In the High Court of Punjab and Haryana, at Chandigarh

1. Civil Writ Petition No. 11686 of 2004 (O&M)

Haryana State Adhyapak Sangh

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

2. Civil Writ Petition No. 6220 of 2009 (O&M)

Haryana Private Colleges Non Teaching Employees Union

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

3. Civil Writ Petition No. 19229 of 2011 (O&M)

Ramesh Chand Jain and Another

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

4. Civil Writ Petition No. 7187 of 2015 (O&M)

Gulab Singh and Others

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

5. Civil Writ Petition No. 13243 of 2016 (O&M)

B.R. Garg

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

6. Civil Writ Petition No. 14773 of 2017 (O&M)

Sultan Singh

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

7. Civil Writ Petition No. 15168 of 2019 (O&M)

Rampal and Another

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

8. Civil Writ Petition No. 17158 of 2019 (O&M)

Subhash Rana and Others

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

9. Civil Writ Petition No. 28125 of 2019 (O&M)

Joginder Singh

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

10. Civil Writ Petition No. 37274 of 2019 (O&M)

Vinod Kumar and Others

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

11. **Civil Writ Petition No. 11706 of 2020 (O&M)**

Vipin Sharma

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

AND

12. **Civil Writ Petition No. 11988 of 2020 (O&M)**

Sudesh Kumari and Others

... Petitioner(s)

Versus

State of Haryana and Others

... Respondent(s)

Date of Decision: 05.01.2021

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. R.K.Malik, Senior Advocate
with Mr. Samrat Malik and Mr. Digvijay Singh, Advocates
for the petitioner(s) (In CWP-11686-2004, CWP-19229-2011 and CWP-7187-2015).

Mr. Saurabh Bajaj and Ms. Ashwarya Bajaj, Advocates
for the petitioners (In CWP-6220-2009, CWP-15168-2019, CWP-28125-2019, CWP-37274-2019 and CWP-119888-2020).

Mr. D.R. Bansal, Advocate
for the petitioner (In CWP-13243-2016).

Mr. Rajender Singh Malik, Advocate
for the petitioner (In CWP-14773-2017).

Mr. Tarun Dhingra, Advocate
for the petitioner(s) (In CWP-17158-2019).

Mr. Vikram Sheoran, Advocate
for the petitioner(s) (In CWP-11706-2020).

Mr. R.D.Sharma, Deputy Advocate General, Haryana.

Mr. Pawan Kumar Mutneja and Mr. Pranav Bhasin, Advocates for respondent No.44 (in CWP-11686-2004) and for respondent No. 34 (In CWP-6220-2009).

Mr. Amit Rao, Advocate
for respondents No. 144 and 147 (In CWP-11686-2004).

Mr. Rajeeep Singh Cheema, Advocate
for respondents No. 6, 8, 15, 33, 64, 74, 82, 176, 179, 180 & 181 (In CWP-11686-2004) and respondents No. 7, 10, 12, 15, 39, 49, 50, 56, 61, 68, 75 and 356 (In CWP-6220-2009).

Mr. Vivek Thakan, Advocate
for respondent No. 94 (In CWP-11686-2004).

Mr. Tanmoy Gupta, Advocate
for respondent No. 115 (In CWP-11686-2004).

Mr. B.S. Mittal, Advocate
for respondents No. 149, 150 and 155 (In CWP-11686-2004).

Mr. Tribhuwan Dahiya, Advocate
for respondent No. 169 (In CWP-11686-2004).

Mr. Sandeep Khunger, Advocate
for respondent No. 92 (In CWP-6220-2009).

Mr. Yashdeep Nain, Advocate
for respondents No. 5, 8, 12, 18, 23, 38, 40, 42, 43, 45, 47, 48, 53, 54, 57, 58, 60, 61, 64, 66, 67, 68, 71 to 73, 77, 80, 84, 86, 88, 93 to 96 and 100 (In CWP-6220-2009).

Mr. Harkesh Manuja, Advocate
for respondent No.4 (in CWP-19229-2011).

Anil Kshetarpal, J.

This judgment shall dispose of Civil Writ Petitions No. 11686 of 2014, 6220 of 2009, 19229 of 2011, 7187 of 2015, 13243 of 2016, 14773 of 2017, 15168, 17158, 28125 & 37274 of 2019 and 11706 & 11988 of 2020. This Court as well as learned counsel for the parties are of the view that these writ petitions can be conveniently disposed of by a common order as the following common question arises for adjudication.

"Whether the writ petitioners (the teachers and employees of the privately managed aided school/colleges) are entitled to the benefits at par with the government servants, under the Haryana Civil Services (Assured Career Progression) Rules, 1998 (hereinafter referred to as "the 1998 Rules") or rules framed thereafter, substituting the previous one?"

The writ petitioners herein are the employees of the privately managed aided schools/colleges. They call upon this Court to issue a writ of mandamus directing the State of Haryana to pay the benefits under the Haryana Civil Services (Assured Career Progression) Rules framed from time to time. In the year 2016, the State notified the Haryana Civil Services (Assured Career Progression) Rules, 2016 (hereinafter referred to as "the 2016 Rules") substituting the previous one.

The state has enacted The Haryana School Education Act, 1995 (hereinafter referred to as "the 1995 Act") and notified the Haryana School Education Rules, 2003"(hereinafter referred to "the 2003 rules")to regulate certain terms of the service of teachers and employees of privately managed aided schools. Whereas for regulating certain terms of the service of the employees of the privately managed aided colleges, the State has enacted the Haryana Affiliated Colleges (Security of Services) Act, 1979 (hereinafter referred to as "the 1979 Act") and notified the Rules "the Haryana Affiliated Colleges (Security of Services) Rules, 2006" (hereinafter referred to as "the 2006 Rules"). The writ petitioner in Civil Writ Petition No. 11686 of 2004, which is the lead case, also prays for a writ of certiorari quashing an order dated 14.07.2004 passed by the State Government, declining to extend the benefit of the 1998 Rules.

Let us now examine the relevant provisions of the 1995 Act and the 2003 Rules. This Act deals with aided as well as unaided schools. The State provides financial aid to the recognized aided schools which is regulated by Section 6 of the 1995 Act. Certain terms & conditions of the service of its employees are regulated by Section 8 *ibid*, which are extracted as under:

> *"**6. Aid to recognized schools** -*
>
> *(1) The Government pay to the prescribed authority, for disbursement of aid to recognised private schools such sums of money as the Government may consider necessary:*
>
> *Provided that the schools already under grant-in-aid system, shall continue to receive such grant provided that they comply with the conditions as specified under sub-sections (1) to (5) of this section.*
>
> *(2) The authority competent to grant the aid may stop, reduce or suspend aid for violation of any of the conditions prescribed in this behalf.*
>
> *(3) The aid may cover such part of the expenditure of the school as may be prescribed.*
>
> *(4) No payment, out of the aid given for salary, allowances and provident fund of employees of the school, shall be made for any other purpose.*
>
> *(5) No un-recognised school shall be eligible to receive any aid or any benefit made available to private school by the Government or any other agency of the Government.*
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> *XXXX XXXX XXXX XXXX XXXX*

8. Terms and conditions of service of employee of aided schools*. (1) The Government may make rules regulating—*

(a) uniform code of service rules for employees in the State relating to pay, allowances, dismissal, removal, suspension, leave, conduct and discipline, provident fund, travelling allowance and other cognate matter;

(b) essential qualifications for various classes of employees; and

(c) uniform scales of pay for various classes of employees:

Provided that the Government may exempt any aided school or class of an aided school from operation of the provision of this section for such period at it may think fit on grounds of economic capacity thereof.

(2) Subject to any rules that may be made in this behalf no employee of a recognised private aided schools shall be dismissed, removed or reduced in rank nor shall his services otherwise terminated except with the prior approval of the Director or his nominee:

Provided that this section shall not apply where an employee is dismissed removed or reduced in rank on the ground of conduct which had led to his conviction on a criminal charge involving moral turpitude.

(3) Any employee of a private aided school, who is dismissed, is removed or reduced in rank may, within three

months from the date of communication to him of the order of such dismissal, removal or reduction in rank, appeal against such order to the Director who may after giving the parties an opportunity of being heard and after making such further enquiry, if any, as he may consider necessary, pass such order as he thinks fit, confirming modifying or reversing the decision or order appealed against.

(4) Any employee of the aided school who has been suspended by the managing committee, the managing committee will hold an enquiry within three months of his suspension. In case the enquiry is not completed within three months, the managing committee will have to take permission from the District Education Officer for the extension of time".

In exercise of the powers conferred by the 1995 Act, the State of Haryana has notified the 2003 Rules. The grant-in-aid is governed by Rules 46, 48, 49, 54, 55 & 56, which are extracted as under:

"46. The sole objective behind the grant-in-aid by the Government for a limited number of posts is to promote expansion of education without interfering with day to day managing committee and running of these private institutions in the State. Grant-in-aid are sums of money which are annually set apart from the general revenues. Such grants are given only for purposes connected with secular instructions without reference to any religious instructions and under the rules given hereafter.

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48. No grant from Government funds may be made, increased or withdrawn otherwise than as provided in this chapter, except with the previous sanction of Government.

49. Grants awarded under the rules of this Chapter are payable out of State revenues to:-

(a) primary schools and primary stage of Middle, Secondary and Senior Secondary Schools.

(b) Middle schools or Middle stage of Secondary/ Senior Secondary Schools;

(c) Secondary / Senior Secondary Schools;

(d) Special grant to special schools.

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54. (1) The salary grant shall be calculated @ 75% or the amount fixed by the Government from time to time on the basis of the difference between the approved expenditure and the approved income made during the previous year by the school as detailed below:-

(a) approved expenditure shall include salaries of teaching and non-teaching staff appointed on the sanctioned posts approved by the Department including Dearness Allowance, House Rent allowance, City Compensatory Allowance, Gratuity etc. etc. as given below:-

(i) salary of teaching staff including Dearness

Allowance, House Rent allowance, City Compensatory Allowance;

(ii) salary of Non-teaching staff including Dearness Allowance, House Rent allowance, City Compensatory Allowance;

(iii) salary of Class-IV (Group D Employee,) including Dearness Allowance, House Rent allowance, City Compensatory Allowance;

(iv) death-cum-retirement-gratuity sanctioned by the Department; (b) approved income shall include,-

(i) tuition fee and admission fee;

(ii) late fee fine;

(iii) grant-in-aid in lieu of free-ship to Scheduled Caste and Backward Class students;

(iv) any other income/ grant received by the school from any other source.

(2) The head of the school shall maintain account of income and expenditure which shall be subject to the audit.

55. (1) The managing committee of the school shall submit the claims of salary grant on the basis of deficit of actual expenditure and income during the previous year ending 31st March, in the prescribed proforma appended as Form III to the District Education Officer/ District Primary Education

Officer before the 31st May positively in triplicate along with certificates required by the Department. The school authority shall also append the audit report of Charted Accountant or qualified auditor approved by the Department.

(2) The claims so received from the schools shall be scrutinized and checked with the original documents of the school by the Section Officer (SAS) of Finance Department within one month from the date of receipt.

(3) The District Education Officer/ District Primary Education Officer after making such enquiry into the matter, shall forward all the claims indicating the actual deficit of the school of the preceding year along with recommendation to the Director before 30th June, every year.

(4) The grant shall be sanctioned and issued preferably in four installments on actual basis. The first installment shall be issued provisionally on the basis of the actual grant released in the previous year. The grant shall be paid by the concerned branch dealing with the matters of aided schools by cheque quarterly in favour of 'School Staff Account' jointly operated by authorized officer of the Director and the representative of the approved managing committee of the concerned school after verifying the claims of payment to the beneficiary school.

(5) The existing system to claim Death-cum-Retirement Gratuity (DCRG) through salary grant shall be discontinued. The managing committee shall pay the DCRG to the beneficiary

within a period of one month from the date of receipt of sanction from the Director. The managing committee shall submit its claim (75% Government Share) in the same year. The Director shall reimburse the claim to the managing committee in the next quarter of the year from the receipt of claim.

56.(1) In order to be eligible to receive grant-in-aid, a school shall employ adequate number of qualified teaching and other staff as approved by the Department under the norms of post fixation or as has been specified by him from to time to time.

(2) The pay of unqualified teachers shall not be admissible charge for the assessment of grant-in-aid for the school.

(3) The Department may exclude from employment in any recognised school a teacher whose certificate has been withdrawn or who has after due enquiry been declared unfit to be a teacher by the Department.

(4) No aid shall be admissible on any special increment, allowance or financial benefit given to the employees by the managing committee at its own level.

(5) No aid shall be granted in respect of any employee who is retained in service subsequent to the attainment of the age of superannuation, except where a teacher, head of the school has obtained National or State award for rendering meritorious service with prior approval of the Department in accordance with the general instructions issued by the Department from

time to time.

(6) No aid shall be admissible in the case of an employee appointed by the managing committee on part time basis.

(7) The minimum number of weekly period of actual secular instruction required to qualify a teacher for full staff, grant shall not be less than that laid down by the Department from time to time.

Provided that the staff grant may be reduced or disallowed if this condition is not fulfilled.

(8) No grant shall be calculated more than the prescribed scale of the post sanctioned by the Department.

(9) No grant shall be allowed for the post filled by the managing committee where appointment procedure has not been adopted.

(10) The rate of dearness allowance, house Rent allowance, compensatory allowance shall be a claim as allowed by the Department from time to time".

The salary and allowances payable to the school staff is regulated by Rule 64, which is extracted as under:

"64.(1) The managing committee of the schools shall pay the salary and allowances to the school staff by the 7th of the following month.

(2) The managing committee of the school shall open apart from the school fund account an account to be called "School Staff Account" in a Nationalized or a Schedule bank for the

payment of salary to the staff.

(3) The 'school staff's account' shall be operated jointly by authorized officer of the Director and the manager or head of the school or in his absence by a member of the staff authorized by managing committee to act as head of the school. The managing committee of the school shall not be competent to cease the 'staff salary account".

Chapter-IV of the Rules regulates the terms and conditions of the services of the employees working in the aided schools. Rules 70,71, 72 & 83 read as under:

"70. These rules shall be applicable to the employees working on aided sanctioned posts only in the aided school.

71. The managing committee of every recognized private aided school shall enter into a written contract of service with every employee of such school in Appendix B. A passport size photo of each employee shall be affixed on the proforma of contract of service, duly filled in.

72. Recruitment of all employees in each aided school shall be made by the managing committee on the recommendation of the selection committee.

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83.(1) The scales of pay of the employees shall be such as specified in column 4 of Appendix A to these rules and modified /revised by the Government from time to time. (2) The rate of dearness allowance, House Rent Allowance and City

Compensatory Allowance payable to these employees shall be such as may be allowed by the department from time to time to the aided schools".

Similarly, the Haryana Government has also enacted the Haryana Affiliated Colleges (Security of Services) Act, 1979. Section 2 (c) defines "employee", which reads as under:-

"2(c) "employee" means any person who-is in the whole-time employment of an affiliated college".

Apart therefrom Section 4, 5 & 6 of the 1979 Act are relevant for the decision of these cases, which reads as under:-

"4. The method of recruitment, and the conditions of service, of the employees shall be such as may be prescribed.

Provided that the conditions of service of an existing employee at the commencement of this Act shall not be varied to his disadvantage.

5. The employees shall be governed by such code of conduct as may be prescribed.

6. 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".

Under the 1979 Act, the 2006 Rules have been notified. Rule 10 *ibid* reads as under:

"10. *The scale of pay and allowances of the employees shall be specified by the Govt. from time to time".*

At this stage, it would be relevant to note that the Government of Haryana in exercise of its powers under proviso to Article 309 of the Constitution of India, notified the 1998 Rules, which have been substituted by various other Rules notified from time to time. At present, the 2016 Rules are in vogue. The Government servant/employee has been defined in the 1998 Rules and the 2016 Rules which reads as under:-

> ***"Rule 3(g) of the Haryana Civil Services (Assured Career Progression) Rules, 1998***
>
> *(g) "Government servant" for the purposes of these rules means the person(s) appointed to the post)(s) in connection with the affairs of the Government of Haryana which are under the administrative control of Government of Haryana and whose pay is debitable to the consolidated funds of State of Haryana and on whom these rules apply.*
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> *XXXX XXXX XXXX XXXX XXXX*
>
> ***Rule 3(j) of the Haryana Civil Services (Assured Career Progression) Rules, 2016***
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> *(j) "Government employee" means the Government employees to whom these rules apply under rule 2".*

This Court has heard learned counsel for the parties and with their able assistance, perused the paper-books.

Learned senior counsel appearing for the writ petitioner in the lead case i.e. Civil Writ Petition No. 11686 of 2004 has heavily relied upon the judgments passed on 10.11.2010 in Civil Writ Petition No. 6220 of 2009, confirmed in Letters Patent Appeal No. 790 of 2011 on 12.05.2011. He contends that the case of the writ petitioners is covered by the aforesaid judgments. He further contends that the Supreme Court, in ***"State of Haryana and Others v. Champa Devi and Others" (2002) 10 SCC*** *78*, held that the teachers employed against the aided posts in the privately managed aided schools are entitled to draw same emoluments to their counterparts in the government schools. Hence, he submitted that the writ petitioners, who are employed as teachers in the privately managed aided schools, are entitled to the benefits of Assured Career Progression (ACP).

Sh. Saurabh Bajaj, the learned counsel appearing for the writ petitioners, in Civil Writ Petition No. 6220 of 2009 filed by non-teaching employees union of the recognised privately aided colleges, apart from adopting the arguments of learned senior counsel, has also submitted that in view of Section 6 of the 1979 Act, the scale of pay and other allowances and the privileges of the employees are required to be specified by the government. Learned counsel has further submitted that in the colleges/institutions, imparting technical education, the benefit of ACP has already been extended. He further submitted that in ***Gurnam Singh and Others v. State of Haryana and Others (CWP No. 341 of 2011, decided on 10.01.2012)***, this Court has already issued directions. He further submitted that the teaching staff of the affiliated colleges have already been granted the benefit of ACP and therefore, there could not be any hostile discrimination with the non-teaching employees vis-a-vis teaching employees. The counsels appearing in other writ petitions, have adopted the arguments of learned counsel for the writ petitioners.

Per contra, Mr. R.D.Sharma, Deputy Advocate General, Haryana, while drawing attention of the Court to various judgments passed by the Supreme Court, has submitted that the salary and dearness allowance have been brought at par with the government employees but that does not include other allowances.

After having heard by learned counsel representing the parties at length, now the stage is set for first examine the provisions of the Acts and rules made thereunder.

It is not the case of the petitioners that the State Government has framed any Rule entitling the Teachers and Employees of the Privately Managed School/Colleges to Assured Career Progression Scheme followed by the rules framed. Further, Rule 48 of the Rules, 2003 provides that no grant from the government funds may be made, increased or withdrawn otherwise than provided in this chapter, except with the previous sanction of the government. Further, Rule 54 lays down as to what are the different allowances payable to the staff of the Aided Privately Managed Schools. Still further, Rule 56(4) provides that no aid shall be admissible on any special allowance or financial benefit given by the Managing Committee at its own level to its employees. Further, Rule 83(1) provides that even with respect to the dearness allowance, house rent allowance, city compensatory allowance payable to staff of the aided schools, the decision has been left to wisdom of the government from time to time. It may be important to note that Rule 83 does not provide that the benefits of Assured Career Progression Scheme shall be payable to the teachers and employees of the privately managed schools. At the cost of repetition, it may be noted that learned counsel for the petitioners has failed to draw attention of the Court to any provision of the Act, Rules or Regulations or Instructions that the teachers and employees of the privately managed schools/colleges shall be entitled to the benefits of ACP Scheme or rules notified.

Now let us shift our focus to the case law. Learned counsel for the petitioners have relied upon the judgments passed by the learned Single Judge in Civil Writ Petition No. 6220 of 2009 decided on 10.11.2009. The aforesaid judgment was upheld by the Letters Patent Bench but set aside by the Supreme Court while remitting back to the High Court. That is how these cases have come up for fresh adjudication. Hence, the judgments, which have already been set aside, cannot be relied upon as precedents. In fact, the aforesaid judgments are no more in existence after these have been set aside by the Supreme Court.

At this stage, it would be appropriate to notice the judgments relied upon by the learned State counsel. The first judgment relied upon in the case of ***"Haryana State Adhyapak Sangh v. State of Haryana and Others" (1988) 4 SCC 571***. In that case, the dispute was with regard to entitlement of the salary and additional dearness allowance. The Supreme Court, after noticing that there is general agreement, directed the government to release the salaries and additional payment. However, it was specifically held that it does not include the house rent allowance, medical allowance, city compensatory allowance and various other allowances claimed under the other heads. The operative part of the aforesaid judgment reads as under:

> *"The approved expenditure extends to the salaries paid to the teaching and non-teaching staff, which includes the Pay and Dearness Allowance and Interim Relief before 1 April, 1981*

and the Pay and Additional Dearness Allowance beyond 1 April, 1981, the deficit expenditure minus income and certain other items, but does not include House Rent Allowance, Medical Allowance, City Compensatory Allowance and the other heads claimed by the petitioners. In our opinion, the teachers of aided schools must be paid the same pay scale and Dearness Allowance as teachers in Government schools for the entire period claimed by the petitioners, and that the expenditure on that account should be apportioned between the State and the Management in the same proportion in which they share the burden of the existing emoluments of the teachers.

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The State Government shall not be liable to pay for the period covered by these 35 instalments any amount on account of House Rent Allowance, City Compensatory Allowance and the other allowances claimed by the petitioners".

The next judgment is in an application filed for seeking implementation of the directions issued in the previous case. The aforesaid application came to decided by a three Judges Bench in ***"Haryana State Adhyapak Sangh v. State of Haryana and Others" (1990) Supp. SCC 306***. The Supreme Court, after noticing the controversy involved, in para 9 held as under:-

"9. With regard to the claim of the applicants, for other allowances viz. House Rent Allowance, City Compensatory Allowance, Medical Reimbursement and Gratuity, etc., we have

already indicated that this claim was not accepted by this Court in respect of the period covered by the thirty five instalments of Additional Dearness Allowance referred to above. For the subsequent period, this Court has directed that the State Government will take up with the managements of the aided schools the question of bringing about parity between the teachers of aided schools and the teachers of Government schools, so that a scheme for payment may be evolved after having regard to the different allowances claimed by petitioners. It appears that, by order dated January 6, 1989 the Government of Haryana has constituted a Committee under the Chairmanship of Deputy Chief Minister-cum-Finance Minister, Haryana, which has been asked to give its report with regard to the implementation of the judgment of this Court and evolve a formula for bringing about parity between the teachers of private aided schools and teachers of Government schools. In the Additional Affidavit of Shri Roshan Lal, dated January 26, 1990 it has been stated that meetings of the said Committee have been held and that the deliberations were inconclusive and no agreement could be reached and that after discussing all the pros and cons in a meeting attended by the Deputy Chief Minister, Education Minister, Financial Commissioner and Secretary of Finance, Commissioner and Secretary of Education, Director Secondary Education and Joint Legal Remembrancer the following decisions were taken:

(i) Besides Additional Dearness Allowance Instalments already released, Government is willing to revise pay scales and Dearness Allowance of private schools employees with effect from January 1, 1990.

(ii) Regarding other allowances like House Rent Allowance, City Compensatory Allowance, L.T.C., Bonus, etc. this is the responsibility of the Managements concerned who should be asked to take a final decision in the matter.

(iii) The pattern of giving grant-in-aid only on the pay and Dearness Allowance has been followed since 1968/1980-1981 and keeping in view the financial constraints the Government is not in a position to change the pattern by including other allowances for grant-in-aid".

There is yet another judgment of the Supreme Court in ***State of Punjab v. Om Parkash Kaushal and Others (1996) 5 SCC 325***. In the aforesaid case, the teachers employed in various privately managed aided schools in the State of Punjab claimed the benefits of the policy instructions of 1957 and 1960, implemented qua the government teachers only. The High Court allowed the writ petitions, however, the Supreme Court set aside the judgment of the High Court. There is yet another judgment of the Supreme Court in ***State of Haryana and Others Champa Devi and Others (2002) 10***

SCC 78, which was relied upon by the learned Single Judge as well as the Division Bench in the previous round. In aforesaid case, the writ petitions were filed by teachers of the privately managed recognized aided schools claiming benefits of four different circulars issued by the government. The Court, after noticing that except the circular dated 08.02.1994 which was relating to the salary, the teachers of the privately managed recognized aided schools are not entitled to the benefits conferred by the circulars dated 14.05.1991, 07.08.1992 and 07.01.1994. It was held as under:

> *"5. Coming, however, to the question as to whether the benefits given to the government employees under the circular 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 circular to the employees of private schools. In State of Punjab and Ors. v. Om Parkash Kaushal and Ors., 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 the 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 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 P-3, P-4and 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 circular also to the teaches of the privately managed schools. We, therefore, set aside that part of the conclusion in the impugned judgment".

Learned counsels for the petitioners have failed to draw attention of the Court to any judgment of the Supreme Court to the contrary.

With regard to the arguments of learned counsels representing the petitioners that in the Technical Education Department, the benefits of ACP Scales have already been granted, it may be noted here that the State has filed an affidavit dated 28.08.2019 explaining that a Committee under the Chairmanship of the Chief Secretary to the Government of Haryana was constituted to look into the recommendations of the All India Council of Technical Education (AICTE) regarding pay structure and career advancement scheme in the institutions under the Department of Technical Education, Government of Haryana including the Government Aided Technical Institutions/Polytechnics. On the recommendations of the Committee, certain modifications in the functional pay structure and cadre specific ACP in the case of teaching posts owing to the specialized technical knowledge and skills while taking into consideration the pattern adopted by the AICTE was recommended. In that context, the Finance Department issued notification dated 18.10.2011 directing the functional pay scales for the posts of Principals, Additional Director, Foreman Instructor and Workshop Instructor/Lab Instructor/Lab Assistant and cadre specific ACP was granted only qua the posts of Lecturer/Programmer (Academic), Workshop Superintendent, Senior Lecturer, Head of Department/Joint Director (Academic), which are the posts of teaching faculty and technical support staff working in the institution under the Department of Technical Education including the government aided Technical Institutions/Polytechnics. It has been mentioned that this has been done in accordance with the pattern approved by AICTE which is a regulatory body. Thus, the petitioners cannot claim parity with the Technical Institutions with the staff of the Technical Institutions as they constitute a separate class. The reasons as noticed above does not require any further elaboration and gets approval of the Court.

Now let us examine the 1998 Rules and the 2016 Rules. It is apparent from the definition of the government servants/government employees makes it is explicitly clear that these rules are applicable to the government servants only. Under Rule 3(g) of the 1998 Rules, it is provided that the person has to be appointed to the post in connection with the affairs of the Government of State of Haryana, which is under the administrative control of the Government of Haryana and whose pay is debitable to the consolidated funds of the State of Haryana. As per Rule 3(j) of the 1998 Rules, the Rules are applicable only to the government employees.

It is important to note that there is no challenge to the correctness of the Rules in these writ petitions.

Further, on careful perusal of Rule 46 of the 2003 Rules, which has already been extracted above, the government has made a provision for the grant-in-aid to promote expansion of education without interfering with the day to day affairs of the managing committee and running of these private educational institutes. The grant-in-aids are sums of money which are annually set apart from the general revenue. Further, Rule 54 explains as to what is the salary grant. It would be important to note here that ACP came to be enforced somewhere in the mid 1990s, whereas the Rules came into force in 2003. At that stage, the government did not consider it appropriate to include the benefits payable under the ACP Scheme under various schemes or the rules. On careful reading of Rule 54 (1)(a), it can be discerned that the benefits under the ACP Rules were never made part of the salary grant. Under Rule 54(1)(a)(i), it is apparent that the salary of teaching staff includes dearness allowance, house rent allowance and city compensatory allowance. The other allowances have not been made part of the salary grant. Apart from the aforesaid allowances, the death-cum-retirement-gratuity has also been made part of the approved expenditure as defined therein. In these circumstances, the question arises that whether the ACP is part of the approved expenditure or not. It may be noted here that Rule 54 does not talk of pay scale or pay band or grade pay. It provides for the allowances which have been made part of the approved expenditure to calculate the salary grant payable to the privately managed aided educational institutions.

Learned counsel for the petitioners have submitted that in the previous round, learned Single Judge as well as the Division Bench had held that since the Assured Career Progression was substituted in place of higher standard grades, therefore, it has to be treated as a part of the pay scale. However, as noted above, the judgment passed by the learned Single Judge and Division Bench have already been set aside by the Supreme Court. In view thereof, the judgments passed in the previous round cannot be relied upon .

The next argument of learned counsel is with respect to the grant of Assured Career Progression to the college teachers and therefore, the non-teaching staff of the aided college are also entitled to. In the written statement, it is explained that the salary of the teaching staff of the college is prescribed by the University Grants Commission which also provides for the Career Advancement Scheme issued by it. It has been submitted that in case of teaching staff of the aided colleges, the ACP Rules as applicable to the government employees have not been made applicable. In these circumstances, the plea of hostile discrimination is not made out. In any case, the teaching staff and the non-teaching staff constitute a different categories. No further elaboration on this aspect is required.

The next argument of learned counsel for the petitioners is that previously higher standard pay scales were granted to the employees of the aided school and colleges and Assured Career Progression Scheme is in substitution thereof. In the reply, the State has taken a stand that both are different and the State Government has taken decision not extend this benefit because the ACP is an incentive. It may be noted here that ACP was introduced to remove stagnation. It is an incentive to the employees who work on a post continuously without getting opportunity to progress in the service career. With this object in mind, these Rules were notified. However, the teachers of the aided schools and non-teaching staff of the aided colleges are not the employees of the government and therefore, they cannot, as a matter of right, claim benefits under the ACP.

The next argument of learned counsel is with reference to the benefits of Assured Career Progression Scheme having been extended to the technical colleges. It may be noted here that those colleges constitute a different category and therefore, the decision of the government cannot be said to be suffering from the vice of discrimination.

This Court has also examined the circular dated 12.10.1998 which was relied upon by the learned Single Judge while allowing the writ petition in the previous round. It may be noted here that the aforesaid circular is with respect to revision of pay scale for the employees of State Public Enterprises/Institutions. In para 1, the government discloses that it had constituted a Pay Revision Committee to consider the revision of the pay scales of the various categories of the employees of the Board/Corporations/Company/Co-operative Institutes etc. and the universities in Haryana including the government aided colleges/schools. Thereafter, in the subsequent para, by laying down the guidelines, it was intimated that the State Public Enterprises/Institutions which have been following the scheme of higher standard pay scales will now adopt with new ACP Scheme. In para 2 of the circular, the government aided colleges/schools have not been referred to. For facility of reference, the relevant part of the communication dated 12.10.2020 is extracted as under:-

> *"The Government of Haryana (in Finance Department) had constituted a Pay Revision Committee to*

consider the revision of pay scales of Boards/Corporations/Companies/Cooperative Institutions etc. and Universities in Haryana including Government Aided Colleges/Schools on the pattern of pay scales approved by the State Govt. for its employees. After examining the details of each category of posts existing in various State Public Enterprises/Institutions and after detailed deliberation on various issues, the pay revision committee had submitted the recommendations, which have been approved by the Finance Department.

A copy of the approved recommendations of the categories of posts existing in the Boards/Corporations/Companies/Coop. Institutions and control are sent for conveying the necessary approval at your level with the following guidelines conditions:

1. All the replacement scales are based on the functional pay scales of the categories of posts. In any case replacement should not be given on the pay scales being enjoyed by the employees on personal measure.

2. The State Public Enterprises/Institutions which have been following the scheme of Higher Standard Pay scales after 10/20 years service, such Enterprises will now adopt with the new Assured Career Progression Scheme notified by the FD for the employees of State Gov. (Scheduled-I, Part-III)".

As regards the non-teaching employees of the affiliated colleges, the State Government has enacted the 1979 Act. Section 6 thereof provides that the scales of pay and other allowances and the privileges of salary of the employees shall be such as may, from time to time, be specified by the government. Under the 1979 Act, the government has notified the Rules which are called "the 2006 rules. Rule 10, which has been extracted above, again provides that the pay and allowances of the employees shall be specified by the government from time to time. Thus, statutory provisions do not entitle the non-teaching employees parity with the government employee with respect to benefit of the ACP Rules, 1998. Thus, there is also no substance in the writ petitions filed by the non-teaching employees of the aided privately managed colleges.

Last argument of learned counsel for the petitioners is with reference to the judgment passed in the case of ***Gurnam Singh*** *(supra)*. This Court has carefully read the judgment passed. The aforesaid judgment is relating to grant of benefit under Career Advancement Scheme as notified by the University Grants Commission with respect to Librarians. The Court while noticing that University Grants Commission clarified that benefit of Career Advancement Scheme is to be granted to the Librarians and the Education Minister as well as Chief Minister have approved the same, however, the Financial Commissioner had ruled that the benefit of the scheme would be granted notionally from 01.01.1996 but actually it would be given w.e.f. 22.05.2009, held that the decision of the Financial Commissioner is erroneous. Thus, it is apparent that in ***Gurnam Singh*** *(supra)* the issue involved was different.

Hence, all the writ petitions lack merit and hence, dismissed.

The miscellaneous application(s) pending, if any, shall also stand disposed of, in terms of the main order.

(Anil Kshetarpal)
Judge

January 05, 2021
"DK"

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No