

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-12179-2011 (O&M)
Date of decision: 10.11.2016

Dr.K.L. Johar and others

.....Petitioners

versus

State of Haryana and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldeep Singh

Present: Mr.R.Kartikeya, Advocate for
Mr.Sanjeev Bansal, Advocate for the petitioners
Mr.Naveen Sheoran, DAG Haryana
Mr.Hemant Bassi, Advocate for the respondent No.8
Mr.Sharad Aggarwal, Advocate for
Mr.Shireesh Gupta, Advocate for the respondent No.11
Mr.O.P.Goyal, Senior Advocate with
Ms.Sheena Khanna, Advocate for the respondent No.19

- 1. Whether Reporters of Local Newspapers 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?*

Kuldip Singh, J. (Oral)

Petitioners are working as Principals and Lecturers in various privately managed government aided colleges.

Learned counsel for the petitioners at the very outset wishes to withdraw this writ petition qua petitioner No.12 Kailash Kashyap, who retired from service on 30.6.1995.

Accordingly, present writ petition is dismissed as withdrawn qua petitioner No.12 Kailash Kashyap.

Now, claim qua remaining petitioners shall be decided.

All the petitioners retired some time after 1.1.1996 upto year 1998. as per details mentioned in the writ petition. Their claim is with regard to the benefits of gratuity and leave encashment in terms of revised

pay scales w.e.f. 1.1.1996 in place of 11.5.1998. The claim of the petitioners is based on the judgment passed by this Court in the case titled as Dr.Karan Singh Rathee and others vs. State of Haryana (CWP No.3732 of 2001) decided on 20.8.2007, wherein the controversy was decided and it was held that the employees of the government aided privately managed colleges are also entitled to gratuity and leave encashment w.e.f. 1.1.1996 at par with the Lecturers of the Government colleges and that the fixing of different date i.e. 11.5.1998 for release of said benefits is illegal. It further comes out that the said judgment of Dr.Karan Singh Rathee's case (supra) was challenged before a Division Bench of this Court and the Letters Patent Appeal was dismissed and further the Special Leave Petition filed by the State before Hon'ble Supreme Court is also stated to have been dismissed, though on the ground of limitation.

Learned counsel for the petitioners claims that on the basis of judgment of Dr.Karan Singh Rathee's case (supra), the petitioners are also entitled to similar relief. The petitioners also approached this Court by way of CWP No.5592 of 2010, in which, this Court directed the State to take a decision on the legal notice within eight weeks from the date the certified copy of the order is received. Consequently, two different orders Annexure P3 and Annexure P4 were passed by the government. Vide order dated 28.12.2010 (Annexure P3), the benefit of leave encashment to the petitioners was declined on the ground that in the petition relied upon by the petitioners, the leave encashment was allowed to the petitioners only and not to all the retirees of non-government aided colleges. Similarly, while denying gratuity in the order dated 28.4.2011 (Annexure P4), it was observed that the maximum limit of gratuity of Rs.one lac was enhanced to

Rs.2.5 lacs from 1.1.1997 and then to Rs.3.5 lacs w.e.f. 11.5.1998. The benefit of judgment of Dr.Karan Singh Rathee's case (supra) cannot be given to all the employees of government aided colleges. In this case, the government has taken a decision that the benefit of judgment of Dr.Karan Singh Rathee's case (supra) is limited only to the petitioners in that writ petition and not to all the employees of the privately managed government aided colleges.

In the reply, respondent Nos.1 and 2 have taken more or less a similar stand taken in the orders Annexures P3 and P4. It was stated that there is no parity between the employees of the government colleges and the employees appointed against sanctioned and aided posts of non-government aided colleges. The employees appointed against the sanctioned aided posts of non-government aided colleges are governed by a set of service conditions which are distinct from those governing the government employees. The posts of non-government aided colleges are non-transferable and they retire at the age of 60 years, whereas the government employees are subject to transfer throughout the State and they retire at the age of 58 years. Therefore, they are not entitled to benefits like gratuity, specially permissible to them under instructions issued from time to time and they cannot claim gratuity at par with their counterparts in government colleges. Similarly, benefit of leave encashment also can not be extended.

In the reply of respondent No.19, a stand has been taken that petitioner No.23 in this case had retired from service on 29.2.1996 and at that time, Rs.one lac gratuity was payable and the same has been paid. The limit of Rs.2.5 lacs was extended from 1.1.1997 and Rs.3.5 lacs from 11.5.1998 when the petitioner was not in service. Therefore, petitioner no.23

was not entitled to any benefit.

I have heard learned counsel for the parties and have also carefully gone through the file.

The perusal of judgment of Dr.Karan Singh Rathee's case (*supra*) shows that in the said case, the dispute was whether the petitioners, who were Lecturers in All India Jat Heroe's Memorial College, Rohtak, which is privately managed government aided institution, are entitled to enhanced gratuity of Rs.3.5 lacs at par with their counter parts in the government colleges w.e.f. 1.1.1996 or a different date i.e. 11.5.1998 and also whether they are entitled to leave encashment? The matter was considered by this Court and this Court, while considering that the government has allowed enhanced gratuity of Rs.3.5 lacs to the Lecturers in the Government colleges w.e.f. 1.1.1996 and to the Lecturers working in the privately managed government aided colleges from 11.5.1998, took a view that there is no justification for fixing a different date for the Lecturers working in the government colleges and Lecturers working in the privately managed government aided colleges. Therefore, it was held that the Lecturers of privately managed Government-aided colleges are also entitled to enhanced Rs.3.5 lacs gratuity w.e.f. 1.1.1996 and not from 11.5.1998.

So far as leave encashment was concerned, this Court relied upon the judgment passed in CWP No.14188 of 1999 and CWP No.3096 of 2001 and also relied upon the judgment of the Hon'ble Supreme Court in State of Rajasthan & another vs. S.R. Hr.Sec. School, Lachhmangarh and others (Civil Appeal No.9166 of 2003) and took a view that the same controversy has already been settled. Consequently, the following order was passed:-

“The present writ petition shall stand allowed accordingly. A writ of mandamus is issued directing the respondents to raise the limit of gratuity for employees of different privately managed Government-aided Colleges with effect from the very date it (enhancement) was ordered to be effective in the case of their counter-parts functioning in Government Institutions. The petitioners shall also be entitled to leave encashment in terms of the adjudication rendered by this Court in Civil Writ Petition No.14188 of 1999 (Annexure P7) and Civil Writ Petition No.3096 of 2001 (Annexure P8). The respondent shall undertake the exercise of calculation in the relevant behalf and pay up the dues in entirety with interest @ 6% with effect from the date of filing of the petition till the payment thereof.”

It is not disputed that the appeal filed against the said judgment has been dismissed by a Division Bench of this Court and Hon'ble Supreme Court has refused to interfere in the same.

Now, this Court will examine as to whether the plea of the respondents raised at the time of arguments is tenable that the petitioners should be relegated to approach Education Tribunal and whether the petitioners being not party in the earlier writ petition, are not entitled to the same benefits and what is the effect of delay in approaching this Court?

Dr.Karan Singh Rathee's case (supra) was filed in the year 2001 and decided on 20.8.2007. It appears that the filing of appeal and the finalization of the judgment in appeal took some time. Hon'ble Supreme Court ultimately dismissed the SLP on 23.11.2009. The petitioners had earlier approached this Court in the year 2010 by filing a CWP No.5592 of 2010 when the State was directed to take a decision on their legal notice. I am of the view that on account of the delay, the petitioners might be entitled to interest from the date of the filing of the earlier petition and the interest

may commence from the date of filing of the earlier petition when they approached this Court.

So far as question of relegating the petitioners to Education Tribunal is concerned, the said controversy in the present case has already been settled vide impugned orders Annexures P3 and P4. Relief has been declined by Government only on the ground that the petitioners were not party in the earlier writ petition. I am of the view that the stand taken by the State is not tenable. Once, the judgment is passed granting the benefits to certain employees, the same has to be applied to the similarly situated other employees as well. Therefore, it is a question of implementation of the judgment of this Court, for which, writ petition is maintainable.

Learned counsel for the respondent No.8 has argued that there were some employees who were working against the regular aided posts and some were working against un-aided posts and that from the petition, it is not clear whether the petitioners were working against regular aided posts and as to which benefits have been released to them and which have not been released to them.

I am of the view that the argument can be set at rest by passing appropriate direction.

In view of what has been discussed above, impugned orders Annexures P3 and P4 are hereby quashed. The respondents are directed to release the gratuity to the petitioners w.e.f. 1.1.1996 @ Rs.3.5 lacs, in terms of judgment of Dr.Karan Singh Rathee's case (*supra*). Gratuity already paid to them shall be adjusted against the balance payment. Leave encashment shall also be paid in terms of judgment of Dr.Karan Singh Rathee's case (*supra*). The said benefit shall be available only to those petitioners who

were working against the regular and aided posts. The petitioners shall also be entitled to interest. Since there is difference of six months only in filing the present petition and the earlier writ petition, therefore, all the petitioners shall be entitled to interest @ 6% per annum as granted in judgment of Dr.Karan Singh Rathee's case (supra) from 12.7.2011, the date when the present writ petition was filed.

It is further directed that State of Haryana shall also consider the case of all the similarly situated employees and extend benefit of judgment of Dr.Karan Singh Rathee's case (supra) to the employees, who are covered by the said judgment. However, the interest shall be payable from the date they approach the government claiming the benefit of the said judgment.

10.11.2016

gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:

Yes

Whether Reportable:

Yes