

213 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. **Date of decision: 19.09.2017**
CWP-7418-2015

Rita Rani
.....Petitioner

Versus

State of Haryana and others Respondents

2. CWP-7258-2015

Ravi Sher Sharma and another
.....Petitioners

Versus

State of Haryana and othersRespondents

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

Present : Mr. Ravindra Jain, Advocate
for the petitioner(s).

Mr. Harish Rathee, Sr. D.A.G., Haryana.

Mr. R.K. Malik, Advocate with
Mr. Bhupender Malik, Advocate
for respondents No.2 & 3.

G.S. SANDHAWALIA, J. (Oral)

The present order shall dispose of two writ petitions i.e. CWP Nos.7418 and 7258 of 2015 as common questions of facts and law are involved in both the CWPs. Facts are being taken from CWP No.7418 of 2015 (*Rita Rani Vs. State of Haryana and others*).

The petitioner seeks quashing of the advertisement appeared in the newspaper on 08.04.2015 and the interview to be held on 18.04.2015.

Grievance of the petitioner is that she had been employed with the respondent-School since 2008 and she had worked till 31.03.2015 as a Social Studies Teacher in the Arya Senior Secondary School, Mullana. The

initial appointment was on an unsanctioned post, but by the expiry of the probation period of two years, the post automatically becomes sanctioned post as per the Haryana Education Code. Therefore, the petitioner was working as a regular employee against the sanctioned post under the grant-in-aid scheme issued by the State of Haryana. It has been mentioned that one month's notice dated 10.02.2015 (Annexure P-7) was issued for relieving the unsanctioned staff w.e.f. 31.03.2015. Thereafter, an advertisement had been issued on 08.04.2015 (Annexure P-8) wherein lecturers were invited to apply in various subjects under negotiable salaries. Resultantly, this action of the respondents is challenged on the ground that there was only one section for each class and the availability of work still existed.

The State in the reply has submitted that there is an alternate remedy available to the petitioner to approach the District and Sessions Judge who has the authority to hear the appeals of the employees of aided/un-aided Technical Educational Institutions.

The Educational Institution in its reply has also taken the same plea and reliance has also been placed on the judgment of the Division Bench passed in ***Management of S.D. Model Sr. Secondary School and another Vs. District Judge-Cum-Service Tribunal and another 2014(1) SCT 652*** (Annexure R-2) to submit that employees of aided and unaided schools also have the remedy before the District and Sessions Judge and reference is also made to the notification issued by this Court on 10.08.2005, which was followed up by notifications dated 08.09.2005 and 07.05.2013. The Division Bench in the said case has held that any decision of the Management could be challenged by way of an appeal before the

Educational Tribunal. The relevant portion reads as under:-

“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.”

This view has been followed in **CWP No.4177 of 2015 'Dr. Mukul Gupta Vs. Industrial Finance Corporation of India Limited and others'** decided on 29.05.2015, **CWP No.16140 of 2015 'Rashmi Arora Vs. DAV College Managing Committee and others'** decided on 18.01.2017 and in **CWP No.58 of 2014 'Sumit Kumar and others VS. State of Haryana and others'** decided on 04.11.2016 and the petitioners have been relegated to their alternative remedy, keeping in view the settled principle by the Apex Court in **'Union of India Vs. Satyawati Tondon and others' 2010 (8) SCC 110**.

Accordingly, the present writ petitions are also disposed of with liberty to the petitioners to avail their remedy before the respective District and Sessions Judges.

(G.S. SANDHAWALIA)
JUDGE

September 19, 2017
ps-I

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No