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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-17906-2018

Date of Decision : Sept. 13, 2018

Savitri Devi

.... Petitioner.

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court-II,
Faridabad and others.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Ms. Abha Rathore, Advocate
for the petitioner.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/227 of the Constitution of India is for issuance of a writ in the nature of certiorari for quashing impugned order dated 14.03.2017 (Annexure P/3) passed by learned Industrial Tribunal-cum-Labour Court-II, Faridabad (for short, "**learned Tribunal**") whereby the reference was returned unanswered on account of its being not maintainable with liberty to the workman to avail her remedy of filing an appeal before the learned District & Sessions Judge, Faridabad as Educational Tribunal.

2. The matter in controversy revolves around termination of services of the petitioner, who was appointed as a Mid-day Cook in Government Primary School, Palwal in the year 2002 and served the

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respondent-School till 13.01.2009 when her services were terminated and learned Tribunal passed the impugned order.

3. Facts relevant for the purpose of decision of this writ petition; that the petitioner had raised an industrial dispute on the point

-“Whether the termination of services of the workman – Savitri Devi is justified or not? If not, what relief he is entitled to?

4. The said reference was returned unanswered by learned Tribunal vide impugned award and as such, the petitioner has filed the present writ petition challenging the same.

5. To support her contention, learned counsel for the petitioner placed reliance upon the judgment from Hon`ble Division Bench of this Court in **Management of S.D. Model Senior Secondary School and another vs. District Judge-cum-service Tribunal and another, 2014(1) SCT 652**, wherein Hon`ble Division Bench observed as under:-

“In view of the above discussion, we concluded 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

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T.M.A Pai Foudnation'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 seeks 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.”

6. On the same point, reliance was also placed on the judgment from Hon`ble Delhi High Court in **Appejay School Vs. Sh. Darbari Lal and others, W.P.(C) No. 7695 of 1999** decided on 28.05.2010.

7. Having considered the submissions made by learned counsel for the petitioner and appraisal of the record as also the view taken by Hon`ble Apex Court and Hon`ble Delhi High Court in the judgments referred to by learned counsel, this Court is of the considered view that the facts of the present case are entirely different because in this case, the petitioner-workman had challenged her termination and as per the view taken by Hon`ble Division Bench of this Court in **Management of S.D. Model Senior Secondary School's case (supra)**, the Education Tribunal shall not have the jurisdiction in respect of payment of gratuity matter and

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all the remaining disputes are to be referred to the Educational Tribunal as per decision of Hon`ble Apex Court in **T.M.A Pai Foudnation & others Vs. State of Karnataka & others, 2003(2) SCT 385.**

8. Learned Tribunal has rightly decided the controversy by returning the reference unanswered with liberty to the workman to avail her remedy of filing an appeal before the learned District & Sessions Judge, Faridabad as Educational Tribunal.

9. Similar view was taken by Hon`ble Division Bench of this Court in **Suman Kajla Vs. State of Haryana and others, 2007 (5) SLR 329;** and Co-ordinate Benches of this Court in **Dr. Mukul Gupta Vs. Industrial Finance Corporation of India Limited and others, 2015(4) SCT 380;** and **Rashmi Arora Vs. DAV College Managing Committee and others, 2017 (2) SCT 615.**

10. In view of the above, there is no merit in the present writ petition and the same stands dismissed *in limine*.

**(SHEKHER DHAWAN)
JUDGE**

September 13, 2018.
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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes