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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CR No.250 of 2018
Date of Decision: 13.03.2019

Arya Girls Senior Secondary School, Sirsa

Petitioner

Versus

Raj Kumari and others

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. B.S. Mittal, Advocate
for the petitioner.

Mr. Rakesh Nagpal, Advocate
for respondent No.1.

Mr. Jasbir Singh Thol, D.A.G., Haryana
for respondents No.2 to 4.

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AVNEESH JHINGAN, J (Oral):

The present Civil Revision Petition has been filed by the petitioner being aggrieved of order dated 28.11.2017 passed by the Civil Judge (Jr. Division), Sirsa, dismissing the application under Order VII Rule 11 of the Code of Civil Procedure, 1908 [for brevity 'CPC'].

The facts in brief are that respondent No.1/plaintiff filed a civil suit for declaration for directions that the respondent No.1/plaintiff is entitled to pension and gratuity w.e.f. 01.02.2012 according to the pay scales awarded by Sixth Pay Commission,

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since she retired from service on 31.01.2012. On notice, the petitioner/defendant filed an application under Order VII Rule 11 of CPC relying upon Section 22 of the Haryana School Education Act, 1995 [for brevity 'the Act'] stating that jurisdiction of the Civil Court is barred. The application was dismissed, hence the present petition.

Learned counsel for the petitioner contends that in the plaint, two issues were raised, one with regard to release of pension arrears and another with regard to gratuity. He states that there is an absolute bar to the jurisdiction of the Civil Court under Section 22 of the Act. He further contends that the Haryana School Educational Tribunal has already been constituted, hence the Civil Court cannot try the suit. He relies upon the decision of 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 (2) PLR 89*** and further on order dated 28.09.2015 passed by this Court in Civil Writ Petition No. 3491 of 2013.

Learned counsel for respondent No.1 defends the order and argues that the direction sought is for release of pension and gratuity. He further states that as only directions are being sought, no remedy is available to the respondent No.1/plaintiff before the Educational Tribunal.

Learned State counsel states that pension and gratuity have been revised by the State and a communication in this regard was sent to the petitioner-School as well as to the respondent

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No.1/plaintiff. He further contends that the petitioner-School has to pay the said amount and thereafter send the relevant documents to the State for reimbursement thereof, no such documents have been sent by the petitioner-School. Learned State counsel produced letter dated 10.04.2015, which was sent to the Manager of the petitioner-School, the same is taken on record as Mark-'A'.

The application filed by the petitioner under Order VII Rule 11 of CPC was solely based upon Section 22 of the Act. Section 22 of the Act is reproduced as under:-

> *"22. No civil court shall have jurisdiction in respect of any matter in relation to which the Government or the Director or any other person authorised by the Government or Director or any other officer or authority appointed or specified or under this Act, is empowered by or under this Act or exercise any power, and no injunction shall be granted by any civil court in respect of any thing which is done or intended to be done by or under this Act."*

From the perusal of Section 22 of the Act, it is evident that jurisdiction of Civil Court has been barred only in respect of matters in relation to which the Government or the Director or any other person authorised is empowered by order under the Act to exercise any power. In the present case, the petitioner utterly failed before the Civil Court to show that for the relief claimed in the plaint, Director or any other officer authorised was empowered to exercise any power. Inspite of repeated queries of this Court, learned counsel for the petitioner failed to show any document or provision

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to buttress his argument that Educational Tribunal is appropriate Forum before whom the respondent No.1/plaintiff can avail remedies for the relief sought in the suit.

Reliance on the decision of Division Bench in ***Management of S.D. Model Senior Secondary School's*** case (supra) of this Court does not enhance the case of the petitioner. The conclusion of the said judgment is reproduced as under:-

> *"23. 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 T.M.A.Pai Foundation's case (supra), but in exercise of the executive powers of the State."*

From the first conclusion itself, it is forthcoming that the Educational Tribunal shall not have jurisdiction over the issue of payment of gratuity, and this is one of the relief claimed in the suit.

With regard to second conclusion in above said decision, the same may not cover the dispute in the present case.

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It deals with the situation where the dispute arise from the order passed by the management and same shall be appealable before the Tribunal. In the present case, no such order has been passed.

Further, the reliance of the learned counsel for the petitioner upon order passed in Civil Writ Petition No.3491 of 2013 is of no help in the present case, as there was an alternative remedy available by way of appeal before the Educational Tribunal in that case.

The law is well settled that for deciding the application under Order VII Rule 11 of CPC, the contents of the plaint have only to be relied upon. The Supreme Court in ***Urvashiben and another v. Krishnakant Manuprasad Trivedi, 2019 (1) R.C.R. (Civil) 366*** held as under:

> *"15. By applying the aforesaid principles in the judgments relied on by Sri Dushyant Dave, learned senior counsel appearing for the respondent, we are of the considered view that merits and demerits of the matter cannot be gone into at this stage, while deciding an application filed under O. VII R. 11 of the CPC. It is fairly well settled that at this stage only averments in the plaint are to be looked into and from a reading of the averments in the plaint in the case on hand, it cannot be said that suit is barred by limitation. The issue as to when the plaintiff had noticed refusal, is an issue which can be adjudicated after trial. Even assuming that there is inordinate delay and laches on the part of the plaintiff, same cannot be a ground for rejection of plaint under O. VII R. 11(d) of CPC."*

Section 22 of the Act relied upon by learned counsel for the petitioner only bars the jurisdiction of Civil Court where the

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officer so authorised or Director is empowered to do certain acts. Having failed to show that any of the officer so authorised is empowered to give the relief sought in the suit, the objection raised cannot be sustained.

The Civil Court while dismissing the application has kept the issue of jurisdiction open to be decided at relevant time after evidence is led.

The Civil Revision Petition is dismissed.

[AVNEESH JHINGAN]
JUDGE

March 13, 2019
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1. Whether speaking/ reasoned : Yes
2. Whether reportable : Yes

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