

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 17476 of 2018
Date of Decision : 01.05.2019

Prem Chand

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: *HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI*

Present: Mr. D.S. Rawat, Advocate for the petitioner.

Ms. Nidhi Garg, A.A.G., Haryana.

Mr. Aman Bahri, Advocate for
Ms. Kritika Sharma, Advocate for respondent No. 4.

Harsimran Singh Sethi, J.(Oral)

The claim of the petitioner in the present writ petition is on account of denial of enhanced gratuity and also the revised pension as well as arrears of the revised pay scale. The said claim of the petitioner is against respondent No. 4, which is a Government Aided Private Institution.

Learned counsel for the respondents state that keeping in view the law laid down by the 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, the present writ petition is not maintainable before this Court at the first instance and the petitioner has to avail the remedy before

Educational Tribunal in accordance with law as directed by the Division

Bench while deciding the said case. The relevant paragraph 23 of the judgment is as under:-

“23. 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.

Since the questions of law have been answered, the matter be placed before the learned Single Bench for appropriate decision.”

A bare perusal of the above would show that the Division Bench has held that all the disputes between the employee and the management are to be adjudicated upon by the Educational Tribunal at the first instance, which have been created by the State keeping in view the judgment rendered by Hon'ble the Supreme Court in **T.M.A. Pai Foundation & others Vs. State of Karnataka & others, (2002) 8 SCC 481.**

With regard to the gratuity, the petitioner will have to avail the remedy as provided under the Payment of Gratuity Act, 1972, in case he has any grievance against the management in that regard.

Keeping in view the above, the petitioner is relegated to avail the appropriate remedy in respect of the reliefs as claimed by him in accordance with law before the appropriate authorities.

Writ petition stands disposed of in above terms.

May 01, 2019
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No