

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 5566 of 2015

Date of Decision : 19.03.2019

Pritpal Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

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

Present: Mr. A.S. Walia, Advocate for the petitioners.

Ms. Deepali Puri Sandhu, Addl. A.G., Punjab.

Mr. Vikram Singh Chahal, Advocate for

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

Harsimran Singh Sethi, J.(Oral)

In the present writ petition, the petitioners are seeking a direction to the respondents to pay difference of provident fund calculated @ 10% of the total salary.

The relief which has been claimed in the present writ petition is against the respondent No. 4-College by the petitioners. In the short reply filed on behalf of respondents No. 3 and 4, a preliminary objection has been taken by the respondents that the present writ petition is not maintainable before this Court at the first instance and the petitioners have to approach the Educational Tribunal for the redressal of their grievances.

In support of the said objection, learned counsel for respondents No. 3 and 4 relies upon an order passed by this Court in CWP

No. 11626 of 2016, decided on 01.03.2019. The said order is as under:-

*“Present: Mr. A.S. Walia, Advocate, for the petitioner.
Mr. Mehardeep Singh, Addl. A.G., Punjab.
Mr. Vikram Singh Chahal, Advocate, for
Mr. Sameer Sachdeva, Advocate, for respondents
No. 3 and 4.*

HARSIMRAN SINGH SETHI , J.(ORAL)

Reply on behalf of respondents No. 3 and 4 has been filed in the Court today and the same is taken on record. Copy of the same has been supplied to counsel for the petitioner.

In the present writ petition, the grievance which has been raised by the petitioner is for the release of the leave encashment and the claim is against respondents No. 3 and 4. A preliminary objection has been raised on behalf of respondents No. 3 and 4 that the present writ petition is not maintainable as the petitioner has to approach the Educational Tribunal constituted by the Government in this regard.

*As per the settled principle of law settled 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**, all the disputes between the employee and the management are to be adjudicated upon by the Educational Tribunal. 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 respondents No. 3 and 4, counsel for the petitioner states that let the record of this case be sent to the Educational Tribunal for passing appropriate order in this regard.

In view of the statement made, let the record of this case be placed before the Educational Tribunal for appropriate order(s).

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

Faced with this, learned counsel for the petitioners states that let the record of this case be sent to the Educational Tribunal for passing an appropriate order in this writ petition as well.

In view of the request made by learned counsel for the petitioners, it is directed that the record of the present case be sent to the Educational Tribunal for passing appropriate orders.

Parties through their counsel(s) are directed to appear before the Educational Tribunal on 02.05.2019.

March 19, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

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