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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-16869-2007 [O&M]

Date of Decision : December 15th, 2015

Chander Kant and others

.... Petitioners

Versus

State of Haryana and others

.... Respondents

**CORAM : HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE SHEKHER DHAWAN**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present Ms. Alka Chatrath, Advocate,
for the petitioners.

Mr. Sandeep Moudgil, Addl. A.G. Haryana,
for respondents No. 1 to 3.

Mr. Mahavir Sandhu, Advocate,
for respondent No. 5.

SHEKHER DHAWAN, J.

Petitioners, who were working in the Government Aided Schools in the State of Haryana, have filed the present writ petition under Articles 226/227 of the Constitution of India for issuance of writ of certiorari quashing the action of the respondents in granting Dearness Allowance on pension to the petitioners with effect from 15.12.2005 i.e. from the date of notification [Annexure P/2] issued by Haryana Government, whereby sub-rule [4] of Rule 8 of Haryana Aided Schools [Special Pension and Contributory Fund] Rules, 2001 was added, instead of with effect from the

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date of their retirement.

2. The case of the petitioners, that they are entitled to Dearness Allowance on pension from the date of notification of pension scheme which came into operation w.e.f. 11.5.1998. The petitioners, in turn are seeking parity with their counter-parts working in the Government Schools in the State of Haryana.

3. Learned counsel for the petitioners submitted that as per the report of the Kothari Commission constituted by Government of India in the year 1963, it was recommended that there should be parity of pay scales, emoluments including pay and allowances. The Commission also made recommendations in respect of retiral benefits which should be admissible to them. The State of Haryana came into existence due to re-organization of State of Punjab under the Re-organization Act, 1966. The State also decided to bear 100% expenditure towards the implementation of Kothari Commission report. He further submitted that the Government of Haryana enacted Haryana Aided Schools [Security of Service] Act, 1971 for governing the service conditions of teachers working in the privately managed aided schools in Haryana. Even after providing parity of pay scales and allowances in the Rules, the same was not maintained. Prior to the year 1999, the employees working in Government Aided Schools in the State of Haryana were not entitled to pensionary benefits. However, the State of Haryana formulated pension scheme which was notified on 31.05.1999 and the same was made applicable retrospectively with effect from 11.5.1998. However, Dearness Allowance was not payable to the employees, who retired from the privately managed aided schools and they agitated the matter. Government of Haryana issued a notification dated

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15.12.2005 [Annexure P/2] whereby, sub-rule [4] to Rule 8 was added to the effect that the "rate of dearness allowance payable to the pensioners shall be such as may be declared by the Government from time to time." This was made applicable from the date of notification i.e. 15.12.2005.

4. Learned counsel for the petitioners further submitted that the action of the respondents in granting dearness allowance on pension to the employees of privately managed aided schools from the date of publication of the amended Rules of 2005 i.e. from 15.12.2005 instead of granting the same retrospectively, is arbitrary and illegal and the petitioners are entitled to get Dearness Allowance from the date they have retired from the service.

5. Learned counsel representing the respondents submitted that the State of Haryana has already notified the Rules and the retirees shall also be entitled to Dearness Allowance on pension with effect from the date of notification i.e., 15.12.2005. Identical provision has also been incorporated in respect of Haryana Affiliated Colleges [Pension and Contributory Provident Fund] Amendment Rules, 2006, notified on 11.5.2006 and pensioners are entitled to seek Dearness Allowance on their pension from the date of notification and the same cannot be given retrospective effect. Even the writ petition, bearing CWP No. 18524 of 2002 was withdrawn vide orders dated 9.3.2015.

6. We have considered the submissions made by learned counsel for the parties and are of the view that the respondent-State has already considered the matter in its entirety and has decided that the persons retiring from privately managed aided schools shall be entitled to pension and as per notification dated 15.12.2005 [Annexure P/2], the petitioners

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shall also be entitled to Dearness Allowance on the pension amount from the date of said notification. Identical matter was brought before this Court by employees of Haryana Affiliated Colleges and in view of the notification dated 11.5.2006 [as applicable to Haryana Affiliated Colleges], the writ petition, CWP-18524-2002 titled **O.P.Gupta Vs. State of Hayana and others**, was withdrawn vide order dated 09.03.2015. The case of the petitioners is identical and they are not entitled to seek Dearness Allowance on pension from the date of their retirement, but they are entitled to receive Dearness Allowance on pension from the date of notification, i.e. 15.12.2005 and the same has already been done vide above notification. Consequently, we find no merit in the writ petition and dismiss the same.

(SATISH KUMAR MITTAL)
JUDGE

(SHEKHER DHAWAN)
JUDGE

December 15th, 2015
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