

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**CWP No.25084 of 2017
Date of decision: 07.11.2017**

Santosh Gupta

....Petitioner

Versus

Aggarwal College, Ballabgarh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

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

G.S. SANDHAWALIA, J. (Oral)

Petitioner seeks quashing of the advertisement dated 13.09.2017 (Annexure P-25) whereby the post of Head Clerk was to be filled up by way of direct recruitment. The grouse of the petitioner is that it was against the provisions of the Haryana Affiliated Colleges (Security & Service) Rules, 2006, as the said posts can only be filled-up by direct recruitment only in case there is no eligible candidate available in the college for promotion to the post of Head Clerk.

It has, accordingly, been contended by counsel for the petitioner that the petitioner being a Clerk with the respondent-Institute, is entitled for promotion.

On 03.11.2017, counsel had taken time to assist this Court regarding whether alternative remedy is available. It is, accordingly, his case that appeal would lie only against an order passed by the Management and in the present case, since only the advertisement has been issued, therefore, alternative remedy would not be available.

In the opinion of this Court, petitioner has an alternative and efficacious remedy before the Educational Tribunal, in view of the authoritative

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pronouncement of the Division Bench in *Management of S.D. Model Senior Secondary School & another Vs. District Judge-cum-Service Tribunal & another 2014 (1) SCT 652*. A perusal of the said judgment would go on to show that it was held that a forum had been adopted by the State for the purpose of presentation of appeals against all decisions of the Management relating to the employees of the educational institutions. Relevant paras of the judgment read as under:

“13. We have heard Learned Counsel for the parties at length. It appears that directions in T.M.A.Pai Foundation’s case (supra) are in the context of disciplinary action against a teacher or other employees though clarifying that approval of any Government authority before taking any disciplinary action by the Management of a private unaided educational institution is not required. The direction of the Supreme Court was to provide a judicial Forum against the decision of the Management relating to the termination of services. Therefore, strictly speaking, the direction of the Supreme Court was to constitute Educational Tribunal for determining the issues arising of disciplinary action initiated against the teacher.

14. Though the circular of the High Court is only to provide a Forum for presentation of the appeals, but the determination of the scope of hearing of such appeals falls within the legislative domain of the State Government independent of the order passed by the Supreme Court. The notification dated 28.05.2008 specifically does not specify as to which orders passed by the management would be appealable, but it is notified that all the District & Sessions Judges have been authorized by the High Court to hear appeals of the employees of aided/unaided Medical/Dental/Ayurvedic/Homeopathic/Educational Institutions against the decision of Management within their jurisdiction. In other words, the circular of this Court contemplating ‘Forum’ has been

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adopted by the State for the purposes of presentation of appeals. Such decision to provide an appeal against the decision of the Management would include all orders which the Management pass in relation to employee of the institution. Such decision to contemplate filing of an appeal against the decision of the Management shall be deemed to be taken in exercise of executive powers of the State in terms of Article 162 of the Constitution of India in the absence of any other legislative enactment dealing with the issue.

15. The education including technical education, vocational and technical training of Labour specifically falls in Entry 25 of List III of 7th Schedule to the Constituion. However, in terms of Article 243G of the Constitution read with 11th Schedule, Adult and non-formal education is a function assigned to institution of rural self-government. Similarly, Entry 13 of 12th Schedule read with Article 243W empowers the Urban Local Bodies to promote education. In fact, the subject of education may fall in one or the other Entry of the 7th Schedule, but it could not be pointed out that there is any other legislation on the subject of teachers and the management of aided or unaided educational institutes in the States except the Act. In the absence of any specific Statute enacted by the Parliament, to regulate the terms of employment of teachers of the educational institutions and the State having enacted the Act, prima facie, it appears that all disputes relating to pay scales and disciplinary proceedings etc. would fall within the legislative competence of the State Government.

16. The subsequent notification dated 07.05.2013 does not change the scope or jurisdiction of the Educational Tribunal in any substantial manner. Therefore, any decision of the Management could be challenged by way of an appeal before the Educational Tribunal. Consequently, we find that though the Supreme Court in T.M.A.Pai Foundation's case (supra), directed constitution of Educational Tribunal relating to disciplinary matters, but in view of the decision of the State Government, taken in exercise of the executive powers of the State, the decision of the Management regarding pay scale can also be subject matter of appeal before the Educational Tribunal."

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Resultantly, the inaction of the respondents in not considering the case of the petitioner for promotion would also bring it within the ambit of the observations of the Division Bench, since the petitioner is falling back upon the statutory provisions and therefore, it cannot be said that the Educational Tribunal would not have jurisdiction, in view of the circulars/notifications dated 10.08.2005, 08.09.2005, 03.04.2008, 28.05.2008, 07.05.2013 and 02.03.2015.

In view of the above, this Court is of the opinion that the inaction of the Management, as such, in not promoting the petitioner, which is his substantial grouse, could be legitimately raised before the Educational Tribunal. It is settled principle that if there is alternative remedy available, this Court would not exercise its discretionary jurisdiction. Reliance can be placed upon the judgment of the Apex Court in **Union of India Vs. Satyawati Tondon & others 2010 (8) SCC 110.**

Accordingly, in view of the above discussion, the present writ petition is disposed of, with liberty to the petitioner to approach the concerned Educational Tribunal.

07.11.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No