

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

(201)

CWP-25942-2012

Date of Decision: April 11, 2019

Suresh Sharma

.. Petitioner

Versus

State of Punjab and others

.. Respondents

(2)

CWP-11669-2015

Surinder Krishan Sharma

.. Petitioner

Versus

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rajinder Goyal, Advocate,
for the petitioner in both the writ petitions.

Mr. Mehardeep Singh, Addl. A.G., Punjab.

Mr. Amrit Paul, Advocate,
for respondent No.3 in CWP-11669-2015.

Mr. Neel Kamal, Advocate, for
Mr. Vikram Satpal Anand, Advocate,
for respondents No. 4 and 5 in CWP-25942-2012.

Mr. Vikram Singh, Advocate, for
Mr. Sameer Sachdeva, Advocate,
for respondents No. 4 and 5 in CWP-11669-2015.

HARSIMRAN SINGH SETHI, J.(ORAL)

By this order of mine, two writ petitions i.e. CWP No.25942 of 2012 and CWP No.11669 of 2015, which involve the same question of law and similar facts, are being decided. For the purpose of this order, the facts are being extracted from CWP No.25942 of 2012.

In the present writ petition, the claim of the petitioner is for the release of the pensionary benefits as well as the balance payment of leave

encashment and also for the arrears of pay scale as a result of the revision which took place w.e.f. 01.01.2006. The claim of the petitioner in the present writ petition is against respondents No. 4 and 5. Respondent No.4 is the President of the Managing Committee, which is managing respondent No.5-College. Respondent No.5 is a private aided college being managed by respondent No.4.

Before counsel for the petitioner starts his arguments on merits, a preliminary objection has been raised as to the maintainability of the writ petition at the first instance before this Court.

Learned counsel(s) appearing on behalf of the private aided college have raised a preliminary objection about the maintainability of the writ petition at the first instance before this Court. An objection has been taken that as the claim of the petitioner is primarily against the management of private aided institution, hence petitioner has to approach the Educational Tribunal for the redressal of his grievance at the first instance and present petition could not have been filed by him seeking the relief as sought in the present writ petition.

Learned counsel for the petitioner contends that the objection raised by counsel for the private aided institution has no merit and the present writ petition is maintainable before this Court. In support of his arguments about the maintainability of the writ petition before this Court, counsel for the petitioner relies upon the provisions of Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974 (for short 'the 1974 Act') as amended from time to time.

Learned counsel for the petitioner states that though 'the 1974

Act, was enacted for the security of service of the employees of the affiliated colleges but the same was only applicable wherein an employee has been either dismissed from service, removed from service or his/her rank is reduced. Employee seeking the payment of the retiral benefits or any other benefits except the three category of cases mentioned above, the jurisdiction of Tribunal is barred.

Learned counsel for the petitioner states that the College Tribunal has been created under Section 2(c) of the Act, 1974. Section 2 (c) is as under:-

“(c) “College Tribunal” means a College Tribunal constituted under Section 7-A of this Act.”

Section 3 of the Act, 1974, relied by the counsel for the petitioner is as under:-

“ 3. Dismissal, removal or reduction in rank not to be ordered except after inquiry.- No employee shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.”

Learned counsel for the petitioner argues that any party, which is aggrieved against the order of Director, which has been passed in pursuance to seeking approval for dismissing an employee, removing an employee or reducing the rank of an employee, College Tribunal could have been approached. Section 4 of the Act, 1974 being relied by the counsel for the petitioner is as under:-

“ 4. Procedure to be observed before dismissal and removal- (1) The penalty of dismissal or removal from

service shall not be imposed unless the same is approved by the Director.

(2) Where after the inquiry referred to in section 3, it is proposed to impose the penalty of dismissal or removal from service the proposal shall be referred to the Director alongwith the relevant record and intimation about the proposal having been so referred shall be sent to the (employee) concerned also simultaneously.

(3) The (employee) may, within a period of thirty days of the receipt of the intimation referred to in sub-section (2), make a representation against the proposed penalty to the Director who may, after examining the record and giving to the parties an opportunity of being heard, by an order in writing, give his approval to the imposition of the proposed penalty of dismissal or removal from service, as the case may be, or refuse to give approval if the proposal is found to be mala fide or by way of victimization or not warranted by the facts and circumstances of the case.

(4) Any party aggrieved by an order of Director (under sub-section (3) may file an appeal to the College Tribunal, which may] after giving to the parties an opportunity of being heard, pass such order as he may deem fit.”

Learned counsel for the petitioner argues that under Section 7-A of the 1974 Act, the College Tribunal has been defined and the State Government by a notification can constitute one or more College Tribunal for the purpose of this Act, which is to be specified in the notification. The relevant Section 7-A (1) is as under:-

“ 7-A. College Tribunal.- *(1) The State Government may, by notification, constitute one or more College*

Tribunals for the purposes of this Act for such area as may be specified in such notification.”

The said Sections 3 and 7-A of the 1974 Act were amended by the Government of Punjab by Punjab Act No.11 of 2008. In Section 2 of the 1974 Act, the definition of Educational Tribunal was introduced for the first time. Further, the definition of the Educational Institution was also introduced by the said amendment. Section 7-A of the 1974 Act, was amended and certain clauses were added to it and the relevant clause for the purpose of this order is Section 7-A (12) which is as under:-

“(12) The Educational Tribunal shall have jurisdiction to hear all cases of disputes between the 'Managing Committee' and the 'employees' as defined in this Act, and the Punjab Privately Managed Recognized Schools Employees (Security of Service) Act, 1979.”

Learned counsel for the petitioner argues that the power to hear the disputes by the Educational Tribunal is given under Section 7-A (12) only and according to the said clause, all the disputes with regard to the dismissal of an employee, removal of an employee or where an employee has been reduced in rank lie within the jurisdiction of the Educational Tribunal. This argument is raised by counsel for the petitioner that interpretation of sub-clause 12 of Section 7-A, as reproduced hereinbefore, has to mean that the jurisdiction to hear all cases qua disputes between the management and the employee **as defined in this Act** lie before the Educational Tribunal and the disputes defined in the 1974 Act are only with regard to the dismissal, removal and the reduction of the rank of an employee. Therefore, the objection which is being taken by counsel for the respondents-private institutions is not borne out of the provisions of the 1974 Act and therefore

this objection needs to be over-ruled and the petition needs to be heard on merits by this Court.

Learned counsel for the petitioner states that in the amended act, in the statement of the object and reasons, it has been mentioned that the Educational Tribunal are being created for the redressal of the grievance of the employees of the aided and unaided institutions, who are subject to punishment or termination of service only.

Learned counsel for the State argues that the State is the author of the Section 7-A (12) of the 1974 Act and according to the State, all the disputes which arise between the employee and the managing committee, will be within the jurisdiction of the Educational Tribunal to decide the same under the 1974 Act.

Learned counsel for the State argues that interpretation which is being given by the counsel for the petitioner that it is only in the case of dismissal, removal or the reduction in rank, which are imposed as a matter of punishment, only then the jurisdiction of the Educational Tribunal can be evoked is not borne out of the clauses 7-A (12) of the 1974 Act. Further, he argues that there is no intention of the State to grant two forums to the employees keeping in view the relief sought against the management, therefore, the Tribunal has jurisdiction to decide all the disputes arising out between the employees and the management under Clause 7-A (12) of the 1974 Act.

Learned counsel for the respondents No. 4 and 5, on the other hand, states that once the Educational Tribunal has been given the jurisdiction to hear all the cases of disputes between the managing

committee and employee, it will mean all disputes and will not be restricted to only in the case of dismissal, removal or reduction in rank of employee as being argued by counsel for the petitioner.

I have heard learned counsel for the parties on this preliminary issued raised before this Court.

The provisions of the 1974 Act has been detailed in the earlier paragraphs of this order. No doubt when the 1974 Act, was enacted, the same was only limited to the punishment imposed upon an employee in respect of dismissal, removal and reduction in rank of the employee. As the time passed and keeping in view the order passed by the Hon'ble Supreme Court of India in *T.M.A. Pai Foundation and others Vs. State of Karnataka and others, (2002) 8 SCC 481*, there arised a need to set up an Educational Tribunal for the purpose of granting any forum where the employees of the private aided and unaided institution could raise their grievances. No doubt, the Educational Tribunals were set up keeping in view the directions given by the Hon'ble Supreme Court of India but the Tribunals were to discharge the duties keeping in view the notification which have been issued by the respective Government giving authority to the respective Tribunal about its jurisdiction. The present case relates to the Educational Tribunal created by the State of Punjab.

Learned counsel for the petitioner has argued that as the 1974 Act, was created only to redress the grievance of the dismissed, removed or the employees who were reduced in rank. The said Act continues to be in the same position even after the same was amended in the year 2008, when the Educational Tribunals were created and granted jurisdiction to decide all

disputes between the managing committee and its employees and therefore, the Tribunals have only the jurisdiction to decide all those disputes which relate to the dismissal, removal of an employee or wherever an employee has been reduced in rank. To support his argument, counsel for the petitioner has cited the statement of object and reasons for amendment. In the statement of object and reasons, the following has been recorded:-

“Whereas Hon'ble Supreme Court of India in C.W.P No.317/1993 and other connected writ petitions (T.M.A. Pai Foundation versus State of Karnataka and others) had directed – vide its judgment dated 31st October, 2002 to create Educational Tribunals for redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service.”

Though on the face of it, it appears that the Tribunals are being created for the redressal of grievance of the employees of the aided and unaided institutions who are subjected to the punishment or termination from service but the said is only a narration by the Government of Punjab wherein, by giving the facts of a case as given by the Hon'ble Supreme Court of India was passed wherein direction was issued to create Educational Tribunals by the respondents-State Government. The said related to a case where punishment on an employee was imposed. While enacting the provisions, State of Punjab extended the jurisdiction of the Tribunal beyond the said scope wherein, the Tribunal was given the power to hear all cases of disputes arose between the managing committee and the employees. Once Section 7-A (12) of the 1974 Act, give the power to decide and hear all the disputes, it cannot be said that the jurisdiction of the Tribunal is only qua the cases where the punishment have been imposed

upon an employee.

Learned counsel for the petitioner tries to interpret sub-Section 12 of the 1974 Act, to mean that all the cases of disputes between the managing committee and employee as defined in this Act has to mean that the purpose of the Act was only to give benefit to the employees who are being punished and therefore, even under Section 12 of the Act, according to the counsel for the petitioner, the jurisdiction to decide cases where the punishment has been imposed upon an employee, lies with the Educational Tribunal and not otherwise.

I am of the opinion that the interpretation as being given to sub-clause 12 is not correct. A bare reading of sub-clause 12 would mean that all cases between the managing committee and employees as defined under this Act means the definition of all cases of disputes qua the institutions and employees, who are covered within the definition of managing committee and the employees, as mentioned in this Act. Therefore, once an employee and the management, where the dispute arises are covered under the definition of the managing committee and the employees as given in the 1974 Act, as amended from time to time, the Educational Tribunal will have the jurisdiction to decide all the disputes between them and not only restricted to where an employee has been punished.

To fortify my view, this Court is relying upon an order passed by a Division Bench in **LPA No.1172 of 2013 titled as Governing Body/Managing Committee and another Vs. Punjab School Education Board and others, decided on 08.07.2013**, wherein also, the Division Bench has interpreted the provisions of the 1974 Act, as amended from time to time

including sub-clause 12 of Section 7-A. The said judgment is as under:-

“(1) This Letters Patent Appeal impugns the order dated 24.05.2013 whereby learned Single Judge has allowed the respondents' writ petition No. 7421 of 2010 on the basis of another Single Bench decision dated 27.11.2012 passed in CWP No. 5471 of 2012 titled as 'Sandesh Kumar v. State of Punjab and others' holding that the Educational Tribunal, Punjab has got jurisdiction to decide the 'service dispute' of an employee of the unaided Privately Managed Recognized Schools/ Colleges also.

(2) We find that writ petitioner in CWP No. 5471 of 2012 (Sandesh Kumar) preferred LPA No. 53 of 2013, as according to him, his case was erroneously relegated to the Educational Tribunal and the same ought to have been decided by the learned Single Judge on merits. The Division Bench rejected his contention and held as follows:-

“It was the submission of the learned counsel for the appellant that since there is no order passed by the Director, there was no occasion for the appellant to challenge that order. This contention would have some force if there was no other provisions conferring the jurisdiction upon the Tribunal. However, we find that subsection 12 of Section 7-A of the said Act stipulates the matter which could be dealt with and over which the Education Tribunal have the jurisdiction. It reads as under:-

“7-A. Educational Tribunal-

(1) to (11) xxx xxx xxx xxx

(12) The Educational Tribunal shall have jurisdiction to hear all cases of dispute between the 'Managing Committees' and the 'employee', as defined in this Act, and the Punjab Privately Managed Recognized Schools Employees (Security of Service) Act, 1979.”

As per the aforesaid provisions, the Tribunal can hear all cases of disputes that would arise between the Managing Committee and the employee. The contention of the appellant that before dismissing the services of the appellant herein, the respondents did not seek approval of the Director, can always be looked into by the Education Tribunal. We are, thus, of the opinion that the order of the learned Single Judge is without any blemish. This appeal is accordingly dismissed.”

(3) The genesis of establishing Educational Tribunals originated from the Hon'ble Supreme Court dictum in TMA PAI Foundation and others vs. State of Karnataka and others (2008) 8 SCC 481. Since the State of Punjab also did not establish the Educational Tribunal for a long period that its inaction prompted this Court in CWP No. 22300 of 2012 (Chamkaur Singh v. State of Punjab and others) to issue the following interim directions on 28.1.2013:-

“The grievance made in his petition is that the employees of the unaided/affiliated colleges have not been provided remedy of appeal before the Educational Tribunal constituted under the Punjab Affiliated Colleges (Security of Service) Amendment Act, 2007. It is the submission of the petitioner that the judgment of Supreme Court in TMA PAI Foundation and others vs. State of Karnataka and others (2008) 8 SCC 481 is not being followed in letter and spirit. This is the short question on which notice of motion was issued on 8.11.2013. However, till date, no reply is filed by the respondent-State. Learned Addl. A.G. Punjab submits that some time be given to him to seek instructions as to whether the respondents would be willing to make suitable amendment(s) in the legislation.”

(4) It was thereafter that an amendment was carried out in the Punjab Affiliated Colleges (Security of Service of

Employees) Act, 1974 (for short, “the Act”), whereby Section 7-A of the Act was decided to be suitably amended and statement to this effect was made before this Court on 22.5.2013 in the above mentioned case, which reads as under :-

“In deference thereto, it is stated by learned State counsel that a decision in principle to carry out suitable amendment in the statute has been taken whereby the teachers/employees working against un-aided posts shall also have an appellate avenue before the Educational Tribunal”

(5) Section 7-A of the Act, as emended by the State of Punjab, reads as follows :-

7-A Educational Tribunal: (1) The State Government may, by notification, in the official Gazette, constitute one or more Educational Tribunal for such area or areas, as may be specified in such notification.

(2) Each Educational Tribunal shall consist of a Chairman and two members, out of whom, one shall be from amongst the persons, who have administrative background and the others from amongst the person, who have academic background.

(3) The chairman and the member of an Educational Tribunal, shall be appointed by the State Government in consultation with the Chief Justice of the Punjab and Haryana High Court.

(4) to (11) xx xx xx

(12) The Educational Tribunal shall have jurisdiction to hear all cases of dispute between the 'Managing Committees' and the 'employee', as defined in this Act, and the Punjab Privately Managed Recognized Schools Employees (Security of Service) Act, 1979.” (Emphasis

applied)

(6) *The jurisdictional scope of the 'Educational Tribunal' constituted under Section 7-A (12) of the Act can be well appreciated with the aid of following definitions contained in Section 2 (a), (aa), (c), (d) and (e) of the Act:-*

“2(a) “affiliated college” means a college associated with and admitted to the privileges of University constituted or established under any law for the time being in force but does not include a Government college or college established or maintained by such a University.

(aa) “aided post” means an aided post on the establishment of an affiliated college against which such a college gets grant-inaid from the State Government from time to time.

(b) xx xx xx

(c) “Educational Tribunal” means a Tribunal, constituted under Section 7-A of this Act, which shall hear and decide the cases of disputes between the “Management Committee” and the “employees”, as defined in this Act and the Punjab Privately Managed Recognized Schools Employees (Security of Service) Act, 1979;

(d) “Managing Committee” means the Managing Committee of an affiliated College and includes a person or body of persons for the time being entrusted with the management of the affairs of an affiliated college;

(e) “employee” means a person in the employment of an affiliated College but does not include a work-charged employee; and” (Emphasis applied)

(7) It may be seen from the conjoint reading of above reproduced provisions of the Act that an un-aided private college also falls within the definition of “affiliated college” and the Educational Tribunal has got jurisdiction to decide the cases of disputes between the “Managing Committee”

and the “Employees” of “affiliated colleges” as defined under the Act. The plain reading of Section 2 (d) and Section 2(e) leaves no room for any ambiguity that the Managing Committee of every affiliated college (which includes un-aided college also) falls within the ambit of Section 2 (c) and so is the situation in the case of an “employee” who is also required to be employed in an 'affiliated college' (not necessarily a Government aided college).

(8) The legislative policy behind amended provisions thus undisputably intends to provide a platform for the redressal of grievance even to an employee of an un-aided but affiliated college and they too have been brought within the jurisdiction of the Educational Tribunal.

(9) Thus, the expression “all cases of disputes” contained in Section 7-A (12) of the Act is wide enough to encompass within its ambit the disputes between the employees of “un-aided institutions” and their “Managing Committee” also. The distinction between the Government aided Privately Managed Recognized Schools/ Colleges or un-aided Privately Managed Recognized Schools/Colleges may have some relevance or bearing on the nature of relief may be granted by the Tribunal in a given case. It is not true that the employee of un-aided Privately Managed Recognized Schools/Colleges is remediless and cannot ventilate his grievance before the Educational Tribunal, more so when the appellant has not been able to point out any express bar against the exercise of jurisdiction by the Educational Tribunal in such like matters.

(10) For the reasons aforementioned, the appeal fails and the same is dismissed.

A bare perusal of the above order would show that the Division

Bench has held that the word 'all disputes' as stated in sub-clause 12 of

Section 7-A is wide enough to include all the disputes. The Division Bench even held that unaided institutions are also to be covered by the amendment which has been done by the State of Punjab that even their employees can approach the Educational Tribunal for the redressal of their grievances.

In respect of the argument which has been raised by counsel for the petitioner that the Educational Tribunal's jurisdiction is only limited to the cases where disciplinary action has been taken against an employee, the same was considered and answered by the Division Bench of this Court while deciding **Civil Revision No.4135 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.** The Division Bench held that though while deciding the **T.M.A. Pai's case (supra)**, the Hon'ble Supreme Court of India was primarily concerned with providing a forum to the employees who have been punished by the managing committee but the jurisdiction of the Tribunal will depend upon the legislation/notification issued by the respective Government so as to include what kind of disputes, the jurisdiction has been conferred upon the Educational Tribunal. The relevant paragraph of the said judgment is as under:-

“12. It may be noticed that on 29.10.2013, learned Additional Advocate General, Haryana sought time to examine the provisions of the Act, its scope and the powers to be exercised by the Educational Tribunal in terms of the judgment of Supreme Court in T.M.A. Pai Foundation's case (supra). Thereafter, Mr. Poonia made a statement on 14.11.2013 that the State Government is contemplating amendment in the Act to provide disputes settlement mechanism between the teachers and the management of the recognised schools within six months. It was stated

that such mechanism will address issues of disputes regarding pay-scales and disciplinary proceedings. It was, thus, noticed that the surviving issue is in respect of gratuity alone.

13. We have heard learned counsel for the parties at length. It appears that directions in T.M.A. Pai Foundation's case (supra) are in the context of disciplinary action against a teacher or other employees though clarifying that approval of any Government authority before taking any disciplinary action by the management of a private unaided education Forum against the decision of the management relating to the termination of services. Therefore, strictly speaking, the direction of the Supreme Court was to constitute Educational Tribunal for determining the issues arising of disciplinary action initiated against the teacher.

14. Though the circular of the High Court is only to provide a forum for presentation of the appeals, but the determination of the scope of hearing of such appeals falls within the legislative domain of the State Government independent of the order passed by the Supreme Court. The notification dated 28.05.2008 specifically does not specify as to which orders passed by the management would be appealable, but it is notified that all the District and Sessions Judges have been authorized by the High Court to hear appeals of the employees of aided/unaided Medical/Dental/Ayurvedic/Homeopathic/Educational Institutions against the decision of Management within their jurisdiction. In other words, the circular of this Court contemplating 'Forum' has been adopted by the State for the purposes of presentation of appeals. Such decision to provide an appeal against the decision of the Management would include all orders which the Management pass in relation to employee of the

institution. Such decision to contemplate filing of an appeal against the decision of the Management shall be deemed to be taken in exercise of executive powers of the State in terms of Article 162 of the Constitution of India in the absence of any other legislative enactment dealing with the issue.”

If the arguments raised by counsel for the petitioner is accepted that in case where there is dismissal, removal or a reduction in rank, the employees will approach the Educational Tribunal, it will lead to an anomalous situation. It cannot be said that there will be two forums for the employees for the redressal of their grievance keeping in view the relief which is being sought by an employee. An employee, who is seeking one increment, which is a minor relief will file a writ petition whereas an employee who has been terminated from service, will have to approach the Educational Tribunal. This kind of an interpretation, which is being sought by the counsel for the petitioner, cannot be given to clause 7-A (12) of the 1974 Act. There was never been any intention of the Government to provide two forums to the employees at the initial stage, keeping in view the relief sought. The 1974 Act, clearly states that all disputes are to be decided by the Educational Tribunal, it has to be taken that all disputes, which are arising between the employee and the management. Hence the definition being created by the counsel for the petitioner while interpreting the clause 7-A (12) will lead to an anomalous situation and will amount to providing two different forums at the initial stage, keeping in view the relief sought by an employee, cannot be permitted.

Further, as the Statute is an edict of legislature, when the Statute is to be interpreted, the intention of its maker has to be kept in mind. In the

present case, once the State has taken a stand that the Educational Tribunal has the jurisdiction to try and decide all the disputes between the employee and the management, the same interpretation has to be given preference over and above the interpretation being given by the petitioner to Clause 7-A (12) of the 1974 Act. The Hon'ble Supreme Court of India in **Civil Appeal No.1140 of 2007 titled as National Insurance Company Ltd. Vs. Laxmi Narain Dhut, decided on 02.03.2007**, held that the Statute has to be construed in accordance with the intention of those who make it and it is the duty of the Court to act upon true intention of the legislature. In the present case, the true intent of legislature was to provide the employees of the aided institution a platform/forum to raise their grievances. It has never been the intent of the statute to provide a forum of Educational Tribunal only under the circumstances where punishment has been imposed upon an employee. The relevant portion of the judgment of the Hon'ble Supreme Court of India is as under:-

“35. A statute is an edict of the Legislature and in construing a statute, it is necessary to seek the intention of its maker. A statute has to be construed according to the intent of those who make it and the duty of the court is to act upon the true intention of the Legislature. If a statutory provision is open to more than one interpretation the Court has to choose that interpretation which represents the true intention of the Legislature. This task very often raises difficulties because of various reasons, inasmuch as the words used may not be scientific symbols having any precise or definite meaning and the language may be an imperfect medium to convey one's thought or that the assembly of Legislatures consisting of persons of

various shades of opinion purport to convey a meaning which may be obscure. It is impossible even for the most imaginative Legislature to foresee all situations exhaustively and circumstances that may emerge after enacting a statute where its application may be called for. Nonetheless, the function of the Courts is only to expound and not to legislate. Legislation in a modern State is actuated with some policy to curb some public evil or to effectuate some public benefit. The legislation is primarily directed to the problems before the Legislature based on information derived from past and present experience. It may also be designed by use of general words to cover similar problems arising in future. But, from the very nature of things, it is impossible to anticipate fully the varied situations arising in future in which the application of the legislation in hand may be called for, and, words chosen to communicate such indefinite referents are bound to be in many cases lacking in clarity and precision and thus giving rise to controversial questions of construction. The process of construction combines both literal and purposive approaches. In other words the legislative intention i.e., the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed. ([See District Mining Officer and Ors. v. Tata Iron & Steel Co. & Anr. JT 2001 \(6\) SC 183](#)).

Counsel for the petitioner has argued that in the statement of object and reasons for the amendment to the 1974 Act, only reason given by the State was to provide a forum of Educational Tribunal as directed by the

Hon'ble Supreme Court of India in CWP No.317 of 1993 and other connected cases for the redressal of the grievance of the employees of the aided and unaided institutions who are subjected to the punishment or termination of their service and therefore, the said object cannot be changed and clause 7-A (12) of the 1974 Act has to be read in with the object and reasons sought to be achieved.

The statute has to be read in whole. There may be different provisions in the statute and every provision has to be given a meaning. In the present case, if the contention of the petitioner is to be accepted that the Educational Tribunals are only to raise the grievance qua the disciplinary proceedings, then, no meaning can be assigned to clause 7-A (12) of the 1974 Act wherein, the legislature has clearly mentioned that all disputes between the employee and the management will be within the jurisdiction of the Educational Tribunal. The statute has to be interpreted in a manner which improve the workability of the statute and not to an interpretation which may lead to any undesirable results.

The Hon'ble Supreme Court of India while deciding **Civil Appeal No.8859 of 2011 titled as The Executive Engineer and another Vs. M/s Sri Seetaram Rice Mill, decided on 20.10.2011** held that the statute has to be construed in a manner that different provisions improve the workability of the statute to be more effective and purposive and also that the same interpretation does not lead to undesirable results. The relevant paragraph of the judgment is as under:-

“10.First and foremost, we have to examine how provisions like Section 126 of the 2003 Act should be construed. From the objects and reasons stated by us in the

beginning of this judgment, it is clear that 'revenue focus' was one of the principal considerations that weighed with the Legislature while enacting this law. The regulatory regime under the 2003 Act empowers the Commission to frame the tariff, which shall be the very basis for raising a demand upon a consumer, depending upon the category to which such consumer belongs and the purpose for which the power is sanctioned to such consumer. We are not prepared to accept the contention on behalf of the respondent that the provisions of Section 126 of the 2003 Act have to be given a strict and textual construction to the extent that they have to be read exhaustively in absolute terms. This is a legislation which establishes a regulatory regime for the generation and distribution of power, as well as deals with serious fiscal repercussions of this entire regime. In our considered view, the two maxims which should be applied for interpretation of such statutes are ex visceribus actus (construction of the act as a whole) and ut res magis valeat quam pereat (it is better to validate a thing than to invalidate it). It is a settled canon of interpretative jurisprudence that the statute should be read as a whole. In other words, its different provisions may have to be construed together to make consistent construction of the whole statute relating to the subject matter. A construction which will improve the workability of the statute, to be more effective and purposive, should be preferred to any other interpretation which may lead to undesirable results.

In the present case, in case the interpretation of the petitioner is accepted that Educational Tribunal will have only the jurisdiction to try the cases of employees in the case of disciplinary proceedings only, it will lead to undesirable results as it will give two different forum to the employees to agitate their grievance keeping in view the relief sought, which is not intent of legislature.

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.

Parties are directed to appear before the Educational Tribunal on 28.05.2019.

The present writ petitions stand disposed of in above terms.

April 11, 2019
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

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