

Salahuddin vs.gnct and Ors.

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Court : Delhi

Decided On : Jan-24-2017

Appellant : Salahuddin

Respondent : Gnct and Ors.

Advocate for Pet/Ap. : Mr. Gursharan Singh

Judgement :

* + % SALAHUDDIN IN THE HIGH COURT OF DELHI AT NEW DELHI W.P.(C)
No.6024/2006 Through: None. versus 24th January, 2017

... Petitioner

GNCT AND ORS.

... RESPONDENTS

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

"SALAHUDDIN S/o Shri Abdul Rasheed R/o B-139, Kabooter Market, Wellcome,
Seelampur, Delhi - 110053 1. Versus 1. Government of National Capital Territory
Through Director of Education, Education Directorate Old Secretariat, Vidhan
Sabha Marg New Delhi. Education Officer, Zone - V, 2. W.P.(C) No.6024/2006
Page 1 of 4 3. District North-East, G.T. Road, Shahadra, Delhi. 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 Honble 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 W.P.(C) No.6024/2006 Page 2 of 4 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 SCC261 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

and 32 of the Constitution, are unconstitutional. Section 28 of the Act W.P.(C) No.6024/2006 Page 3 of 4 role in the powers discharging the Supreme Court under Article 32 of 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

and upon 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 by Articles

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) conferred 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. JANUARY24 2017/AK VALMIKI J.

MEHTA, J W.P.(C) No.6024/2006 Page 4 of 4

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