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

+ **W.P.(C) 2250/2016**

ARCHANA

..... Petitioner

Through: None.

versus

GNCT OF DELHI & ANR

..... Respondents

Through: Mr. Santosh Kumar Tripathy, ASC
with Mr. Rizwan, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **08.12.2016**

1. The order dated 16.3.2016 shows that prayers (i) and (ii) were given up and only prayer (iii) was remained to be adjudicated. The third prayer seeks declaration as invalid the recruitment rules for the post of TGT (Home Science).

2. The challenged rules are with respect to employees of the Director of Education under the Government of NCT of Delhi. Petitioner therefore is questioning issues of service between her and the employer which is Government of NCT of Delhi. Such disputes have to be decided not by this Court but by the Central Administrative Tribunal (CAT), Principal Bench,

New Delhi which has original jurisdiction in view of para 99 of the Constitution Bench judgment of the Supreme Court in the case of ***L. Chandra Kumar vs. Union of India & Ors. (1997) 3 SCC 261***, and which para 99 reads as under:-

“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.” (underling added)

3. In view of the above, this writ petition is not maintainable in

this Court, and the same is therefore dismissed reserving liberty to the petitioner to approach the CAT, Principal Bench, New Delhi.

VALMIKI J. MEHTA, J

DECEMBER 08, 2016

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