

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 18453 of 2009 (O&M)

Date of decision : 15.10.2019

Gurcharan Singh

....Petitioner

Versus

The State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. G.C. Shahpuri, Advocate for the petitioner.

Ms. Nidhi Garg, Assistant Advocate General, Haryana.

Mr. R.S. Longia, Advocate for respondent No. 4.

Harsimran Singh Sethi, J. (Oral)

In the present writ petition, the claim of the petitioner is for the grant of salary for the period from 01.12.2002 till 18.04.2007 and also the arrears of the Dearness Allowance from 31.03.2001 to 30.11.2002.

The claim of the petitioner is against respondent No. 4 i.e. the Managing Committee of the D.A.V. Dev. Nagri Primary School, Mustafabad, District Yamuna Nagar.

Learned counsel for respondent No. 4 argues that keeping in view the Notification dated 07.05.2013 issued by the Government of Haryana during the pendency of the present writ petition, the jurisdiction to decide all the disputes except the claim for gratuity between an employee

He relies upon a judgment of the Division Bench of this Court passed in **CR No.4315 of 2012 titled as Management of S.D. Model Senior Secondary School and another Vs. District Judge-cum- Service Tribunal and another, decided on 27.11.2013**, wherein, it has been held that except for grant of gratuity, all other disputes between an employee and the management will lie before the Educational Tribunal as constituted by the Government of Haryana. The relevant portion of the judgment is 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 T.M.A Pai Foundation'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 seek 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.”

Keeping in view the above position, learned counsel for the petitioner prays that petitioner be relegated before the Educational Tribunal, Yamuna Nagar. Learned counsel further prays that as the writ petition was filed in the year 2009 and all the pleadings are already complete, let the paper book of this writ petition be sent to Educational Tribunal, Yamuna Nagar for passing appropriate order on the claim raised by the petitioner. Learned counsel further states that in case the pleadings are to be filed again before the Educational Tribunal, it will waste the time of the tribunal as same pleadings will be filed.

Learned counsel for the respondents state that they have no objection if the record of the present case is sent to the Educational Tribunal, Yamuna Nagar for passing appropriate order.

Keeping in view the above, petitioner is relegated to avail his remedy before the Educational Tribunal, Yamuna Nagar.

Let, record of the present writ petition be sent to the Educational Tribunal, Yamuna Nagar for appropriate orders.

Parties are directed to appear before the Educational Tribunal, Yamuna Nagar on 04.12.2019.

In view of the above, present writ petition stands disposed of.

October 15, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking? *Yes*
Whether reportable? *No*