

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

**CWP-14553 of 2016
Date of decision: 13.08.2019**

Prem Mangla

.... Petitioner

versus

State of Punjab and others

.... Respondents

CORAM:HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: None for the parties.

HARSIMRAN SINGH SETHI, J.

In the present writ petition, the challenge is to order dated 29.02.2016 (Annexure P/9) which has been passed by respondent No.3 i.e Shri Sanatan Dharam Girls College, Bathinda. The grievance of the petitioner is against privately managed institute for the grant of gratuity as well as leave encashment. The respondents in their reply have taken preliminary objection qua maintainability of the present writ petition against the respondents No.2 and 3, which are private aided institutions.

Keeping in view the order passed by this Court in CWP-25942 of 2012 titled as **Suresh Sharma Vs. State of Punjab and others** on 11.04.2019 writ petition is not maintainable against the privately managed aided institutions at the first instance and the petitioner, who is raising a grievance against the management of the privately managed institution, where she was serving, has to approach the Educational Tribunal for raising her grievance in respect of the claim of leave encashment. In respect of the claim of gratuity, the

petitioner has to avail her remedy under the Payment of Gratuity Act, 1972 in case she has any grievance in that regard.

This Court while deciding Suresh Sharma (supra) held 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 Pilania v. Arya Pritinidhi Shabha, Dayanand Math, Rohtak and others, decided on September 01, 2017; CWP No.11506 of 2013, anchan 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.”

The aforesaid order has already been upheld in LPA No.892 of 2019 titled as **Surinder Krishan Sharma vs. State of Punjab and others** on 09.05.2019.

Keeping in view the above, the present writ petition is held to be not maintainable at first instance before this Court and the petitioner has to avail her remedy before the Educational Tribunal. As the present writ petition was filed in the year 2016 and reply has also been filed, let the record of present writ petition be sent to the Educational Tribunal for passing an appropriate order.

Parties are directed to appear before the Educational Tribunal on 23.10.2019.

13.08.2019
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(HARSIMRAN SINGH SETHI)
JUDGE

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| 1. | Whether speaking/non-speaking? | Yes/No |
| 2. | Whether reportable? | Yes/No |