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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP- 689-2025

Date of Decision: 14.01.2025

S.K. JAIN AND ANOTHER

..... PETITIONERS

VERSUS

DISTRICT JUDGE, SONIPAT- CUM- EDUCATIONAL TRIBUNAL,
SONIPAT AND OTHERS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYAPresent: Mr. Vinay Singh Rathee, Advocate
for the petitioner.**TRIBHUVAN DAHIYA, J. (ORAL)**

The petition has been filed *inter alia* seeking a writ of *certiorari* quashing the judgment dated 25.10.2024, Annexure P-4, passed by the Educational Tribunal, whereby the appeal filed by the second respondent has been partly allowed by directing payment of arrears of salary amounting ₹1,45,000 within two months. It has also been ordered that he is entitled to calculation of gratuity by taking his monthly salary as ₹30,000 instead of ₹25,000.

2. Learned counsel for the petitioner has contended that the order passed by the Tribunal is not sustainable on two counts. Firstly, the second respondent was appointed with the petitioner-Management on a monthly salary of ₹25,000, which was wrongly taken to be ₹30,000. The letter of



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appointment, Annexure P-5, issued to him mentioning the pay as ₹30,000 per month cannot be considered valid as it is undated. Secondly, it has wrongly been directed that the second respondent would be entitled to calculation of gratuity by taking his salary as ₹30,000 per month. The direction is without jurisdiction since as per law laid down by the Division Bench in CR-4315-2012 titled *Management of S.D. Model Senior Secondary School and another v. District Judge-cum-Service Tribunal and another*, the Tribunal is not competent to adjudicate the disputes relating to gratuity arising under the Payment of Gratuity Act, 1972 (for short, 'the Act, 1972).

3. The submissions made by learned counsel for the petitioner have been considered.

4. It remains undisputed that the second respondent was appointed by the petitioner-Management on 02.08.2010. The amount of monthly salary payable to him as per the terms of appointment was disputed by the Management before the Tribunal as well, but it failed to produce any evidence on record establishing that he was actually drawing any lesser amount as monthly salary. The Management being the employer was privy to the record, if any, and was bound to produce the same as well. On its failure to do so, the salary mentioned in the letter of appointment was accepted as correct, which is unexceptionable. The Tribunal's findings to that effect recorded in para 9 and 10 of the impugned Judgment are as under:

9. The factum of appointment of appellant on 02.08.2010 is not being denied directly by respondents No. 1 & 4 though they had pleaded that as per them the monthly salary was Rs. 25,000/- per month when they took over Management in February, 2020. The previous Chairman of the Management/



respondent No. 1, respondent No. 2, however, has admitted that appellant was appointed on 02.08.2010 and in 2018 due to financial crunches his salary was reduced to Rs.20,000/- / Rs.25,000/-. The another aspect, which needs to be noted in present case is that both respondents No. 1 & 4 on one hand and respondent No. 2 on another hand are claiming that the record pertaining to appointment, payment of salary of appellant, bank account statements etc. is with other side. It is the case of respondent No. 2 that when he left the Management all the records were handed over to respondents No. 1 & 4 whereas respondents No. 1 & 4 claimed that respondent No. 2 never handed over any record pertaining to college and took away all the records. It is also being claimed that after taking over of Management, college had issued detailed advertisement in the newspapers claiming that as per them such payment is due and if any body has objection he can make his request, however, no request was made by appellant claiming payment of lesser salary.

10. However, in present case once appellant has succeeded in proving the fact that he was appointed on 02.08.2010 and this fact has not been disputed by the respondents then it was the duty of the respondent / institution to place on record appointment letter vide which appellant was appointed and also to disclose the exact amount of salary agreed to be paid and was actually paid till July, 2018 as respondent No. 2 has duly admitted that salary of appellant was reduced in 2018. The best evidence is available with college and the Management, which college and the Management have failed to produce on record. Therefore, Ex. A-2 has to be accepted by this court as correct appointment letter.

5. The contention regarding lack of jurisdiction in the Tribunal to hold the second respondent entitled to calculation of gratuity by taking



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salary as ₹30,000 is also not sustainable, since the Tribunal has not adjudicated any dispute relating to payment of gratuity under the Act,1972. The direction to calculate the gratuity on the basis of salary actually drawn by the second respondent is based upon the finding recorded in the judgment regarding actual salary paid to him. There is nothing illegal or irregular about it.

6. The Tribunal's judgment has been rendered after proper appreciation of facts and the evidence on record, it does not suffer from any error of law. The petition accordingly stands dismissed.

(TRIBHUVAN DAHIYA)
JUDGE

14.01.2025

*Seema**Whether speaking/reasoned* *Yes/No**Whether reportable* *Yes/No*