

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

Date of Order: November 22, 2017

+ **W.P.(C) 10394/2017 & CMs 42436-38/2017**

VIRENDER SINGH GAHLOT AND ORS.Petitioners
Through: Mr. Aruneshwar Gupta and Mr.
Varun Dewan, Advocates

Versus

GOVT. OF NCT OF DELHI AND ORS.Respondents
Through: Mr. Anuj Aggarwal, ASC & Ms.
Deboshree Mukherjee, Advocate for
respondents No.1, 2 & 6
Mrs. Biji Rajesh, Advocate for Mr. Gaurang
Kanth, Advocate for respondent No.3
Ms.Mini Pushkarna, Standing Counsel & Ms.
Anushruti, Advocate for respondent No.4-
SDMC
Mr. Kumar Rajesh Singh and Ms. Punam
Singh, Advocates for respondent No.5-EDMC

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

ORDER
(ORAL)

1. In this writ petition, petitioners seek setting aside of the entire examination process conducted by respondents on 29th October, 2017 for recruitment of 4366 posts of Primary Teachers with three Municipal Corporations of Delhi.
2. There is a preliminary jurisdictional objection to entertain this writ by learned counsel for respondents, who submit that this very examination, which is also under challenge herein, is *sub judice* before

the Central Administrative Tribunal, Delhi in O.A.No. 3961/2017 titled *Naveen Kumar & Ors. v GNCTD & Ors.* Attention of this Court is drawn by learned counsel for respondents to Sub- Section 3(a) of Section 14 of *the Administrative Tribunals Act 1985* to point out that the recruitment and matters concerning recruitment to any service are to be dealt with by the Central Administrative Tribunals, who are vested with the powers of all courts except the Supreme Court of India. Attention of this Court is also drawn by learned counsel for respondents to an order of 8th November, 2017 in W.P. (C) 9597/2017 wherein this Court while dealing with the examination for the post of Post-Graduate Teachers has relegated petitioner therein to avail of the remedies before *the Central Administrative Tribunal, Delhi* while relying upon Supreme Court's Constitution Bench decision in *L. Chandra Kumar v. Union of India* (1997) 3 SCC 261.

3. Learned Counsel for petitioners refutes the aforesaid stand taken by respondents and relies upon Supreme Court's decision in *Tanvi Sarwal v. Central Board of Secondary Education and Others* (2015) 6 SCC 573 and a Division Bench decision of this Court in *Secretary, D.S.S.S.B. v. Neeraj Kumar & Ors.* 2006 (88) DRJ 523 (DB) to submit that where there were malpractices in recruitment by Delhi Subordinate Services Selection Board, writ petition was entertained while exercising the powers under Article 226 of the Constitution of India. Learned counsel for petitioners also relies upon Supreme Court's decision in *Union of India and Others v. Tejram Parashramji Bombhate & Ors.* (1991) 3 SCC 11 in support of the above submissions.

4. After having heard both the sides on the jurisdictional aspect, I find that Section 14 of the *Administrative Tribunals Act, 1985* clearly provides that in matters relating to recruitment or concerning recruitment to any service in connection with the affair of such local or other authority or corporation are to be entertained by the concerned Administrative Tribunal.

5. Supreme Court's Constitution Bench decision in *L. Chandra Kumar (supra)* clinches this issue. The aspect of unfettered powers under Articles 226/227 of the Constitution of India has been considered by Supreme Court in *L. Chandra Kumar (supra)* in the following manner:-

“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.”

6. In view of afore-noted dictum of Supreme Court in *L. Chandra Kumar (supra)*, I find that reliance placed by petitioner’s counsel upon decisions in *Tanvi Sarwal (supra)*, *Neeraj Kumar (supra)* and *Tejram Parashramji (supra)* are of no avail as the jurisdictional aspect was not the subject matter of consideration in the said decisions. Since the selection in question is already subject matter of consideration before the Central Administrative Tribunal, Delhi in *Naveen Kumar’s* case [*in O.A.No. 3961/2017*], therefore, petitioner is relegated to avail of the remedies before the Central Administrative Tribunal, Delhi in the first instance.

7. With aforesaid directions, this petition and the applications are disposed of.

(SUNIL GAUR)
JUDGE

NOVEMBER 22, 2017

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