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

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Date of decision: 11.09.2020

+ W.P.(C) 6155/2020 & CM No. 22073/2020

DR. DHARMENDRA DAHIYA Petitioner

Through Mr. Abhishek Kaul, Advocate.

versus

DEPARTMENT OF HEALTH AND FAMILY WELFARE,
GOVT OF NCT OF DELHI & ANR. Respondents

Through Mrs. Avnish Ahlawat, Standing
Counsel GNCTD (services) with
Mr. N.K. Singh and Ms. Palak
Rohmetra, Advocates.

**CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH**

JYOTI SINGH, J. (ORAL)

1. The present petition has been filed by a doctor who is employed with Respondent no. 1 i.e. Department of Health and Family Welfare, Govt. of NCT of Delhi. The challenge in the present petition is to transfer order dated 19.06.2020 issued by Govt. of NCT of Delhi as well as to an order dated 17.07.2020 whereby Respondent No. 2/Hospital has issued directions for stoppage of the salary of the Petitioner with effect from 01.08.2020.

2. The nature of relief sought in the present petition is essentially a “service matter” and the Delhi Government is covered under the Administrative Tribunals Act, 1985.
3. In view of the above this Court has no jurisdiction to entertain the present petition as the Petitioner is amenable to the jurisdiction of the Central Administrative Tribunal.
4. The observations of the Constitutional Bench in ***L. Chandra Kumar v. Union of India and Others***, [(1997) 3 SCC 261] are relevant in this context and the following passage is quoted hereunder:-

“99. 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. At this stage Mr. Abhishek Kaul learned counsel for the Petitioner seeks to withdraw the present Petition, with liberty to approach the Central Administrative Tribunal.

6. Present Petition, along with accompanying Application, is accordingly disposed of, granting the liberty, as prayed.

JYOTI SINGH, J

SEPTEMBER 11, 2020/yo