

377-2

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-9006-2019 (O&M)

Date of Decision: 20.09.2023

S.P. Yadav

.....Petitioner

V/s.

State of Punjab and others

.....Respondents

CORAM: **HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA.**

Present Mr. Ramesh Kumar, Advocate
for the petitioner.

Ms. Shivani Sharma, DAG, Punjab.

Mr. Rajat Khanna, Advocate
Mr. Vijay Pratap Singh, Advocate
Mr. Vishal Saini, Advocate
for respondents No.2 to 4.

Mr. Ashish Pandey, Advocate for
Mr. Nitin Kaushal, Advocate
for respondent No.6.

SANJEEV PRAKASH SHARMA, J. (Oral)

1. Preliminary objection has been raised by the respondents regarding maintainability of the Writ Petition on account of availability of alternate efficacious remedy of filing Appeal before the Educational Tribunal, Punjab (hereinafter referred to as “The Tribunal”).

2. Section 7-A of the Punjab Affiliated Colleges (Security of Service) Act, 1974 (“the Act of 1974”) provides as under:-

“7-A.

(1) *The State Government may, by notification, constitute one or more College Tribunals for the purposes of this Act for such area as may be specified in such notification.*

(2) *A College Tribunal shall consist of one person only to be appointed by the State Government.*

- (3) *A person shall not be qualified for appointment as a Presiding Officer of a College Tribunal unless he has been a Judge of the High Court or an officer of the State Government not below the rank of a Commissioner of a Division.*
- (4) *The terms and conditions of service of the Presiding Officer of a College Tribunal shall be such as may be prescribed by rules made under this Act:*
- Provided that no person shall hold office as the Presiding Officer of a College Tribunal beyond the age of sixty-five years.*
- (5) *If any vacancy, other than a temporary absence, occurs in the office of the Presiding Officer of a College Tribunal, the State Government shall appoint another person in accordance with the provisions of this section to fill the vacancy and the proceedings may be continued before the College Tribunal from the stage at which the vacancy is filled.*
- (6) *The State Government shall make available to a College Tribunal such staff as may be necessary in the discharge of its functions under this Act.*
- (7) *All expenses incurred in connection with a College Tribunal shall be borne by the State Government.*
- (8) *A College Tribunal shall have power to regulate its own procedure in all matters arising out of the discharge of its functions including the place or places at which it shall hold its sittings.*
- (9) *A College Tribunal shall for the purposes of disposal of an appeal preferred under this Act, have the same powers as are vested in a Court of appeal by the Code of Civil Procedure, 1908, and shall also have the power to stay the operation of any order appealed against on such terms as it may think fit.*
- (10) *The order of the College Tribunal made in any appeal shall be final.”*

3. The said Section 7-A of the Act of 1974 was further amended vide notification dated 07.01.2022 wherein following amendment was made:-

“4. In the principal Act, in section 7-A:

(i) for sub-section (3), the following sub-section shall be substituted, namely:-

“(3) "The Chairman of an Educational Tribunal, shall be appointed by the State Government in consultation with the Chief Justice of the Punjab and Haryana High Court. The members of an Educational Tribunal shall be appointed by the State Government."; and

(ii) after sub-section (13), the following sub-section shall be added, namely:-

"(14) Every order made by the Tribunal shall be enforced by it in the same manner as if it were a decree made by the court in a suit before it, and the provisions of Order XXI of the First Schedule to the Code of Civil Procedure, 1908, shall apply."

4. Thus, the Educational Tribunal has been strengthened and its order is executable.

5. In spite of there being an efficacious alternative remedy available to the petitioner(s) for seeking of redressal of his/her/their grievances before the College Tribunal also called as Educational Tribunal, Punjab, this Writ Petition has been filed in this Court and is pending for adjudication since long. No reasons have been mentioned by the petitioner(s) for filing this Writ Petition before this Court without availing the said remedy. For a brief period, the Chairman was not posted. The said Tribunal was already constituted and was functional. However, recently a notification was issued by the Government of Punjab on 17.08.2023 whereby the Chairman has been nominated and appointed for the said Tribunal and it is fully functional.

6. Considering that the Tribunal would be in a position to examine the Appeal with all the aspects legal as well as factual which

cannot be examined under the limited scope of adjudication under Article 226 of the Constitution of India, it is more appropriate to direct the Tribunal to decide the case of the petitioner as the first forum for the redressal of his grievance instead of entertaining the present Writ Petition.

7. In this Writ Petition pleadings are complete and it is being argued that this Court ought not to send the petitioner(s) to the Tribunal. Counsel for the petitioner have also argued that the Writ Petition itself made alternatively, be transferred to the Tribunal so that the Tribunal may proceed from that stage itself.

8. I have considered the submissions of the counsel for the petitioner(s) and find that the Act of 1974 does not provide for transfer of cases pending in the High Court to the Tribunal, and there is no such similar provision as available under Section 19 of the Administrative Tribunal Act, 1985.

9. Further, this Court finds that the provision for filing Appeal existed at the time when the Writ Petition was filed before this Court and the Writ Petition was, therefore, not maintainable at the initial stage itself. This Court finds that the Tribunal has not been formed by exercising the power under Article 323-A or Article 323-B of the Constitution of India and the same does not have status to that of the Central Administrative Tribunal or the Armed Forces Tribunal nor can it be equated to that of the Income Tax Appellate Tribunal.

10. In view of the above and considering the prayer made by the petitioner, the Writ Petition is dismissed with liberty to the petitioner to file an Appeal before the Tribunal. The petitioner would be free to take all the

grounds as raised in the present Writ Petition before the Tribunal. However, any interim order passed by this Court in this Writ Petition would be duly considered by the Tribunal and appropriate order shall be passed while hearing the appeal.

11. If such an appeal is preferred by the petitioner before the Tribunal within a period of two months henceforth, the same shall be entertained without delving on the question of limitation, keeping in view Section 14 of the Limitation Act, 1963, and it is expected that the Tribunal shall decide the same on merits expeditiously preferably within a period of 1 year but latest by 2 years.

12. All pending applications in the present Writ Petition shall stand disposed of accordingly.

13. No costs.

September 20, 2023
Mohit Goyal

[SANJEEV PRAKASH SHARMA]
JUDGE

<i>Whether speaking / reasoned</i>	:	<i>Yes/No.</i>
<i>Whether Reportable</i>	:	<i>Yes/No</i>