **Kesavananda Bharati Vs. State of Kerala** reported in **(1973) 4 SCC 225**. While examining the scope of power of judicial review of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution of India, in **L. Chandra Kumar's** case the Supreme Court had also dealt with the question as to whether, the High Courts should entertain matters coming within the domain of the CAT. While clarifying that the Tribunals constituted as per the provisions of Articles 323-A(2)(d) and 323-B(3)(d) will have the power to entertain all matters for the purpose of which the Tribunals were created,



including the power to test the vires of subordinate legislation and Rules, save and except entertaining any question regarding the vires of the parent statute, it was held that the Tribunals will continue to act as the only court of first instance in respect of areas of law for which they have been constituted. It was further clarified that the consequence of the observations made in the decision would mean that it would not be open for the litigants to directly approach the High Courts even in cases where any question of vires of statutory legislation, except the exceptions mentioned in the decision, is under challenge, by overlooking the jurisdiction of the Tribunal concerned. The Supreme Court has, however, emphatically held in paragraph 99 that the jurisdiction conferred upon the High Court under Articles 226/227 of the Constitution and upon the Supreme Court under Article 32 of the Constitution were a part of the invariable basic structure of our Constitution. It was further observed that while the jurisdiction conferred upon the High Courts and the Supreme Court cannot be ousted, the other Courts and Tribunals may perform a supplementary role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The observations made by the Supreme Court in paragraph 99 of **L. Chandra Kumar** (*supra*) would be relevant in this case and, therefore, those are reproduced herein below for ready reference :-

“99. In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323A and Clause 3(d) of Article 323B, 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 323A and 323B 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 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 323A and Article 323B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal 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 concerned Tribunal. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.”

22. A careful reading of the decision of the Supreme Court rendered in the case of **L. Chandra Kumar** (*supra*) would go to show that the observations made therein, pertaining to the jurisdiction of the Tribunals to act as the Court of first instance with regard to the areas of law for which they have been constituted, were driven more out of concern for heavy pendency of cases in the High Courts and in view of the theory of alternative institutional mechanism, as propounded in the case of **S. P. Sampat Kumar Vs. Union of India and others** reported in **(1987) 1 SCC 124** rather to exclude the jurisdiction of the constitutional courts to entertain such disputes. It also appears from the observations made in **L. Chandra Kumar's** case that the Supreme Court was anxious about preserving the conferment of powers on the Tribunals,



keeping in mind the unprecedented docket explosions in the superior Courts rather than to oust the jurisdiction of the High Court under Article 226 and accordingly, had emphasized on the need to adopt the theory of alternative institutional mechanism, as highlighted in the case of **S. P.Sampat Kumar**(*supra*). In **L. Chandra Kumar** (*supra*) there is no finding or observations of the Apex Court indicating complete ouster of jurisdiction of the High Court in matters where the Tribunals were also empowered to entertain the dispute. On the contrary, the Supreme Court has observed that the Tribunals cannot act as substitute for the High Courts or the Supreme Court. In the case of **L. Chandra Kumar** (*supra*) the Supreme Court has categorically held that there was no exclusion of jurisdiction of the High Courts and the Supreme Court.

23. **L. Chandra Kumar**, undoubtedly, emphasizes on the need for the litigants to first approach the CAT as the court of first instance, if the dispute is one which comes within the ambit of law for which the Tribunals are created and to that extent, it would be perfectly justified for the High Courts to refuse to entertain such a dispute in exercise of powers conferred under Article 226. However, such an approach of the High Court cannot be interpreted to altogether exclude the jurisdiction of the High Court to entertain the dispute. 24. Not entertaining a writ petition under Article 226 of the Constitution in view of availability of alternative remedy is not a rule of law but a rule of prudence and would depend on the facts and circumstances of each case. The ratio laid down in the decision of **L. Chandra Kumar** (*supra*), therefore, must be understood to be one wherein, it has been provided that under ordinary circumstances it is the Tribunal constituted under the statute which will be the court of first instance to entertain a dispute falling within the area of law for which the Tribunal



has been constituted. The question arising in these appeals, however, would be as to whether, in view of the decisions in **L. Chandra Kumar's** case, there is complete ouster of jurisdiction of the High Court to entertain such a dispute. The answer to the said question, in our considered opinion, has to be in the negative. This we say so in view of the categorical observations made in paragraph 99 of **L. Chandra Kumar** (*supra*).

25. Examining the legality and validity of exercise of power by the executive would lie within the realm of administrative law. Law is well settled that exercise of executive power of the State within the domain of Article 162 of the Constitution of India would be amenable to judicial review by the constitutional courts.

26. Law is equally settled that by issuing office orders/memorandums/ executive instructions, the executive power of the State cannot be exercised to supplant any statutory provision but the same can only be used to supplement the statute/rule. Such orders/ memorandums/executive instructions can also not be issued in contravention of the statutory rules. [See : *Union of India v. Majji Jangamayya* [(1977) 1 SCC 606], *P.D. Agarwal v. State of U.P.* [(1987) 3 SCC 622], *Paluru Ramkrishnaiah v. Union of India* [(1989) 2 SCC 541], *C. Rangaswamaiah v. Karnataka Lokayukta* [(1998) 6 SCC 66]. While exercising the power of judicial review in such matters, the judiciary is expected to act as the sentinel in *qui vive*.

27. In the case of **State of Bihar and Others vs. Subhash Singh** reported in (1997) 4 SCC 430 the Supreme Court has observed that the power of judicial review of administrative actions and also of legislation, is exercised against the action of State. Since the State or public authorities act in exercise of their executive or legislative



power, they are amenable to judicial review. The State, therefore, is subject to *etat de droit* i.e. the State is submitted to the law which implies that all actions of the State or its authorities and officials must be carried out subject to the Constitution and within the limits set by law i.e. constitutionalism.

28. In the present case, the writ petitioners have questioned not only the manner in which the equivalence declaration notification was issued by the State Government on 27.10.2017 without circulating the same in the official gazette but also the manner in which the same was given effect to without amending the Schedule-I of the Rules of 1998. The aforesaid aspects of challenge in the writ petition lies in the realm of exercise of administrative and legislative powers of the State and therefore, in our considered opinion, would raise legal issues which would undoubtedly transcend beyond the contours of jurisdiction of the CAT, as conferred under Section 14 of the Act of 1985. If the challenge to the notification dated 27.10.2017 succeeds on merit, then in that event, the same would, in all probability, have a cascading effect on the other issues raised in the writ petition including the question of validity of the recommendations of non-SCS category candidates, not only in the recent past but also for future purposes. Therefore, the views expressed by the learned Single Judge in paragraphs 18 and 19 of the impugned order dated 26.04.2018, holding the writ petition to be maintainable, appears to be a plausible view. We are also of the *prima-facie* opinion that the core issues raised in the writ petition would lie within the domain of the power of judicial review conferred on the High Court under Article 226 of the Constitution of India. Therefore, the Writ Petition is maintainable in the eyes of law.



29. In the case of **Tajuk Charu** (*supra*) relied upon by the appellants, an unsuccessful candidate, whose name was not included in the list of short listed candidates from the non-SCS category for nomination to IAS, had approached the High Court by filing a writ petition raising a dispute which was purely a service matter. On the face of objection raised by the counsel for the respondents regarding the maintainability of the writ petition in the light of the decision rendered in the case of **L. Chandra Kumar** (*supra*), the learned Single Judge had upheld the preliminary objection of the respondents regarding the maintainability of the writ petition and dismissed the same by giving liberty to the petitioner to approach the CAT in accordance with law. After going through the decision in **Tajuk Charu** (*supra*) we are of the opinion that although there is some similarity of some of the issues involved in both the proceedings, yet, the facets of challenge in the instant writ petition lies in a completely different compass, thus giving rise to dissimilar questions of law and facts. As such, we find that the decision rendered in the case of **Tajuk Charu** (*supra*) is distinguishable on facts.

30. In so far as the plea of *locus standi* of the petitioners to institute the writ petition is concerned, we find that although the learned counsel for the appellants in Writ Appeal Nos.165/2018 and 166/2018 had specifically raised the said plea before the learned Single Judge, no finding on the above issue has been recorded in the impugned order dated 26.04.2018. Since the writ petition is still pending and a question on the above point has been raised, it would be incumbent upon the learned Single Judge to decide the question of *locus standi* of the petitioners at an appropriate stage. Therefore, we find force in the submission of learned counsel for



the appellants that a direction to that effect is called for from this Court.

31. We have also taken note of the submissions of Mr. Saikia that the writ appellants/respondents in the writ petition are yet to file counter affidavit in the writ petition. Notwithstanding the same, the learned Single Judge has made observations in the impugned order dated 26.04.2018 touching upon the merit of the case which deserves to be set-aside by this Court. We find ourselves in agreement with such submission of the learned counsel for the appellants. Since the writ petition is pending disposal on merit, any finding and/or observation recorded in the impugned order dated 26.04.2018 touching upon the merit of the case would cause undue prejudice to the interest of the parties at the stage of final hearing and therefore, would be uncalled for.

32. For the reasons stated herein above, we affirm the impugned order dated 26.04.2018 passed by the learned Single Judge, in so far as the maintainability of the writ petition, despite availability of alternative remedy is concerned. We, accordingly, request the learned Single Judge to expeditiously decide the writ petition on merit by considering all the legal objections and/or pleas raised by both the sides, including the questions of *locus standi* of the writ petitioners. We also make it clear that the observations recorded by the learned Single Judge in the impugned order dated 26.04.2018 shall be treated to be of *prima facie* nature, meant only for the limited purpose of considering the objections pertaining to maintainability of the writ petition and the same shall not have any bearing at the stage of final hearing of the writ petition.



With the above observations, all the three Writ Appeals stand disposed of.

Parties to bear their own costs.

JUDGE

CHIEF JUSTICE

T U Choudhury/Sr. PS

Comparing Assistant