

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

**(1) CWP No. 1486 of 2018 (O&M)
Date of Decision : 13.12.2018**

Kidar Nath Kohli and others

...Petitioners

Versus

State of Haryana and others

...Respondents

**(2) CWP No. 1441 of 2018 (O&M)
Date of Decision : 13.12.2018**

Sudha Gupta and others

...Petitioners

Versus

State of Haryana and others

...Respondents

**(3) CWP No. 29348 of 2017 (O&M)
Date of Decision : 13.12.2018**

Swaran Khurana and others

...Petitioners

Versus

State of Haryana and others

...Respondents

**(4) CWP No. 17160 of 2018 (O&M)
Date of Decision : 13.12.2018**

Sh. Kanwal Singh and others

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

**Present: Mr. Anil Kumar Aggarwal, Advocate and
Mr. Jitender Nara, Advocate for the petitioners.**

Mr. Pankaj Mulwani, Deputy Advocate General, Haryana.

Mr. Sanjay Jain, Advocate for respondent No. 3
(in CWP No. 1486 of 2018).

Mr. Vivek Thakur, Advocate for respondent No. 4
(in CWP No. 1486 of 2018).

Mr. Harshit Jain, Advocate for
Mr. Rajdeep Singh Cheema, Advocate
for respondents No. 3 and 4 (in CWP No. 1441 of 2018).

Mr. Rahul Jaswal, Advocate for respondent No. 5
(in CWP No. 1441 of 2018).

Harsimran Singh Sethi, J.(Oral)

1. By this judgment, four petitions bearing No. CWP No. 1486 of 2018, CWP No. 1441 of 2018, CWP No. 29348 of 2017 and CWP No. 17160 of 2018 are being disposed of as common questions of facts are involved therein.

2. Separate replies (in CWP No. 1441 of 2018) on behalf of respondents No. 4 and 5 have been filed in Court today. The same are taken on record.

3. In the present case, the petitioners are the retired Teachers of the Aided Schools, who have approached this Court for grant of benefit of the Pension Scheme, which was formulated by the respondents-State. All the petitioners retired from the Government Aided Schools prior to 11.05.1998. It is not disputed that all the petitioners were working against the permanent sanctioned post. The petitioners have been denied the benefit of Haryana Aided Schools (Special Pension and Contributory Provident Fund) Rules, 2001 (hereinafter referred to as "2001 Rules") on the ground that the cut off date fixed for being eligible for the grant of benefits under

2001 Rules is 11.05.1998 and, therefore, as the petitioners retired prior to the said date and were not the employees of the Aided Schools on the date of the promulgation of 2001 Rules, they cannot be extended the benefits of the said Rules.

4. Government of Haryana was not extending the benefit of allowances pension and other retiral benefits, which were admissible to the Government School Teachers, to the Teachers of the Aided Schools. A writ petition bearing CWP No. 5353 of 1984 was filed claiming the benefits of allowances pension and other retiral benefits as being given to the Government School Teachers. The said writ petition was dismissed by this Court on 21.02.1985. Against the said judgment, some of the Teachers alongwith the Union known as Haryana State Adhyapak Sangh filed an SLP before Hon'ble the Supreme Court, which was allowed on 28.07.1988. A direction was given by Hon'ble the Supreme Court that the Teachers of the Aided Schools must be given the same pay scale and dearness allowances as admissible to the Government School Teachers. Further, a direction was given to the State Government to formulate a Scheme in respect of grant of pension and other retiral benefits to the Teachers of the Aided Schools as being granted to the Teachers of the Government Schools.

5. Despite the fact that a clear direction was given by Hon'ble the Supreme Court in Haryana State Adhyapak Sangh and others Vs. State of Haryana and others, 1988 (4) SCC 571, still the State Government did not formulate the Scheme for grant of pension and other retiral benefits to the Teachers of the Aided Schools. The matter was again taken up by the Haryana State Adhyapak Sangh by filing Civil Miscellaneous Application bearing No. 15049 of 1989 in Civil Appeal No. 2366 of 1988 which came to

be decided on 21.02.1990 reported as 1999 (Supplementary) SCC 306 and Hon'ble the Supreme Court granted more time to State to formulate the Scheme/Policy for the parity in respect of pension and other retiral benefits also between the Teachers of the Aided Schools and Teachers of the Government Schools. As per the directions given, the said Scheme/Policy was to be formulated by 31.12.1990.

6. Despite the fact that a clear direction was given by Hon'ble the Supreme Court, still no Scheme/Policy was framed by the State and ultimately another writ petition bearing CWP No. 7945 of 1997 was filed by the Teaches of the Aided Schools for grant of pension and other retiral benefits as admissible to the Teachers of the Government Schools. The said writ petition was allowed by this Court on 09.12.1999 with the following directions :-

“It may be concluded that the petitioners are entitled to parity in respect of other allowances and other retiral benefits also. The matter has already been examined by the Supreme Court and a scheme was required to be formulated by the State Government in consultation with the managements of the privately managed schools. It appears that the State Government has done little in this direction. The reasons are not known. The scheme regarding pension has been prepared and implemented 7 years after their Lordships of the Supreme Court directed the State Government to evolve the scheme in this behalf. Thus, the State Government has shown little interest in the matter. There is found no valid reason. Once the principle of parity has been accepted, it should not be left half way. It must be given full effect.

In the result, the writ petition is allowed with a direction to the respondents to prepare a scheme with regard to the remaining other allowances like medical allowances, bonus,

leave travel concession and retiral benefits like leave encashment etc. Respondents No. 4 to 12 (managements of the aided schools) shall prepare a scheme afresh regarding parity in respect of the aforesaid allowances and benefits which are admissible to the teachers of Government schools but are not paid to the teachers of aided schools. The scheme shall be furnished to the State Government within six months from the date of this order. The scheme shall be prepared in consultation with the association of teachers of the aided schools. The State Government shall thereafter take a decision thereon within three months from the date of submission of the scheme to it by respondents No. 4 to 12.

No order as to costs.

Petition allowed.

December 9, 1999

*Sd/- N.K. Agrawal,
Judge.”*

7. After the said writ petition was allowed, the respondents-State submitted that in the month of May, 1998, the Government had approved the Scheme with regard to the pension to the Teachers of the Aided Schools and in pursuance to the said decision, Haryana Aided Schools (Special Pension and Contributory Provident Fund) Rules, 2001 was formulated. Even though the Rules were notified in the year 2001 but the same were to come into effect from 11.05.1998.

8. That as the cut off date was fixed as 11.05.1998, large number of Teachers who had retired from the year 1980 till the year 1998 (when the directions were first given by Hon'ble the Supreme Court i.e. 28.07.1988 till the cut off date of 11.05.1998) were rendered ineligible to be granted benefits under the 2001 Rules. In fact, these were the employees who had started the campaign for the grant of parity and for the grant of pension and

other pensionary benefits to the Teachers of the Aided Colleges as being given to the Teachers of the Government Schools. By the cut off date fixed in 2001 Rules, they were left ineligible.

9. Similarly situated persons as the petitioners herein, filed a writ petition bearing CWP No. 20085 of 2003 claiming that the cut off date, which has been fixed by the State while framing 2001 Rules, is bad in law and they should also be treated eligible for the grant of benefits under 2001 Rules.

10. The respondents on the other hand stated that according to 2001 Rules, the same has only been come into effect from 11.05.1998 and any Teacher, who has retired before the said order, is ineligible to seek benefits under the said Rules and further as there was no challenge to the cut off date, no relief can be granted.

11. A Co-ordinate Bench of this Court considered all the objections raised by the State of Haryana and held that once directions were given by Hon'ble the Supreme Court on 28.07.1988, directing the State to frame a Scheme/Policy on the same parity for the grant of pension and other pensionary benefits to the Teachers of the Aided Schools as done in the case of Teachers of the Government Schools, there is no justification to deny the benefit to those Teachers, who retired only due to inaction on the part of the State to implement the orders of Hon'ble the Supreme Court. The Co-ordinate Bench held that State who took 10 years to frame the Scheme/Policy as directed by Hon'ble the Supreme Court for which the Teachers, who were otherwise entitled for the benefits, cannot be made ineligible. Had the directions given by Hon'ble the Supreme Court complied with in the letter and spirit immediately, the Teachers who retired

from July, 1988 till the framing of the Scheme/Policy would not have suffered prejudice. The relevant direction given by the Co-ordinate Bench are as under :-

“The petition is allowed and it is held that the petitioners are entitled to pension Scheme of 2001 i.e. Haryana Aided Schools (Special Pension and Contributory Provident Fund) Rules, 2001 in view of their pre-existing right for the benefits arising out of the said Rules on the basis of judgment of the Apex Court dated July 28, 1988 and this Court dated December 9, 1999 which has resulted in the formulation of the Pension Rules, 2001. The petitioners will be permitted to exercise option as per the Rules to be governed by the abovesaid rules within the period of one month. They would also be required to deposit the full amount of employers share alongwith interest at the rate of 6% per annum on the actual amount drawn by them from the date of drawal of the said amount, with the Director within a period of two months after the same is calculated by the respondent State and respective management of the petitioners and communicated to the petitioners. It is further made clear that in case the petitioners make a request for adjustment of the amount out of the pension amount released to them, the same may be permitted as per relevant rules as provided under Rule 16 (3) of the 2001 Rules. It is observed that as the petitioners are senior citizens, unnecessary harassment should be avoided to them and that they should be granted the relief within a period three months. It is observed that this judgment is not meant to be treated as a precedent and should be considered as a special relief to the petitioners as they have been denied fruits of prolonged contested litigation.

-sd-

November 7, 2013
sanjay

(M.M.S. BEDI)
JUDGE”

challenging the said order. The said LPA was decided on 31.07.2017 by passing with the following order :

“CM-2908-LPA-2017 has been filed seeking disposal of the main appeal in terms of the affidavits submitted by the respondents/legal heir(s) of respondents to the appeal which have been appended to the aforesaid application as Annexures R-I to R-V.

Respondents No. 1 to 5 are represented by their counsel and it is stated that they are bound to the affidavits and have no objection in the case of appeal being disposed of.

Consequently, in view of the consensual stands of the parties, we deem it appropriate to take the appeal on board, allow the application and dispose of the appeal leaving the parties bound to their respective stands. Ordered accordingly.”

A bare perusal of the above would show that there was some compromise between the State of Haryana and the respondents therein.

13. It is admitted by learned counsel for the State that the petitioners in CWP No. 20085 of 2003 have already been extended the benefits of pension in pursuance to the order dated 07.11.2013 (Annexure P-8) passed by a Co-ordinate Bench of this Court.

14. The petitioners in the present writ petition are also seeking the same benefits as extended to the petitioners in CWP No. 20085 of 2003 on the ground that the petitioners are similarly situated employees, who retired between 28.07.1988 and 11.05.1998 and hence are entitled to be granted the same relief.

15. While issuing notice of motion, this Court had restricted the claim to 38 months prior to the filing of the writ petition, in case the writ petition was to be allowed in favour of the petitioners.

16. Learned counsel for the respondents states that even as on today, as per 2001 Rules, the cut off date for being eligible to be granted benefit is 11.05.1998 and, therefore, as all the petitioners have retired prior to the said date; they are not eligible to be granted any benefit and the writ petition is liable to be dismissed. With respect of the passing of the order by the Co-ordinate Bench in CWP No. 20085 of 2003 decided on 07.11.2013, the learned counsel for the respondents state that the said judgment was not to be treated as a precedent and the said relief was a special relief to the petitioners therein.

17. In respect of the first objection taken by the State counsel that the cut off date is not under challenge and, therefore, once as per the cut off date fixed by the 2001 Rules which is 11.05.1998, the petitioners cannot be granted any benefit. I am of the view that the said argument cannot be taken by the State in view of the fact that similarly situated Teachers, who retired between July 1988 till May 1998, have already been granted benefits despite the existence of the cut off date under 2001 Rules. Once similarly situated persons have been allowed benefits by this Court, the relief cannot be denied to the petitioners only on the ground that as per 2001 Rules only the employee, who retired after 11.05.1998 will be granted the benefit. By a detailed reason, the Co-ordinate Bench while deciding CWP No. 20085 of 2003 had held that denying the Teachers the benefit of pension, who retired between 28.07.1988 till 11.05.1998, will amount to put in premium upon the State action for not implementing the orders passed by Hon'ble the Supreme Court immediately. The State cannot be allowed to take benefit of its own delay and deny a legitimate right which had been created within the petitioners, who were in service when the directions were given by Hon'ble

the Supreme Court on 28.07.1988 to treat the Teachers of the Aided Schools at par with the Teachers of the Government Schools in respect of the pension and other retiral benefits.

18. Furthermore, once despite existence of the cut off date as 11.05.1998 under 2001 Rules, the benefits have been granted to the Teachers, who retired prior to the said date by the State itself, the same cannot be denied to the petitioners therein and the argument stands rejected.

19. As far as the arguments raised by the learned counsel for the respondents that the judgment passed by the Co-ordinate Bench in CWP No. 20085 of 2003, decided on 07.11.2013 is not to be treated as a precedent and is to be considered as a special relief to the petitioners as have been denied fruits of the prolong contested litigation, I am of the view that this observation is to be treated in respect of the grant of benefits despite being no challenge to the cut off date. The relief was not limited to the petitioners in CWP No. 20085 of 2003. Keeping in view the detailed reasons which were given by the learned Single Judge while deciding CWP No. 20085 of 2003 that the Teachers, who were in service after the directions were given by Hon'ble the Supreme Court on 28.07.1988 to frame a Scheme with regard to the pension and pensionary benefits as being given to the Teachers of the Government School, the same was applicable upon the petitioners as they were in service on the said date. There is no difference between the petitioners in the present case and the petitioners in CWP No. 20085 of 2003 and, therefore, the Government cannot discriminate between the similarly situated persons.

20. Further as per the settled principle of law settled by the Division Bench of this Court in the case relating to the State of Haryana

only, it has been held that the State must accept the judgment and implement it in its true spirit and command. Denial of the identical relief to the similarly situated employees by the State would certainly be judicially charticised. By the said judgment, Division Bench held that a duty is caste upon the State to grant relief to its employees who are similarly situated on identical facts, the State must avoid discrimination. The relevant paragraphs of the judgment are as under :-

“11. State has pervasive obligations to discharge in relation to maintaining its expected standards of employer-employee relationship. As already noticed, one of the important facets of such obligations is to be reasonable and fair in granting service benefit to its employees in accordance with service rules and the principles enunciated on pronouncement of judgments by the Courts. When judgments attain finality to which the State is a party, duty is casted upon the State to grant relief to its employees who are similarly situated and on identical facts. Benefit of such approach are many and it causes no disadvantage to the interests of the State. It is not necessary for the State to require each one of its employees to approach the Courts of law for grant of a relief which the State ought to grant to the employees in normal course of its administration, particularly, the cases of the kind afore-referred. Such principles is well known and accepted for years now. By referring to few judgments we would only predicate the principle with greater emphasis of its application in the day-to-day affairs of the State. In the case of Dr. (Mrs.) Santosh Kumari v. Union of India and others, JT 1994(7) SC 565 : 1995(1) SCT 527 (SC) the Hon'ble Apex Court held as under :-

"The allotment of seats should go according to merit. It does not depend upon who comes to Court and who does not. The matter is one of principle

and should not depend upon who comes to the court. A more deserving candidate may not have the means of approach the Court."

- 12. xxxx xxxx xxxx xxxx
- 13. xxxx xxxx xxxx xxxx
- 14. xxxx xxxx xxxx xxxx

15. The cumulative effect of the above settled principles is that the State must avoid discrimination in grant of service benefits to the members of the same cadre identically situated. If the employees had not approached the Court, but the judgments otherwise pronounced relating to the same matter have attained finality, the State must show its grace and in fact carry out its implicit duty to grant benefit to the other members of the cadre.

- 16. xxxx xxxx xxxx xxxx

17. We are of the considered view that the State ought to have granted or at least attended, responded to the notice served by the petitioners in which judgments of the Court in their favour on all force were specifically mentioned. The learned Advocate General, Haryana fairly conceded that the times have come when the State must take preventive measures to avoid unnecessary litigation. Wherever the Courts have settled the law and the State has taken all available remedies in law of appealing against the judgments upto highest court of the land, in that event the State must accept the judgment and implement it is its true spirit and command.

- 18. xxxx xxxx xxxx xxxx

19. Be that as it may, particularly in the afore-referred premises, we still feel that it is the bounden duty of the Court to issue the following directions to the State in the larger public interest and for proper administration of

justice :-

(i) Wherever the rights of the parties have been settled by a judgment of the Court, the State has taken all remedies available to it in law against that judgment even upto the highest court of the land and the judgments has attained finality, then the State must accept the judgment and implement it in its true spirit and command. There is implicit obligation on the part or the State to grant same relief to other members of the cadre whose claim was based upon identical facts and points of law.

(ii) The State Government shall as expeditiously as possible in any case not later than four months react and respond to a legal notice/representation served upon it by any of its employees in redressal of his grievance/grant of relief, which has been granted to his co-employees similarly situated, in furtherance to the judgment of the Court. Unless, for reasons to be indicated in the reply, the State feels compelled to deny such relief. Needless to point out that denial must neither be evasive nor intended to circumvent the orders of the Court.

(iii) In the event such an employee is compelled to approach the court of law, whereupon the court awards interest and/or costs while allowing such a petition, then the expenditure incurred by the State including the costs/interest paid in furtherance to the orders of the Court should be recovered from the erring officer(s).

(iv) The concerned quarters of the Government are expected to work out the details in furtherance to the above directions and issue pervasive but definite instructions to all its departments forthwith

to ensure compliance.”

21. In view of the above, the respondents-State was liable to extend the benefit of the judgment rendered by this Court in CWP No. 20085 of 2003 to all the similarly situated persons and should not have forced the petitioners to approach this Court by raising the same objection which already stands rejected by the Co-ordinate Bench and which judgment has already attained the finality.

22. Further this Court while issuing notice of motion has only restricted the arrears to 38 months, which is to be followed by the State while implementing the 2001 Rules upon the petitioners in the present writ petition.

23. In view of the aforesaid facts and circumstances of the case, the present writ petition is allowed. The respondents are directed to implement 2001 Rules upon the petitioners as well for the grant of benefit therein. The respondents are further directed to calculate the pensionary benefits for which the petitioners will be entitled for by applying 2001 Rules. Let the exercise be completed within a period of three months from the date of receipt of certified copy of this order. After the calculation of the benefits, which the petitioners will be found entitled for, the respondents shall be at liberty to adjust the amount of Contributory Provident Fund paid to the petitioners at the time of retirement and release the remaining amount to the petitioners.

21. Keeping in view the facts and circumstances of the case is not granting any interest to the petitioners on the payments which the petitioners will be entitled for. Similarly, the Contributory Provident Fund which the petitioners shall have to be deposited and which has to be adjusted, shall be

adjusted without their being any claim on the interest on the same.

The writ petition is allowed in the above terms.

December 13, 2018
kanchan

(HARSIMRAN SINGH SETHI)
JUDGE

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