

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

(218)

CM-209-CWP of 2016 in/and
CWP-12507-2015 (O&M)
Date of Decision: 02.09.2019

Dr. Kamlesh Kumari

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Pankaj Maini, Advocate
for the petitioner.

Mr. C.S. Bakhshi, Addl. AG, Haryana.

Mr. Jatin Salwan, Advocate for respondent No.5.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the grievance is raised by the petitioner against respondent Nos.3 and 4 which is a private aided institution.

Learned counsel appearing on behalf of respondent Nos. 3 and 4 states that the present writ petition is not maintainable before this Court keeping in view the order(s) passed by this Court in **CWP No. 15122 of 2017 titled as S.D. Aadarsh Vidyalaya through President, Sector 47, Sohna Road, Gurugram and others Versus Additional District Judge-cum- Educational Tribunal, Gurugram and others and CR No. 4315 of 2012 titled as Management of S.D. Model Senior Secondary School and another Versus District Judge-cum-Service Tribunal and another**, wherein, it has been held that the jurisdiction to adjudicate all the disputes between the employees and the Management at first instance lies with the Educational Tribunal. The relevant portion of the Management of S.D. Model Senior Secondary School (supra) 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.”

Learned counsel for respondent Nos.3 and 4 argues that keeping in view the judgment of the Division Bench of this Court reproduced above, petitioner be relegated to avail her remedy before the Educational Tribunal.

Learned counsel for the petitioner is unable to rebut the objection raised by the respondents and prayed that petitioner be relegated to avail her remedy before the Educational Tribunal but prays that as the present writ petition was filed in the year 2015 and the pleadings are complete, let the paper book of this petition be sent to the Educational Tribunal for passing an appropriate order,

otherwise, a lot of time will be consumed in completing the pleadings and even if

he files fresh pleadings, the stand which the respondents has already taken before this Court in these proceedings, will be repeated, which will only result in wastage of time.

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

Keeping in view the request made by counsel for the parties, petitioner be relegated to avail her remedy before the Educational Tribunal. Record of the present writ petition be sent to the Educational Tribunal, Karnal for passing appropriate orders.

Parties are directed to appear before the Educational Tribunal, Karnal on 05.11.2019.

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

02.09.2019
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(HARSIMRAN SINGH SETHI)
JUDGE

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