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

+ W.P.(C) 9234/2014 and C.M. No.9701/2016 (for directions)

SANDEEP KUMAR Petitioner
Through: Mr. M.K. Sinha, Advocate.

versus

KALAWATI SARAN CHILDREN'S HOSPITAL & ORS..... Respondents
Through: Mr. Anurag Kumar, Advocate for
GNCTD.
Mr. Prashant Jain, Advocate for
respondent Nos.3,4 and 5.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **07.12.2016**

1. Petitioner seeks appointment with Kalawati Saran Children's Hospital, and which admittedly has no independent legal entity and petitioner's appointment therefore would be with the Union of India. Since petitioner claims employment with Union of India, this writ petition will not be maintainable in this Court because writ petition will have to be filed before the Central Administrative Tribunal (CAT), Principal Bench, New Delhi which has original jurisdiction and only which can decide this petition as per the ratio 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. Para 99 of this judgment 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)

2. In view of the above, instead of dismissing the petition, at the request of the petitioner, this petition is transferred for decision to CAT, Principal Bench, New Delhi. Parties to appear before the Registrar of CAT

on 21st December, 2016. Registry will ensure that file of this case is available to the Registrar of CAT on the date fixed.

VALMIKI J. MEHTA, J

DECEMBER 07, 2016
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