

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

(229)

CWP-5310-2016 (O&M)

Date of Decision: July 04, 2019

Suresh Kumar

.. Petitioner

Versus

Deputy Commissioner Sirsa and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Ms. Shalini Atri, Advocate, for the petitioner.

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

Mr. Rajinder Kantiwal, Advocate, for
Mr. Sandeep Punchhhi, Advocate, for respondent No.2.

Mr. Rakesh Nagpal, Advocate, for respondent No.3.

HARSIMRAN SINGH SETHI, J.(ORAL)

Claim of the petitioner in this writ petition is against Hellan Keller Blind School, Sirsa, which according to the counsel for the petitioner, is an aided institution, receiving grant in aid from State.

At the outset, learned counsel for the respondents raise a preliminary objection that the present writ petition is not maintainable before this Court at the first instance keeping in view the notification dated 07.05.2013 issued by the Government of Haryana, which has already been interpreted 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.**

Learned counsel for the respondents argues that as per the decision of the Division Bench, except in the case of grant of gratuity, all other disputes between an employee and the management petition will lie

before the Educational Tribunal as constituted by the Government of Haryana. The relevant portion of the 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.”

Learned counsel for the petitioner prays that as the petitioner was already pursuing this remedy before this Court and the replies have already been filed in the present case, let record of the present writ petition be sent to the Educational Tribunal, Sirsa for appropriate decision, in view

of the objection raised by the respondents in respect of the maintainability of the writ petition before this Court at first instance.

Learned counsel for the respondents state that they have no objection if the record of the present case is sent to the Educational Tribunal, Sirsa for appropriate decision.

Keeping in view the request made by counsel for the parties, record of the present writ petition be sent to the Educational Tribunal, Sirsa for appropriate orders.

Parties are directed to appear before the Educational Tribunal, Sirsa on 21.08.2019.

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

(HARSIMRAN SINGH SETHI)
JUDGE

July 04, 2019
harsha

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