

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

Date of Order: November 08, 2017

+ **W.P.(C) 9597/2017 & CM. 39067/2017**

RUBY Petitioner
Through: Mr. Rakesh Sachdeva, Advocate

versus

GNCT OF DELHI Respondent
Through: Mr. R.A. Iyer and Ms. Mahamaya
Chatterjee, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

1. Petitioner had appeared in an examination for Post-Graduate Teachers and the grievance of petitioner is that on 15th March, 2017, respondent had declared the result without correcting the Key with respect to 12 questions pointed out by petitioner vide her Representation of 27th July, 2015. According to petitioner, she had secured 145.25 marks out of 250 marks and the last candidate in the merit list was the one who had secured 149 marks. Petitioner is aggrieved by respondent's inaction of not correcting the Key Answers with respect to question nos. 02, 12, 18, 28, 29, 43, 60, 61, 67, 68, 83, 84, 87, 90, 96, 103, 106, 107, 126 & 198. The prayer made in this petition is to correctly evaluate the Answers given by petitioner to the afore-noted questions.

2. Learned counsel for respondent raises the jurisdictional issue by submitting that the jurisdiction to deal with petitioner's grievance would

be of Central Administrative Tribunal, Delhi and so, petitioner cannot approach this Court in the first instance. To submit so, he relies upon a decision of Constitution Bench of Supreme Court in *L. Chandra Kumar v. Union of India* (1997) 3 SCC 261. Reliance is also placed upon a Division Bench decision of this Court in *Shahin Rustam & Anr. v. Indira Gandhi National Open University & Ors.*, 2014 SCC OnLine Del 4127 wherein the party was relegated to avail of the remedies before the Central Administrative Tribunal while relying upon decision in *L. Chandra Kumar (supra)*. Reliance was also placed upon a decision of coordinate Bench of this Court in *Dr. Vivek Ranjan Biswas & Ors., Union of India and Ors.*, 2013 SCC OnLine Del 3146 to submit that a similar view has been taken while relying upon decision in *L. Chandra Kumar (supra)*.

3. Learned counsel for petitioner relies upon a later decision of Supreme Court in *Rajesh Kumar & Ors. v. State of Bihar & Ors.*, (2013) 4 SCC 690 to submit that the issue of correction of Key was entertained by High Court. He further seeks to distinguish Supreme Court's decision in *L. Chandra Kumar (supra)* by submitting that the jurisdiction of the High Court cannot be curtailed. Reliance is placed by petitioner's counsel upon decision of a Three Judge Bench of Supreme Court in *R.K. Jain v. Union of India*, 1993 (4) SCC 119 to submit that the power of judicial review of the High Court and Supreme Court is unfettered.

4. Upon hearing and on perusal of material on record and the decisions cited, I find that the Constitution Bench decision of Supreme Court in *L. Chandra Kumar (supra)* holds the field. The relevant extract of *L. Chandra Kumar (supra)* reads as under: -

“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.”

5. The reliance placed by petitioner’s counsel upon Supreme Court’s decision in *Rajesh Kumar (supra)* and *R.K. Jain (supra)* is of no avail as

the jurisdictional aspect was directly not in issue therein. Applying the dictum of Supreme Court *L. Chandra Kumar (supra)*, followed by a Division Bench of this Court in *Shahin Rustam (supra)* and a co-ordinate Bench of this Court in *Dr. Vivek Ranjan Biswas (supra)*, petitioner is relegated to avail of the remedy, before the Central Administrative Tribunal, Delhi.

6. With aforesaid directions, this petition and the application are disposed of.

(SUNIL GAUR)
JUDGE

NOVEMBER 08, 2017
s



नित्यमेव जयते