

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 23115 of 2016
Date of Decision : 10.04.2019

Vikas Kapoor

...Petitioner

Versus

State of Haryana and others

...Respondents

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

Present: Mr. R.K. Chaudhary, Advocate for the petitioner.

Mr. C.S. Bakhshi, Additional Advocate General, Haryana.

Mr. Rahul Jain, Advocate for

Mr. Sumit Gupta, Advocate for respondent No. 4.

Harsimran Singh Sethi, J.(Oral)

In the present writ petition, the grievance which is being raised by the petitioner, who is the son of Smt. Kamlesh Kapoor, is that the benefits for the service, which his late mother had rendered with respondent No. 4-School, have not been released to the legal heirs and further after the death of his mother in the year 2002, no family pension was released to the father of the petitioner, who also, unfortunately, died on 03.01.2009, hence petitioner is entitled for the said amount as well.

Learned counsel for the respondents states that the claim, which is being raised by the petitioner is against respondent No. 4-School, which is run by the Private Management. Learned counsel states that though the school is aided but the present writ petition is not maintainable keeping in

view the law laid down by the Division Bench of this Court in case titled as ***Management of S.D. Model Senior Secondary School & another Vs. District Judge-cum-Service Tribunal and another, 2014 (1) S.C.T. 652***, as all the disputes between the employee and the management are to be adjudicated upon by the Educational Tribunal at the first instance. The relevant paragraph of the judgment passed by the Division Bench 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.”

In view of the objections raised by counsel for the respondents, counsel for the petitioner states that the record of this case be sent to the Educational Tribunal, Ambala for passing an appropriate order on the plea, which has been raised by the petitioner in the present writ petition. Learned counsel for the petitioner further states that as the petition is already pending for the last three years before this Court, some timeframe should be fixed for disposal of the present case.

In view of the statement made, let the record of this case be placed before the Educational Tribunal, Ambala for appropriate order(s) on the plea raised by the petitioner in the present writ petition.

Keeping in view the fact that the petitioner is seeking the benefits in respect of service rendered by his late mother, who expired in the year 2002, the Educational Tribunal, Ambala is directed to pass appropriate orders on the claim of the petitioner as expeditiously as possible.

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

April 10, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

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