

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

115

CWP No.11218 of 2022 (O&M)
DATE OF DECISION: 24th MAY, 2022

Appeejay School and another

.... Petitioners

Versus

**Controlling Authority (Under the payment of Gratuity Act, 1972)
and another**

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. H.L. Tikku, Senior Advocate with
Ms. Yashmeet and Mr. Manav Bajaj, Advocates,
for the petitioners.

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RAJBIR SEHRAWAT, J. (Oral)

This is a petition filed under Articles 226/227 of the Constitution of India for issuance of an appropriate writ, order or direction especially in the nature of Certiorari for quashing/setting aside the order dated 11.04.2022 (Annexure P-1) passed by respondent No.1, with a further prayer to direct respondent No.1 to decide the issue of maintainability before proceeding with recording of evidence in the matter.

The argument of the counsel for the petitioners is that the petitioner School is being unnecessarily dragged into the controversy by the respondent No.2. The respondent No.2 joined the service with the petitioners' school only w.e.f. 01.08.1997 and superannuated from the school on 31.03.2001. Therefore, the respondent No.2 had not completed

five years of service with the petitioners' school. Hence, the application moved by respondent No.2 before the respondent No.1-Controlling Authority; itself is not maintainable. The petitioners had moved application to claim preliminary issue on this aspect. Hence, the Controlling Authority is required to decide the issue of maintainability of the application in the first instance. However, the application moved by the present petitioners has been rejected by the impugned order. Hence, the Controlling Authority deserves to be directed to take up the issue of maintainability of the application in the first instance; and decide the same before proceeding further in the matter.

Having heard the counsel for the petitioners and having perused the impugned order, this Court does not find any substance in the arguments of the counsel for the petitioners. A bare perusal of the impugned order itself shows that the Controlling Authority is sanguine to the fact that the issue of completion of minimum five years of service by the respondent No.2 with the petitioners is a *sine qua non* for granting any gratuity to respondent No.2. Therefore, the Controlling Authority is already considering the issue. The only aspect which has been emphasized in the impugned order by the Controlling Authority is that both the parties have to be given an opportunity to substantiate their assertions even on the factum of length of service, by leading the evidence. This Court finds the course of action adopted by the Controlling Authority perfectly in line with the procedure required to be followed. Needless to say that the procedure under the Act and the relevant rules does not contemplate any segregation of an aspect to be tried or decided separately as a preliminary issue. Moreover, even if the

length of service of the respondent No.2 is to be decided by the Controlling Authority as a preliminary issue; still the respondent No.2 is also required to be granted an opportunity to lead the evidence in his possession or to summon the record which is supposed to be an exclusive possession of the petitioners. Therefore, it would be only appropriate if the entire matter is decided by the Controlling Authority by a composite order, instead of segregating the issues involved in the case.

In view of the above, finding no merit in the present petition, the same is dismissed.

24th MAY, 2022
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(RAJBIR SEHRAWAT)
JUDGE

Whether speaking/reasoned:	Yes	No
Whether Reportable:	Yes	No