

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 21136 of 2020 (O&M)

Date of decision : December 20th 2021

...

Dr. Dharmbir Singh

.....Petitioner

vs.

Maharishi Markandeshwar University,
District Ambala through its Chairman

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Neeraj Gupta, Advocate
for the petitioner.

Mr. Brijender Kaushik, Advocate for the respondent.

...

H. S. Madaan, J.

As per case of petitioner – Dr. Dharambir Singh, he had been working as Professor of Physics with Maharishi Markandeshwar University, Sadopur – Ambala, District Ambala, against a confirmed post since 5.9.2016 at Mulana Campus and he was transferred to Sadopur, District Ambala Campus in July 2017, where he worked as Head of Physics Department. All of a sudden the University stopped allotting him work and paying salary to him regularly. He had served a legal notice dated 18.9.2020 copy Annexure P-2, upon the respondent -University to which reply dated 5.10.2020, copy

Anneuxre P-4 was received, that all the staff members of the University were made clear in the meeting of May 2020 that some courses ran by the University had been discontinued with immediate effect and there would be requirement of nominal staff. Accordingly, some specific staff members including Dr. Dharmbir Singh had been told in clear terms to seek their suitable job elsewhere in other institutions and when the petitioner was asked in that behalf, he stated that as per terms and conditions of the appointment letter dated 5.9.2016, he would complete whole of the notice period, which would be complete on 31.8.2020 and on completion of the notice period, he would leave the service of the University and vacate the official accommodation allotted to him in the University Campus, but he had failed to do so. Therefore, Dr. Dharmbir Singh has approached this Court by way of filing the present writ petition, craving for issuance of a direction to the respondent-University to allow him to continue his service and allot him work of teaching and not to discontinue his services in an arbitrary and illegal manner besides paying the unpaid salary to him.

Notice of the petition was issued to the respondent-University, which has put in appearance and filed written reply, contesting the writ petition, stating that the jurisdiction to decide the present controversy rests with the Educational Tribunal and the writ petition is not maintainable.

I have heard learned counsel for the petitioner, learned counsel for the respondent, besides going through the record.

In the judgment, Management of S.D. Model Senior Secondary School and another vs. District Judge-cum-Service Tribunal and another 2014 (13) R.C.R. (Civil) 328, it was held by a Division Bench of this Court as under :-

23. In view of the above discussion, we conclude 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 present controversy squarely falls within the jurisdiction of the Educational Tribunal. Though learned counsel for the petitioner has contended that no formal order has been passed by the Management, which could be challenged in appeal before the Educational Tribunal, therefore, the petitioner cannot possibly approach such Tribunal. Whereas, learned counsel appearing for the respondent has submitted that the interpretation by learned counsel for the petitioner is very narrow. It does not mean that any order is to be passed by the Management against which appeal lies with the Educational Tribunal. Rather, it means that any dispute between the

employee and Management, except with regard to payment of gratuity, shall be adjudicated by the Educational Tribunal.

After hearing learned counsel for both the sides, I find that admittedly, the petitioner had served a legal notice upon the respondent before filing of the petition, to which reply had been filed by the University, copy of which being Annexure P-4, categorically informing him that after expiry of the notice period, his services stood dispensed with and he should vacate the official accommodation allotted to him in the premises of the University. The petitioner having been made aware of that situation, has not chosen to challenge this information in the form of written reply, in the writ petition. In any case, this reply can certainly form the basis of his approaching the Educational Tribunal and the argument by learned counsel for the petitioner does not hold good.

Learned counsel for the petitioner had further contended that the petitioner is a citizen of India and by his services being dispensed with in an illegal and arbitrary manner, he has got a right to file the writ petition for redressal of his grievances, notwithstanding availability of alternative remedy of approaching the Educational Tribunal. In support of his such contentions, he had referred to judgment *M/s Magadh Sugar and Energy Ltd. vs. The State of Bihar and others, in Civil Appeal No. 5728 of 2021, decided on 24.9.2021*, by the Hon'ble Apex court. However, learned counsel for the respondent has contended that with the alternative remedy being available to the petitioner, the writ petition, so filed by him cannot

proceed.

After hearing the counsel and going through the judgment by learned counsel for the petitioner, I find that the present dispute should be adjudicated by the Educational Tribunal, at Ambala for proper and effective adjudication of the controversy. Detailed pleadings by the parties, ought to be there and evidence would be required to be lead by the parties in support of their respective stands and accordingly, thereafter the controversy can be decided in a proper manner. This lengthy exercise cannot possibly be undertaken by this Court, in exercise of writ jurisdiction. As far as the authority *M/s Magadh Sugar and Energy Ltd. (Supra)* referred to by learned counsel for the petitioner is concerned, that had different facts and the context in which the observations were made, was also quite distinct. Therefore, this judgment does not come to the rescue of the petitioner in the present case.

Accordingly, the present writ petition is disposed of relegating the petitioner to the remedy of approaching the Educational Tribunal, at Ambala, in accordance with law.

December 20th 2021
chugh

(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No