

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.27372 of 2017(O&M)
DATE OF DECISION:29.05.2019

Kamal Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. D.S. Punia, Advocate
for the petitioner.

Ms. Nidhi Garg, Assistant Advocate General, Haryana.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the grievance which is being raised by the petitioner is in respect of order dated 04.07.2017 (Annexure P-3), vide which the claim of the petitioner, for counting of total service which he had rendered as a qualifying service and not only the service for which the contribution was deducted, was rejected by the respondents.

The claim of the petitioner is against respondent No.3, which is a privately managed government aided college.

Counsel for the respondents states that keeping in view the settled principles 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 & another Vs. District Judge-cum-Service Tribunal & another**, an employee who is seeking relief

against the management of a government aided institution has to approach the Educational Tribunal for the redressal of his grievance.

The relevant para of order passed by the Division bench 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."

Counsel for the petitioner is not able to refute the said objection which has been taken on behalf of the respondents and states that as the present petition was filed in the year 2017 and the

replies have also been filed, let the present writ petition be transferred to the Educational Tribunal, Bhiwani for passing appropriate orders for the claim which the petitioner has raised in the present writ petition.

In view of the above, the record of the present writ petition be sent to the Educational Tribunal, Bhiwani for passing appropriate orders on the pleas raised by the petitioner.

The parties are directed to appear before the Educational Tribunal, Bhiwani on 05.08.2019.

The present writ petition stands disposed of in the above terms.

Keeping in view the order passed in the present writ petition, application has been rendered infructuous.

May 29, 2019
jt

(HARSIMRAN SINGH SETHI)
JUDGE

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