



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

(1)

**LPA No.737 of 2018 (O&M)
Reserved on: 13.01.2025
Date of Decision: 06.02.2025**

Kamlesh

.....Appellant.

Versus

Presiding Officer, Labour Court-III, Faridabad and another

.....Respondents.

(2)

LPA No.841 of 2018 (O&M)

Ram Pyare Singh

.....Appellant.

Versus

Presiding Officer, Labour Court-III, Faridabad and another

.....Respondents.

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Argued by:- Mr. Deepak Sonak, Advocate with
Mr. Vikas Sonak, Advocate
for the appellant(s).

Mr. Mohak Bhadana, Advocate with
Mr. Satyaveer Singh, Advocate
for respondent No.2 in LPA No.737 of 2018.

Mr. Tarun Singhal, Advocate
for respondent No.2 in LPA No.841 of 2018.

MEENAKSHI I. MEHTA, J.

Both the above-captioned Letters Patent Appeals are being taken up together for discussion and adjudication as the similar questions of law and facts are involved therein.



2. ***LPA No.737 of 2018*** has been preferred by the appellant-writ petitioner named Kamlesh whereas ***LPA No.841 of 2018*** has been filed by the appellant-writ petitioner namely Ram Pyare Singh (here-in-after both of them to be referred as ‘the appellants’) to lay challenge to the judgments rendered by learned Single Judge on 27.02.2018 and 16.02.2018, whereby ***CWP Nos.3740 and 3571 of 2018***, moved by them for seeking the issuance of the writ in the nature of certiorari for setting-aside the Awards passed by the Presiding Officer, Industrial Tribunal-cum-Labour Court-III, Faridabad (for short ‘the Labour Court’) on 26.10.2015 and 14.03.2017 respectively, have been dismissed.

3. Shorn and short of unnecessary details, the facts, resulting in the filing of ***CWP No.3740*** by the appellant in ***LPA No.737 of 2018***, are that she had been employed by respondent No.2-School, as ‘*Safai Karamchari*’, on 05.01.2009 and her services were terminated on 22.10.2010. Then, she raised an industrial dispute in this regard, which was referred to the Labour Court and vide the Award dated 26.10.2015, the afore-said Reference had been disposed of, with the observations that it was not maintainable but the appellant would be at liberty to approach the appropriate Forum of District and Sessions Judge, Faridabad.

4. Bereft of the unnecessary details, the facts, culminating in the filing of ***CWP No.3571*** by the appellant in ***LPA No.841 of 2018***, are that he was employed by respondent No.2-School, as a ‘Driver’ on 01.08.1992. However, a domestic enquiry had been conducted against him regarding the charge of misconduct and he was held guilty for the same and consequently,



he had been dismissed from service vide the letter dated 20.01.2014 and the industrial dispute, as raised by him in respect thereof, had been referred to the Labour Court. Vide the Award dated 14.03.2017, the above-mentioned Reference was returned unanswered on account of its non-maintainability but the appellant had been granted the liberty to avail the remedy of filing an appeal before District and Sessions Judge, Faridabad, against the decision of respondent No.2-School.

5. We have heard learned counsel for the appellants as well as learned counsel for respondent No.2-School(s) in both the present intra Court appeals and have also perused the files carefully.

6. Learned counsel for the appellants have contended that the constitution of the Educational Tribunals, in pursuance of the verdict handed down by the Apex Court in **T.M.A. Pai Foundation and others Vs. State of Karnataka and others, 2003(2) SCT 385**, did not debar the appellants from availing the statutory remedy of raising the industrial dispute regarding their termination/dismissal from service, as available to them under the Industrial Disputes Act, 1947 and therefore, the Labour Court was required to answer the afore-said References, as arisen from their above-mentioned disputes, on merits instead of relegating them to the Educational Tribunal for seeking the redressal of their afore-referred grievance(s) and in these circumstances, it becomes quite explicit that the impugned judgments, as passed by learned Single Judge in both the above-said writ petitions as well as the Awards passed by the Labour Court, are not legally sustainable and hence, the same deserve to be set-aside.



7. Per contra, learned counsel for respondent No.2-School(s) have argued that the appellants were supposed to challenge the orders passed qua their termination/dismissal from the service, by approaching the Educational Tribunal, as set-up/constituted for this purpose and it being so, the instant appeals are liable to be dismissed.

8. It is worth-while to point it out here that while dealing with the bunch of LPAs involving the similar dispute (**LPA No.1908 of 2018** tilted as '**Savitri Devi Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court and others**' and the connected matters), the Division Bench-I of this Court has held as under:-

*"1. These intra Court appeals have been filed against the order dated 13.09.2018 passed by learned Single Judge, whereby, the challenge made to the award passed by the Labour Court dated 14.03.2017 was upheld. The award dated 14.03.2017, decided the reference with regard to illegal termination from service against the workman by holding that in view of the alternative remedy of approaching the educational Tribunal constituted pursuant to the Apex Court's decision in **T.M.A. Pai Foundation & others vs. State of Karnatka & others**' 2003(2) SCT 385, the reference was not maintainable.*

*2. It appears that the Labour Court as well as learned Single Judge were oblivious of the decision of this Court rendered by the Full Bench in the case of **Ambala Central Co-op. Bank Limited Ambala Vs State of Haryana and others**', 1993(2) S.C.T. 310, where similar dispute was adjudicated upon by holding*



thus:-

“7. In view of the consistent decisions referred to above specifying the scope of the authorities under the Co-operative Societies Act, the Civil Court and the Labour Court and the remedies available there-under, the decision of the Division Bench of this Court in the Kapurthala Central Co-operative Bank Limited v. State of Punjab, (supra), does not lay down the law correctly. In this case it was held that the employee of a Co-operative Society having elected his remedy of filing an appeal under the provisions of the Act and failed there could not get the matter referred through the State to the Labour Court under Section 10 of the Industrial Disputes Act. It was also held in this case that the decision of the authorities under the Co-operative Societies Act, Registrar of the Co-operative Societies) would operate as res judicata. Since the dispute between the workmen and the Bank in the present case related to establishment of the Society, it could be referred to the Arbitrator under Section 102 and adjudicated under section 103 of the Act reproduced above. Jurisdiction of the Civil Court would obviously be barred to challenge those decisions. However, Industrial Disputes Act dealing with the special subject relating to rights of the workman and the management and the relief provided therein could only be granted by the Court established under the Industrial



Disputes Act. Section 128 of the Haryana Co-operative Societies Act was rightly held to be ultra vires i.e. the remedies available under the Industrial Disputes Act could not be denied to the workman of the management, a Co-operative Society. In that sense the order of the Registrar passed under the provisions of the Co-operative Societies Act cannot be treated as a decision final to operate as res judicata in the Labour Court in a reference under Section 10 of the Industrial Disputes Act. Obviously when the order itself is under challenge the same cannot operate as res judicata. To sum up, it is held that after the Registrar decides the matter between an employee and employer, a Co-operative Society, with regard to the termination of his service under Sections 102 and 103 of the Haryana Co-operative Societies Act, 1984 the matter could be referred under Section 10 of the Industrial Disputes Act as an industrial dispute to the Labour Court for adjudication. It is further held that such a decision made by the Registrar under the Haryana Co-operative Societies Act would not operate as res judicata in proceedings initiated on reference under Section 10 of the Industrial Disputes Act in the Labour Court.

8. The matter be put up before the Division Bench for further proceedings.”

3. It was held by the Full Bench that remedy available under the Industrial Disputes Act, 1947 cannot be excluded by any other special law.



Therefore, it is available to the workman, irrespective of availability of other alternative remedy. As such, it appears that the decision rendered by the Labour Court as well as learned Single Bench, is per incuriam the view of Full Bench in the case 'Ambala Central Co-op. Bank Limited Ambala Vs State of Haryana and others', 1993(2) S.C.T. 310.

4. *Similar view has recently been taken by this Bench on 05.09.2024, while allowing the LPA-1204-2017 titled as "**Jagjit Singh Vs The Presiding Officer, Industrial Tribunal, Ludhiana and another**".*

5. *In view of the above, the impugned order dated 13.09.2018, passed by learned Single Judge as well as the award dated 14.03.2017 passed by the Labour Court are set aside."*

9. The afore-quoted verdict is fully applicable to both the present appeals and accordingly, we are of the considered opinion that instead of granting the liberty to the appellants to approach the Educational Tribunal to challenge/assail the decision of their respective employers regarding their termination/dismissal from the service, the Labour Court was required to answer the References, by adjudicating the same on merits.

10. As a sequel to the fore-going discussion, we, hereby, set-aside the impugned judgments dated 27.02.2018 and 16.02.2018 passed by learned Single Judge and also the Awards passed by the Labour Court on 26.10.2015 and 14.03.2017 and further direct for placing the matters before the Labour Court for the adjudication of the References on merits, as expeditiously as possible, preferably within the period of one year hence-forth.



11. The parties, through their respective counsel, are directed to appear before the concerned Labour Court(s) on 03.03.2025.

12. Both the Letters Patent Appeals in hand stand disposed of accordingly.

(SANJEEV PRAKASH SHARMA)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

06th February, 2025

Yag Dutt

Whether speaking/reasoned: Yes

Whether Reportable: No