

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

LPA-1098-2018 (O&M)

Date of decision:- 31.07.2018

Dr. Gurdev Singh Virk

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present:- Mr. Tribhuvan Dahiya, Advocate,
for the appellant.

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KRISHNA MURARI, C.J. (ORAL)

CM-2943-LPA-2018

For the reasons mentioned in the application, the delay of 03 days in filing the appeal is condoned.

The application stands disposed of.

LPA-1098-2018

This intra court appeal under clause X of the Letters Patent has been filed by the petitioner (appellant herein) challenging the judgement and order dated 21.05.2018 passed by the learned Single Judge dismissing the writ petition on the ground that petitioner has an alternative remedy available of approaching the Educational Tribunal under the provisions of Haryana Affiliated Colleges (Security of Service) Act, 1979 (in short 1979 Act).

2. The facts giving rise to the dispute in nutshell can be summarized as under:-

The petitioner, who was working as Associate Professor, Physical Education in the DAV College, Pundri,

Kaithal, was served with a chargesheet and enquiry proceedings were directed for alleged mis-conduct in availing House Rent Allowance (HRA) from the State Government w.e.f. January, 2011 to December, 2012. After completion of enquiry proceedings, an amount of ₹ 2,26,242/- was recovered from petitioner in compliance of the order dated 20.12.2016 which was passed by the authority based on the disciplinary enquiry. By filing the writ petition being CWP-29398-2017, petitioner challenged the order directing recovery of the aforesaid amount. The learned Single Judge dismissed the writ petition on the ground that petitioner has an alternative forum available in the form of Educational Tribunal constituted in terms of judgement of the Hon'ble Apex Court in *T.M.A. PAI Foundation & others Vs State of Karnataka & others*, 2002 (8) SCC 481 for raising the dispute.

3. While passing the impugned judgement, the learned Single Judge placed reliance on a judgement of this Court in CWP-6702-2016 titled as *Raj Kumar Vs The State of Punjab and others*, wherein similar view was taken in respect of Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974, which is parimateria to 1979 Act.

4. Learned counsel for the appellant vehemently contended that in view of the definition contained in clause 2(c) of 1979 Act, the appellant being a retired employee would not be covered under the definition of "employee" and hence provisions of 1979 Act are not attracted.

5. Clause 2(c) of 1979 Act reads as under:-

"2. In these rules, unless the context otherwise requires-

(c) "Employee" means any person who is in the whole time employment of the Haryana Affiliated Colleges."

6. We are afraid that the argument is mis-conceived. The only requirement under 1979 Act is that an employee should be in the whole-time employment of the Haryana affiliated college. It does not carve out any distinction between a retired or a serving employee. Further, a similar argument was advanced in the case of *Raj Kumar Vs The State of Punjab and others* (supra) that alternative remedy would not be available to a retired employee for approaching the Educational Tribunal, Punjab, which was rejected. We are also of the considered opinion that a retired employee of an affiliated college would not stand excluded from the definition of "employee" contained in 1979 Act.

7. In view of the above, we do not find any illegality or infirmity in the order passed by the learned Single Judge relegating the petitioner to avail the remedy before the Educational Tribunal and, thus, the appeal does not require any interference and is devoid of merits and accordingly stands dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

31.07.2018
Amodh

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No