



2026:AHC-LKO:12165

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - A No. - 226 of 2026

AFR

Reserved on- 11.02.2026

Delivered on- 17.02.2026

Amit Gupta And 5 Others

.....Petitioner(s)

Versus

U.O.I. Thru. Secy. Deptt. Of Medical Health And
Family Welfare New Delhi And 5 Others

.....Respondent(s)

Counsel for Petitioner(s)

: Anand Dubey

Counsel for Respondent(s)

: A.S.G.I., Anagh Misra

And

WRIT - A No. - 132 of 2026

Bikash Pachambhawala And 4 Others

.....Petitioner(s)

Versus

U.O.I. Thru. Secy. Deptt. Of Medical Health And Family
Welfare, New Delhi And 5 Others

.....Respondent(s)

Counsel for Petitioner(s)

: Anand Dubey

Counsel for Respondent(s)

: A.S.G.I., Anagh Misra

Court No. - 18

HON'BLE SHREE PRAKASH SINGH, J.

1. Heard Mr. Anand Dubey, learned counsel for the petitioners, Mr. Varun Pandey, learned counsel for respondent nos. 1 & 2, Mr. Surya Bhan Pandey, learned D.S.G.I. assisted by Mr. Anagh Mishra and perused the record.

2. Instant petition has been filed with the following reliefs:-

"Issue a writ order direction in the nature of certiorari thereby quashing the advertisement dated 11.11.2025 with respect to recruitment of two posts of Assistant Store Officer and three post of Private Secretary in AIIMS Raebareli same are annexed as Annexure no.1 to this writ petition.

ii. Issue a writ order direction in the nature of mandamus commanding the opposite party No.-3 to 5 to fill up two vacant posts of Assistant Store Officer and three post of Private Secretary through promotion in AIIMS Raebareli by mechanism provided in office memorandum dated: 20.11.2024 issued by AIIMS New Delhi.

ii. Any appropriate order/direction which this Hon'ble court may deem fit and proper, in the circumstances of the case.

iv. Award the cost of the writ petition."

3. In Writ A No. 132 of 2026, additionally, the advertisement dated 11.07.2025 is also under challenge.

4. Preliminary objection is raised by counsels for the respondents that the writ petition is not maintainable, as the advertisement dated 11.11.2025 and 11.07.2025, which are published by the competent authority of All India Institute of Medical Science, Raebareli(hereinafter referred to as "Institution"), under challenge herein, in fact, put the recruitment in motion/process, whereas, the provisions of Section 14 of the Administrative Tribunal Act, 1985 (hereinafter referred to as "the Act 1985") prescribes the jurisdiction, power and authority of the administrative tribunals, therefore, the efficacious alternative remedy is available to the petitioners to approach the Central Administrative Tribunal sitting at Lucknow.

5. He further submitted that the law rendered in the case of **L. Chandra Kumar V. Union Of India** reported in **AIR 1997 SC 1125**, it has been held in paragraphs 94 to 100 that every suit or case subject matter as given under Article 14, shall be triable before the tribunals, established under the Act 1985. The aforesaid paragraphs of the judgment and order are extracted as under:-

"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.

95. We are also required to address the issue of the competence of those who man the Tribunals and the question of who is to exercise administrative supervision over them. It has been urged that only those who have had judicial experience should be appointed to such Tribunals. In the case of Administrative Tribunals, it has been pointed out that the Administrative Members who have been appointed have little or no experience in adjudicating such disputes; the Malimath Committee has noted that at times IPS Officers have been appointed to these Tribunals. It is stated that in the short tenures that these Administrative Members are on the Tribunal, they are unable to attain enough experience in adjudication and in cases where they do acquire the ability, it is invariably on the eve of the expiry of their tenures. For these reasons, it has been urged that the appointment of Administrative Members to Administrative Tribunals be stopped. We find it difficult to accept such a contention. It must be remembered that the setting up of these Tribunals is founded on the premise that specialist bodies comprising both trained administrators and those with judicial experience would, by virtue of their specialised knowledge, be better equipped to dispense speedy and efficient justice. It was expected that a judicious mix of Judicial Members and those with grassroot experience would best serve this purpose. To hold that the Tribunal should consist only of Judicial Members would attack the primary basis of the theory pursuant to which they have been constituted. Since the Selection Committee is now headed by a Judge of the Supreme Court, nominated by the Chief Justice of India, we have reason to believe that the Committee would take care to ensure that Administrative Members are chosen from amongst those who have some background to deal with such cases.

96. It has been brought to our notice that one reason why these Tribunals have been functioning inefficiently is because there is no authority charged with supervising and fulfilling their administrative requirements. To this end, it is suggested that the Tribunals be made subject to the supervisory jurisdiction of the High Courts within whose territorial jurisdiction they fall. We are, however, of the view that this may not be the best way of solving the problem. We do not think that our constitutional scheme requires that all adjudicatory bodies which fall within the territorial jurisdiction of the High Courts should be subject to their supervisory jurisdiction. If the idea is to divest the High Courts of their onerous burdens, then adding to their supervisory functions cannot, in any manner, be of assistance to them. The situation at present is that different Tribunals constituted under different enactments are administered by different administrative departments of the Central and the State Governments. The problem is compounded by the fact that some Tribunals have been created pursuant to Central Legislations and some others have been created by State Legislations. However, even in the case of Tribunals created by parliamentary legislations, there is no uniformity in administration. We are of the view that, until a wholly independent agency for the administration of all such Tribunals can be set up, it is desirable that all such Tribunals should be, as far as possible, under a single nodal ministry which will be in a position to oversee the working of these Tribunals. For a number of reasons that Ministry should appropriately be the Ministry of Law. It would be open for the Ministry, in its turn, to appoint an independent supervisory body to oversee the

working of the Tribunals. This will ensure that if the President or Chairperson of the Tribunal is for some reason unable to take sufficient interest in the working of the Tribunal, the entire system will not languish and the ultimate consumer of justice will not suffer. The creation of a single umbrella organisation will, in our view, remove many of the ills of the present system. If the need arises, there can be separate umbrella organisations at the Central and the State levels. Such a supervisory authority must try to ensure that the independence of the members of all such Tribunals is maintained. To that extent, the procedure for the selection of the members of the Tribunals, the manner in which funds are allocated for the functioning of the Tribunals and all other consequential details will have to be clearly spelt out.

97. The suggestions that we have made in respect of appointments to Tribunals and the supervision of their administrative function need to be considered in detail by those entrusted with the duty of formulating the policy in this respect. That body will also have to take into consideration the comments of expert bodies like the LCI and the Malimath Committee in this regard. We, therefore, recommend that the Union of India initiate action in this behalf and after consulting all concerned, place all these Tribunals under one single nodal department, preferably the Legal Department.

*98. Since we have analysed the issue of the constitutional validity of Section 5(6) of the Act at length, we may now pronounce our opinion on this aspect. Though the vires of the provision was not in question in *Dr Mahabab Ram case [(1994) 2 SCC 401 : 1994 SCC (L&S) 642 : (1994) 27 ATC 97]*, we believe that the approach adopted in that case, the relevant portion of which has been extracted in the first part of this judgment, is correct since it harmoniously resolves the manner in which Sections 5(2) and 5(6) can operate together. We wish to make it clear that where a question involving the interpretation of a statutory provision or rule in relation to the Constitution arises for the consideration of a Single Member Bench of the Administrative Tribunal, the proviso to Section 5(6) will automatically apply and the Chairman or the Member concerned shall refer the matter to a Bench consisting of at least two Members, one of whom must be a Judicial Member. This will ensure that questions involving the vires of a statutory provision or rule will never arise for adjudication before a Single Member Bench or a Bench which does not consist of a Judicial Member. So construed, Section 5(6) will no longer be susceptible to charges of unconstitutionality.*

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.

100. All these matters may now be listed before a Division Bench to enable them to be decided upon their individual facts in the light of the observations contained in this judgment."

6. Further submission is that the present writ petition is not maintainable, as there is an efficacious statutory remedy is available to the petitioners, under section 14 of Act 1985, thus, the writ petition is liable to be dismissed.

7. On the other hand, Mr. Anand Dubey, learned counsel appearing for the petitioners has submitted that the present writ petition is maintainable, as the advertisement has been published under the provisions of the Recruitment Rules For Non-Faculty Posts For New AIIMS, 2015(hereinafter referred as 'Rules 2015') and the writ petition was instituted prior to the notification of the Institution, under Section 14 of the Act 1985. He also added that the recruitment process has also been initiated prior to that notification.

8. He further argued that, in fact, two posts are advertised; one of the Assistant Store Officer and the second one is of Private Secretaries and as per the rules, 75% of total posts of Assistant Store Officer shall be filled up either on promotion or on the deputation and 25% of posts by the direct recruitment, whereas, no promotion has ever been done. Further also, so far as the post of Private Secretaries are concerned, there are six posts, out of which three posts have already been filled up through direct recruitment and

by way of the present advertisement, three other posts have been advertised, for appointment, through direct recruitment. He also submitted that as per the Rules 2015, there is 50% quota for promotion for the post of Private Secretaries, which has apparently been violated by the respondent institute as the same is in derogation of the rules. He submitted that, in fact, if there is any illegal exercise of powers by a statutory authority, then the writ petition can be entertained, under Article 226 of the Constitution of India.

9. In support of his contention, he has placed reliance on the judgment rendered in the case of **Leelavathi N. And Ors. Etc. Versus The State of Karnatata** passed in **SLP (Civil) No(s). 27984-27988 of 2023** and has referred paragraph 37, which is quoted hereinunder:-

"37. Nevertheless, a writ petition under Article 226 may still be maintainable notwithstanding the existence of such an alternative remedy in exceptional circumstances, including the enforcement of fundamental rights guaranteed under Part III of the Constitution; instances of ultra vires or illegal exercise of power by a statutory authority; violation of the principles of natural justice; or where the vires of the parent legislation itself is under challenge. While these exceptions have been carved out and reiterated by this Court in a catena of decisions, the facts of the present case do not fall within any of these exceptions so as to warrant the maintainability of the writ petitions before the High Court."

10. Referring the aforesaid, he submitted that it has been held in so many words that the alternative remedy would be no bar, in the exceptions, where there is prayer for enforcement of fundamental rights guaranteed under Part III of the Constitution of India, instances of ultra vires or illegal exercise of power by statutory authority or there is violation of principle of natural justice. He submitted that in fact it is apparent that the respondent-institute, by way of the advertisement for the post of private secretaries, has proceeded for the direct recruitment, thus, has violated the law prescribed under the Rules 2015, which is an unlawful exercise of powers by the authority concerned, therefore, the writ petition is maintainable.

11. Having heard learned counsel for the parties and after perusal of the records, it transpires that the petitioners have instituted the present writ petition, challenging the advertisement, which has been published by the 'Institution,' for recruitment, under the provisions of 'Rules 2015.'

12. Upon considering the preliminary objection regarding availability of alternative remedy, it is apt to say that section 14 of the Act 1985, envisaged the jurisdiction and power of the Central Administrative Tribunal, which says that 'the administrative tribunals shall exercise, on and from the appointed day, all the jurisdiction, power and authority exercisable immediately before the day, by all courts.'

13. Section 14 of the 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 2***) 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 corporation 3[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 corporation 3[or society] or other body, at the disposal of the Central Government for such appointment.

4[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 corporations 3[or societies]

owned or controlled by Government, not being a local or other authority or corporation 3[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 1[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 1[or society], all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court 2***) 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 1[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 1[or society] and pertaining to the service of such person in connection with such affairs."

14. The issue herein, is with respect to the advertisement for the recruitment of two posts, namely, the Assistant Store Officer as well as Private Secretary, which essentially is the subject matter of clause 14(i)(a) of the 'Act 1985'.

15. The case in hand is that the advertisement for recruitment of the posts in question, was published on 11.11.2025 and Institution has subsequently been notified on 13.01.2026 by Ministry of Personnel, Public Grievances and Pensions. The further fact is that the writ petition was also preferred on 08.01.2026 that too was prior to the notification dated 13.01.2026. When this court examines the aforesaid facts under the prevalent law, it emerges that Section 14 of the Act 1985 provides the jurisdiction, powers and authority of the Central Administrative Tribunal and it says that the Central Administrative Tribunal shall exercise on and from the appointed day, all the jurisdiction, authority and powers, exercisable by all the courts. The appointed days is 'the day', when any 'authority' mentioned section 14(2) is notified. The institution, who published the advertisement for recruitment of posts, has been notified by the Central Govt. on 13.01.2026, on the appointed day, the instant writ petition is pending. Section 29 of the Act 1985 envisages the provision of transfer of pending cases.

16. Section 29 of the Act 1985 reads as under:-

*"29. Transfer of pending cases.—(1) Every suit or other proceeding pending before any court or other authority immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal: Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before a High Court 4***.*

(2) Every suit or other proceeding pending before a court or other authority immediately before the date with effect from which jurisdiction is conferred on a

*Tribunal in relation to any local or other authority or corporation 5 [or society], being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after the said date, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal: Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before a High Court 1****
Explanation.—For the purposes of this sub-section "date with effect from which jurisdiction is conferred on a Tribunal", in relation to any local or other authority or corporation 2 [or society], means the date with effect from which the provisions of sub-section (3) of section 14 or, as the case may be, sub-section (3) of section 15 are applied to such local or other authority or corporation 2 [or society].

(3) Where immediately before the date of establishment of a Joint Administrative Tribunal any one or more of the States for which it is established, has or have a State Tribunal or State Tribunals, all cases pending before such State Tribunal or State Tribunals immediately before the said date together with the records thereof shall stand transferred on that date to such Joint Administrative Tribunal.

Explanation.—For the purposes of this sub-section, "State Tribunal" means a Tribunal established under sub-section (2) of section 4.

(4) Where any suit, appeal or other proceeding stands transferred from any court or other authority to a Tribunal under sub-section (1) or sub-section (2),—

(a) the court or other authority shall, as soon as may be after such transfer, forward the records of such suit, appeal or other proceeding to the Tribunal; and

(b) the Tribunal may, on receipt of such records, proceed to deal with such suit, appeal or other proceeding, so far as may be, in the same manner as in the case of an application under section 19 from the stage which was reached before such transfer or from any earlier stage or de novo as the Tribunal may deem fit.

(5) Where any case stands transferred to a Joint Administrative Tribunal under sub-section (3), the Joint Administrative Tribunal may proceed to deal with such case from the stage which was reached before it stood so transferred.

3[(6) Every case pending before a Tribunal immediately before the commencement of the Administrative Tribunals (Amendment) Act, 1987 (51 of 1987), being a case the cause of action whereon it is based is such that it would have been, if it had arisen after such commencement, within the jurisdiction of any court, shall, together with the records thereof, stand transferred on such commencement to such court.

(7) Where any case stands transferred to a court under sub-section (6), that court may proceed to deal with such case from the stage which was reached before it stood so transferred.]'''

17. The aforesaid provision is very clear in its terms that every suit or other proceeding before any court or other authority, immediately before the date

of establishment of a tribunal under the Act 1985, shall stand transferred, on that date to the Tribunals. In the above-noted provisions the word 'pending before a court or authority' has substantive meaning. The question is that when a matter could be said to be pending before any court or authority, is the date, when it is filed and the date, when it's decided finally. So far as the case in hand is concerned, admittedly, the date of notification of the Institution is 13.01.2026 and the present writ petition has been filed on 08.01.2026, while the date of advertisement is 11.11.2025 as is apparent from the advertisement itself and the writ petition has been filed with the main prayer of quashing the aforesaid advertisement. This is an undisputed fact that the writ petition remained pending until the notification dated 13.01.2026 was issued, therefore, the mandate of Section 29 of the Act 1985 would be applicable to the present case and the plea taken by the counsel for the petitioner that the notification has subsequently been issued than that of filing of the writ petition would have no contrary effect.

18. The law rendered in the case of **L. Chandra Kumar(Supra)**, it has been held that such Tribunals have all jurisdiction from the day, they came into existence and even in paragraph 99, it has been said that the tribunals created under Article 323A and 323B of the Constitution of India, are possessed of the competence to test the constitutional validity of statutory provisions and rules and even the vires of the act of the statutory legislation can also be looked into, by the Tribunals.

19. The law, relied upon by the counsel for the petitioners, rendered in the case of **Leelavathi N.(Supra)**, it has been held in paragraph 36, that where an efficacious alternative remedy is available, the High Court should not entertain a Writ Petition under Article 226 of the Constitution of India, in matters falling squarely within the domain of Tribunals. Counsel for the petitioners has failed to substantiate his arguments that the case of the petitioners do not fall under the domain of the Tribunals, constituted under the scheme of the Constitution of India.

20. Consequently, this Court finds force in the argument of learned counsel for respondents, thus, preliminary objection sustains.

21. Ergo, both the writ petitions are hereby **dismissed as not maintainable.**

22. Liberty is given to the petitioners to pursue the appropriate remedy provided under the law.

(Shree Prakash Singh,J.)

February 17, 2026

Mayank