

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

(209)

CWP-6550-2013

Date of Decision: September 16, 2019

Yogesh Chander Gautam and others

.. Petitioners

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Mukul Aggarwal, Advocate, for the petitioners.

Mr. Charanjit Singh Bakhshi, Addl. A.G., Haryana.

Mr. Rajesh Bansal, Advocate, for respondents No. 3, 4, 7 to 10.

HARSIMRAN SINGH SETHI, J.(ORAL)

In the present writ petition, the grievance of the petitioners is against the management of the institution for conducting an enquiry against them afresh despite the fact that the petitioners were already exonerated of the same charges by the management.

Learned counsel for the respondents states that as the grievance in the present writ petition is against the management of an aided insitution, the jurisdiction to adjudicate the same is with the Educational Tribunal keeping in view the settled principle of law settled 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 relevant paragraph of the said 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.”

A bare perusal of the above would show that except the claim of gratuity, all the disputes between the employee and the management are to be raised before the Educational Tribunal and for gratuity, an employee has to approach the appropriate authority under the Payment of Gratuity Act, 1972.

Faced with this situation, learned counsel for the petitioners prays that he be relegated to the Educational Tribunal, Kurukshetra for the redressal of his grievance, as raised in the present writ petition.

Learned counsel for the petitioners prays that as this writ petition was filed in the year 2013 and even the pleadings are complete, let

the paper book of this writ petition be sent to the Educational Tribunal, Kurukshetra for passing appropriate orders as filing of the fresh pleadings for the same cause of action will consume time and the same pleadings, as they are already on record of this writ petition, will have to be filed again, which will waste the time of Educational Tribunal as well.

Learned counsel for the respondents states that he does not have any objection in case the paper book of this writ petition is sent to the Educational Tribunal, Kurukshetra for passing appropriate orders.

In view of the above, the petitioners, in the present writ petition, are relegated to avail their remedy before the Educational Tribunal, Kurukshetra in respect of the grievance as raised in the present writ petition.

Let the paper book of this writ petition be also sent to the Educational Tribunal, Kurukshetra for passing appropriate orders.

Parties are directed to appear before the Educational Tribunal, Kurukshetra on 20.11.2019.

Learned counsel for the parties are agreeable that the interim order already passed on 26.03.2013 will continue till the matter is taken up by the Educational Tribunal, Kurukshetra in pursuance to this order and the Tribunal will be at liberty to pass an appropriate order extending the said or passing any appropriate orders which it deems fit.

The present writ petition is disposed of in above terms.

(HARSIMRAN SINGH SETHI)
JUDGE

September 16, 2019
harsha

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