

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-8031-2017

Date of decision: - 25.02.2019

Sarita Sharma

...Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Swapanh Shaorey, Advocate
for the petitioner.

Mr. Mehardeep Singh, Additional Advocate General, Punjab.

HARSIMRAN SINGH SETHI, J. (ORAL)

In the present writ petition, the grievance raised by the petitioner is that she is entitled for the release of gratuity, leave encashment, other benefits alongwith interest after her retirement.

The claim is in respect of the aided College i.e. respondent No.4, namely, Swami Ganga Giri Janta Girls College, Ludhiana Road, Raikot.

Mr. Mehardeep Singh, Additional Advocate General, Punjab, states that jurisdiction to decide the present controversy at the first instance lies with the Educational Tribunal in view of the settled principle of law settled by a 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,

wherein, it has been held that in view of the judgment of Ho'nble Supreme Court in T.M.A. Pai Foundation & others Vs. State of Karnataka & others, (2002) 8 SCC 481, the jurisdiction of the Educational Tribunal set up under that direction. The relevant portion of the said 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.”

Counsel for the petitioner is unable to rebut this argument/objection.

In view of the above, the petitioner is relegated to the Educational Tribunal set up by the Government of Punjab in this regard for redressal of her grievance.

Keeping in view above, let the record of the present writ petition be sent to the Educational Tribunal for appropriate decision as the matter is within the jurisdiction of the said authority.

Parties are directed to appear before the Educational Tribunal on 09.05.2019.

February 25, 2019
naresh.k

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?	Yes
Whether reportable?	No