

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

(1) CWP No.1426 of 2020
Date of Decision: 20.02.2020

Mahabir Singh and others
.....Petitioners
Versus
State of Haryana and others
.....Respondents

(2) CWP No.36347 of 2019

Girdhari Lal and others
.....Petitioners
Versus
Haryana Vidyut Prasaran Nigam Limited and others
.....Respondents

(3) CWP No.4261 of 2020

Ishwar Singh Sangwan and others
.....Petitioners
Versus
State of Haryana and others
.....Respondents

(4) CWP No.28381 of 2019

Jai Singh
.....Petitioner
Versus
State of Haryana and others
.....Respondents

(5) CWP No.25777 of 2019

Jagan Nath and others
.....Petitioners
Versus
State of Haryana and others
.....Respondents

(6) CWP No.37042 of 2019

Tara Chand and others
.....Petitioners
Versus
State of Haryana and others
.....Respondents

CWP No.1426 of 2020 and other connected cases

(7) CWP No.29757 of 2019

Kapoor Chand and anotherPetitioners

Versus

State of Haryana and othersRespondents

(8) CWP No.29774 of 2019

Gian Chand Bhalla and othersPetitioners

Versus

State of Haryana and othersRespondents

(9) CWP No.31260 of 2019

Partap Singh Yadav and othersPetitioners

Versus

State of Haryana and othersRespondents

(10) CWP No.29672 of 2019

Ved Parkash and othersPetitioners

Versus

State of Haryana and othersRespondents

(11) CWP No.4255 of 2020

Om Parkash and othersPetitioners

Versus

State of Haryana and othersRespondents

CORAM: HON'BLE MS. JUSTICE NIRMALJIT KAUR

Present: Mr. Virender Kumar, Advocate
for the petitiones in CWP-1426-2020.

Mr. Umesh Narang, Advocate
for the petitioners in CWP-36347-2019.

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Mr. S.N. Yadav, Advocate
for the petitioners in CWP Nos.29672, 31260 of 2019
and in CWP No.4261-2020.

Mr. Rahul Deswal, Advocate
for the petitioners in CWP-25777-2019.

Mr. Vivek Khatri, Advocate
for the petitioners in CWP Nos.29774, 29757, 37042 and
28381 of 2019.

Mr. Aditya Yadav, Advocate
for the petitioners in CWP-4255-2020.

Mr. Ravi Dutt Sharma, DAG Haryana and
Mr. Pankaj Mulwani, DAG, Haryana.

NIRMALJIT KAUR, J.

All the aforementioned writ petitions shall stand decided by
this common order as the issue involved is identical.

For convenience, the facts are being taken from CWP No.1426
of 2020. The grievance of the petitioner in short is that for providing relief
to its employees (due to hike in prices etc.) the Haryana Govt. after
considering the aforesaid question took a conscious decision to grant adhoc
relief to its employees w.e.f. 01.04.1972 @ Rs.15/- to Rs.45/- as first
component of adhoc relief and Rs.7/- to Rs.15/- as second component of
adhoc relief vide Govt. letter dated 27/29 June, 1972 vide Govt. letter
No.7158-3FR-72/30420 dated 19.12.1972. As the grant of above mentioned
adhoc relief was not commensurate with the relief which was required in the
circumstances then prevailing, the Govt. with a view to providing further
relief to its employees decided that further relief may be granted to its
employees belonging to class II, III & IV services in the form of additional

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dearness allowances w.e.f. 01.05.1973, 01.08.73, 01.10.73 and 01.01.74 at the rates indicated in the Haryana Govt. Finance Deptt. letter No.1699-3FR-74/10392 dated 20.03.1974.

The prayer, herein, is for quashing of the impugned orders passed by the Appropriate Authority, vide which, the claim of the petitioners for re-fixing of pay and revision pensionary benefits with all consequential benefits was rejected, with a further prayer to restore the deduction made from the payment of additional dearness allowances w.e.f. 01.05.1973 onwards alongwith arrears and consequential benefits of re-fixation of pay upto date and revision of pension and pensionary benefits alongwith interest.

While praying for restoration of the deduction made from the payment of additional dearness allowance w.e.f. 01.05.1973, learned counsel for the petitioners raised the following arguments:

Firstly, similar writ petitions were filed by the similarly situated employees titled as R.K. Gupta and others Vs. State of Haryana and others, CWP No.4518 of 2000, which was allowed, vide order dated 11.08.2003. The State filed SLP No.8661 of 2009 against the said judgment, which was also dismissed vide order dated 08.12.2015 by the Hon'ble Apex Court. Thereafter, the Additional Chief Secretary, Government of Haryana, Finance Department issued instructions dated 28.03.2017 to implement the above said order and granted the adhoc relief. Subsequently, the petitioners too submitted their representations to their respective Superintendent of Police/DGP for getting the same benefit but the same have been rejected on the ground that the benefit of re-fixation of pay pension is to be given only

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to the petitioners in CWP No.4518 of 2000 as per the instructions dated 28.03.2017 issued by the Finance Department.

Secondly, while re-fixing the pay of the petitioners, in the scaled revised w.e.f. 01.04.1979 has a recurring adverse effect detrimental to the interest of the employees.

Thirdly, once a benefit has been given pursuant to a judgment of a Court of law to a set of employees, then similarly situated employees are entitled to the grant of the same benefit.

Learned counsel for the petitioners in CWP No.4261 of 2020 argued that, vide order dated 08.11.2018 (Annexure P-9), the department have granted the benefits of alleged excess payment of adhoc dearness allowance in terms of the judgment rendered in the case of R.K. Gupta (supra). Therefore, there is no reason to discriminate the present petitioners/employees on the ground of delay and latches.

Learned counsel for the petitioners in CWP No.1426 of 2020 argued that the Additional Chief Secretary to Government of Haryana, Public Health Engineering Department, vide order dated 04.09.2019 too was granted the benefits to similarly situated employees in their department in terms of the judgment rendered in the case of R.K. Gupta (supra). Further, the relief was also granted in an identical case by allowing the writ petition bearing CWP No.12583 of 2002 titled as R.S. Khanna and others Vs. The State of Haryana and others, decided on 08.05.2019 on the statement of the counsel for State of Haryana that the case of the petitioners were squarely covered by the judgment rendered in the case of R.K. Gupta (supra).

Mr. Ravi Dutt Sharma, DAG Haryana and Mr. Pankaj Mulwani, DAG, Haryana, have put in appearance on behalf of the respondents.

However, the above mentioned writ petitions deserve to be dismissed in view of certain facts, which have been brought to the notice of this Court as under but were conveniently concealed to derive wrongful benefit.

Total 268 writ petitions of identical nature were filed by similarly situated persons as the present petitioners, which stood dismissed by the Division Bench of this Court, vide judgment dated 18.09.1991 passed in CWP No.16470 of 1990 titled as Ishwar Singh Sharma Vs. State of Haryana and others. The SLP No.20144 of 2019 against the said judgment too was dismissed by Hon'ble the Apex Court on 17.02.1993. Not only 268 writ petitions stood dismissed and the SLP too was dismissed but shockingly some of the petitioners in the above mentioned writ petitions were also petitioners in 268 writ petitions, dismissed vide order dated 18.09.1991 passed in CWP No.16470 of 1990 and other connected cases. List of petitioners in CWP No.37042 of 2019 titled as Tara Chand and others Vs. State of Haryana and others, who had earlier filed writ petitions and they did not disclose the same while filing the present writ petition, are as under:-

Serial No. of the petitioner in CWP No.37042 of 2019	Name of the petitioner in CWP No.37042 of 2019	Serial No. and CWP No. in which the petitioner was earlier party.
1	Tara Chand	Petitioner No. 43 in CWP No.6906 of 1991
4	Sampuran Chand	Petitioner No. 37 in CWP No.15569 of 1990
5	Ram Sharan	Petitioner No. 23 in CWP No.15569 of 1990

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Serial No. of the petitioner in CWP No.37042 of 2019	Name of the petitioner in CWP No.37042 of 2019	Serial No. and CWP No. in which the petitioner was earlier party.
6	Rajender Singh	Petitioner No.27 in CWP No.6906 of 1991
8	Chander Patti Yadav	Petitioner No.57 in CWP No.15569 of 1990
9	Naib Singh Chauhan	Petitioner No.16 in CWP No. 15569 of 1990
11	Anang Pal	Petitioner No.108 in CWP No.15993 of 1990
12	Mahavir Singh	Petitioner No.18 in CWP No.15993 of 1990
13	Naresh Kumar	Petitioner No.34 in CWP No.15993 of 1990
14	Rakesh Kumar	Petitioner No.43 in CWP No.389 of 1991
15	Mohinder Singh	Petitioner No.20 in CWP No.6906 of 1991
17	Arvind Kumar Tyagi	Petitioner No.33 in CWP No.15569 of 1990
19	Man Pal Singh	Petitioner No.106 in CWP No.15569 of 1990
20	Tej Pal Singh	Petitioner No.165 in CWP No.15993 of 1990
24	Mahi Pal Singh	Petitioner No.33 in CWP No.12386 of 1990
29	Om Parkash Sachdeva	Petitioner No.170 in CWP No.15993 of 1990
31	Kulwant Singh	Petitioner No.45 in CWP No.15569 of 1990
32	Gulab Singh	Petitioner No.153 in CWP No.389 of 1991

The petitioners in CWP No.31260 of 2019 titled as Partap Singh and others Vs. State of Haryana, who had earlier filed writ petitions but did not disclose the same while filing the present writ petition, are as under:-

Serial No. of the petitioner in CWP No.31260 of 2019	Name of the petitioner in CWP No.31260 of 2019	Serial No. in CWP No.1471 of 1991.
3	Om Dutt Tyagi	42
9	Ram Kumar Dahinwal	43
10	B.R.Bhatti	22

Serial No. of the petitioner in CWP No.31260 of 2019	Name of the petitioner in CWP No.31260 of 2019	Serial No. in CWP No.1471 of 1991.
21	M.S.Bhatia	46
22	Gur Charan Singh	47
23	Devi Chand	41
27	H.L.Goel	50

A huge number of other petitioners in the above mentioned writ petitions being disposed of today too had earlier filed writ petitions but did not disclose the same while filing the present writ petitions. Their names can be verified from the orders dated 18.09.1991 passed in all the connected writ petitions which were disposed of alongwith CWP No.16470 of 1990, on the same day.

The certified copies of the writ petitions bearing CWP No.15569 of 1990, CWP No.15993 of 1990, CWP No.389 of 1991, CWP No.1471 of 1991, CWP No.6906 of 1991 as placed by learned counsel for the respondents are taken on record. Writ petitions deserve to be dismissed on this ground alone.

The Division Bench of this Court while deciding the case of Ishwar Singh Sharma (supra) alongwith the 268 writ petitions, dismissed the same both on the question of merit and delay by observing in para Nos.6, 7 and 8 as under:-

“6. After hearing the counsel for the parties and perusing the pleadings, we find that the 'ad hoc' relief granted by the Government in the year 1972 was truly 'ad hoc'. Subsequent actions and events have clearly revealed that no definite formula or criterion had been prescribed or followed while granting the ad hoc relief. In such a situation, we find nothing wrong in the action of the

Government in deciding to adjust the excess amount which was being already drawn by the employees towards future installments of additional Dearness Allowance. It did not violate any Rule or Law. It did not act unfairly. It did not even withdraw or recover the excess already paid. It did not even stop the payment of the ad hoc relief. It only directed that additional allowance shall be granted after adjusting the excess amount of ad hoc relief already wanted. We find nothing to be arbitrary. We find no illegality in the order.

7. It is also proper to remember that the country- the tax payer-bears the burden of the pay and allowances of the Civil Servants. The financial constraints that confront the State cannot be easily over-looked. Payments by way of ad hoc relief and additional Dearness Allowance sanctioned by the State are only in the nature of welfare measures. These must have a relation to the resources actually available. Equally the civil servant must not flourish at the cost of others.

8. On a consideration of the matter we are satisfied that the premises on which the Government had passed the impugned orders are valid. The consequential adjustments made by the Government cannot be annulled by us in the exercise of jurisdiction under Article 226 of the Constitution.”

Thereafter, the judgment rendered in the case of Nitya Nand Vs. State of Haryana, CWP No. 5563-A of 1989, decided on 23.04.1990 was dealt with in para No.9 of the same judgment Ishwar Singh Sharma (supra) as under:-

“9. Relying on the decision of this Court in *Nitya Nand v. State of Haryana* (C.W.P. No. 5563-A of 1989 decided

on April 23,1990), it has been contended that the writ petition deserves to be allowed. We have gone through this judgment. We are also informed that on the basis of the decision in Nitya Nand's case (supra), a number of other petitions have also been decided. On the other hand, Mr. Sibal appearing for the respondents has pointed out that the State Government has filed a petition for special leave in the Nitya Nand's case and is also filing appeals petitions in other cases. In this situation, we have decided not to refer the matter to a larger Bench. Even otherwise, we find that the decision in Nitya Nand's case is based on the judgment in ***C.W.P. No. 966 of 1988 (Haryana Govt. College Lecturers Association v. The State of Haryana, 1991(1) S.C.T. 141)decided on July 18, 1988.*** This decision was in the case of College Teachers, who were not granted any *ad hoc* relief under the order of the State Government in the year 1972. Consequently in their case, the question of any adjustment of an excess payment did not arise. This decision had no application in the cases of other Govt. servants. The pay scales of college Lecturers were determined on the recommendations of the University Grants Commission, while the employees in various departments of the Govt. were granted relief periodically in the nature of additional dearness allowance. The cases of College Lecturers are, therefore, entirely different from those of other civil servants and no analogy could have been drawn therefrom as in the case of Nitya Nand.”

The writ petitions were also dismissed on the ground of delay

in approaching the Court by holding in para 11 as under:-

“11. It is noteworthy that in Nitya Nand's case even the objection regarding delay had not been raised. In the

present case, the learned Advocate General has vehemently contended that the claim made by the petitioners is absolutely stale. The orders of 1974 have been challenged in the year 1990. On a consideration of the matter, we find merit in the objection. The petitioners did not raise even a whisper against the order of March, 1974 during all these years. In fact, they drew all the benefits under the order which is now sought to be impugned. Not only that the pay scales have been revised in the years 1979 and 1986, but even otherwise, we have found no justification for the long silence on the part of the petitioners. On the ground of delay alone the petitions deserve to be dismissed. The learned counsel for the petitioners contends that it is a recurring cause of action. We are not inclined to accept this contention. The pay of every employee had been fixed in accordance with the letter of March 20, 1974 and the Annexures thereto. Even a suit would be totally barred by limitation. In such a situation, we are not inclined to invoke our extraordinary jurisdiction under Article 226 of the Constitution of India to entertain this belated claim made by the petitioners.”

Thereafter, the said judgment was upheld by Hon'ble the Apex Court, vide order dated 17.02.1993, passed in the SLP filed by employees, in the case of State of Haryana and another Vs. O.P. Sharma and others, reported in 1993 (3) SCT 170 as well as other connected SLPs including SLP filed by employees Om Parkash Kaushik Vs. State of Haryana (SLP No.3399 of 1993) by holding in para 3 as under:-

“xxxxxxx The State Government was also directed to dispose of the said representation by a speaking order. When the order giving reasons for negating the

contention of the employees was placed before the Division Bench it appreciated the stand of the State Government since the factual premise in the case of College Teachers was altogether different from the factual premise in the case of other Government servants who had actually received the ad-hoc interim relief. The High Court, therefore, rightly came to the conclusion that the ratio of the College Teachers' case was not applicable to the case of those Government servants who were the recipients of ad-hoc interim relief. Since the interim relief granted in 1972 was not based on any formula but was totally ad-hoc, when the formula for the grant of additional dearness allowance on the cycle of increase by 8 points in the Consumer Price Index was adopted by the State Government, the State Government realised that the ad-hoc interim relief was in excess by Rs. 9.40 to Rs. 45 per month depending on the pay-slab of a Government servant and, therefore, decided to adjust the increase rather than order lump sum recovery of the excess amount. Such an order passed by the State Government to recover the excess amount in a phased manner can never be termed as arbitrary, unreasonable, unfair or illegal. The High Court was, therefore, right in refusing to follow the decision in Nitya Nand's case in the subsequent Writ Petitions which were filed by various groups of Government employees who had benefited from the interim ad-hoc relief. In view of the above, we are of the opinion that Civil Appeals Nos. 53-60 of 1992 must be allowed and the order passed by the High Court must be reversed. There will be no order as to costs throughout. The Special Leave Petitions filed by the employees against the subsequent order of the High Court upholding the impugned order of 20th March,

1974 must fail and are rejected.”

Unfortunately, the above mentioned judgments were not brought to the notice of the Court either in R.K. Gupta's case (supra) or any other subsequent writ petition allowed by learned Single Bench of this Court. Even, the argument that writ petition titled as R.S. Khanna (supra) was allowed on the statement of learned State counsel does not help as no statement could have been made contrary to the record.

The above mentioned writ petitions are filed now in the year 2020, which is even later then the writ petitions, which came to be filed against the same action of the respondents/State way back in the year 1990 but was dismissed both on account of delay and merit.

Dismissed accordingly.

20.02.2020
sandeep

(NIRMALJIT KAUR)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No