

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

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CWP No.23820 of 2017

Date of decision:30.10.2017

Rajiv Kaushik

... Petitioner

versus

Vaish Education Society (Regd.) Rohtak and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr.Nilesh Bhardwaj, Advocate,
for the petitioner

...

AMOL RATTAN SINGH, J. (Oral)

1. Though this matter had been adjourned to enable learned counsel for the petitioner to address arguments in terms of the judgment of the Supreme Court in Anadi Mukta Sadguru Shree Mukta Jeevandasswami Suvarna Jayanti Mahotsav Smarak Trust and others vs V.R.Rudani and others, AIR 1989 SC 1607, that question, in fact, need not be really gone into on the issue of maintainability of the writ petition in terms of the aforesaid judgment, as admittedly, though the respondent institution is not an aided institution, the petitioners' services have been terminated by an order, Annexure P-10, dated 3.10.2017, which obviously is a service matter.

2. Though no formal notice has been issued in this petition, Mr.Alok Mittal, Advocate, appears on behalf of respondents no.1 and 2 and has filed his power of attorney, which is taken on record. He submits that as per the judgment of a Division Bench of this Court in Management of S.D.Model Senior Secondary School and another vs. District Judge-cum-Service Tribunal and another (CR No.4315 of 2012 decided on 27.11.2013),

all service disputes of the employees of educational institutions, as are

covered by the notifications of the Haryana Government dated 7.5.2013 and 3.8.2008, would lie at the first instance to the Educational Tribunals constituted by the State vide the aforesaid notifications (and under the Haryana School Education Act, 1995), with jurisdiction of this Court therefore not lying at the first instance.

3. The conclusion reached by the Division Bench in the aforesaid judgment needs to be referred to:-

“In view of the above discussion, we conclude as under:

(i) That an Educational Tribunal constituted in terms of the direction of the Supreme Court in T.M.A.Pai Foundation’s case (supra), will not have the jurisdiction to decide issue of payment of gratuity, as the same is payable to the teaching and non-teaching staff in terms of the Payment of Gratuity Act, 1972.

(ii) In respect of second question, the notification of the State Government constituting Educational Tribunal will include all service disputes arising out of an order passed by the Management, as appealable to the Educational Tribunal. Such right to appeal is not arising in view of the judgment in T.M.A.Pai Foundation’s case (supra), but in exercise of the executive powers of the State.

(iii) The State Government shall consider appropriate amendments in the Haryana School Education Act, 1995 in the light of statement made by Mr. Poonia before this Court expeditiously.

(iv) Since the controversy regarding the Forum for adjudication of disputes relating to payment of gratuity has been settled now, it shall be open to the aggrieved persons to seek redressal under the Payment of Gratuity Act, 1972 in accordance with law, if the same is availed within two months from today. The payment deposited by the petitioners shall be subject to the decision of the Authority under the Payment of Gratuity Act.”

4. Thus, as per the conclusion reached by their Lordships at clause (ii) herein above, all service disputes arising out of an order passed by the Management, as are appealable to the Educational Tribunal, have to be raised at the first instance before the said Tribunal.

Consequently, this petition is disposed of with liberty to the petitioner to approach the Educational Tribunal concerned, as notified by the State Government, for redressal of his grievance, his services having been dispensed with and as is contended by learned counsel appearing on his behalf, against the norms laid down by the AICTE

5. However, the contention of learned counsel, with regard to whether the action of the Management is actually against the norms of the AICTE or not, would naturally be gone into by the Tribunal and the question of grant of interim stay to the petitioner would also be considered by the Tribunal at the first instance.

30.10.2017
pk

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No