

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

LPA-1111-2019 (O&M)

Manju Mukhija and others

....Appellants

Versus

State of Haryana and others

.... Respondents

(2)

LPA-1304-2019 (O&M)

Raj Kanwar Dahiya and others

....Appellants

Versus

State of Haryana and others

.... Respondents

Decided on : 20.12.2022

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Sunil K. Nehra, Advocate for the appellants.

Mr. Hitesh Pandit, Additional Advocate General, Haryana.

Mr. Gaurav Mohunta, Advocate and
Mr. Yashasvi Goyal, Advocate for respondent No.3
in LPA-1111-2019.

G.S. Sandhawalia, J.

CM-2466-LPA-2019 in LPA-1111-2019

CM-2840-LPA-2019 in LPA-1304-2019

Application for condonation of delay of 1522 and 1566 days in filing the present Letters Patent Appeals have been preferred against orders dated 12.02.2015 and 13.03.2015.

In the applications it has been averred that similarly situated persons had filed **CWP No.5859 of 2010 ‘Shashi Sharma Vs. State of Haryana and others’** which had been allowed on 17.11.2012. The review application, thereafter, of the State of Haryana had been allowed and the matter had been taken to the Apex Court in **SLP (C) No.14792 of**

2015. The appellants herein had filed interlocutory applications in the said

SLP for being impleaded before the Apex Court. Subsequently the said SLP had been dismissed as withdrawn with the remedy to file the Letters Patent Appeal. The appeal is stated to be pending bearing LPA No.384 of 2019. It is not disputed that the present set of appeals were de-tagged on 03.08.2022.

No reply has been filed to the applications either by the State or by the respondent-Management though appearance had been put in on 07.12.2022 in LPA-1111-2019.

Keeping in view the fact that since the applicant/appellants were agitating for their grievances in accordance with law by filing an appropriate application for intervention, sufficient cause as such is made out to condone the delay. Accordingly, the applications are allowed and delay of 1522 and 1566 days in filing the present Letters Patent Appeals is condoned.

CMs stand disposed of.

LPA Nos.1111 & 1304 of 2019 (O&M)

Present judgment shall dispose off LPA Nos.1111 & 1304 of 2019 since identical issue is involved in both the appeals.

Appellants are aggrieved against the order of the learned Single Judge dated 12.02.2015 wherein they were relegated to the remedy before the Educational Tribunal in view of the notification dated 07.05.2013, apparently on the consent as such of the counsels. The review was filed immediately thereafter which was dismissed being bereft of any merit and on the ground that the consent was there of the counsels for the parties. Resultantly, the present appeals have been filed.

Counsel for the appellants has primarily raised the argument

that the issue has not been decided on merits and even if there was a

consent of the counsels, the same would not give the power to the Educational Tribunal to hear the matter as per the terms of the notification as the relief claimed was not within the purview of the Educational Tribunal, which has been sought for. It is submitted that in such circumstances the matter be remanded to the learned Single Judge for disposal on merits.

Counsels appearing for the respondents were not in a position to dispute the factual matrix as such.

It is apparent from the record that the claim as such was to grant the same pay scales and allowances as admissible to the counter parts working in Government Schools/Government Aided Schools and to extend the benefit of grant-in-aid scheme to Senior Secondary Department of the Schools, as 10+1 and 10+2 classes had been started with the permission and approval of the Education Department. Resultantly, placing reliance upon the judgment passed in **Chandigarh Administration Vs. Mrs. Rajni Wali & others, JT 2000 (1) SC 159**, the relief had been claimed, which was against the State and the employer-school was arrayed as a proforma respondent.

The written statement filed by the State would go on to show that the defence as such of the State was that the writ petitioners were working in a school which was being run by their managing committee against unsanctioned/unaided posts under self-financed scheme and there was no statutory right for claiming the grant-in-aid. The State never had taken any objection that there was any alternative or efficacious remedy and the Educational Tribunal as such would have jurisdiction on the issue.

Rather the writ petitioners had specifically pleaded that they have no alternative remedy of appeal/revision except to approach this Court and

the said fact was not specifically controverted by the State to show that the Educational Tribunal as such had jurisdiction.

The constitution of the Educational Tribunal was done in pursuance of the judgment of the Apex Court passed in **TMA Pai Foundation & others Vs. State of Karnataka & others, (2002) 8 SCC 481** since it was held that the object of the setting up the Tribunal was that the teacher or a member of staff could not suffer through the substantial costs and should have a remedy rather than go to the Civil Court. Relevant portion of the said judgment reads as under:-

“64..... In the case of educational institutions, however, we are of the opinion that requiring a teacher or a member of the staff to go to a civil court for the purpose of seeking redress is not in the interest of general education. Disputes between the management and the staff of educational institutions must be decided speedily, and without the excessive incurring of costs. It would, therefore, be appropriate that an educational Tribunal be set up in each district in a State, to enable the aggrieved teacher to file an appeal, unless there already exists such an educational tribunal in a State -- the object being that the teacher should not suffer through the substantial costs that arise because of the location of the tribunal; if the tribunals are limited in number, they can hold circuit/camp sittings in different districts to achieve this objective. Till a specialized tribunal is set up, the right of filing the appeal would lie before the District Judge or Additional District Judge as notified by the government. It will not be necessary for the institution to get prior permission or ex post facto approval of a governmental authority while taking disciplinary action against a teacher or any other employee. The State Government shall determine, in consultation with the High Court, the judicial forum in which an aggrieved teacher can file an appeal against the decision of the management concerning disciplinary action or termination of service.”

Resultantly, a circular was issued by the Registrar General of this Court on 03.04.2008 authorizing all the District & Session Judges in the State of Haryana to hear appeals of the employees of aided/unaided Medical/ Dental/Ayurvedic/Homeopathic/Educational Institutions against the decision of Management within their jurisdiction. Later, the State Government issued the following notification on 28.05.2008:

“No.18/18/07-2HBIV in pursuance of the judgment dated 30.12.02 of the Hon’ble Supreme Court of India in TMA Pai Foundation and others Vs. State of Karnataka (2002) 8 SCC 481, wherein Hon’ble Court has observed that for the redressal of grievances of employees of aided/unaided Medical/Dental/Ayurvedic/Homeopathic-Educational Institutions, who are subjected to punishment or termination of services, a mechanism will have to be evolved by constituting appropriate tribunals. The right of filing appeals would lie before the District & Sessions Judge or Addl. District & Sessions Judges till the Tribunals are set up. It is notified that all the District & Sessions Judges in the State of Haryana have been authorized by the Hon’ble Punjab and Haryana High Court, Chandigarh vide their No.11233 Gaz.II/IX.CII, dated 03.04.2008 to hear the appeals of the employees of aided/unaided Medical/Dental/Ayurvedic /Homeopathic/Health Educational Institutions against the decisions of Management within their jurisdiction.”

Subsequently, on 07.05.2013 another Notification has been issued by the Haryana Government, which reads as under:

"No.7/45-2010 PS(2) - In pursuance of the judgment dated 30.12.2002 of the Hon'ble Supreme Court of India in TMA Pai Foundation and others Vs. State of Karnataka (2002) 8 SCC 481, wherein Hon'ble Court has observed that for the redressal of grievances of employees of unaided educational institutions, who are subjected to punishment or termination of services, a mechanism will have to be evolved by constituting appropriate tribunals. The right of filing

appeals would lie before the District & Sessions Judge or Addl. District & Sessions Judges till the Tribunals are set up. Accordingly, District & Sessions Judges in the State of Haryana have been authorized to hear appeals of employees of aided/unaided technical education institutions against decision of Management within their jurisdiction by the Hon'ble Punjab and Haryana High Court, Chandigarh vide No.23414 Gaz.II/IX.CII, dated 10.08.200_. The Tribunals already notified by the Hon'ble High Court will also hear appeals of employees of aided/unaided schools against the orders of Management.”

The said notification as such was subject matter of consideration before a Coordinate Bench of this Court in **Management of S.D. Model Senior Secondary School and another Vs. District Judge-cum-Service Tribunal and another’ 2014 (2) PLR 89**, wherein one of the issue was that whether the Educational Tribunal has jurisdiction to decide all service disputes other than matters arising out of disciplinary action. Resultantly, the Division Bench came to the conclusion that the Tribunal as such could go into the dispute regarding the pay-scales and the disciplinary proceedings against the decision of the Management regarding the same which could be subject matter of appeal. Resultantly, it was held that all service disputes arising out of order of Management would be appealable. Relevant portion of the said judgment reads as under:-

“13. We have heard Learned Counsel for the parties at length. It appears that directions in T.M.A.Pai Foundation’s case (supra) are in the context of disciplinary action against a teacher or other employees though clarifying that approval of any Government authority before taking any disciplinary action by the Management of a private unaided educational institution is not required. The direction of the Supreme Court was to provide a judicial Forum against the decision of the Management relating to the termination of services. Therefore,

strictly speaking, the direction of the Supreme Court was to constitute Educational Tribunal for determining the issues arising of disciplinary action initiated against the teacher.

14. Though the circular of the High Court is only to provide a Forum for presentation of the appeals, but the determination of the scope of hearing of such appeals falls within the legislative domain of the State Government independent of the order passed by the Supreme Court. The notification dated 28.05.2008 specifically does not specify as to which orders passed by the management would be appealable, but it is notified that all the District & Sessions Judges have been authorized by the High Court to hear appeals of the employees of aided/unaided Medical/Dental/Ayurvedic / Homeopathic/ Educational Institutions against the decision of Management within their jurisdiction. In other words, the circular of this Court contemplating 'Forum' has been adopted by the State for the purposes of presentation of appeals. Such decision to provide an appeal against the decision of the Management would include all orders which the Management pass in relation to employee of the institution. Such decision to contemplate filing of an appeal against the decision of the Management shall be deemed to be taken in exercise of executive powers of the State in terms of Article 162 of the Constitution of India in the absence of any other legislative enactment dealing with the issue.

15. The education including technical education, vocational and technical training of Labour specifically falls in Entry 25 of List III of 7th Schedule to the Constitution. However, in terms of Article 243G of the Constitution read with 11th Schedule, Adult and non-formal education is a function assigned to institution of rural self-government. Similarly, Entry 13 of 12th Schedule read with Article 243W empowers the Urban Local Bodies to promote education. In fact, the subject of education may fall in one or the other Entry of the 7th Schedule, but it could not be pointed out that there is any other legislation on the subject of teachers and the management of aided or unaided educational institutes in the States except the Act. In the absence of any specific Statute

enacted by the Parliament, to regulate the terms of employment of teachers of the educational institutions and the State having enacted the Act, prima facie, it appears that all disputes relating to pay scales and disciplinary proceedings etc. would fall within the legislative competence of the State Government.

16. The subsequent notification dated 07.05.2013 does not change the scope or jurisdiction of the Educational Tribunal in any substantial manner. Therefore, any decision of the Management could be challenged by way of an appeal before the Educational Tribunal. Consequently, we find that though the Supreme Court in T.M.A.Pai Foundation's case (supra), directed constitution of Educational Tribunal relating to disciplinary matters, but in view of the decision of the State Government, taken in exercise of the executive powers of the State, the decision of the Management regarding pay scale can also be subject matter of appeal before the Educational Tribunal.

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23 (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."

It is, thus, apparent that the limited jurisdiction of the Tribunal as such is regarding the issue of the dispute *inter se* the Management and the employees. In the present writ petitions as noticed above the claim was against the State Government for grant of aid to the institutes for teachers of Classes 10+1 and 10+2. In such circumstances, the order of the learned Single Judge as such relegating the appellants to the Educational Tribunal would be an exercise in futility and would prejudice the writ petitioners/appellants as reference could have been answered against them as not maintainable, on account of the view taken

by the Coordinate Bench. Thus, even if the consent was given wrongly, the review application was liable to be entertained.

Resultantly, we are of the considered opinion that the orders dated 12.02.2015 and 13.03.2015 are liable to be set aside. Accordingly, the appeals are allowed and the said orders are set aside. The writ petitions are, accordingly, restored to their original number and position. All pending civil miscellaneous applications are also stand disposed of.

To be listed before the learned Single Judge for disposal on merits, as per roster.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

20.12.2022
Naveen

Whether speaking/reasoned :	Yes
Whether Reportable :	No