IN THE COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4177 of 2015 (O&M)
Date of decision: 29.05.2015

Dr. Mukul Gupta ....Petitioner

versus

Industrial Finance Corporation of India Limited and others
....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

* * *

To be referred to Reporters or not?

Whether the judgment should be reported in the digest?

* * *

Present: Mr. Anubhav Ray, Advocate and
Mr. J.S. Bhatia, Advocate,
for the petitioner.

Mr. Anupam Bansal, Advocate for
Mr. A.M. Punchhi, Advocate,
for respondents No.1 and 3.

Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Rajat Arora, Advocate,
for respondents No.2 and 5.

Mr. R. Kartikeya, Advocate,
for respondent No.4.

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DEEPAK SIBAL, J.

Through the present petition, the petitioner who was an employee of respondent No.2- Management Development Institute

(hereinafter referred to as the 'Institute') has challenged the termination of his services. He has further prayed for the issuance of a direction to the respondents to reinstate him as Director of the respondent-Institute with all consequential benefits.

Raising a preliminary issue, learned Senior counsel for respondents No.2 and 5 while relying on notification dated 02.03.2015 issued by the Government of Haryana seeks dismissal of the present writ petition on the ground that the petitioner has an efficacious alternate remedy of filing an appeal against the order of termination of his services before the Educational Tribunal, Gurgaon.

The above referred Notification dated 02.03.2015 on which reliance is placed, reads as under :-

> *" HARYANA GOVERNMENT*
> *HIGHER EDUCATION DEPARTMENT*
> *NOTIFICATION*
>
> *Dated: the 2nd March, 2015*
>
> *No.24/21-2011-C-IV(3)- In pursuance to the judgment dated 20.10.2002 of the Hon'ble Supreme Court of India in TMA Pai Foundation and others versus State of Karnataka 2002(8) SCC 481 wherein the Hon'ble Court has observed that for the redressal of grievances of employees of aided/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 lime before the district and session judges or Additional district and session judges till the tribunals are set up.*
>
> *It is notified that the District and Session Judges in the State of Haryana have been authorized to heard the appeals of the employees of aided/unaided educational institutions against decision of management within their jurisdiction, by the Hon'ble Punjab and Haryana High Court, Chandigarh vide No.23414 Gaz.II/IX.C.II dated 10.08.2005. The tribunals already notified by the Hon'ble High Court will also bear appeals of Employees of aided/unaided colleges against the orders of management.*

Vijai Vardhan, IAS
Additional Chief Secretary to Govt. of Haryana,
Higher Education Department, Chandigarh."

Per contra, learned counsel for the petitioner submitted that notification dated 02.03.2015 has been issued in pursuance to the directions given by the Apex Court in ***'T.M.A. Pai Foundation and others versus State of Karnatka and others', (2002) 8 SCC 481*** and a reading of the judgment in ***T.M.A. Pai Foundation's case (supra)***, particularly para No.64 of the judgment would show that the Educational Tribunals were to be constituted to adjudicate disputes between managements of only private institutes with their respective employees.

Learned counsel for the petitioner further submitted that respondent No.2-Institute was under the persuasive control of the Industrial Finance Corporation of India Limited and therefore, being "State" within the meaning of Article 12 of the Constitution of India was amenable to the writ jurisdiction of this Court. To buttress this submission, counsel for the petitioner relied upon a Division Bench judgment of the Delhi High Court in ***LPA No.723 of 2004*** titled as '***Bernard D'mello versus Industrial Finance Corporation Limited'***, decided on 05.10.2006, wherein it has been held as under :-

> *"16. After considering the arguments advanced and the judgments of the Hon'ble Supreme Court cited by counsel and the other findings of the learned Single Judge noted by us, we hold that the IFCI and the Central Government has sufficient control on the MDI. Hence, the reasoning of the learned single Judge in so far as the maintainability of the writ petition under Article 226 in respect of public functions is*

concerned, is based on the established position of law and we hereby affirm the said view."

In view of the above, counsel for the petitioner stated that at the most notification dated 02.03.2015 would provide an alternate remedy to the petitioner and that would not constitute a bar towards the maintainability of the present writ petition before this Court.

A plain reading of the notification dated 02.03.2015, leads me to an irresistible conclusion that the notification covers within its ambit the disputes of employees pertaining to their punishment or termination of their services with the management of any aided and unaided Educational Institution in the State of Haryana.

Reliance of the counsel for the petitioner on para No.64 of the judgment in ***T.M.A. Pai Foundation's case (supra)*** is also misplaced. Para no.64, is reproduced below:-

"It would, therefore, be appropriate that an educational tribunal be set up in each district in a state, to enable to 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 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."

In this regard, the ultimate findings on the issue returned by the Apex Court while answering question No.5 (c) in Para No.162-G of the judgment can be usefully referred to:-

"162-G. Q.5(c) Whether the statutory provisions which regulate the facets of administration like control over education agencies, control over governing bodies, conditions of affiliation including recognition/withdrawal thereof, and appointment of staff, employees, teachers and Principals including their service conditions and regulation of fees, etc. would interfere with the right of administration of minorities?

A. So far as the statutory provisions regulating the facets of administration are concerned, in case of an unaided minority educational institution, the regulatory measure of control should be minimal and the conditions of recognition as well as the conditions of affiliation to an University or board have to be complied with, but in the matter of day-today management, like the appointment of staff, teaching and non-teaching, and administrative control over them, the management should have the freedom and there should not be any external controlling agency. However, a rational procedure for the selection of teaching staff and for taking disciplinary action has to be evolved by the management itself. For redressing the grievances of employees of aided and unaided institutions who are subjected to punishment or termination from service, a mechanism will have to be evolved, and in our opinion, appropriate tribunals could be constituted, and till then, such tribunals could be presided over by a Judicial

Officer of the rank of District Judge. [emphasis supplied]."

A perusal of the above shows that while finally answering the framed question the Apex Court has made no distinction between private colleges or otherwise and has simply issued directions for setting up of Educational Tribunals for adjudicating disputes of employees of all aided and unaided Educational Institutions. It can, thus, be seen that learned counsel for the petitioner, through his submissions, is seeking to import in the notification and the directions given by the Apex Court something which is not found on the plain reading of the same.

Still further, this issue was considered and decided by a Division Bench of this Court in ***'Management of S.D. Model Senior Secondary School and another versus District Judge-cum-Service Tribunal and another, 2014(2) PLR 89,*** wherein it was held that the notification issued by the State of Haryana while constituting Educational Tribunals was not arising in view of the judgment of the Apex Court in ***T.M.A. Pai Foundation's case (supra)*** but was in the exercise of executive powers of the State of Haryana. Para No.23 (ii) of the judgment, which is relevant is reproduced below:-

> *"(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."*

In view of the above, I can safely hold that the Educational Tribunals which have been constituted through notification dated

02.03.2015, are not just for settling disputes pertaining to service matters of employees of only private Educational Institutions but covers all aided/unaided Educational Institutions in the State of Haryana.

Respondent No.2-Institute is not a Government institute and is an unaided Educational Institution in the State of Haryana and is thus covered under the notification dated 02.03.2015.

Further, a perusal of the above reproduced conclusion arrived at by the Division Bench in ***Management of S.D. Model Senior Secondary School's case (supra)*** shows that all service disputes of employees of aided and unaided Educational Institutions in the State of Haryana can be adjudicated upon by the Educational Tribunals.

It is true that respondent No.2-Institute would be an amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India being "State" within the meaning of Article 12 of the Constitution of India but as observed earlier in view of the fact that the petitioner has an effective efficacious alternate remedy, I am not inclined to entertain the present writ petition at this stage. In this regard, it would be useful to refer the following observations by a Constitution Bench of the Apex Court in ***'Thansingh Nathmal v. Superintendent of Taxes, (1964) 6 SCR 654,*** wherein it was observed as under:-

> *"The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary : it is not*

exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Courts does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a Court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be by passed, and will leave the party applying to it to seek resort to the machinery so set up [emphasis supplied].”

The same opinion has been recorded by the Apex Court in ***'Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Limted and others, (1985) 1 SCC 260***, in the following

words:-

> *"Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute."*

In ***'Modern Industries v. Steel Authority of India Limited (2010) 5 SCC 44***, the Apex Court held that where the remedy was available under the Interest on Delayed Payments to Small Scale and Ancillary Industrial Undertakings Act, 1993, the High Court was not justified in entertaining a petition under Article 226 of the Constitution.

Similar views were expressed by the Apex Court in ***'Union of India v. Satyawati Tondon and others' 2010(8) SCC 110***, wherein it was held as under:-

> *"There is another reason why the impugned order should be set aside. If respondent No.1 had any tangible grievance against the notice issued under Section 13(4) or action taken under Section 14, then she could have availed remedy by filing an application under Section 17(1). The expression 'any person' used in Section 17(1) is wide of import.*

It takes within its fold, not only the borrower but also guarantor or any other person who may be affected by the action taken under Section 13(4) or Section 14. Both, the Tribunal and the Appellate Tribunal are empowered to pass interim orders under Sections 17 and 18 and are required to decide the matters within a fixed time schedule. It is thus evident that the remedies available to an aggrieved person under the SARFAESI Act are both expeditious and effective. Unfortunately, the High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore in all such cases, High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant

statute."

No special circumstances have been shown to me by the counsel for the petitioner which would compel me to interfere at this stage while exercising my writ jurisdiction under Article 226 of the Constitution of India.

The Educational Tribunal is manned by a District Judge who by virtue of the post that he holds and years of experience that he possesses cannot by any length of imagination not to be considered as an efficacious Forum especially when the Forum has been chosen by none other than the Apex Court in '***T.M.A. Pai Foundation's case (supra)***. All the issues raised by the petitioner with regard to the challenge to his impugned termination can effectively be gone into by the concerned District Judge who constitutes the Educational Tribunal.

Relegation of the petitioner to an efficacious alternate Forum at the very initial stage like the present one would not be prejudicial to the interest of any party especially when, in the peculiar facts of the case in hand, wherein the petitioner had earlier approached the Delhi High Court and then this Court, to direct the Educational Tribunal, Gurgaon, to decide the appeal, if any, to be filed by the petitioner against the termination of his services expeditiously but not later than 9 months from the date of filing of such appeal. The Educational Tribunal, Gurgaon, would also consider and decide the interim prayers to be made by the petitioner along with his appeal, if he chooses to file such an appeal, without any delay but of course by following procedure prescribed by law.

The interim protection given to the petitioner vide order dated

10.03.2015 shall continue for a period of 15 days from today enabling the petitioner in the meanwhile to prefer his appeal against his termination before the Educational Tribunal at Gurgaon.

The writ petition stands disposed of in the above terms.

No costs.

(DEEPAK SIBAL)
JUDGE

May 29, 2015
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