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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-7965-2015

Date of Decision : November 20, 2018

Smt. Lajwanti and another Petitioners.

Versus

State of Haryana and others. Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. D.R. Bansal, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana,
for the respondent-State.

Mr. B.S.Bedi, Advocate,
for respondent No.5.

SHEKHER DHAWAN, J.

Present writ petition under Articles 226/227 of the Constitution of India is for issuance of directions to the respondents to pay arrears of ACP including house rent allowance and CCA and revised gratuity as per circular dated 29.8.2012, Annexure P/3 granting ACP to the teaching and non-teaching employees of privately managed aided schools in the State of Haryana, with interest from the due date.

2. As per the petitioner, respondent No. 3 was running JRD Aggarwal Sr. Secondary School (recognized) Kaithal, (hereinafter referred to as "the respondent-School"), which was an aided school as 75% aid was being paid by the State Government and 25% was the Management

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share. The dispute between the employees of the respondent-School was before this Court in CWP Nos. 12920 of 2004, 7422 of 2008, 2774 of 2007 and 17430 of 2008 and this Court vide judgment dated 17.02.2009 (Annexure P/1) ordered as under:-

“... A broad consensus has emerged between the parties that in the present precarious condition it would be in the best interest of all if the school is closed down after this academic session so that at least the year of the students is not wasted. In the circumstances the District Education Officer is directed to retain control of the school till the end of this academic session and give adequate notice to the guardians of the students to transfer their children to another school from the next academic session. He will also ensure that such students who are not admitted in any other school would be accommodated in some nearby Govt. school. After completion of this academic session the school will be closed down so that at least future liabilities can be stopped. Thereafter a period of two months will be granted to the management to devise ways and means of utilising the building and the premises and raising money to pay all the admitted debts. However, if after this period of two months no constructive suggestion emanates from the management thereafter the Deputy Commissioner will take steps to auction the premises by way of public auction and the funds so generated would be used to discharge the statutory and other liabilities of the institution. The remaining amount if any would be deposited in a permanent fixed deposit favouring respondent No.2 with the stipulation that the said amount can never be withdrawn by any body but only interest thereon can be used for the benefit of the community by its representatives.”

3. As per the petitioners, petitioner No.1 had joined service of the

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respondent-School as Peon on 7.1.1992 and retired on 31.3.2009 when the school was closed as per orders passed by this Court vide Annexure P/1. Kamlesh Aggarwal, wife of petitioner No.2 joined the respondent-School as Clerk on 1.12.1971 and she retired voluntarily on 31.05.2006. She died on 3.5.2014.

4. The State of Haryana introduced Haryana Civil Services (Assured Career Progression) Rules, 1998 and 2008 w.e.f. 1.1.1996 and 1.1.2006 respectively and these rules were implemented by the State of Haryana subsequently in respect of employees of aided schools. The compliance was not being made by the respondents. However, the State of Haryana paid the amount of share i.e. 75% due to the employees and the dispute is regarding 25% share of the respondent-School.

5. Management of the respondent-School (respondent no.5) have come with the plea that the appointment of Administrator was made by the Court and all the employees had consented to take over the Management of the respondent school by the Government and agreed to do the job on accepting 75% of the salary payable by the State Government. As per the order dated 27.12.2004, all the employees, including the petitioners are not entitled to claim the benefit of any kind or salary after December, 2004 i.e. w.e.f. January, 2005. The petitioners are paid their salary till 31.03.2009 when the institution was ultimately closed in accordance with law and as such, respondent No. 5 is not liable to make any payment, as claimed by the petitioners.

6. At the time of arguments, learned counsel representing

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respondent No. 5/school contended that the matter in controversy is of such a nature that the petitioners, for redressal of their grievance, are required to lead evidence and for that purpose, writ jurisdiction would not be the appropriate remedy. It has also come on the file that some civil dispute is already going on and the same is now pending before the Appellate Authority. Petitioner No. 2 had already moved an application under Order 1 Rule 10 CPC for impleadment.

7. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that as is the controversy involved in this case, the matter certainly requires leading of evidence by the parties in support of their respective claim and the said controversy cannot be decided by this Court in writ jurisdiction, rather filing of civil suit is the appropriate remedy for the petitioners.

8. As such, the present writ petition stands dismissed while granting liberty to the petitioners to approach the Civil Court for redressal of their grievance or in the alternative, to move appropriate application before the Court concerned if any such controversy having been raised by respondent No. 5 or by the employees of the respondent-School, is pending before the Court below.

(SHEKHER DHAWAN)
JUDGE

November 20, 2018.
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes

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