

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

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CWP No.4738 of 2015

Date of decision: 06.03.2019

Kulwinder Kaur

..Petitioner

Vs.

State of Punjab and Ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. P.K. Dwivedi, Advocate
for the petitioner.

Mr. Mehardeep Singh, Addl. AG, Punjab.

HARSIMRAN SINGH SETHI, J.(ORAL)

By the present writ petition, the petitioner lays challenge to the action of the respondent No.4 deducting her salary. The grievance is that a sum of ₹ 68,936/- has been deducted from the salary of the petitioner for the period from April 2010 till March 2011.

At the very outset, counsel for the respondent has stated that the writ petition is not maintainable for the reason that the jurisdiction to resolve/decide the present controversy at the first instance lies with the Educational Tribunal. A Division Bench of this Court in **Management of S.D. Model Senior Secondary School and Another Vs. District Judge-cum-Service Tribunal and Another 2014(1) S.C.T. 652** has already held that the jurisdiction to decide all the service disputes between the employees and the Aided Colleges/Schools at first instance lies before the Educational Tribunal, which has been created in implementation of the judgement of the Hon'ble Supreme Court of India in **T.M.A. Pai's** case. 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, counsel for the petitioner prays that the present writ petition be sent to the Educational Tribunal Punjab alongwith record.

Counsel for the petitioner prays that the petitioner is pursuing the present writ petition since March 2015 i.e. for the last 4 years and, therefore, a direction be issued to the Tribunal to decide the said petition at the earliest.

Educational Tribunal has been created by the Government of Punjab in implementation of the order passed by the Hon'ble Supreme Court of India and nothing has been brought to my notice that there is in-ordinate delay in deciding the cases by the Educational Tribunal. In the absence of the same, it is presumed that the cases are being decided within the time frame and the present case will also be decided at the earliest, keeping in view that only the arguments are to be addressed in the present case as the pleadings are already completed. In view of the above, it is directed that the records of the present case be sent to the Educational Tribunal for passing appropriate orders on the controversy raised by the petitioner in the present writ petition.

Parties are directed to appear before the Educational Tribunal on 29.04.2019.

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

(HARSIMRAN SINGH SETHI)
JUDGE

March 06, 2019

Poonam Sharma

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No