

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 4224 of 2015 (O&M)

Date of Decision : 15.02.2019

Harminder Singh Sidhu

...Petitioner

Versus

State of Punjab and others

...Respondents

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

Present: Mr. R.S. Dadwal, Advocate for the petitioner.

Ms. Deepali Puri Sandhu, Addl. A.G., Punjab
for respondent No. 1.

Mr. Sameer Sachdeva, Advocate for respondents No. 3 and 4.

Harsimran Singh Sethi, J.(Oral)

CM-17902-CWP-2018

Cost of ₹10,000/- paid on 15.02.2019 vide Receipt No. 798.

The present application has been filed to place on record the
written statement on behalf of respondents No. 3 and 4.

Copy has already been supplied to learned counsel for the
petitioner.

The application is allowed and written statement filed on behalf
of respondents No. 3 and 4 is taken on record.

CWP No. 4224 of 2015

In the present writ petition, the grievance, which has been
raised by the petitioner is for release of the gratuity, leave encashment and
other dues, which are to be released by the Private Aided College.

In respect of the claim, a preliminary objection has been taken by respondents No. 3 and 4 in the reply that the present writ petition is not maintainable here i.e. in this High Court and the petitioner has to avail his remedy before the Educational Tribunal constituted by the Government. The relevant objection raised is as under:-

“2. That at the very outset, it is submitted that the writ petition filed by the petitioner is misconceived and is not legally maintainable. The petitioner had been working on the private post and not on an aided post. Thus the case of the petitioner falls within the ambit of Punjab Colleges (Security of Service Act of 1974 as amended by Punjab) Act No. 11-Leg/of 2008. The State Government has constituted Educational Tribunal to deal with all the matters between Management and the Employee of the Affiliated Colleges. The petitioner has deliberately not availed the remedy available to him and straight-away filed the present petition before this Hon'ble Court, which is not legally maintainable and deserves dismissal on this score alone.”

Learned counsel for the petitioner has not been able to rebut the said preliminary objection that the jurisdiction at the first instance is before the Educational Tribunal.

It is a settled principle of law settled by a 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**, wherein, it has been held that in view of the judgment of Ho'nble the Supreme Court in **T.M.A. Pai Foundation & others Vs. State of Karnataka & others, (2002) 8 SCC 481**, the jurisdiction of the Educational Tribunal set up under that direction. The

relevant portion of the said 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.”

In view of the above, the petitioner is relegated to his remedy

before the Educational Tribunal set up by the Government of Punjab in this regard.

Keeping in view above, let the record of the present writ petition be sent to the Educational Tribunal for appropriate decision as the matter is within the jurisdiction of the said authority.

Parties are directed to appear before the Educational Tribunal on 15.05.2019.

In view of the above, present writ petition stands disposed of.

February 15, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

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