

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

+ **W.P.(C) No. 6024/2006**

% **24th January, 2017**

SALAHUDDIN Petitioner

Through: None.

versus

GNCT AND ORS. Respondents

Through: Mr. Gursharan Singh, Advocate for
R-1 and 2.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The memo of parties of this writ petition is as under:-

“1. SALAHUDDIN
S/o Shri Abdul Rasheed
R/o B-139, Kabooter Market,
Wellcome, Seelampur,
Delhi – 110053

Versus

1. Government of National Capital Territory
Through Director of Education,
Education Directorate
Old Secretariat, Vidhan Sabha Marg
New Delhi.
2. Education Officer,
Zone – V,

District North-East,
G.T. Road, Shahadra,
Delhi.

3. Government Boys Secondary School
Parents Teachers Association
Through its President
The Principal Government Body Secondary School,
Brahampuri,
Delhi -110053”

2. As per the writ petition, the petitioner claims to be appointed as an Urdu teacher with the Government Boys Secondary School and payment to be made to the petitioner from the Parents Teachers Association Fund created by the respondent no. 3 which is the Parents Teachers Association. Petitioner claims that petitioner is teaching in the school since July, 2001 and further pleads that he has been making representations for regularization which have not been granted and therefore the present writ petition is filed for the following reliefs:-

- “a) Issue a writ in the nature of mandamus or any other appropriate writ or direction to the respondents no. 1 and 2 to recruit the petitioner to the post of Urdu teacher; in view of the Office Memorandum dated 28.6.1978; and
- b) Issue a writ in the nature of mandamus or any other appropriate writ or direction to the respondent no. 3, to release the salary to the petitioner for the period of teaching imparted by the petitioner as Urdu teacher; and
- c) Pass such order or further order/orders or direction/directions as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.”

3. It is seen that if petitioner was to be appointed in a government school and becomes a government employee then the petitioner would have

to be appointed through a regular recruitment process. Admittedly, there is no recruitment process for appointment of the petitioner as an Urdu teacher in the Government Boys Secondary School and therefore there does not arise any issue of appointment of the petitioner as an Urdu teacher in the Government Boys Secondary School. In fact, the writ petition is a curious petition because petitioner claims payment of salary from the funds of the Parents Teachers Association i.e. there are no funds of the employer/Government Body Secondary School which are said to be paid to the petitioner for teaching as an Urdu teacher.

4. Accordingly, it is seen that not only there is no merit in the writ petition, but petitioner if claims to be an employee of government school and hence seeking government employment, the writ petition would not be maintainable in this Court because any appointment or regularization of an employee with Government of National Capital Territory of Delhi has to be decided by the Central Administrative Tribunal, Principal Bench, New Delhi and not this Court, 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)

5. Accordingly, though this writ petition has no merits, but since this Court does not have jurisdiction in view of the observations of the Constitution Bench judgment of the Supreme Court in the case of *L. Chandra Kumar (supra)*, this writ petition is dismissed as being not maintainable before this Court as regularization is claimed as an employee of Government Boys Secondary School.

JANUARY 24, 2017/३११

VALMIKI J. MEHTA, J