

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.
(Sr. No. 204)**

(1)

CWP-4925-2020

Date of Decision: 09.08.2021

Dharambir and others

.. petitioner(s)

Versus

State of Haryana and others

.. Respondents

(2)

CWP-6068-2021

Monika

.. petitioner

Versus

State of Haryana and others

.. Respondents

(3)

CWP-8897-2021

Monika Dagar and others

.. petitioner(s)

Versus

State of Haryana and others

.. Respondents

(4)

CWP-11585-2021

Vandana Sheoran and another

.. petitioner(s)

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Vijay Pal, Advocate for the petitioner(s)
in CWP Nos. 4925 of 2020, CWP No. 6068 of 2021 and
CWP No. 8897 of 2021.

Mr. D.S. Malik, Advocate for the petitioner(s)
in CWP No. 11585 of 2021.

Ms. Shubhra Singh, Additional Advocate General, Haryana.

Mr. Ravinder Singh, Advocate for
Mr. Puneet Gupta, Advocate for respondent No. 2
in CWP No. 4925 of 2020 and
for respondent No. 3 in CWP No. 6068 of 2021.

Mr. B.S. Rana, Senior Advocate with
Mr. Nayandeep Rana, Advocate
for respondents No. 3 and 5 in CWP No. 4925 of 2020.

Mr. Sant Lal Barwala, Advocate
for respondents No. 4 and 5 in CWP No. 6068 of 2021.

Harsimran Singh Sethi, J.(Oral)

By this common order, four writ petitions, the details of which have been given above, are being disposed of as all the writ petitions involve the same question of law on similar facts.

Reply in CWP No. 4925 of 2020 on behalf of respondents No. 3 and 5 has been filed in Court today. The same is taken on record.

Learned counsel(s) for the petitioner(s) argue that the petitioner(s) are entitled for the grant of salary as being paid to the other similarly situated teachers, who are working in their cadre keeping in view the UGC guidelines. Learned counsel(s) for the petitioner(s) further argue that the petitioner(s) are sought to be replaced by another set of employees on the same terms and conditions.

Learned senior counsel appearing on behalf of respondents No. 3 and 5 in CWP No. 4925 of 2020 submits that the petitioner(s) have efficacious remedy before the Educational Tribunal, especially, in view of the fact that the posts on which the petitioner(s) are working, are under the self finance scheme and no grant-in-aid is being received qua the said posts

and the Management of the Institute is paying the salaries for the petitioner(s) from their own resources. Reliance is being placed in this regard upon a judgement of 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 and a judgment of this Court in CWP No.25942 of 2012 titled as ***Suresh Sharma Vs. State of Punjab and others***, decided on 11.04.2019, which judgment has been upheld by a Division Bench in LPA No. 892 of 2019 titled as ***Surinder Krishan Sharma Vs. State of Punjab and others***, decided on 09.05.2019.

Learned senior counsel for respondents No. 3 and 5 further submits 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 in ***Management of S.D. Model Senior Secondary School's case (supra)*** 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 senior counsel further submits that the apprehension of the petitioner(s) that they are being replaced with another set of employees on the same terms and conditions is without any basis and there is no intention of the respondent-Management to replace the petitioner(s) with another set of employees on the same terms and conditions and petitioner(s) will be allowed to continue in service as long as their services are needed keeping in view requirement to be assessed by the Management.

Learned counsel(s) for the petitioner(s) submit that keeping in view the statement given by the learned senior counsel appearing on behalf of respondents No. 3 and 5 in CWP No. 4925 of 2020 that the petitioner(s) will not be replaced by another set of employees on the same terms and conditions, keeping in view the objection raised by the learned senior counsel of the remedy available to the petitioner(s) before the Educational Tribunal, the petitioner(s) be relegated to the said remedy. Learned counsel(s) for the petitioner(s) further submits that as the reply in some of

the writ petitions have been filed, in order to save the precious time of the Tribunal, the paper book of these petitions be sent to the Educational Tribunal for adjudication, which will save a lot of time.

Learned senior counsel raises no objection in case the paper book of these writ petitions is transferred to the Educational Tribunal for adjudication.

Keeping in view the facts and circumstances recorded hereinbefore and the prayer of the petitioner(s), petitioner(s) are relegated to their remedy before the Educational Tribunal.

Registry is directed to send the paper book of these writ petitions to the Educational Tribunal, Hisar for appropriate orders.

Parties are directed to appear before the Educational Tribunal, Hisar on 08.11.2021.

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

As the writ petitions are disposed of, CM No. 8383-CWP-2020 in CWP No. 4925 of 2020 also stands disposed of.

(HARSIMRAN SINGH SETHI)

JUDGE

August 09, 2021

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No