

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

LPA No.606 of 2021 (O&M)

Date of decision :10.08.2021

Haryana Private Colleges Non-Teaching Employees Union (Regd.)

... Appellant

Versus

State of Haryana and another

.. Respondents

**CORAM : HON'BLE MR.JUSTICE RAJAN GUPTA
HON'BLE MR.JUSTICE KARAMJIT SINGH**

Present : Mr.Saurabh Bajaj, Advocate
for the appellant.

(The case has been taken up through Video Conferencing)

Karamjit Singh, J.

Appellant has filed this appeal against order dated 02.02.2021 whereby CWP No.22651 of 2020 (O&M) filed by the appellant was dismissed by the learned Single Judge.

The facts relevant for the disposal of this appeal are that:-

That the appellant, which claims to be representing the cause of all the Non-Teaching employees of the Govt. aided private colleges in Haryana, invoked the writ jurisdiction before the learned Single Judge with the following prayers:-

- “i. Issuance of a writ in the nature of mandamus directing the respondent to extend the benefit of the ex-gratia scheme to the employees of Govt. Aided Colleges issued vide notification dated 02.08.2019 (Annexure P-8) with the all consequential and retrospective benefits of previous scheme issued by the State of Haryana for grant the compassionate assistance by way of ex-gratia financial assistance on compassionate grounds to the family of the deceased Govt. employee who dies while in

service, since the employees of the Govt. Aided colleges are also the employees of Govt. of Haryana as per the provisions of Article 12 of the Constitution of India and further 95% grant in aid is also given by the Govt. of Haryana and therefore entitled for the same benefits which are being given to the employees working in the Govt. colleges, especially in a circumstances where whole control of the institution i.e. Govt. aided colleges is with the Govt. of Haryana such as recruitment admission pay Scale employment service condition, pension etc.;

- ii. Further a writ in the nature of certiorari for the quashment of order dated 25.11.2019 (Annexure P-7) vide which the respondent-authorities have rejected the claim of the petitioner-society in the absolute arbitrary, unconstitutional, violative, discriminatory and nonhumanitarian ground without considering the true and the material circumstances of the dispute.”

The learned Single Judge after hearing the counsel for the petitioner at length, dismissed the writ petition with the following observations:-

“Learned counsel for the petitioner has failed to draw the attention of the Court to any conscious decision to extend the benefits of the 2019 Rules taken by the Government to the employees of the privately managed affiliated Colleges. In view thereof, in absence of any right or a corresponding duty on the respondents, it would not be appropriate to issue the writ as prayed for. Still further, the petitioner has sought the issuance of a writ of certiorari. Learned counsel has failed to put forth any justification to quash the decision taken by the Director Higher Education, extracted above.

Accordingly, the writ petition is dismissed.”

Being not satisfied, the appellant has filed the present appeal against the impugned order dated 02.02.2021 passed by the learned Single

Judge .

We have heard counsel for the appellant.

The learned counsel for the appellant while assailing the impugned order contended that learned Single Judge ignored the fact that **Haryana Affiliated Colleges (Security of Service) Act, 1979** (in short, “Act of 1979”) is not only related to pay and pay bands of the employees but also provides security of service to these employees. The learned counsel for the appellant while drawing the attention of the Court to Section 6 of the Act 1979, submitted that the State Government has power to regulate the scales of pay, other allowances and privileges, payable to the employees of the affiliated colleges.

Learned counsel for the appellant further brought to the notice of this Court a letter dated 20.07.1982 (Annexure A-1), as per which, clarification was given by the Director, Higher Education, Haryana to the effect that pay fixation issued by the Haryana Government from time to time for the government employees would also be applicable to the non-teaching employees of the non-govt. recognized colleges. Learned counsel further placed emphasis on another letter dated 02.08.1993 (Annexure P2) issued by respondent No.2-Higher Education Commissioner, Haryana for grant of ex-gratia relief to the employees of govt. aided colleges.

The learned counsel for the appellant next argued that from 1983 till 2000, aforesaid ex-gratia scheme remained applicable to the employees of government aided colleges. In the meantime, the Haryana Government made provision for financial assistance on compassionate ground to the family of deceased employees of Government aided colleges

in the light of judgment passed by the Hon'ble Apex Court in SLP (Civil) 2309/2000. Learned counsel for the appellant also referred to letter dated 11.04.2001 (Annexure P-4) relating to employment to the dependents of deceased government employees under ex-gratia scheme.

Learned counsel for the appellant also urged that in 2006, the things changed, with the implementation of Haryana Compassionate Assistance to the dependents of deceased Govt. Employees Rules 2006 (in short, "Rules of 2006). It is contended that in the said rules, no provision was made for compassionate assistance to the dependents of deceased employees of government aided colleges. On this, the appellant filed CWP No.42926 of 2018 seeking benefit of aforesaid scheme to its employees. The said writ petition was disposed of vide order dated 16.1.2019 with a direction to the respondents to decide the representation dated 30.05.2018 of the appellant. The counsel for the appellant further contended that the aforesaid representation was rejected by the respondents vide order dated 25.11.2019 (Annexure P-7) with the observation that the non-teaching employees of govt. aided private colleges cannot be treated at par with the non-teaching employees of the government colleges.

Learned counsel further contended that in the meantime, the Rules of 2006 were repealed by the **Haryana Civil Services (Compassionate Financial Assistance or Appointment) Rules, 2019** (in short Rules of 2019). It is further contended that being aggrieved by the aforesaid decision of the government dated 25.11.2019, the appellant filed CWP No.22651 of 2020 but the same was dismissed by the learned Single Judge vide impugned order dated 02.02.2021.

The learned counsel for the appellant further submitted that while passing the impugned order, all the afore-stated aspects were not considered by the learned Single Judge. It was further contended that in **CWP No.23906 of 2011 Vikas Sharma vs. Sate of Haryana** decided on **05.05.2015**, the learned Single Judge of this Court gave direction to the concerned authority to approve the appointment of the petitioner therein as a peon in govt. aided college on compassionate ground. The learned counsel for the appellant also referred to decision dated 16.04.2001 of the Hon'ble Jharkhand High Court in Civil Writ Case No.1122 of 1999 titled as “**Najmussabah Vs. State of Bihar and others**” wherein benefit of State Government circular for appointment on compassionate ground available to government employees was also made applicable to teachers of non-govt. institutions and local bodies. Reference was also made to W.P. No.1974 of 2006 titled as “**Bhuvaneshwar Upadhyay Vs. Kesharwani Higher Secondary School**” decided on 17.08.2006 wherein Hon'ble Madhya Pradesh High Court gave direction to the State Govt. to appoint the petitioner therein on compassionate ground in Grant in Aid school.

The learned counsel for the appellant while concluding his arguments submitted that the stand taken by the respondents is unjust and arbitrary and cannot be sustained.

We have considered the submissions made by the counsel for the appellant.

Appellant-Haryana Private Colleges Non-Teaching Employees Union is seeking indulgence of this Court for getting extended the benefit of ex-gratia scheme for grant of compassionate assistance (Annexure P-8) to

the families of deceased employees of the government aided private colleges of Haryana.

The colleges that get aid from the Government are termed as Government Aided Colleges. Actually Government Aided Colleges are owned and managed by private management but get aid from the Government. This being the position, the staff of Government aided colleges are not employees of the Government and therefore, they cannot as a matter of right claim benefits of scheme of financial assistance (Annexure P-8). The aforesaid scheme is called the Haryana Civil Services (Compassionate Financial Assistance or Appointment) Rules, 2019 (in short Rules of 2019). The same came into force w.e.f. 1.8.2019. The object of these Rules is to grant compassionate financial assistance or appointment to the family of Government employee who dies or disappears while in service, consequently to relieve the family of Government employee concerned from financial distress. After going through the said Rules, it is clear that they are applicable only to the family of a Government employee who while working on regular basis dies while in service. The Rules of 2019 repealed the previous Rules of 2006. Even the Rules of 2006 were applicable only to the family of deceased Government employee. It was within the right of the State Government to extend the aforesaid Rules of 2019 to the employees of Government aided private colleges. As has been rightly observed by the learned Single Judge, the appellant has failed to draw the attention of this Court to any conscious decision taken by the Government to extend the benefit of the 2019 rules to the employees of the privately managed affiliated colleges.

Now we advert to Section 6 of the Act of 1979 which reads as follows:-

“The scales of pay and other allowances and privileges of the salary employees shall be such as may, from time to time, be specified by the Government.”

The said provision clearly states that pay-scales, other allowances and privileges should be given to the affiliated colleges of Haryana as specified by the Government. The counsel for the appellant failed to show that Haryana Government ever issued any such specific circular / notification extending the Rules of 2019 to the employees of affiliated colleges. It being so the aforesaid statutory provision of Section 6 of the Act of 1979 is of no help to the appellant in advancing its case.

Further the appellant has also relied upon letters dated 20.7.1982 and 2.8.1993. The said letters are not of any help to the appellant, the reason being subsequent thereto the Haryana Government in 2006 framed specific rules for grant of compassionate financial assistance/appointment. Later on the Rules of 2006 were succeeded by the Rules of 2019. Both these rules are applicable only to the family of deceased Government employee as has been discussed earlier.

We are of the view that the case of the appellant is not covered even under the concept of ‘parity in employment’. In **State of Haryana and Ors. vs. Champa Devi & Ors, 2002(10) SCC78**, the Hon’ble Apex Court while partly allowing the appeals filed by the State observed as follows:-

“That being the position, the conclusion of the High Court that the teachers of the private schools would be entitled to the benefits of the circular dated 8.2.1994 is unassailable and we, therefore,

sustain that part of the conclusion of the impugned judgment. Coming, however, to the question as to whether the benefits given to the Government employees under the circulars dated 14.5.1991, 7.8.1992, and 7.1.1994 which were annexed as Annexures P-3, P-4 and P-6, we are of the considered opinion that the High Court committed error in granting the benefits of those circulars to the employees of private schools. In *State of Punjab & Ors. v. Om Prakash Kaushal & Ors.* [(1996) 5 SCC 325], a Bench of this Court examined the question as to what is the true meaning of "parity in employment" and ultimately came to the conclusion that all incentives granted to the employees of the Government cannot be claimed as a matter of right by the employee under private management, as that would not be within expression "parity in employment". The Court unequivocally said that the scale of pay and the dearness allowance to a Government servant or the teacher of a Government school can be claimed as a matter of right by the teachers of a private school and not other incentives which the Government might be intending to confer on its own employees. This being the position and on examining the aforesaid three circulars which were annexed as P3, P-4 and P-6 in the writ petition filed before the High Court, we are of the considered opinion that the High Court committed error in granting the benefit of those circulars also to the teachers of the privately managed schools. We, therefore, set aside that part of the conclusion in the impugned judgment."

Further the judicial citations referred by the counsel for appellant are not helpful to the appellant in advancing its case. **Vikas Sharma's** case (supra) referred by the counsel for the appellant is relating employee of aided college who died on 24.6.2003, prior to coming into force

of Rules of 2006. Even otherwise the said judgment was passed on the basis of its own facts and circumstances and as such does not advance the case of the appellant. **Najmussabah's** case (supra) is relating to State of Bihar (Jharkhand) while **Bhuvaneshwar Upadhyay's** case (supra) is relating to State of Madhya Pradesh and both the said cases were based on the Rules / Circulars applicable to the respective States.

In the light of the above, we find no reason to differ with the conclusion arrived at by the learned Single Judge.

Consequently, the present appeal is hereby dismissed being devoid of merits.

[RAJAN GUPTA]
JUDGE

[KARAMJIT SINGH]
JUDGE

10.08.2021

sd/Gaurav Sorot

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No