

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

**CWP No.20238 of 2008
Date of decision: 20.01.2017**

Jagmohan Lal and others

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. R. K. Malik, Senior Advocate with
Mr. Ramandeep Singh, Advocate
for the petitioners.

Mr. Ashish Kapoor Addl. Advocate General, Haryana.

Mr. B.B.S. Randhawa, Advocate,
for respondent no.3.

AMOL RATTAN SINGH, J.

By this petition, 22 petitioners (some of them now represented by legal representatives), essentially seek the benefit of pension after their retirement from the YMCA Institute of Engineering, Faridabad, which has been denied to them, they having retired prior to 31.12.2005, though those who were in service on that date and retired thereafter were given the said benefits as per the Haryana Affiliated Aided Technical Institutions (Pension and Contributory Provident Fund) Rules, 2005 (hereinafter to be referred to as the Rules).

This petition initially having been heard by this Court and judgment reserved, thereafter while dictating the judgment, it was found that firstly, the vires of the aforesaid rules of 2005 had already been upheld by a

Division Bench of this Court in CWP No.20314 of 2010, which had been dismissed on 15.12.2010.

It was further noticed that two of the petitioners in the present petition were also petitioners in CWP No.9149 of 2005, in which a similar relief as is sought in this writ petition, had been prayed for.

Consequently, the matter had been put up for rehearing, during the course of which an application was filed seeking amendment of the writ petition, in which notice had been issued to the respondents and learned State counsel had stated on instructions, (as recorded in the order of this Court dated 04.11.2015), that the application may be allowed with the State given liberty to file a reply to the amended writ petition.

Consequently, the application for amendment was allowed, with the State having filed a fresh written statement in reply to the same and a replication thereto also having been filed by the petitioners.

Consequently, it is the amended writ petition which is now to be adjudicated upon.

2. As already noticed, petitioners no.1 and 2, i.e. Jagmohan Lal and J. D. Arora, have also filed CWP No.9149 of 2005, alongwith other employees of the institute. Hence, an application (CM No.11854-CWP-2015) had been filed in the present petition, seeking that their names be deleted from the memo of parties. That application had been allowed by this Court vide its order dated 19.09.2015 and consequently, though renumbering of the array of the petitioner has not been formally carried out, the aforesaid two persons are no longer petitioners no.1 and 2, with the first petitioner actually now being B.L. Kapoor (represented through his LRs), with the total number of petitioners therefore now being 22 and not 24.

The Registry would make the correction in the amended memo of parties even after pronouncement of this judgment, with the title of the case also to be shown as B. L. Kapoor and others v. State of Haryana and others.

3. Thus, the 22 petitioners in this case are seeking that though they retired prior to 31.12.2005 from the Institute impleaded as respondent no.3, i.e. the Young Men's Christian Association Institute of Engineering, Faridabad, they be included within the purview of the Rules of 2005, so as to be able to draw pension and other such benefits as are available to those who come within the purview of the said Rules, (actually notified on 21.04.2008).

Rule 1(3) of the Rules stipulates that the Rules shall be applicable only in the case of employees working on 31.12.2005. Sub rule (4) of Rule 1 further stipulates that employees who were appointed on 01.01.2006 or thereafter shall be governed by the 'New Defined Contributory Pension Scheme' approved on 10.04.2007.

4. Thus, the pension scheme promulgated by the Rules, is to apply to those employees who were appointed prior to 01.01.2006 and were in service on 31.12.2005. The 22 petitioners though employed prior to 01.01.2006, had retired prior to 31.12.2005 and as such, they have been denied the benefit of pension in terms of the aforesaid rules.

In fact, their prayer for such inclusion has been rejected by the respondents vide an order/letter dated 07.08.2008 (Annexure P14 with the petition), which simply informs them that their representation for inclusion of the few left over employees who had retired before 31.12.2005 has been considered by the State and after consideration, filed away.

The petitioners also therefore seek a writ of certiorari quashing

the impugned order Annexure P-14, as also the aforesaid Rules to the extent that they deny the benefit of pension to those who had retired prior to 31.12.2005.

5. All the petitioners were recruited either in the teaching or non-teaching cadre of the Young Men's Christian Association Institute of Engineering, Faridabad (respondent no.3), on various dates between 1969 to 1974, details of which have been supplied in Annexure P-1 to the petition. After having served about 30 to 35 years, they retired from the same institute on various dates before 31.12.2005, also given in the said annexure.

6. Respondent no.3 was an institute established in the year 1966, upon an agreement having been entered into by the erstwhile State of Punjab and the National Council of Young Men's Christian Association of India, New Delhi, on 14.01.1966 (Annexure P-2).

As per the provisions contained in Clause 3(a) of the agreement, the Government of India was to meet 25% of the gross recurring expenditure of the institute, the institute itself was to bear 5 to 25% of the recurring expenditure, with the starting point for the institute to bear the expenditure at the rate of 5% being the 6th year onwards, within an increase of 5% each year up to the 10th year, from when onwards the institute was to bear 25% of the net recurring expenditure. The remaining recurring expenditure, after the contribution made by the Government of India and the institute, was to be borne by the State Government.

7. The control and management of the institute was to vest in a Board of Governors consisting of 16 members which, after its establishment, was to be registered as such society under the Societies Registration Act, 1860. Of these 16 members, 12, including the Chairman and two members,

were to be nominated by the said society. These two members were to be drawn from the legal industry at Faridabad, with the Chairman and these two members to be nominated by the society in consultation with the Government. The Principal of the institute was to be an ex-officio member and Secretary of the Board.

Of the remaining four members of the Board, one was to be nominated by the State Government, one by the Government of India and one by the State Board of Technical Education, Punjab (thereafter Haryana), and one by the All India Council of Technical Education.

8. The property of the institute was to vest in the society even though the land of 20 acres was to be provided by the State Government, free of cost. However, the society, in terms of the agreement, had no right to sell, mortgage or otherwise transfer the property except with the prior approval of the State Government and the property was to be used exclusively for the purpose of the institute.

If the society failed at any point to pay its share of recurring expenditure for running of the institute in accordance with the terms of the agreement, then within a period of six months from the date of which the share of the society became payable, the State Government could take over the management of the institute after which the members of the Board, as had been nominated by the society, would cease to be such members and in their place, the State Government could nominate fresh members, with the Board so constituted then being the Board to manage the institute in terms of the agreement, till such time as the society did not pay its share of the recurring expenditure, alongwith the arrears (Clause 11 (a) of the agreement).

Further, as per sub-clause (b) of Clause 11 of the agreement, if

the society failed to pay its share of recurring expenditure alongwith arrears, for a consecutive period of three years, then unless the Government extended the period for such payment, the Government would take over the institute with all rights, title and interest of the society in the institute, including all its assets, without making any compensation to the society, after which all rights, title and interest and assets of the society, would vest in the Government.

Other than for reason of non-payment of recurring expenditure, Government also retained the right to take over the society as above, if the society diverted any of its assets created with the contribution made by the State Government, the Union Government and the society; if the society expressed its inability to arrange for the management of the institute, or if there were found to be any mis-appropriation, or breach or non-observance by the society of the various terms and conditions in various clauses of the agreement.

Rules to give effect to the purposes of the society, including the conditions under which the society would be taken over by the Government, were also framed, which do not need any reproduction or extensive reference to presently.

9. Thereafter, another agreement dated 08.06.1988 (Annexure P-4) was signed between the Government of Haryana and the National Council of Young Men's Christian Association of India, New Delhi and the Board of Governors of the institute, altering some of the terms and conditions of the earlier agreement dated 14.01.1966, but without specifically revoking the said earlier agreement. The major feature of the second agreement was that the property of the institute was to now vest in the Board instead of the

society but again with the Board having no right to sell or mortgage or otherwise transfer the property without prior approval of the State Government. However, the Board had the power of dispose of any serviceable material and equipment up to the value of Rs.10,000/-.

The recurring expenditure now was to be met with in the following manner:-

- a) 50% by the Government of India'
- b) 10% by the society w.e.f. 01.04.1978, with a rider that in case the profits in the Training Oriented Production Unit at Faridabad exceeded 10%, in terms of another agreement entered into by the State and the society on 08.08.1973 for the purpose of establishing the said unit, then the recurring expenditure of the institute would be borne by the society to an extent above 10% but up to 25% only, with the remaining expenditure to be borne by the State Government.

Instead of 16, the Board of Governors was to consist of 20 members, of which the society would nominate 13 members including the Chairman, two members would be from the local industry, with again the same provision that the two members to be drawn from the industry, as also the Chairman, would be nominated by the society only in consultation with the Government. Of the remaining seven members, two members were to be nominated by the State Government, one by the Government of India, one by the State Board of Technical Education, Haryana, and one by All India Council for Technical Education and two from the faculty, by the Board of Governors.

The remaining clauses of the new agreement remained same as the previous agreement dated 14.01.1966, including the conditions for 'take

over' by the State Government.

A rider was included in this agreement that the Government could, upon giving six months' notice, revert back to the original formula of sharing of recurring expenditure to the extent given in the agreement of 1966, if there was a revision of the policy of the State Government relating to other technical institutes, such as the Chhotu Ram Polytechnic, Rohtak and Vaish Polytechnic, Rohtak.

10. Thereafter, yet another agreement was entered into between the State and the National Council of Young Men's Christian Association of India, though this time by way of a supplementary agreement to the earlier agreement dated 08.06.1988. In the new agreement dated 25.03.1989, the agreement dated 08.06.1988 has also been referred to as an agreement supplementary to the agreement dated 14.01.1966. However, since nothing specifically devolves on this part, it is being noticed only for the record.

By way of this supplementary agreement of 1989, sub-clause 'c' was added to clause 3 of the agreement dated 08.06.1988, which provided, in fact, that w.e.f. 01.04.1989, the society would only meet the net recurring expenditure of the institute upto 5% of such expenditure, unless the share of the society in the profits, in terms of the agreement of 1973, exceeded 5%, in which case the society would bear the recurring expenditure upto the extent of 25%, with the remaining expenditure, in either circumstance, being borne by the State Government.

A rider was again provided that the Government would have the option to revert back to the previous formula of expenses of recurring expenditure to be incurred, after giving six months' notice to the society.

The societys' right to nominate members of the Board was

reduced from 13 to 11 and the number of nominees of the State Government were increased from 2 to 4.

11. Thereafter, on 26.03.1996 an order was passed by the Government (Annexure P-6) taking over the management of the YMCA Institute of Engineering, Faridabad (respondent no.3) with immediate effect, because the society, i.e. the National Council of Young Men's Christian Association of India, New Delhi, had not been paying its share of 5% of the recurring expenditure since the financial year 1992-93.

Hence, invoking clauses 11 (a) and 10 respectively of the agreements dated 14.01.1966 and 08.06.1988, the take over was ordered and the Board of Governors was reconstituted vide the same order, by including the Minister for Technical Education, Haryana, as its Chairman, the Commissioner and Secretary to the Government in the Department of Technical Education as the Vice Chairman and four other officers of the Government of Haryana as members, with the National General Secretary of the National Council of YMCA and the representative of the said council of YMCA as two members of the Board. Other than that, two representatives of the local industry of Faridabad were also nominated alongwith various other persons from the field of education, including two faculty members of the YMCA institute at Faridabad itself, as also its Director/Principal. The total number of members of the Board of Governors, including the Chairman, was retained as 20.

12. It is also contended in the writ petition that even prior to the passing of the order dated 26.03.1996, w.e.f. the financial year 1992-93 itself, the State Government started providing 100% grant-in-aid to respondent no.3, to meet both, recurring and non-recurring expenditure of the institute

and in any case, pervasive control had always been that of the State Government.

13. Thereafter, a civil suit was filed by the State of Haryana against the National Council of YMCA of India, seeking a declaration that the State of Haryana is the owner in respect of the institute itself and that the management of the institute vests in the State of Haryana, in all respects. That suit was decreed on 04.08.1999 by the learned Civil Judge (Senior Division), Faridabad, which decree is stated to have become final. A copy of the order and decree-sheet have been annexed alongwith the petition. A perusal of the order of the Civil Judge shows that the defendants, i.e. the National Council of the YMCA of India and the Board of Governors of the institute (present respondent no.3), had admitted the case of the plaintiff-State in toto, in respect of which counsel for the defendants had also recorded his statement. Thus, the suit was accordingly decreed.

14. On 24.03.2000 the 2nd respondent, i.e. the Director, Technical Education, Haryana, circulated a memo to the institute, that it had been decided, upon taking over of the institute by the Government, that affidavits be obtained from all employees of the institute, that upon such taking over they would have to abide by the policies/instructions of the State Government. For that purpose a proforma affidavit was also annexed with the said circular, after which, the Principal of the Institute displayed a notice for the employees to submit their option forms in the prescribed proforma, upon affidavit, duly attested, by 03.04.2000, as to their option to be governed by the State Government rules and instructions or to continue to be governed by the terms and conditions of the appointment letters issued to them by the institute or its governing body at the time of their appointment.

It is stated in the petition that out of 167 employees, 164 exercised their option in favour of being governed by the rules and instructions.

15. It would be necessary to reproduce the said affidavit in toto, as was required to be submitted by the petitioners and their co-employees, to the 1st and 2nd respondents, upon taking over of the institute by the Government.

The proforma affidavit, as annexed with the petition, reads as follows:-

“ AFFIDAVIT

I, _____ S/o/W/o/D/o _____, presently working as _____ Y.M.C.A. Institute of Engineering, Faridabad do hereby solemnly affirm and declare as under:-

That I opt for coming under the fold of State government employment in the eventuality of taking over of the YMCA Institute of Engineering, Faridabad by Government of Haryana, in which case, I shall be governed by the State Government Rules/instructions issued from time to time in all respect and I shall abide by the decisions of the State Government, whatsoever. I will not claim any benefit as per any terms of my Appointment letter issued to me by YMCA Institute of Engineering, Faridabad or its Governing Body which is contrary to the State Government, Civil Service Rules, Department Services Rules and any other rules which are applicable to employees of Government of Haryana.

OR

That I don't opt for coming under the fold of the State Government Employment in the eventuality of taking over of YMCA Institute of Engineering, Faridabad by Govt. of Haryana, and in case, even if the Institute is taken-over by Govt. of Haryana, I shall continue to be governed by terms and conditions of my appointment letter issued by YMCA Institute of Engineer, Faridabad or its governing body, till my retirement.

I undertake not to claim any benefit which accrues to the person opting for coming under the fold of State Govt. employment.

Place: DEPONENT

Dated:

Verification

Verified that the contents of my affidavit are true and correct to my knowledge and no part of it is false and nothing has been concealed therefrom.

Place: DEPONENT

Dated:

”

[It may be pointed out at this stage itself, that the factual position as has been detailed above in the writ petition, has not been disputed by the 3 respondents in the written statement filed by them. In fact, a common reply has been filed on behalf of all three respondents, including the Institute.]

16. However, despite taking over the Institute and despite the affidavits having been filed, the respondents seemingly did not equate the service of the petitioners and their co-employees at par with employees of the state government, leading to the petitioners and some other co-employees filing CWP No.3414 of 2001, titled as Parsh Ram and others v. State of Haryana and others, seeking the relief of absorption as employees of the State of Haryana with effect from the date that respondent no.3 was taken over by the Government on 26.03.1996. All consequential benefits of such absorption, including pension, pay gratuity, travel and dearness allowances etc. were also sought by the petitioners of that petition.

They also sought a restraint by way of a writ of prohibition, that no recovery should be effected against the institute (present respondent no.3)

“on account of EPF and MPF, 1952 on the basis of letter dated 16.09.1999”.

That writ petition was disposed of by a Division Bench of this Court on 27.05.2003, on the statement of the Additional Advocate General appearing for the State, in terms of the written statement filed in that case, that the matter of grant of pension as per a pension scheme for the employees of the YMCA Institute, was under consideration of the Government and a decision would be taken within three months. The operative part of that order is reproduced hereinunder:-

“In the present writ petition, the petitioners have primarily made a request for a direction to the State of Haryana to absorb the petitioners as employees of the State Government.

In the written statement filed on behalf of the respondent Nos.1 and 2, it has been alleged that the matter is already under consideration of the State Government to run the institute on self financing basis through a Govt. owned Society and that the State Government is in the process of registering a Society under the Societies Registration Act, and that the employees of the YMCA Institute of Engineering, Faridabad shall become the employees of the Govt. owned Society. It has also been alleged that none of the terms and conditions of the appointment letters and the benefits enjoined by the employees shall be altered to their disadvantage. It was further alleged that so far as the issue of giving pension to the employees of YMCA Institute of Engineering, Faridabad, including the petitioner, is concerned, the Institute had prepared a Pension Scheme and had sent the same to the answering respondent vide memo dated 31.10.2001 and the same was under active consideration of the answering respondent. It was alleged that the State Government was considering different alternatives for providing pension, including Employees Pension Scheme, 1995 to the employees of the said Institute provided the pension scheme is self sustaining and does not require any additional inputs other than equivalent

to employer's contribution of provident funds, as per the law.

The learned State counsel appearing on behalf of respondent Nos.1 and 2 has submitted that the final decision on the aforesaid matters shall be taken by the State Government within three months from the receipt of a copy of this order.

In view of the undertaking given by the learned State counsel, in our opinion, the present writ petition has become infructuous and disposed of as such. However, it is made clear that if the petitioners are still dissatisfied with the decision of the State Government, or for seeking any other relief, the petitioners would be at liberty to approach the Court, once again, in accordance with law.”

17. Thus, what was proposed by the Government at that point of time was that the employees of respondent no.3 would become employees of a Government owned society which the Government was in the process of registering and the pension scheme prepared by the institute itself on 31.10.2001 was also under active consideration, alongwith the other alternatives.

It was also stated that the terms and conditions of the appointment letters of the petitioners and the benefits enjoyed by them (as employees of respondent no.3) would not be altered to their disadvantage.

18. The decision not having been taken within three months, a contempt petition was filed, after which the notification dated 21.04.2008 was issued, promulgating the Rules of 2005, by which pension and contributory fund of the employees of respondent no.3 is to be regulated.

It is thus in the aforesaid backgrounds of facts and events, that the rules were promulgated, by which those employees who were not in service on 31.12.2005, have been denied the benefit of pension, as per the

terms of the said rules, thus leading up to the filing of the present petition.

19. As per the petitioners, the rules were preceded by a draft pension scheme dated 25.04.2007 (Annexure P-12 with the petition), by which it was proposed that those employees who were appointed on 01.01.2006 or thereafter, would be governed by the “New Defined Contributory Pension Scheme” issued by the Finance Department on 10.04.2007. Thus, as per the petitioners, in fact, it was only those employees who were appointed on or after 01.01.2006 who were to be governed by the new contributory pension scheme and not those who were appointed prior thereto. The said scheme was to be on the same pattern as the scheme governing the non-government affiliated/aided colleges and that scheme, for such colleges, actually came into force w.e.f. 11.05.1998. Hence, it is contended that there is no rationale for choosing the date, 31.12.2005, in the case of the petitioners.

20. In the amended writ petition, a specific stand has been taken that the petitioners actually became Government employees w.e.f. 26.03.1996 for all intents and purposes and as such, the pension scheme of the Government became applicable to them from that date, they also being subject to all instructions/policies of the Haryana Government since that date.

21. Another set of instructions dated 17.07.2007 (Annexure P-15) has also been referred to, to state that all teaching employees of erstwhile private colleges as had been taken over by the State Government, would be entitled to have their past service counted towards pensionary benefits after the take over of such colleges by the Government. Hence, it is contended that the petitioners being ready to deposit the employers' share of the contributory provident fund, alongwith 10% annual compounded interest, in terms of the aforesaid instructions of 17.07.2007, the said instructions should be made

applicable to them.

This is contended to be all the more so as other co-employees whose services were taken over alongwith the petitioners, but continued to be in service after 31.01.2005, have been given the benefit of the pension scheme promulgated vide the Rules of 2005.

22. In the written statement filed in reply to the amended writ petition, it has been stated that in fact, the rules were promulgated pursuant to directions issued in CWP No.3414 of 2001, on 27.05.2003, after which the same employees who had filed that writ petition also filed CWP No.1949 of 2005, which stands admitted to regular hearing in this Court.

23. The history of the institute (respondent no.3) has been given in the reply of the respondents also, which is almost identical to what has been stated by the petitioners in the writ petition, as regards the agreements between the YMCA and the Government, in the years 1966, 1988 and 1989.

Additionally, it has been stated that bye laws of the institute were framed on 05.02.1980, in which there was a provision for grant of contributory provident fund, medical reimbursement, travelling allowance, dearness allowance, house allotment etc. but no provision for pension had been made.

It has further been stated that even in the agreements with the YMCA there was no provision for pension to the employees of the institute. Yet further, the institute is stated to have now been upgraded to a University w.e.f. 16.09.2009, with all assets also being vested in the University.

As per the respondents, in case the petitioners are allowed the benefit of pension, even after return of the employees' provident fund contribution made, the estimated liability on the State Government would be

Rs.3,82,20,132/-. The monthly liability, it is contended, would be Rs.5.95 lacs approximately.

Further, it is also stated that if pension is granted to the petitioners, then the employees of three other institutes, i.e. the Vaish Polytechnic Institute, Rohtak, Chhotu Ram Polytechnic Institute, Rohtak and Seth Jai Parkash Polytechnic, Damla, Yamunangar, would also have to be given the same benefit. Of these, the number of employees of the petitioner institute itself is given as 59, those of the Vaish Polytechnic Institute to be 45 and of the Chhotu Ram Polytechnic Institute, Rohtak, 23, there being no affected employees of the Yamuna Nagar Institute. Thus, as per the respondents, a total of 127 employees would have to be granted the said benefit, which would entail an immediate liability of Rs.39.09 crores to the Government, with a recurring annual liability of Rs.1.86 crores per annum.

24. Yet further, it is the stand of the respondents that if the same scheme is sought to be implemented qua the departments of higher education and elementary education in the State, in respect of Government aided institutions, the liability would go up to multi-crores.

25. Next, the reply states that the matter has actually already been settled by this Court in the case of **Jagdish Chander v. State of Haryana and others** (CWP No.20314 of 2010), in which case the petition was dismissed on 15.12.2010 with the following observations:-

“We have heard learned counsel at some length and are of the view that for coming into operation, some date has to be fixed by the rule making authorities and the fixation of such a date cannot be considered to be arbitrary or violative of Articles 14 and 16 of the Constitution. In the present case, the petitioner had attained the age of superannuation on 30.09.2005 whereas the benefit of the Rules could be given to those who have attained

superannuation after 31.12.2005. Accordingly, no case made out to declare that Rule 3(2)(iii) of the Rules is violative of Articles 14 and 16 (1) of the Constitutions. However, the learned counsel for the petitioner has prayed that with regard to other matters the petitioner may be permitted to file representation by raising various pleas before respondent Nos.3 and 4.

In view of above discussion, this writ petition fails. Vires of rules 3(2)(iii) of the Rules is upheld, and the writ petition is disposed of with liberty in terms of the prayer made by the learned counsel for the petitioner.”

26. Another judgment of a Full Bench of this Court in **Rikhi Ram Sharma v. State of Punjab** 1997 (1) RSJ 554 has also been referred to, to contend that once rules have been promulgated fixing a cut off date while implementing a new pension scheme, the said scheme cannot be held to be discriminatory or ultra-vires on the ground that it does not take into account those who had retired prior to such cut off date.

A judgment of the Supreme Court in **Bani Singh v. Kurukshetra University** AIR 2006 SC 2100 has also been referred to in this regard, further contending that the rules of 2005 have been framed, fixing a cut off date of 2005 after considering all aspects of the matter.

27. Though no specific reply has been given with regard to the instructions dated 17.07.2007 (Annexure P-15), however, it has been contended in reply to that specific para of the writ petition (paragraph 22-A) that there were no rules/Government instructions regarding pension of employees of Government aided polytechnics and that the request of the employees of these institutions was considered at length and thereafter, the present pension scheme promulgated.

Eventually, it has been denied that the cut off date, i.e.

31.12.2005, is arbitrary in any manner.

28. The petitioners have also filed a short replication to the written statement of the respondents, stating therein that they are not challenging the promulgation of the rules dated 21.04.2008 but are challenging the extraordinary delay in the issuance of the pension scheme, inasmuch as, it was actually to be finalized by 27.08.2003, in terms of the undertaking given by the State counsel before the Division Bench on 27.05.2003 (in CWP No.3414 of 2001); Parsh Ram and others v. State of Haryana.

29. It is further stated that the pension scheme was not “in vogue” at the time of establishment of the institute, with the employees being covered by the benefits of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, w.e.f. 01.08.1982.

However, upon a notice being served on the institute by the Regional Provident Fund Commissioner, for the enforcement of the provisions of the said Act, the Government, to escape its additional financial liability, informed the Commissioner vide a letter dated 16.09.1999 (Annexure P-10 with the petition), that a pension scheme was being introduced for the employees and therefore, action be not taken against the institute under the Act of 1952.

Hence, it is contended that the petitioners and others employees were denied the benefits of that Act, without even being consulted by the Government.

Thereafter, it is reiterated in the replication that the Government had approved, vide letter dated 25.04.2007 (Annexure P-12), that the pension scheme would be applicable in respect of all employees who had been appointed upto 31.12.2005 and that those who joined after 01.01.2006 would

be covered by the “New Defined Contributory Pension Scheme”.

However, it is contended that the administrative department, while issuing the rules of 2005, misconstrued the scheme approved by the Finance Department vide the aforesaid letter.

30. Other contentions of the written statement, with regard to the Government not being the controlling authority of the institute, have been refuted, with the contentions made in the writ petition, reiterated.

Lastly, it has been stated that the petitioners having attained the age of more than 70 years and 5 of them having already died, they deserve to be granted pension, for which they had opted as part of the option given to them at the time of take over of the institution, to the effect that they would be governed by all rules and instructions as govern the State Government employees.

31. Arguing for the petitioners, Mr. Malik, learned Senior Advocate, first reiterated the averments taken in the petition, specifically pointing to the fact that firstly, the institute was undoubtedly taken over in toto by the Government vide order dated 26.03.1996, changing the composition of the Board of Governors and thereafter infusing 100% Government funds for the running of the institute in every manner. Thus, learned Senior Counsel contended, *dehors* the nomenclature calling the institute a Government institute, it was actually and effectively a Government college/institute like all other such engineering colleges and institutes, run by the Government.

Mr. Malik next pointed to the affidavit sworn by 164 out of 167 employees of respondent no.3, on a proforma provided by the Government itself, in which the employee was specifically required to state that he was opting to come under the fold of the state government in the eventuality of

the take over of the YMCA Institute of Engineering, in which case he would be governed by the State Government rules/ instructions issued from time to time in all respects and that he would abide by all the decisions of the State government.

He submitted that even though the affidavit stated that the employee was willing to come into the state government “in the eventuality of take over” of the YMCA institute, factually the institute had already been taken over on 23.03.1996 and as such, the said phrase “in the eventuality of take over”, was wholly superfluous and uncalled for.

He further submitted that even as per the order of this Court in CWP No.3414 of 2001, in which the stand of the respondents in their written statement was extensively referred to, though the respondents had stated that they were in the process of forming a government owned society, to be registered under the Societies Registration Act, no such stand has been taken now by the government that such society had actually been formed and therefore, the petitioners and all other employees who were to abide by government rules and instructions, are to be treated as government employees with effect from the date of take over. Consequently, learned senior counsel submitted, the petitioners being government employees at least w.e.f. 26.03.1996, they would be entitled to pension in terms of government rules and instructions etc. and by counting the service rendered in the past by them, i.e. before 26.03.1996, as qualifying service, of course after deducting all contributions made by the employer to the contributory employees provident fund during the period that the petitioners remained employees of the society running the institute.

He therefore prayed that the impugned orders be quashed and the

petitioners be granted the same benefits, as government employees, as per the Punjab Civil Service rules (as applicable to the State of Haryana), or at least in terms of the Rules of 2005, as are available to those who retired after 31.12.2005.

32. Mr. Bedi, learned counsel for the State of Haryana, on the other hand submitted that the first time that pension rules were introduced for employees of the YMCA Institute of Engineering, Faridabad (now University of Science and Technology), was vide the Rules of 2005, which specifically apply to the employees of respondent no.3, i.e. the YMCA Institute, as also the three other institutions the names of which were mentioned in the notification by which the rules were promulgated. As such, those rules having come into force only w.e.f. 31.02.2005 in respect of employees who were in service on that day, the petitioners having retired prior to that date, cannot be given the benefit thereof.

Mr. Bedi further relied upon the judgment of this Court in CWP No.20314 of 2010 decided on 15.12.2010, wherein the writ petition filed by a similarly situated employee was dismissed, upholding the cut off date stipulated in the aforesaid rules, i.e. 31.12.2005, for the purpose of grant of pension. Learned State counsel therefore submitted that the matter having already been adjudicated upon by the Division Bench, the petitioners cannot be granted anything over and above what was adjudicated upon in that petition.

33. In rebuttal, Mr. Malik submitted that as a matter of fact, the Rules of 2005 having actually come into force after the petitioners retired, even if the validity of the rules of 2005 (notified on 21.04.2008) has been upheld, that would not affect the petitioners' right as government servants,

from the date of the take over of the institute till the date of their retirement, and as such, they would be entitled to pension just like other government servants of the State of Haryana. He further drew attention to the letter from the Commissioner and Secretary to the Government of Haryana, Education Department, addressed to the Higher Education Commissioner, Haryana, dated 17.07.2007 (Annexure P-15), which is to the following effect:-

“Sanction is hereby accorded to count past service towards pensionary benefits to the teaching employees of the erstwhile Private Colleges taken over by the State Government in relaxation of instructions issued O.M No.1/2(4) 96-2F-RII dated 7th January, 2002 subject to the following conditions:-

1. These benefits will be given subject to the condition that the teaching employees of the taken over college who were contributing towards contributory provident fund and they will deposit the share of the contribution made the management alongwith 10% annual compounded made the management alongwith 10% annual compounded interest (upto the date of depositing) in lump sum in Govt. Treasury.
2. This order will be optional and applicable only to those who agree to refund the Management Share (before the date of taking over of the College by the State Government alongwith 10% annual compounded interest). This amount can be deducted from their gratuity and they will given an undertaking to this effect that if the amount of contributory provident fund is more than gratuity payable to them, then the pensioners will deposit the excess amount in Govt. Treasury.
3. These benefits will be made effective in respect of the teaching employees of the taken over Colleges from the date of Pension Scheme made applicable in Private Aided Colleges i.e. with effect from 01.05.1998.

This issues with the concurrence of F.D. Conveyed vide

U.O. No.3.76/06-2FD-II/3240 dated 06.06.2007.”

34. Thus, Mr. Malik submitted that in any case, even prior to the rules of 2005 having coming into effect w.e.f. 31.12.2005, the Government had already issued instructions to the effect that those employees of erstwhile private aided colleges taken over by the Government, who are willing to deposit the managements' share towards the contributory provident fund, alongwith 10% interest annually compounded, in a lump sum, would be entitled to pensionary benefits, w.e.f. 01.05.1998.

He therefore submitted that even if the petitioners are not to be treated as a government servants per se from the date of take over, in any case they would be covered by the said instructions, if they are willing to make the deposit of the management share of contributory provident fund, alongwith interest as aforesaid, whether or not they retired prior to 01.05.1998, though the scheme would obviously be only w.e.f. 01.05.1998, in terms of the aforesaid instructions.

He submitted that, in fact, had the pension scheme been introduced at the right time, there would have been no burden on the Government and as such, any immediate burden created now was only its own fault.

As regards the decision in Jagdish Chander Aryas' case, learned counsel submitted that it is distinguishable on facts, though upon query, he qualified that by saying that if the matter had been argued in detail, to bring out the entire chain of events, as has been done in the present case, that judgment may have held differently.

Finally, Mr. Malik reiterated that the institute actually became a

wholly Government institute from the date of its take over, which would be seen to be all the more so, when all assets of the institute have come to vest in Government pursuant to the civil Court decree passed to that effect, in a suit instituted by the Government itself.

35. Before considering the pleadings and the arguments addressed before this Court, it is also necessary to notice at this stage, that in view of the challenge made to the same provision, though not specifically to Rule 3 (2)(iii) but more generally to the Rules of 2005, to the extent that they have been made applicable only to employees who were working on 31.12.2005, the matter was referred by a co-ordinate Bench (this very petition), to a Division Bench, vide order dated 25.08.2014.

Before the Division Bench, the aforesaid judgment in Jagdish Chander Aryas' case was brought to the notice of the Court, by the State counsel appearing there and consequently, the Division Bench, vide its order dated 12.12.2014, after citing what was held in *Aryas'* case, directed as follows:-

“In view of the said fact that since the matter with regard to vires of the aforesaid Rules has already been decided, this petition is ordered to be again put up before the learned Single Judge as per roster.”

Thus, as regards the challenge to the vires, obviously the same having been upheld by the Division Bench, this Court cannot go into that question. However, whether or not any relief can still be granted to the petitioners, is something which would be seen in the light of the pleadings and the arguments addressed in detail.

36. Having considered the written and orally pleaded contentions in detail, in my opinion, the contention of the petitioners is correct, inasmuch as,

once the institute was taken over completely by the Government vide its order dated 26.03.1996 (Annexure P-6), and thereafter, the petitioners and other employees also having been asked to file affidavits giving their option to abide all policies and instructions of the State Government, the institute no longer remained a Government aided institute but had, in fact, become a Government institute itself.

Though the respondent State has tried to put the institute on the same footing as Government aided institutions, to contend that any pension scheme applicable to such institutions would also be applicable in the same manner to the petitioners and their co-employees, however that contention in the opinion of this Court is wholly misplaced and is in fact, being made only to avoid any kind of financial liability, despite the fact that such financial liability was inherent in the take over of the institute itself, with no contributory funding left from any private body.

Possibly, it may not have been necessary for the Government to count the past service of the petitioners towards pensionary benefits that would enure to them as employees of the Government, once the institute became a Government institute. However, eventually, Government by its promulgation of the 2005 rules, has granted the benefit of pension to co-employees of the petitioners, if they were in service on 31.12.2005 and retired thereafter.

There also can be no quarrel with the proposition that in any pension scheme floated, some cut off date obviously has to be prescribed and fixing of such cut off date has been time and again upheld by the Supreme Court in numerous judgments.

The question only is, as to whether the cut off date fixed vide

Rule 3(2) (iii) of the Rules of 2005, i.e. 31.12.2005, is an arbitrary date or rational.

Before going on to discuss that, it also needs to be noticed that Rule 1(3) also stipulates to the same effect and therefore, Rule 1 is reproduced as follows:-

“1. Short title and commencement.

- (1) These rules may be called the Haryana Affiliated Aided Technical Institutions (Pension and Contributory Provident Fund) Rules, 2005.
- (2) They shall be deemed to have come into force with effect from 31st December, 2005.
- (3) They shall be applicable only in the case of employees working on 31st December, 2005.
- (4) The employees who are appointed on 1st January, 2006 or thereafter shall be governed by 'New Defined Contributory Pension Scheme' approved in Principle by the Finance Department vide their U.O. No.2/8/07-Pension, dated 10th April, 2007.”

Rule 3 thereafter reads as follows:-

“3. Application:-

- (1) Except as otherwise provided in any rule, and subject to the conditions that the Managing Committee/Board of Management of Aided Technical Institutions executes an agreement in Form I duly supported by a resolution of the governing body to abide by the provisions of these rules and the undertaking of the employees in Form II and Form III, these rules shall apply to all the employees who were working on aided sanctioned posts on or before the 31st December, 2005, and who have attained or shall attain the age of superannuation on or after the 31st December, 2005, and who have exercised option to be governed by these rules

within a period of three months from the date of publication of these rules in the Official Gazette.

- (2) These rules shall not apply to,
- (i) the employees appointed on part time basis against aided sanctioned posts;
 - (ii) the employees appointed against the posts not sanctioned by the Government;
 - (iii) the employees who have retired from the sanctioned posts before the 31st December, 2005 and the employees who attained the age of superannuation before the said date except those who have been given extension by the Department after the age of superannuation on sanctioned posts;
 - (iv) the employees employed on a leave-gap arrangement, or on ad hoc basis or on contractual basis; and
 - (v) the employee appointed on or after 1st January, 2006 on aided sanctioned post.”

Hence, Rule 3(2)(iii) has been challenged in this writ petition.

Though the said rule has not been challenged in the main prayer, possibly because its vires has already been upheld, however, in fact, it is still under challenge in this petition, because in the face of the rule standing, obviously the petitioners cannot be given the benefit of pension. That part to be adverted to a little later.

37. Coming back to the application of the rules, any employee of the institute who was in service on 31.12.2005 and retired at any time thereafter, would be entitled to the benefit of pension (in terms of the said rules). This would obviously include those co-employees of the petitioners who were in service on the date of the take over by the government in 1996 but being

younger (even slightly), to the petitioners, continued in service after 31.12.2005.

In the opinion of this Court, the cut off date that should have been applied by the government while promulgating these rules, should have been closer to the date of take over and not fixed as a date more than 9 years thereafter, thereby depriving a large number of employees of the benefit of the rules, despite them being employees of the Government since 1996, yet granting the benefit to those who were similarly placed but retired may be even a few months after the petitioners.

The same yardstick of refund of the employees' share of the contributory provident fund, alongwith interest thereupon, as has been made applicable to those who retired after 31.12.2005, could also have been made applicable to the petitioners, in terms of Rule 18 of the Rules of 2005.

[Rule 18 refers to the details of transfer of the employees' share to the Government; however, it is not considered necessary to reproduce that rule, the petitioners in any case not being aggrieved of such methodology in order to make the pension scheme applicable to them.]

38. In this regard, I also find considerable weight in the contention of Mr. Malik, learned Senior Counsel, to the effect that the cut off date of 31.12.2005 has probably resulted only because the Government kept delaying the matter of formulating the pension scheme for the employees of the institute, despite having given an undertaking to this Court on 27.05.2003, in CWP No.3414 of 2001, that such a scheme would be finalized within three months.

Though no detailed arguments have been addressed in that regard, I also do not find to be unsound the reasoning in the stand taken by

the petitioners, to the effect that even in the year 1999, the Government escaped its liability under the provisions of the Employees Provident Fund and Miscellaneous Provision Act, 1952, simply informing the Regional Provident Fund Commissioner that it was in the process of formulating a pension scheme for the employees. Actually, such scheme was not introduced with effect from another six years and more thereafter.

Thus, whatever benefit the petitioners may have been able to obtain under the Act of 1952, in terms of the notice issued by the Regional Provident Fund Commissioner in 1999, i.e. 3 years after the take over by the Government, they were deprived of such benefits also.

39. It is also to be noticed that in the order impugned in this writ petition, i.e. the letter dated 07.08.2008, from the office of the Director Technical Education to the petitioners (Anneuxre P-14), no reason whatsoever has been given for rejecting the representation of the employees who have retired before 31.12.2005.

Thus, there is no criteria disclosed, on the basis of which the aforesaid date has been taken to be the cut off date.

It may possibly have been understandable if the cut off date had been fixed so as to exclude from pensionary benefits those who had only 2 to 3 years of service left on the date of take over of the institute by the government, vide its order Anneuxre P-6, dated 26.03.1996. However, no such criteria having been framed, the cut off date of 31.12.2005, fixed vide Rule 3(2)(iii) of the Rules (as also vide Rule 1(3) thereof), would appear to wholly arbitrary and without any rationale to it, with the petitioners having remained wholly Govt. employees for periods ranging from 2 years to 9 years after the take over. It also cannot be lost sight of that even prior to its take

over in March, 1996, the institute was very much a Government aided institute, with Government contributing between 75% to 95% of the recurring expenditure, as was not met by the institute from its own revenue. In a similar situation, the Government has undoubtedly framed a scheme for employees of formerly aided colleges of the Education Department, keeping a cut off date in the year 1998. In the opinion of this Court, a similar scheme should have been framed in the present case also.

40. Hence, for the aforesaid reasons, I am of the opinion that the grievance of the petitioners is genuine.

However, since the matter has been earlier adjudicated upon by a Division Bench in *Jagdish Chanders'* case (supra) (CWP No.20314), whereby the vires of Rule 3(2)(iii) has been upheld, the benefit of the pension scheme as promulgated in the Rules naturally cannot be granted to the petitioners by issuing a writ of mandamus in that regard by this Court, there being no other provision or scheme, by which pension can be granted to them.

Possibly, Mr. Malik, learned Senior Counsel, may be correct in stating that all the facts were not brought before their Lordships of the Division Bench, with regard to the complete take over of the employees of the institute, or the fact that the Government wriggled out of its liability under the Act of 1952, stating in 1999 itself that it would formulate a pension scheme for the employees who were working in in the institute.

Be that as it may, this Court is respectfully bound by the ratio of the judgment of the Division Bench, in a writ petition which was filed by a co-employee of the petitioners themselves.

41. It is also to be stated here that as regards the instructions,

Annexure P-15, dated 17.07.2007, though it seems that even if the petitioners cannot be granted the benefit of pension under the Rules of 2005, they would still be entitled to pension in terms of the said letter, as contended by Mr. Malik; however, it is seen that the said letter was issued specific to the Education Department and not to the Technical Education Department, i.e. it is a letter from the Commissioner and Secretary to Government of Haryana, Education Department, addressed to the Higher Education Commissioner, Haryana. Obviously, not being employees of the Education Department but of the Technical Education Department, which is wholly different, the said instructions of 17.07.2007 cannot be ipso-facto applied to the petitioners, though correctly, as already said, Government should have followed a similar policy even for the employees of the Technical Education Department, it being a more rational policy in respect of erstwhile private aided colleges wholly taken over by the Government subsequently.

42. Having expressed the aforesaid opinion, however, keeping in view the fact that a Division Bench has already dismissed a similar claim raised by a co-employee of the petitioners and even in this very petition, the ratio of that judgment has been upheld by another Division Bench, to whom a reference was made, as already noticed earlier, this petition has to be dismissed.

Ordered accordingly. No order as to costs.

January 20, 2017
dinesh

(Amol Rattan Singh)
Judge

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No