IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 8034 of 2012
Date of decision : 13.05.2015

Ashok Kumar

...... Petitioner

versus

State of Haryana and others

...... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

***

Present:- Mr. R. N. Sharma, Advocate
for the petitioner.

Mr. Ashish Kapoor, Additional Advocate General, Haryana

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1. To be referred to the Reporters or not? Yes.
2. Whether the judgment should be reported in the Digest?

AMOL RATTAN SINGH, J.

The petitioner seeks the following reliefs in this petition, in respect of the service rendered by his late wife, Smt. Parvesh, as a JBT teacher in the Saini Primary School, Rohtak, till the date of her unfortunate death on 04.01.2007:-

i) Benefits of service rendered by Smt. Parvesh between 15.02.1973 to 01.04.1980, after accepting the petitioners' option to deposit the share of Contributory Provident Fund for the said period, alongwith interest, so as to give benefit of 33 years qualifying service instead of the 26 years, 9 months and 4 days now granted vide the impugned order dated 20.08.2009;

ii) For grant of financial assistance of Rs.5 lacs on account of the pre-mature death of his wife, while in service, in terms of the Haryana Compassionate Assistance to the Dependents of

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the Deceased Government Employees Rules, 2006;

iii) Release of revised pay, pension and pensionary benefits w.e.f. 01.01.2006;

iv) Interest on delayed payment of family pension and gratuity, from 04.01.2007 to 02.06.2008.

2. The facts of the case are that the petitioners' late wife joined as a JBT teacher on 15.02.1973, in the school run by respondent no.5, i.e. the Saini Shikshan Sansthan, Rohtak, and continued to be in service in the said school till the date of her death, i.e. 04.01.2007. The school is a government aided school, run by the said respondent.

Though she joined in the year 1973, the contribution to the Contributory Provident Fund, as was to be deposited by the Management, in lieu of pension, as per the then existing retirement benefits scheme, was deposited only w.e.f. 01.04.1980, by respondent no.5.

After the pension scheme came to be notified by the respondent-Government on 29.03.2001, providing for pension to employees of Government aided private schools, by promulgation of the Haryana Aided Schools (Special Pension and Contributory Provident Fund) Rules, 2001, all eligible employees were entitled to pension, by counting their period of service from the date that contribution was first made to the CPF by the Management. Thus, since in the case of the petitioners' wife, contribution to the fund was made only w.e.f. 01.04.1980, she was taken to have been in service, for the purpose of calculating the amount of family pension payable to the petitioner, only with effect from that date.

3. Rule 5 of the said Rules of 2001 reads as follows:-

"Qualifying service:- (1) The service of an employee shall qualify for retirement benefits under these rules, as

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under:-

a. The service rendered on attaining the age of 18 years on aided sanctioned post;

b. The service rendered till the attainment of the age of sixty years in the case of Group-D employee, and in case of others, service rendered till the attainment of the age of fifty eight years. However, the qualifying service will be taken into account with effect from the date an employee subscribes contribution towards contributory provident fund;

i) The leave admissible under the rules to be framed under the Act and under the instructions issued by the Government from time to time, excluding leave without pay and period of suspension overstayal of leave not subsequently regularized under the Act and period of break in service.

ii) Service rendered in one or more aided schools under the same Management provided the transfer is made in terms of the Act.

iii) The service rendered on aided sanctioned post in another aided school in the State of Haryana.

Provided that the official has been appointed through proper channel on an aided sanctioned post and the approval of continuity of service has been obtained from the Director;

Provided further that the contributory provided fund account of the employee in the previous school continued as such in the subsequent school to which he is transferred or appointed and there is no break in service."

4. Further, another set of Rules, the Haryana School Education Rules, 2003, were amended vide the Haryana School Education (Amendment) Rules, 2007, by virtue of Rule-32 of which, Rule-114 of the 2003 Rules was amended to stipulate that an employee/retiree who has not

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availed of the option to deposit the subscription to the contributory provident fund till now, may give his option to deposit the subscription to the fund, alongwith interest at the prevailing rate as worked out by the Director, within 90 days from the date of commencement of the said Rules.

Though the amendment was notified on 19.01.2007, instructions were issued by the Chief Secretary to the Government of Haryana on 14.03.2008, bringing to the attention of all concerned, that the Rules of 2003 have been amended as aforesaid and necessary action should be taken immediately to deposit the share of the CPF of all concerned employees/retirees, as had exercised their option to deposit the subscription, into the relevant Government Head of Account.

It is necessary to notice at this stage itself that these facts are not denied by the respondents in their reply.

5. The petitioners' claim, in his petition, is that he never came to know about the aforesaid amendment or the instructions of the government dated 14.03.2008, in view of the fact that his wife had already died and therefore, was obviously not in service. Consequently, he is stated to have deposited the contributory share towards the provident fund w.e.f. 15.02.1973 to 31.03.1980, on 09.06.2009 and copies of the 'Treasury Challans' are annexed as Annexure P-5 with the petition, which however, show the name of the employee as Smt. Usha, JBT teacher and not that of the petitioners' late wife, Smt. Parvesh.

6. Meanwhile, the petitioner had got a legal notice served upon the respondents on 25.11.2008 (Annexure P-6) claiming therein that even if his wifes' services were to be counted with effect from the date when contribution was made to the CPF (01.04.1980), the amount of monthly

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pension payable to him would be Rs.3989/- and not Rs.2925/- as was being paid. He also laid claim to Rs.5 lacs by way of Compassionate Financial Assistance, in terms of the Rules of 2006 aforesaid.

7. When the legal notice was not replied to, the petitioner filed CWP No.7960 of 2009 seeking that the total service rendered by his wife w.e.f. 15.02.1973 to 04.01.2007, be counted towards grant of family pension, alongwith dearness pay to the tune of 50%, as also for release of leave encashment. A prayer was also made for grant of financial assistance, in terms of the 2006 Rules and for grant of interest on delayed payment of pension. In other words, substantially the same relief as has been sought in the present petition, was sought in CWP No.7960 of 2009.

The aforesaid writ petition was decided by a co-ordinate Bench on 25.05.2009, noticing therein that though the petitioner has been released family pension and gratuity, his request for leave encashment had not been considered in terms of Rule 91 of the Haryana School Education Rules, 2003. The petition, however, was disposed of with a direction to the respondents to decide the petitioners' legal notice dated 25.11.2008, by passing a speaking order.

8. Consequently, the impugned order dated 20.08.2009 has been passed by the 2nd respondent, holding that a lesser amount of monthly family pension of Rs.2925/- was erroneously given to the petitioner and that he is actually entitled of Rs.3989/- per month, taking his wifes' qualifying service to be 26 years, 9 months and 4 days (w.e.f. 01.04.1980 to 04.01.2007). He was also held entitled to an additional amount of gratuity of Rs.17,330/-.

He was, however, not held to be entitled to the grant of

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financial assistance under the Compassionate Assistance Rules, 2006, which are stated to be applicable only to Government employees and not to employees of privately managed government aided schools.

Interest on delayed payment was also denied in view of the fact that the petitioners' case for family pension, after his wifes' death, was received from respondent no.5 only on 11.04.2007, which was returned due to deficiencies and was thereafter received only on 07.02.2008 after which, pensionary benefits were granted to him on 28.03.2008.

Thus, this order has been challenged by way of the present petition, to the extent that it denies the petitioner interest on delayed payment, *ex-gratia* financial assistance and does not grant the benefit of 33 years service rendered by his wife, but only of 26 years, 9 months and 4 days.

The issue of leave encashment has not been touched upon in the impugned order, even though, in the order of this Court passed in CWP No. 7960 of 2009, it had been specifically referred to. The omission is possibly on account of the fact that the direction issued in that petition was to the effect that the prayer of the petitioner, made in the legal notice served upon the respondents, be decided by passing a speaking order. In the said notice, there was no claim made to leave encashment, even though the same was made in CWP No.7960 of 2009. Strangely, again no prayer has been made in the present petition for payment of leave encashment to the petitioner, as was due to his wife, though in the main body of the petition, as also in the law points raised, a claim has been made for the same.

Mr. Sharma, learned counsel for the petitioner submitted that the omission in the prayer clause seeking release of leave encashment, was

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an inadvertent error which can be condoned by this Court and the said prayer added as a part of relief sought, even by resorting to the residual clause-(v) in the main prayer clause.

9. He submitted that as per Rule 91 of the Haryana School Education Rules, 2003, the petitioners' late wife would have been entitled to leave encashment of earned leave not availed of, during her service tenure.

Though the said rule has not been reproduced in the petition, as per the copy of the said rules available with this Court, Rule 91 reads as under:-

> "91.(1) The employees shall be entitled to causal leave as under:
>
> | | | |
> |---|---|---|
> | a) | Upto ten years service | 10 days |
> | b) | Ten to twenty years service | 15 days |
> | c) | Above twenty years service | 20 days |
> | d) | All female employees | 20 days |
>
> (2) The head of school shall be competent to grant causal leave to the employees and in the case of head of the school, the managing committee.
>
> (3) The employees (teaching) shall also be entitled to ten days earned leave in lieu of half pay leave on completion of one year.
>
> (4) The employees (nonteaching) shall be entitled to earned leave as under:
>
> | | | |
> |---|---|---|
> | i) | Upto the service of ten years | @1/24 days |
> | ii) | Above ten years upto twenty years of service | @1/18 days |
> | iii) | Above twenty years of service | @ 1/12 days |
>
> These employees shall also be entitled to twenty half pay leave on completion of one year.
>
> (5) The benefit of leave encashment, facilities of leave

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travel concession, bonus and medical reimbursement etc. shall be at the discretion of the managing committee. No grantinaid on this account shall be reimbursed by the Department."

10. Coming next to the other issues, Mr. Sharma, learned counsel for the petitioner, submitted that as regards exercise of option to deposit the amount which was to be deposited to the Contributory Provident Fund, between 15.02.1973 to 31.03.1980, only because the petitioner did not deposit the same within the stipulated time, in terms of the amendment to Rule 114 of the Haryana School Education Rules, 2003, or the instructions dated 14.03.2008, it cannot be a ground to deny him higher pension, as no issue of limitation can come against the petitioner, in view of the fact that pension is a recurring monthly payment to be made, and any shortfall in it, is obviously a continuous loss.

11. As regards the payment of Rs.5 lacs by way of *ex-gratia* compensation to the dependent of a deceased employee, in terms of the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2006, learned counsel submitted that once the employees of Government aided private schools are held entitled to financial benefits of pay, equivalent to employees of government schools, other allowances on par with Government employees would necessarily have to follow, and as such, the stand of the respondents that the said Rules are not applicable to employees of aided schools but to only those of government schools, is not a sustainable argument.

12. On the issue of payment of interest for delayed release of retirement benefits, Mr. Sharma made a two fold submission.

Firstly, he submitted that such interest in any case is due from

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all the respondents jointly and severally as regards the retirement dues admittedly released to the petitioner on 02.06.2008, upon sanction being approved on 28.03.2008; i.e. the payment was made after more than one and half years of the death of the petitioners' wife. As such, whether it is respondent no.5, or respondents no.1 to 4 who are responsible for the delay, is a matter to be settled inter se the respondents and they cannot deprive the petitioner of his right to penal interest on delayed payment of retirement/service benefits/family pension, relatable to the service of his late wife.

As regards the benefits claimed in the present petition, i.e. enhanced family pension by counting 33 years of service instead of 26 years, 9 months and 4 days, learned counsel submitted that interest was also payable at penal rates on the same, at least from the date that the petitioner deposited the amount of contribution, alongwith interest (as was to be deposited for the period between 15.02.1973 till 31.03.1980); i.e. interest is due with effect from 09.06.2009 till the date of actual payment of enhanced family pension and gratuity etc., taking the service of the petitioners' late wife to have been 33 years.

Similarly, he stated that interest is also due on delayed payment of Rs.5 lacs as *ex-gratia* assistance and on the leave encashment not paid so far.

13. Countering the arguments of Mr. Sharma, Mr. Ashish Kapoor, learned Additional Advocate General, Haryana, first submitted that, no leave encashment is payable by respondents no.1 to 4, even in terms of Rule 91 of the Rules of 2003 and if the petitioner has any grievance on that count, it would be solely against respondent no.5.

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14. As regards counting of the period between 15.02.1973 to 01.04.1980 towards pension/family pension, Mr. Kapoor submitted that since neither the petitioner nor his wife had exercised the option to deposit the amount of contribution required to be deposited, alongwith interest, for the said period within 90 days of the amendment made to Rule 114 of the 2003 Rules, at this belated stage, or even w.e.f. 09.06.2009, he cannot be allowed to avail such benefit.

15. On the issue of grant of interest, Mr. Kapooor reiterated what has been stated in the impugned order and the written statement, to submit that no interest was due to the petitioner.

Learned State counsel, therefore, prayed that the writ petition be dismissed.

16. Having heard learned counsel for the parties and having gone through the pleadings, this Court goes on to hold as follows, in respect of each of the claims raised in this petition.

As regards leave encashment, I find that the stand of the learned Additional Advocate General is wholly correct, inasmuch as, even in terms of Rule 91 of the Haryana School Education Rules, 2003, as amended in 2004, leave encashment is to be paid to an employee at the discretion of the management for which no reimbursement is to be made by the Government. In this regard, it would also be appropriate to cite from the judgment of the Supreme Court in Haryana State Adhyapak Sangh and others vs. State of Haryana 1990 Supp. SCC 306, wherein it was held as under:-

> "**9.** With regard to the claim of the applicants, for other allowances viz. house rent allowance, city compensatory allowance, medical reimbursement and gratuity, etc. we have

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already indicated that this claim was not accepted by this Court in respect of the period covered by the 35 installments of additional dearness allowance referred to above. For the subsequent period, this Court has directed that the State Government will take up with the managements of the aided schools the question of .bringing about parity between the teachers of aided schools and the teachers of government schools, so that a scheme for payment may be evolved after having regard to the different allowances claimed by petitioners. It appears that, by order dated January 6, 1989 the Government of Haryana has constituted a Committee under the Chairmanship of Deputy Chief Minister-cum-Finance Minister, Haryana, which has been asked to give its report with regard to the implementation of the judgment of this Court and evolve a formula for bringing about parity between the teachers of private aided schools and teachers of government schools. In the additional affidavit of Shri Roshan Lal, dated January 26, 1990 it has been stated that meetings of the said Committee have been held and that the deliberations were inconclusive and no agreement could be reached and that after discussing all the pros and cons in a meeting attended by the Deputy Chief Minister, Education Minister, Financial Commissioner and Secretary of Finance, Commissioner and Secretary of Education, Director Secondary Education and Joint Legal Remembrancer the following decisions were taken:

(i) Besides additional dearness allowance installments already released, government is willing to revise pay scales and dearness allowance of private schools employees with effect from January 1, 1990.

(ii) Regarding other allowances like house rent allowance, city compensatory allowance, LTC, bonus, etc. this is the responsibility of the managements concerned who should be asked to take a final decision in the matter.

(iii) The pattern of giving grant-in-aid only on the pay and dearness allowance has been followed since 1968/1980-81

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and keeping in view the financial constraints the government is not in a position to change the pattern by including other allowances for grant-in-aid.

10. xxxxxx xxxxxx xxxxxx

11. In view of the direction given by this Court in the judgment dated July 28, 1988 that the respondents should evolve a scheme to bring about parity between the teachers of aided schools and teachers of government schools having regard to the different allowances claimed by the petitioners, it is necessary that the respondents should pursue the matter with the managements of the aided schools and a suitable scheme should be evolved at an early date."

Thereafter, in State of Punjab v. Om Parkash Kaushal (1996) 5 SCC 325, relying upon the first Adhyapak Sangh case (1988) 4 SCC 571, it was held as under:-

"7.As mentioned above, the Act came into force on 23-1-1981. Section 7 of the Act granted parity to the private teachers in the matter of scales of pay and dearness allowances with the government teachers. Prior to that the Punjab Government had granted unified pay scales and dearness allowance to the private teachers at par with the government teachers by the executive instructions with effect from 1-12-1967. The respondents were given parity under the executive instructions only in respect of pay scales and dearness allowance. The other conditions of service relating to the government teachers were not extended to the respondents. The incentives provided in the 1960 instructions in the shape of advance increments to the government teachers who improved their educational qualifications could not be automatically extended to the respondents. This Court, in the two *Adhyapak Sangh cases* from the State of Haryana, allowed the benefit of pay scales

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> and dearness allowance to the private teachers and declined to go into other benefits like house rent allowance, city compensatory allowance, LTC, bonus etc."

Still further, in State of Haryana and others vs. Champa Devi (2002) 10 SCC 78, it was held as under:-

> "5. Coming, however, to the question as to whether the benefits given to the government employees under the circulars dated 14-5-1991, 7-8-1992 and 7-1-1994 which were annexed as Annexures P-3, P-4 and P-6, we are of the considered opinion that the High Court committed error in granting the benefits of those circulars to the employees of private schools. In *State of Punjab* v. *Om Parkash Kaushal*[4] a Bench of this Court examined the question as to what is the true meaning of "parity in employment" and ultimately came to the conclusion that all incentives granted to the employees of the Government cannot be claimed as a matter of right by the employee under private management, as that would not be within the expression "parity in employment". The Court unequivocally said that the scale of pay and the dearness allowance to a government servant or the teacher of a government school can be claimed as a matter of right by the teachers of a private school and not other incentives which the Government might be intending to confer on its own employees. This being the position and on examining the aforesaid three circulars which were annexed as Annexures P-3, P-4 and P-6 in the writ petition filed before the High Court, we are of the considered opinion that the High Court committed error in granting the benefit of those circulars also to the teachers of the privately managed schools. We, therefore, set aside that part of the conclusion in the impugned judgment."

Thus, it is obvious that other than basic pay, dearness allowance and additional dearness allowance, it has not been upheld in any

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judgment, that other allowances are also payable to employees of Government Aided Schools, on par with employees of Government schools.

In the second *Adhyapak Sangh case* (supra) it had been left to Government to resolve the matter with the management of the aided schools, which obviously had led to the promulgation of the Haryana School Education Rules, 2003, in Rule 91 of which it has been stipulated that the grant of leave encashment, leave travel concession, bonus and medical reimbursement etc. shall be at the discretion of the Managing Committee concerned.

It is pertinent to note here that sub-rule 5, which enables payment of leave encashment to an employee of an aided school (to whom the Rules of 2003 are applicable, in terms of the preamble to the Rules), was inserted vide amendment made on 20.02.2004. Thus, the petitioners' wife having expired on 04.01.2007, the said amendment would obviously apply to her.

However, a bare perusal of sub-rule 5 of rule 91, shows that the benefit of leave encashment and some other allowances, have been left to the discretion of the Managing Committees of Government aided schools and is not reimbursable by the Government, to the management. Thus, leave encashment to an employee of a private government aided school is at the pure discretion of the management, i.e. respondent no.5 in the present case. Nothing to the contrary was pointed out by the learned counsel for the petitioner, in this regard.

Thus, I find no reason to differ with the arguments raised on behalf of the State by the learned Additional Advocate General, in this regard.

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Since, none has appeared for respondent no.5, despite service ever since notice was issued in this case more than two and half years ago, the stand of respondent no.5, is obviously not on record.

17. However, in view of what has been discussed, it is held that leave encashment would be payable to the petitioner, by respondent no.5, only if employees similarly situated as his wife have been paid the same, to show which, no material has been placed before this Court. Thus, even though it is a moot point as to whether a writ of mandamus would lie to issue direction to respondent no.5, in view of the fact that the payment to be made is wholly non-reimbursable by the respondents-State, liberty is granted to the petitioner to make an appropriate representation to respondent no.5, for grant of leave encashment, and in case such representation is made within a period of three months from the date of receipt of a certified copy of this order, the same would be decided by respondent no.5 by passing a speaking order within another period of two months thereafter.

18. Coming now to the issue of exercise of option by the petitioner to deposit the contribution which should have been made to the Contributory Provident Fund between 15.02.1973 to 31.03.1980, I do not find the stand of the State to be tenable on this issue, in view of the fact that the matter has been well settled by now, in various judgments of this Court, to the effect that even if an option in that regard is exercised beyond the time given in the concerned Instructions/Rules, an employee (dependent of the employee in this case) cannot be denied the benefit of service for the said period if he/she deposits the requisite contribution for the period in question, alongwith interest as laid down by the Government in its Instructions/Rules promulgated on the issue.

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In Smt. Veena Shashi v. State of Haryana and others (CWP No.4466 of 2006) decided by a Division Bench of this Court on 01.12.2006, it was held in relation to affiliated/government aided private colleges of the State of Haryana, as under:-

> "In view of the above, the writ petition succeeds. The order dated 22.09.2005 (P-11) is hereby quashed and a direction is issued to the respondents to grant to the petitioner benefit of service rendered by her from 16.07.1969 till 1980 by treating the same as qualifying service for the purposes of pension. However, the payment of contributory provident fund, which has been availed by the petitioner, shall be refunded by her to the respondents. Let, revised pension be calculated and released to her after giving the benefit of service from 16.07.1969 till 1980, within a period of two months from the date of receipt of certified copy of this order."

Even though the facts in that case and the present one are not identical, inasmuch as, the issue there was with regard to counting of service rendered by that petitioner in an aided college prior to her joining another government aided college, the matter was otherwise identical, to the extent that the service rendered by that petitioner in the Dev Samaj College for Girls, Ambala City, between 1969 to 1986, was a period for which the employee had not deposited the amount received by her to the Contributory Provident Fund, upon her joining Hindu Girls College, Sonepat. However, the Division Bench, held that if the employee deposits the payment of Contributory Provident Fund as had been received by her, alongwith interest, the said period would be countable as service computable towards grant of pension.

Similarly, in Vandana Batra v. State of Haryana and another (CWP No.3405 of 2012) decided on 09.08.2012, a co-ordinate Bench held

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that if the management of a Government aided college did not deduct contribution towards CPF from an employee, it was not something which the employee had any control over and as such, if the employee was willing to deposit the requisite contribution, alongwith interest thereupon, for the period of service during which no contribution had been made towards the CPF, then the said period would be countable for calculation of pension.

This Bench also, in Rajeshwar Aggarwal v. State of Haryana and another (CWP No.7725 of 2013) decided on 04.11.2014, has held a similar view, citing the aforesaid judgments.

Further, pension/family pension, being a recurring payment to be made on a monthly basis to a retired employee/his family, delay in subscribing/making payment to avail of the full benefit of a pension scheme, cannot be used as an excuse, by an employer, to deny the benefits of pension/family pension. However, of course, in case of any delay on the part of an employee in making any payment/in taking action as he/she was required to take, to obtain the benefit of such pension, appropriate interest would be payable by the employee in case of a payment to be made, and further, arrears of pension/family pension, can be commensurately denied to him/her.

19. In view of the above, it is held that the petitioner is entitled to grant of family pension by taking into account the service rendered by his wife for the period from 15.02.1973 to 31.03.1980, provided the petitioner deposits the entire amount as is calculated by the respondents, in terms of amended Rule 114 of the Rules of 2003, and instructions on the issue, as was payable towards the Contributory Provident Fund, (including interest for the said period).

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20. Coming next to the issue of grant of *ex-gratia* assistance in terms of the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2006; I find no reason to agree with the submission of the learned counsel for the petitioner that the respondent-Government is bound to grant *ex-gratia* compensation allowance of Rs.5 lacs to the petitioner upon the death of his wife while she was in service with respondent no.5, on par with Government employees who are governed by the said Rules of 2006.

As already noticed herein above with regard to grant of leave encashment, Government employees and employees of government aided schools, cannot be treated absolutely at par, unless the respondents themselves provide for such parity, in view of what has been held in the *Adhyapak Sangh cases* and subsequent judgments, referred to hereinabove.

Hence, the petitioner is held to be not entitled to the grant of Rs.5 lacs as financial assistance, in terms of the aforesaid Rules of 2006, which in any case are not applicable to employees of government aided schools.

21. Coming next to the interest that is awardable to the petitioner.

As regards the delay in payment of family pension and other retirement benefits, by the respondents, either at the initial stage, in 2008, or subsequently vide the impugned order dated 20.08.2009, i.e. other than what has been granted by way of this judgment, I find the stand of the respondents to be wholly untenable, inasmuch as, it was not the fault of the petitioner that respondent no.5 delayed forwarding the necessary documents to respondents no.1 to 4, after which the said respondents raised some objections, upon which, finally, the matter was settled only in March, 2008

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and payment actually made to the petitioner on 02.06.2008.

Thus, on the retirement benefits paid to the petitioner on 02.06.2008 and as had been ordered to be paid vide the impugned order dated 20.08.2009, the petitioner is held entitled to interest @ 12% per annum w.e.f. 01.05.2007, till the date that actual payments were made to him under various heads, whether in 2008 or pursuant to the order dated 20.08.2009.

22. As regards interest to be granted on the enhanced family pension and other benefits as are now to be paid to the petitioner, upon taking his wifes' service to be 33 years instead of 26 years, 9 months and 4 days, after he makes the requisite deposit to the respondents as per paragraph 19 hereinabove, he is held entitled to interest @ 6% per annum, from the date that he made/makes the deposit of the amount due from him by way of contribution to the CPF, alongwith interest, till the date that actual payment is made to him, provided that such payment is made within the period stipulated in paragraph 24(i), following, of this judgment. In case payment is delayed beyond such date, then the petitioner would be entitled to interest @ 12% per annum for the period falling beyond the said period till the date that actual payment is made to him.

23. As regards the last relief claimed by the petitioner, i.e. release of pensionary benefits under the revision of pay applicable w.e.f. 01.01.2006, in the reply filed by the respondents no.1 to 4, it has been stated on this issue that the Government has already issued the notification for the revised pension on 28.06.2011 and cases for revised pension have been called for from the field officers on 15.04.2013 and that the petitioners' case would be considered alongwith those cases.

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Though the written statement is dated 10.03.2014, nothing was submitted specifically with regard to whether this issue has been redressed adequately or not. Hence, in case the petitioner still has any grievance with regard to this particular issue, he would be at liberty to represent to the respondents in that regard, within a period of two months from the date of receipt of a certified copy of this order, after which the respondents would decide the same, within another two months thereafter, by passing a speaking order, in case any adverse order is to be passed against the petitioner, denying him the relief claimed.

24. Thus, this writ petition is partly allowed as follows:-

i) The petitioner is held entitled to family pension and other admissible benefits pertaining to the service of his wife, with respondent no.5, taking it that she was in service for a period of 33 years instead of 26 years, 9 months and 4 days, provided that the petitioner makes all necessary payments to the respondents, within two months from the date of receipt of a demand in that regard from respondents no.1 to 5. The respondents are directed to calculate the amount still due from the petitioner, if any, and convey the same to him within a period of one month from the date of receipt of a certified copy of this judgment.

ii) The petitioners' claim to leave encashment would be determined by respondent no.5 upon the petitioner making a representation in that regard, within a period of two months from the date of receipt of certified copy of this order, which would be decided by the said respondent within a period of two months thereafter, by passing a speaking order, keeping in view, as to whether employees similarly situated as Smt. Parvesh, the late wife of the petitioner, was/are being granted such benefits.

iii) The petitioner is held to be not entitled to any *ex-gratia* financial assistance, in terms of the Haryana Compassionate

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Assistance to the Dependents of the Deceased Government Employees Rules, 2006.

iv) The petitioner would be entitled to interest as per directions contained in paragraphs no.21 and 22 of this judgment.

v) In respect of pensionary benefits emanating from the revision of pay scales w.e.f. 01.01.2006, the directions contained in paragraph 23 hereinabove, would operate qua parties.

No order as to costs.

(AMOL RATTAN SINGH)
JUDGE

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