

**CWP- 29449-2018 (O&M)  
Date of decision: 10.05.2019**

**SUNITA GUPTA**

**...PETITIONER**

**VERSUS**

**STATE OF HARYANA AND OTHERS**

**...RESPONDENTS**

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

Present: Mr. Tribhuvan Dahiya, Advocate  
for the petitioner.

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

\*\*\*\*

**HARSIMRAN SINGH SETHI, J. (ORAL)**

Reply has been filed on behalf of respondent Nos.1 & 2 in Court today, which is taken on record. Copy supplied to the counsel opposite.

Counsel for the respondents states that the present writ petition is not maintainable before this Court at the first instance.

The claim of the petitioner is in respect of the retiral benefits and that too against a Government Aided Private Institution and as per the settled principle of law settled by the Division Bench in Management of S.D. Model Senior Secondary School & another Vs. District Judge-cum-Service Tribunal and another, 2014(1) S.C.T. 652, the jurisdiction at the first instance in respect of an employee and in respect of a claim made by an employee against the Private Re-aided Management lies before the Educational Tribunal. The relevant portion of the 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.”

The counsel for the respondents states that as per the direction given by the Division Bench, in respect of the gratuity, an employee has to avail the remedy under the Payment of the Gratuity Act, 1972 and in respect of all other disputes between the Management and the employee, the jurisdiction lies with the Educational Tribunal.

Counsel for the petitioner, faced with this situation, prays that he be allowed to withdraw the present writ petition with liberty to approach the Educational Tribunal for the redressal of his grievance.

Dismissed as withdrawn with liberty as prayed for.

10.05.2019  
*renubala*

**(HARSIMRAN SINGH SETHI)**  
**JUDGE**

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