

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

**CWP No.16794 of 2015 (O&M)
Date of decision : December 09, 2019**

Geeta Sharma

..... Petitioner

Versus

DAV College Managing Committee and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. S.S. Malik, Advocate for the petitioner.

Mr. Harshit Jain, Advocate for
Mr. R.S. Cheema, Advocate for respondent Nos.1 and 2.

Mr. A.S. Virk, Advocate for respondent No.3.

Mr. Amit Singla, Advocate for respondent No.4.

Mr. V.D. Sharma, Advocate for respondent No.5.

None for respondent No.6.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present writ petition the challenge is to the selection and appointment of respondent No.6 to the post of Assistant Professor in English in the respondent-DAV College, Yamunanagar. The claim of the petitioner is against an unaided institution in respect of the selection and appointment.

Learned counsel for the respondents states that keeping in view the order passed by the Division Bench of this Court in CR No.4315 of 2012, titled as “*Management of S.D. Model Senior Secondary School & another vs District Judge-cum-Service Tribunal & another*”, decided on 27.11.2013, all the disputes between employees and the management is

to lie before the Educational Tribunal at first instance except for the grant of gratuity. The relevant paragraph 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.”

Faced with this situation, learned counsel for the petitioner prays that the petitioner be relegated to avail her remedy before the Educational Tribunal, Yamunanagar.

Learned counsel for the petitioner prays that present writ petition was filed in the year 2015 and the pleadings in this petition are complete and in case, the same pleadings are to be filed a fresh, it will consume precious time of the Educational Tribunal in deciding the controversy as raised in the present writ petition, therefore, the paper book of this writ petition be sent to the Educational Tribunal, Yamunanagar for passing appropriate order(s) on the prayer made in the present writ petition.

Learned counsel for the respondents raise no objection for sending the paper book of this writ petition to the Educational Tribunal, Yamunanagar for passing appropriate order(s) on the plea raised by the petitioner in this writ petition.

Keeping in view the above and as requested by the learned counsel for the petitioner, the petitioner is relegated to avail her remedy before the Educational Tribunal, Yamunanagar.

Let the paper book of this writ petition be sent to the Educational Tribunal, Yamunanagar for passing appropriate order(s).

Let the parties appear before the Educational Tribunal, Yamunanagar on 24.02.2020.

The present writ petition is disposed of.

(HARSIMRAN SINGH SETHI)
JUDGE

December 09, 2019

sarita

Whether speaking / reasoned Yes Whether Reportable: No