

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

CWP-22651-2020 (O&M)
Date of decision : 02.02.2021

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

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

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

Mr. Samarth Sagar, Addl. A.G. Haryana.

ANIL KSHETARPAL, J.

Through this writ petition filed under Article 226/227 of the Constitution of India, the petitioner-Union, which claims to be representing the cause of all the Non-Teaching Employees of the Government Aided Private Colleges, has invoked the extra-ordinary jurisdiction of the Court with the following substantive prayers:-

“ii. 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.;

iii. 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 non-humanitarian ground without considering the true and the material circumstances of the dispute.”

The petitioner-Association previously filed CWP-42926-2018, which was disposed of by directing the respondents to decide the pending representation. Pursuant thereto, the Director Higher Education, Haryana, has passed an order on 25.11.2019, operative part whereof reads as under:-

“In view of above, the appointing authority of the non-teaching staff of Haryana Private Govt. Aided College is either the managing committee or the Principal of the concerned college. The management committee of the said college is a supervisory and controlling authority with the management of the affairs of the Govt. Aided Colleges. The non teaching staff of the Govt. Aided Colleges are deceased employee of Haryana s of Haryana Govt. And cannot be treated at par with Govt. employees for the purpose of Ex-gratia financial assistance to the dependents of deceased

Govt. employees. Hence the Govt. policy i.e. the Haryana Compassionate Assistance to the Dependent of the deceased Government Employees is not applicable in the case of the petitioner. It is held by the Hon'ble Apex Court in the case of Jagdish Parshad Sharma ete. Vs. State of Bihar SLP(c) Nos.18766 -18782 of 2016 decided on 17.07.2013 that there can be no automatic application of the recommendation made by the Commission, without any conscious decision being taken by the State in this regard, on account of the Financial implications and other consequences attached to such a decision it is the prerogative of the Government. The Haryana Govt. has not taken by decision to grant ex-gratia financial assistance to the employees of Govt. Aided Colleges so far. The representation dated 30.05.2018 has been considered and the same is hereby rejected being devoid of merit.

I order accordingly."

The petitioner claims that the State is duty bound to extend the benefits of the Ex-gratia Scheme to the employees of the Government Aided Colleges.

It may be noted here that the State of Haryana has made Rules in exercise of powers conferred by the proviso to Article 309 of the Constitution of India for providing financial assistance or appointment to the dependents of its employees who die in harness. These Rules are called the Haryana Civil Services (Compassionate Financial Assistance or Appointment) Rules, 2019 (hereinafter to be referred as "the 2019 Rules"). Rule 2, 3, 4 and 5 (h) and (i) reads as under:-

"2. 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.

3. *Save as otherwise provided, these rules shall be applicable to the eligible family member(s) of **a Government employee working on regular basis and All India Service Officers** who disappears or dies while in service including death by suicide.*

Note 1.-The family of deceased Government employee who died before the date of notification of these rules but have not been sanctioned the compassionate financial assistance by the competent authority due to one reason or the other, they may exercise an option within a period of six months from the date of notification either to avail the benefit under the Haryana compassionate Assistance to the Departments of deceased Government Employees Rules, 2006 or these rules. Option once exercised shall be final.

Note 2.- Where there is any training compulsory for a person selected by the Haryana Public Service Commission or Haryana Staff Selection Commission or any approved agency before his appointment to a post on regular basis, these rules shall also be applicable during the period of training.

Note 3.- The eligible family members of All India Service Officers may exercise an option either to avail the benefit under these rules or under the rules or policy of Government of India applicable to All India Service Officers at the time of death or disappearance while in service.

Note 4.-The Speaker of the Legislative Assembly has agreed under clause (3) of article 187 of the Constitution of

India that until a law is made by the Legislature of the State under clause (2) of article 187 of the Constitution or rules are framed by the Governor in consultation with the Speaker of the Legislative Assembly under clause (3) of article 187 of the Constitution of India, these rules and amendments thereof, if any, after prior consent of the Speaker, shall apply to the Secretarial staff of the Haryana Legislative Assembly.

Note 5.-The Chairman, Haryana Public Service Commission, has agreed to the application of these rules as amended from time to time, in the case of officers and employees of the Haryana Public Service Commission.

4. (1) The family member shall be eligible for consideration of compassionate appointment under these rules subject to the condition that the deceased or missing Government employee should,--

- (i) have completed five years service on regular basis;*
- (ii) have not attained the age of fifty-two years or more upto the date of death or missing; and*
- (iii) not be suspected to have committed fraud or joined any terrorist organisation or gone abroad.*

Explanation- Five years service includes the period of all kinds of leave sanctioned by the competent authority and availed by the deceased or missing Government employee while working on regular basis.

(2) Compassionate appointment would not be a matter of right and it will be subject to fulfillment of all the conditions, including the availability of vacancy, as laid down for such appointment under these rules.

5 (1) xxx xxx

(a) to (g) xxx xxx

(h) "Government" means the Haryana Government in the General Administration Department;

(i) "Government employee" means a member of the State Services of Group A, B, C or D whose,-

(i) conditions of service are regulated by rules made by the Governor of Haryana under the proviso to article 309 of the Constitution of India;

ii) appointment is made on regular basis in connection with the affairs of Government of Haryana, and

iii) pay is debited to Consolidated Fund of the State of Haryana except when serving on foreign service or deputation but it shall not include persons-

(1) of casual or daily-rated or part-time employment;

(2) paid from contingencies/contingent charges;

(3) of work-charged establishment,

(4) appointed on contract or adhoc basis, and

(5) re-employed after retirement;"

This Court has heard learned counsel for the petitioner at length and with his able assistance perused the paper book.

Learned counsel for the petitioner, while drawing the attention of the Court to Section 6 of the Haryana Affiliated Colleges (Security of Service) Act, 1979 (hereinafter to be referred as "the Act of 1979"), submits that the State has the power to specify the scales of pay, other allowances and privileges payable to the employees of the affiliated Colleges. He further contends that the State vide its decision dated 02.08.1993 had decided to extend the benefit of compassionate appointment to one dependent member of the employee who dies in harness while working in the Government Aided Colleges. He further contend that it has been a

consistent practice in the State to allow appointment on compassionate basis to the dependents of aided Colleges. In this regard, he draws the attention of the Court to Annexure P-3 and P-4.

On analysis of the arguments of learned counsel for the petitioner, this Court is of the considered view that there is no substance in the present petition. Section 6 of the Act of 1979, reads as under:-

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

Thus, it is apparent that the scales of pay, other allowances and privileges of the employees shall be such, as may, from time to time be specified by the State. In other words, the State Government has been given the powers to specify the scales of pay, allowances payable and the privileges available to the employees of the affiliated Colleges from time to time. Thus, the scales of pay etc. can be changed by the Government. From the reading of Section 6, it is apparent that the Government is entitled to take a decision from time to time as to what scale of pay, other allowances and privileges are payable to the employees of affiliated colleges. The 2019 Rules are applicable only to the Government employees who die in harness. The members of the petitioner-Union do not fall within the definition of the Government employee. Still further, on bare perusal of the 2019 Rules, it is apparent that those Rules are applicable to the Government employees. The members of the petitioner-Association cannot claim that they fall in the definition of Government employees under the 2019 Rules. They are the employees of the management or the college or the society as the case may

be. The management of an affiliated college is regulated by a private entity. The Act of 1979 only enables the Government to notify the scales of pay in view of the fact that the Government extends the grant in aid to the aided Colleges.

Still further, the issue, whether such members of the private Colleges are the Government employees or they are entitled to the allowances equal to the Government employees, has already been examined in detail by the Court in the case of **Haryana State Adhyapak Sangh Vs. State of Haryana and others, CWP-11686-2004 and other connected cases, decided on 05.01.2021.** Hence, the employees of the petitioner cannot claim that they are entitled to the same facilities at par with the Government employees.

Now, let us examine the Instructions relied upon by the learned counsel for the petitioner. No doubt, on 02.08.1993, the Government conveyed its decision to permit the Government Aided Colleges to employ one dependant member of the family of the deceased employee. However, the aforesaid communication does support the case of the petitioner particularly when these instructions stand substituted by the Service Rules. Further, perusal of copies of the communications dated 07.02.2000 and 15.09.2000 (Annexures P-3 and P-4) also does not help the cause of the petitioner. On careful reading of both the communications, it is apparent that the reference is to the Government employees. Only copies of the aforesaid letters were forwarded to all the Principals of the private aided affiliated Colleges.

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.

All the pending miscellaneous applications, if any, are disposed of, in view of the aforesaid judgment.

02.02.2021

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No