

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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**CWP-20767-2012 (O&M)
Date of decision: 11.01.2017**

Vipin Kumar and others

....Petitioners

Versus

State of Haryana and others

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. Anurag Goyal, Advocate for the petitioners.

Mr. Harish Rathee, Sr. DAG, Haryana.

P.B. Bajanthri, J. (Oral)

In the instant writ petition, the petitioners have questioned the validity of the order dated 18.10.2011 (Annexure P3) by which structure of pay/ACP pay structure of the Teaching Faculty and Technical Supporting Staff in Technical Education Department by which the respondents are implementing the pay structure notionally w.e.f. 01.04.2010 and actual benefit shall be available with immediate effect.

2. Learned counsel for the petitioners submitted that State of Haryana promulgated the rules called Haryana Civil Services (Revised Pay) Rules, 2008 which would come into effect from 01.01.2006. Various post's pay has been revised notionally with reference to the existing notional pay scale. All India Council for Technical Education (for short 'AICTE') issued

a notification on 05.03.2010 promulgating regulations called All India Council for Technical Education (Pay Scales, Services Conditions and Qualifications for the Teachers and other Academic Staff in Technical Institutions (Diploma) Regulations, 2010 for various posts vide Annexure R1. The same has been adopted by the State by passing an order dated 08.10.2011 under Rule 17 and 19 of the Haryana Civil Services (Revised Pay) Rules, 2008 vide Annexure P3.

3. Learned counsel for the petitioner pointed out that the respondents have arbitrarily incorporated that the pay structure shall be applicable notionally w.e.f. 01.04.2010 and actual financial benefits shall be available with immediate effect. For which no reasons have been assigned. Moreover, when the AICTE notification was issued on 05.03.2010 and the respondents-State are adopting the same on 18.10.2011, there is no question of extending the pay structure notionally w.e.f. 01.04.2010. Thus, there is lacuna in the order dated 18.10.2011(Annexure P3).

4. On the other hand, learned counsel for the respondents submitted that no doubt the AICTE had issued a notification on 05.03.2010 in respect of Regulation, 2010 vide Annexure R1. The same has been taken note of by the respondents-State and issue an order on 18.10.2011 under Rule 17 and 19 of the Haryana Civil Services (Revised Pay) Rules, 2008. The object of imposing the condition that the pay structure with reference to 18.10.2011 is notionally is with reference to the fact that the petitioners have already been granted the benefit of revision of pay Rules, 2008 w.e.f. 01.01.2006. Therefore, there is no infirmity in imposing the clause that pay

structure/ACP Pay structure shall be applicable notionally w.e.f. 01.04.2010.

5. Heard learned counsel for the parties.

6. Short question for consideration in the present petition is whether imposing the following condition in the order dated 18.10.2011 is correct or not. Condition No.2 of the order dated 18.10.2011 reads as under:

"2. The above Pay Structure/ACP Pay Structure shall be applicable notionally with effect from 01.04.2010 and actual financial benefit shall be available with immediate effect."

7. Admittedly, the State issued Rules called Haryana Civil Services (Revised Pay) Rules, 2008 and it would be given effect from 01.01.2006. The petitioners are beneficiary of the 2008 revised rules and further they are entitled for AICTE notification dated 05.03.2010 vide Annexure R1 and same has been implemented by the State-respondents on 18.10.2011 by issuing the order. While extending the benefit of pay structure, ACP pay structure with reference to AICTE notification dated 05.03.2010, the State respondents have imposed the clause for extending pay structure and ACP pay structure would be applicable notionally w.e.f. 01.04.2010 and actual financial benefits will be available with immediate effect. The respondents-State are adopting certain post's pay structure and other service conditions prescribed by the AICTE. In the present case notification dated 05.03.2010 by which the AICTE promulgated the regulations called All India Council for Technical Education (Pay Scales, Services conditions and Qualifications for the Teachers and other Academic Staff in Technical Institutions

(Diploma) Regulations, 2010. Admittedly, the said regulations are applicable to the petitioners and others who are covered by the notification dated 05.03.2010. When the State government intends to adopt the AICTE notification dated 05.03.2010, the same would be effective from 05.03.2010 for the reasons that State Government is adopting AICTE prescribed norms, service conditions, pay scale etc. from time to time for various posts. While adopting the AICTE notification dated 05.03.2010 there is delay of more than one year. Mere implementation of AICTE notification with time gap that does not take away the pay structure/ACP pay structure which is due to the eligible employees. Therefore, prescription of extending benefit of pay structure/ACP pay structure which would be applicable notionally w.e.f. 01.04.2010 is highly arbitrary and no reasons have been assigned. Therefore, insofar as imposing the condition that pay structure/ACP pay structure shall be applicable notionally w.e.f. 01.04.2010 is read down and the pay structure/ACP pay structure shall be applicable w.e.f. 01.04.2010 with actual financial benefit from 01.04.2010. To that extent, the Annexure P3 dated 18.10.2011 is read down.

8. In view of these facts and circumstances, the respondents are directed to carry out necessary fixation and extend the monetary benefits to the petitioners within a period of 4 months from today.

(P.B.BAJANTHRI)
JUDGE

11.01.2017

pooja saini

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No