

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGRH

Letters Patent Appeal No.892 of 2019 (O&M)

Date of Decision: 09.05.2019

Surinder Krishan Sharma

..Appellant

Versus

State of Punjab and others

..Respondents

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

Present : Mr. Rajinder Goyal, Advocate, for the appellant.

KRISHNA MURARI, CHIEF JUSTICE, (oral)

This intra-court appeal under Clause X of the Letters Patent is directed against the judgment and order of the learned Single Judge dated 11.04.2019 refusing to entertain the writ petition filed by the appellant herein on the ground of existence of a statutory alternate remedy before the Educational Tribunal.

2. The appellant-petitioner approached this Court by filing the writ petition seeking a direction for release of the pensionary benefits as well as payment of leave encashment and also for the arrears of the pay scale as a result of revision in pay which came effective from 01.01.2006 alongwith interest and other retiral benefits.

3. Facts in brief necessary for the adjudication of the controversy at hands can be summarized as under:-

The appellant-petitioner initially joined as an Accountant on 25.09.1992 in respondent No.5 institution. Subsequently, his services were transferred to respondent No.4 institution. He retired on attaining the age of

superannuation w.e.f. 31.01.2010. After superannuation, he started making representations one after the other claiming enhanced amount of gratuity along with interest @ 9% per annum on leave encashment, arrears of revised pay scale etc. When no action was taken by the respondents, a Civil Writ Petition No. 782 of 2015 was filed before this Court, which was disposed of vide order dated 16.01.2015, commanding the respondents to take a decision thereon. In compliance of the order, the representation of the petitioner was considered and rejected vide order dated 16.01.2015 on the ground that since he retired from service on 31.01.2010, he was not entitled to enhanced gratuity and since he was holding the non-teaching post, as such he was not covered under 95% grant-in-aid scheme of the Government of Punjab.

4. It was further held that no arrears of revised pay scale were also payable to him. The above decision taken by the respondents' authorities on the representation of the appellant-petitioner was also subject matter of challenge in the writ petition out of which present appeal arises.

5. The preliminary objection with respect of maintainability of the writ petition was raised by the respondents on the ground that a statutory alternative remedy of approaching the Educational Tribunal since was available, the petition was not liable to be entertained. The preliminary objection was upheld by the learned Single Judge and accordingly the petition was dismissed and the record of the writ petition was directed to be transferred to the Educational Tribunal for consideration and appropriate orders.

6. Learned counsel for the appellant vehemently contends that the Educational Tribunal as constituted has only the jurisdiction to decide the dispute of an employee of educational institution regarding dismissal, removal or reduction in rank.

7. The aforesaid argument is based on the provisions of Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974, which contained a provision for establishment of a college Tribunal under section 7-A of the said Act. Section 3 of the said Act provides that no penalty of dismissal, removal or reduction in rank can be inflicted upon an employee of college except after an enquiry in which he has been informed of the charges against him and has been given a reasonable opportunity of being heard in respect of the said charges. Under Section 4(3) of the said Act, a representation could be made by an employee against the proposed penalty before the Director who after examining the record and affording of an opportunity of being heard to the parties could either approve or disapprove the proposed punishment. Under Sub Section 4, an appeal could be filed against the order of Director before the College Tribunal.

8. In view of the judgment of the Hon'ble Apex Court rendered in the case of ***TMA Pai Foundation and others v. State of Karnataka and others 2002(8) SCC 481***, an amendment was carried out in Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974. The existing section 7-A was substituted by the following:-

"7-A. Educational Tribunal " (1) The State Government may, by notification, in the Official Gazette, constitute one or more Educational Tribunals for such area or areas, as may be specified in such notification.

(2) Each Educational Tribunal shall consist of a Chairman and two members, out of whom, one shall be from amongst the persons, who have administrative background and the others from amongst the person, who have academic background.

(3) The chairman and the member of an Educational Tribunal, shall be appointed by the State Government in consultation with the Chief Justice of the Punjab and Haryana High Court.

(4) A person shall not be qualified for appointment as Chairman of an Educational Tribunal, unless he has been a judge of High Court.

(5) A person shall not be qualified for appointment as a member of an Educational Tribunal from the category of persons, having administrative background , unless he has been an officer of the State Government, not below the rank of a Principal Secretary to Government of Punjab.

(6) A person shall not be qualified for appointment as a member of an Educational Tribunal from the category of persons, having academic background, unless he has been a Principal of College for a minimum period of one year.

(7) If a vacancy, other than on account of temporary absence, occurs in the office of the Chairman, the State Government shall appoint another person in accordance with the provision of this section to fill the vacancy, and the proceeding may be continued before the Educational Tribunal from the stage at which, the vacancy is filled.

(8) The State Government shall make available to an Educational Tribunal such staff, as may be necessary in the discharge of its function under this Act.

(9) All expenses incurred in connection with an Educational Tribunal, shall be borne by the State Government.

(10) The Educational Tribunal shall have power to regulate its own procedure in all matters arising out of the discharge of its functions including the place or places at which, it shall holds its sitting:

Provided that the State Government, may, specify any place or places, where the Educational Tribunal shall hold its sittings.

(11) The Educational Tribunal shall, for the purposes of disposal of application made under this Act, have the same powers, as are vested in an appellate court by the Code of Civil Procedure, 1908. An Educational Tribunal shall also have the power to stay the operation of any order, appealed against, on such term, as it may think appropriate.

(12) The Educational Tribunal shall have jurisdiction to hear all cases of dispute between the 'Managing Committees' and the 'employee', as defined in this Act, and

the Punjab Privately Managed Recognized Schools Employees(Security of Service) Act, 1979.

(13) The order of the Educational Tribunal shall be final.”

9. The expression “*all cases of disputes*” used in Section 7-A(12) of the Act is wide enough to encompass within its ambit any type of disputes between the employees of “*unaided institutions*” and their “*Managing Committee*” and the scope of the same cannot be held to be confined only to the punishment of dismissal, removal or reduction in rank. The expression used is wide enough to confer power upon the Tribunal to hear all such disputes arising between the employees and the Managing Committee of the institution.

10. The view being taken by us finds support from another Division Bench judgment of this Court in the case of ***Governing Body/Managing Committee and another v. Punjab School Education Board and others***, LPA No. 1172 of 2013, decided on 08.07.2013. The matter can be examined from yet another angle. If the argument advanced by learned counsel for the appellant is accepted, it would result into an anomalous situation as there would be two forms for redressal of the grievances of the employees dependent upon the relief being sought by them.

11. In view of the above facts and discussion, we find no good ground to take a view different from the one taken by the learned Single Judge that the Educational Tribunal shall have the jurisdiction to entertain all the disputes between the employees and the Management of the Institution and thus we do not find any illegality in the judgment of the learned Single Judge in refusing to entertain the writ petition on the ground of existence of alternate remedy and upholding the preliminary objection of the State respondents.

12. The appeal is thus devoid of merits and accordingly stands dismissed in limine.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

09.05.2019
ravinder

Whether speaking/non-speaking: Speaking
Whether reportable : Yes/No.