

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

(244)

**CM-14580-CWP-2017 in
CWP-135-2012**

Date of Decision: September 30, 2019

Sapna Sang

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Puneet Jindal, Sr. Advocate, with
Mr. Raghav Kakkar, Advocate, for the petitioner.

Ms. Safia Gupta, AAG, Haryana.

Mr. Govind Rana, Advocate, for
Mr. Harkesh Manuja, Advocate, for respondent No.2.

Mr. R. Kartikeya, Advocate, for respondent No.3.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the challenge is to the order dated 02.06.2011 (Annexure P-3) passed by the Managing Committee of Seth Jai Parkash Polytechnic, Yamunanagar, by which the Managing Committee of the institution had refused to implement the benefits granted to the employees by the 6th Pay Commission. The writ petition was admitted by this Court on 05.05.2015. Thereafter, for seeking the implementation of 7th Pay Commission, CM No.14580-CWP-2017 has been filed by the petitioner, which is pending consideration.

On joint request of learned counsel for the parties, the main writ petition is taken up for hearing.

On the last date of hearing, learned counsel for the respondents has raised a preliminary objection regarding the maintainability of the writ petition before this Court at the first instance keeping in view the order passed by Division Bench of this Court 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.

Learned senior counsel appearing on behalf of the petitioner argues that though, the Division Bench 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,* has held that all the disputes between the management and the employees except the claim for the grant of gratuity are to be decided by the Educational Tribunal which have been created by the State of Haryana but in strict sense, the claim of the petitioner for the benefit of revised pay scale granted by 6th Pay Commission as well as 7th Pay Commission, will be maintainable before this Court as well.

Learned senior counsel appearing on behalf of the petitioner argues that case of the petitioner is not covered to be sent before the Educational Tribunal keeping in view the order passed by this Court 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* as the Tribunal will have the jurisdiction to decide the cases of the employees, on whom the punishment of termination, reversion and reduction in rank has been imposed and the cases with regard to the claim of the employees seeking other benefits such as higher pay scale, will be maintainable before this Court.

This question had come up before this Court while dealing with the cases of State of Punjab wherein also the same argument was raised.

While deciding *CWP No.25942 of 2012, titled as Suresh Sharma Vs. State*

of Punjab and others, decided on 11.04.2019, this Court has held that all the disputes between the employee and the management comes within the purview of the Educational Tribunal and the jurisdiction of the Tribunal is not to be decided on the basis of the claim being made by an employee as “all the disputes between employee and the management are to be decided by the Educational Tribunal”. The relevant portion of the judgment in Suresh Sharma's (supra) is as under:-

“Apart from this, the similar objection have been taken with regard to the maintainability of the writ petition in respect of the employees of the aided and unaided colleges seeking relief against the management in writ petition filed before this Court. A Coordinate Bench while dealing with the same objection after noticing the earlier orders passed by this Court on the same question of law while deciding CWP No.19854 of 2014 held that the writ petition is not maintainable where, an employee of aided and unaided institution is seeking relief against the management and the appropriate remedy at the first instance is before the Educational Tribunal. The order passed by the Coordinate Bench in CWP No.19854 of 2014 titled as Sanjay Dabas and others Vs. The Director General of Police, Haryana and others, decided on 19.02.2018, is as under:-

“1. Without going into the merits of the claim seeking pay benefits under the 6th Pay Commission or the character of the respondent school this case would have to be remitted to the Educational Tribunal exercising territorial jurisdiction over the dispute. The designated authority in Haryana to hear cases of all disputes between the management and staff is the District Judge of the respective district/Sessions Divisions. There is ample judicial authority that disputes have to be sent to the Tribunal for determination which include the Division Bench judgment of this Court in Management of S.D. Model

Senior Secondary School and another v. District Judge-cum-Service Tribunal and another, 2014 (1) S.C.T 652, the Division Bench in LPA No.1172 of 2013 in case titled Governing Body/Managing Committee and another v. Punjab School Education Board and others, decided on July 08, 2013 and a number of Single Benches in CWP No.12904 of 2013, Sandeep Pilonia v. Arya Pritinidhi Shabha, Dayanand Math, Rohtak and others, decided on September 01, 2017; CWP No.11506 of 2013, Kanchan Sharma v. State of Haryana and others, decided on September 20, 2017; CWP No.58 of 2014, Sumit Kumar and others v. State of Haryana and others, decided on November 04, 2016 and lastly CWP No.4177 of 2015, Dr. Mukul Gupta v. Industrial Finance Corporation of India Limited and others, decided on May 29, 2015 which order and judgment is specific regarding financial benefits in terms of recommendations of the 6th Pay Commission.

2. As a result, the file is remitted to the learned District Judge, Karnal for adjudicating the dispute.

3. Parties are directed to appear before the learned District Judge, Karnal on 16.03.2018.

4. The petition stands disposed of.”

Therefore, it is clear that the consistent view of this Court, keeping in view the provisions of the 1974 Act as amended from time to time especially sub-clause 12 (7-A) of the 1974 Act, the grievance in respect of a dispute between the employee and the management is to be raised before the Educational Tribunal.

Keeping in view the above, I find force in the preliminary objections which have been raised by counsel appearing on behalf of the private aided institutions that at the first instance, the jurisdiction to try all the disputes between the managing committee and its employees except in the case of claim of gratuity as being claimed under the Payment of Gratuity Act, lies with the Educational Tribunal keeping in view the provisions of the 1974 Act, as amended from time to

time especially Section 7-A sub-clause 12 as reproduced hereinbefore.

Resultantly, the petitioner(s) are relegated to the jurisdiction of the Educational Tribunal for the redressal of their grievances.

As the present writ petitions are pending since long before this Court and the pleadings are near completion, on request of counsel for the petitioner, the record of the present writ petitions be sent to the Educational Tribunal for passing appropriate orders.”

This judgment has already been upheld by the Division Bench in **LPA No.892 of 2019 titled as Surinder Krishan Sharma Vs. State of Punjab and others, decided on 09.05.2019.**

Faced with this situation, learned counsel for the petitioner prays that petitioner be relegated to his remedy before Educational Tribunal. Learned senior counsel prays that as the present writ petition is pending before this Court since 2012, all the records of this writ petition be also sent there otherwise, the same pleadings as filed before this Court will have to be filed before the Educational Tribunal again, which will waste the time of Tribunal as the claim of the petitioner and the stand of the respondents would remain the same and filing the same pleadings will not only consume the time but the litigant will also suffer.

Counsel for the respondents raises no objection for grant of the prayer of sending this paper book to the Educational Tribunal, Yamunanagar for passing appropriate orders on the claim which are being made by the petitioner in the present writ petition.

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

Let record of the present writ petition be placed before the Educational Tribunal, Yamunanagar for passing appropriate orders on the claim raised by the petitioner.

Parties are directed to appear before the Educational Tribunal, Yamunanagar on 02.12.2019.

In view of the above, present writ petitions stand disposed of.

September 30, 2019
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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