

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-18964-2021(O&M)

Date of decision:-12.10.2021

Pawan Kumar and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Sandeep Kotla, Advocate
for the petitioners.

Ms.Shubhra Singh, Addl. A.G., Haryana.

H.S. MADAAN, J.

1. S/Sh.Pawan Kumar, Jagwant Singh, Dinesh Kumar and Ms.Dimple Sood working as Teachers in Delhi Public School, Gurugram – respondent No.4 have brought the instant writ petition praying for issuance of a writ in the nature of mandamus for directing respondents No.1 and 2 to take action against respondent No.4 – Delhi Public School, Gurugram for acting arbitrarily violating the principles of natural justice and Articles 14 and 21 of the Constitution of India and for setting aside the revised terms and conditions and in addition to that quashing/setting aside the termination order of petitioner No.4 dated 14.9.2021.

2. According to the petitioners, initially they were recruited on probation; after completion of probation period, they have been confirmed; while issuing appointment letters to the petitioners certain terms and conditions were got signed from them by respondent –

management; on account of outbreak of Covid-19, the schools and educational institutions were closed for a few months; respondent No.4 – Delhi Public School, Gurugram was also closed; the salary of petitioners was withheld by respondent No.4 for that period; after some time the schools got re-opened in a phased manner and working of schools got started in a restricted mode; the salary of petitioners and other staff members were reduced by 25%; several staff members have already resigned from their posts. The respondents No.4 introduced new revised terms and conditions.

3. Feeling aggrieved, the petitioners have filed the present writ petition.

4. At the first instance, learned counsel for the petitioners was asked to address the Court on the point of maintainability of the writ petition. He has accordingly contended that a writ petition against wrongful action of respondent No.4 is maintainable. In support of his that contention, he has pressed into service **Anandi Mukta Versus V.R. Rudani & Ors., 1989 AIR 1607, Bineeta Patnaik Padhi Versus Union of India and others passed in WPA No.5544 of 2021 and Jasmine Ebenezer Arthur Versus HDFC ERGO General Insurance Company Ltd. and others passed in W.P. No.22234 of 2016.**

5. On the other hand, learned State counsel has placed reliance upon judgment **Management of S.D. Model Senior Secondary School & another Versus District Judge-cum-Service Tribunal & another** passed by this Court in CR No.4315 of 2012, wherein on a reference having been made by a Single Judge, the Division Bench had 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.

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6. After hearing learned counsel for the parties and going through the record as well as judgments cited from both the sides, I find that the Educational Tribunal has got the jurisdiction to adjudicate the present dispute.

7. Therefore, the present petition is disposed of relegating the petitioners to the remedy of approaching the Educational Tribunal at Gurugram having jurisdiction over the matter for redressal of their grievances.

12.10.2021
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(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No