

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8396 of 2014

DATE OF DECISION:05.12.2019

Jai Bhagwan Sharma and another

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Saurabh Bajaj, Advocate
for the petitioners.

Ms. Safia Gupta, Assistant Advocate General, Haryana.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the petitioners, who are working on the post of Lab Attendants are seeking the pay scale as extended to the post of Lab Assistants on the ground that both the posts are equivalent and similar and hence the petitioners, who are working as Lab Attendants are entitled for the grant of same pay scale as granted to Lab Assistants.

Learned counsel for the petitioners very fairly admits that the employer of the petitioners is a private aided institution and the claim in respect of the grant of a pay scale can only be made from an employer, which relief is being claimed in the present writ petition.

Learned counsel for the respondents raises preliminary objection for the maintainability of this writ petition 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., wherein it has been

held that all the disputes between the employee and the management are to be raised before the Educational Tribunal at the first instance.

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.”

Faced with this situation, learned counsel for the

petitioners prays that the petitioners be relegated to the Educational Tribunal, Bhiwani for the redressal of their grievance, as raised in the present writ petition.

Learned counsel for the petitioners further prays that as the pleadings in this writ petition are complete, let the paper book of this writ petition be sent to the Educational Tribunal, Bhiwani 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, Bhiwani 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, Bhiwani 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, Bhiwani for passing appropriate orders.

Parties are directed to appear before the Educational Tribunal, Bhiwani on 03.02.2020.

The present writ petition is disposed of in above terms.

December 05, 2019

jt

**(HARSIMRAN SINGH SETHI)
JUDGE**

Whether speaking/reasoned: Yes / No

Whether reportable : Yes / No