

SHER SINGH (DECEASED) THROUGH LRS AND ANR
V/S
STATE OF HARYANA AND OTHERS

Present : Mr. Ankur Mittal, Addl. A.G. Haryana with
Mr. Shivendra Swaroop, DAG, Haryana,
Mr. Saurabh Mago, DAG, Haryana and
Ms. Kushaldeep Kaur, Advocate
for review-applicant/respondents.

Mr. J.S.Saneta, Advocate
for LRs No.1, 2, 4 and 5 of petitioner No.1.

Mr. Lalit Rishi, Advocate for
Mr. S.S.Dinarpur, Advocate
for non-applicant-petitioners No.1 to 8 and 12 to 14
in RA-CW-95-2019.

These are applications, under Order XLVII Rule 1 and 2 of the Code of Civil Procedure, filed by the respondent-State, seeking review of the order and judgment dated 13.03.2018, vide which two separate writ petitions were disposed of.

Despite repeated opportunities, no replies have been filed by the non-applicant/petitioners.

Facts that are required to be noticed are limited.

The petitioners had prayed for a certiorari to quash the impugned letter dated 11.06.2009 (P4), pursuant whereeto, the benefit of ACP scales granted to them, w.e.f. 01.01.1996 or from subsequent date(s), was withdrawn, in apparent violation of the Principle of Natural Justice. And to direct the respondents to restore the said benefits and re-fix their salaries and allowances etc.

For, learned counsel for the parties were *ad idem* that the matter in issue was squarely covered by a judgment dated 11.08.2008, rendered by the

Division Bench in **CWP No.15839 of 2007 (Nirmal Kanta and another Vs. State of Haryana and others)**, which had since attained finality, the petitions were accordingly disposed of:-

“Learned counsel for the petitioners submits that the matter in issue is squarely covered by an order and judgment dated 11.08.2008, rendered by the Division Bench of this Court, in CWP No.15839 of 2007 (Nirmal Kanta and another Vs. State of Haryana and others), which has since attained finality, for, an appeal preferred against the said decision by the State of Haryana was dismissed by the Supreme Court, vide order dated 16.02.2009 (Annexure P-8).

The factual position is not disputed by learned State counsel, who rather, fairly submits that the matter at hands is required to be disposed of, in terms of the decision, referred to above.

The petitions are accordingly disposed of, in terms of the decision, in Nirmal Kanta and another (supra).”

However, review is prayed for, on the ground that the matter was disposed of owing to an inadvertent concession/statement made by learned State counsel that, the same was covered by the decision in **Nirmal Kanta (supra)**. Though, in the written statement, that had already been filed, claim of the petitioners was seriously disputed. For, in terms of Rule 11 of ACP Rules 1998, withdrawing the benefit of ACP scale, was completely justified, and in terms of the instructions of the Finance Department, the State was even entitled to cause recoveries. In fact, the admission/concession made by the learned State counsel was in ignorance of the decision, rendered by the Single Bench of this Court in **CWP No.9389 of 2013 (Surinder Kumari and others**

Vs. State of Haryana and another), decided on **05.09.2017**. Wherein, not only the judgment in **Nirmal Kanta (supra)** was elaborately discussed and distinguished, but upon a due analysis of all the earlier decisions on the issue, the writ petition was dismissed. And LPA No.322 of 2018, preferred against the said judgment, was dismissed on 28.02.2018. Subsequently, even the SLP (diary No.35555 of 2018), filed against the decision of this Court, too was dismissed by the Supreme Court on 05.07.2019. Not just that, the Supreme Court, in SLP (C) No.32555 of 2009, while considering a similar issue and the same rules as are applicable in the present cases, though, dismissed the SLPs, preferred by the State of Haryana on 19.01.2016, but the question of law, involved for consideration, was kept open. The operative part of the said order and judgment is extracted in the review applications. Accordingly, reliance is being placed upon the decision, rendered by this Court in **Surinder Kumari and others (supra)**, wherein the observations recorded by the Supreme Court in its order dated 19.01.2016, were considered and referred to. Thus, learned Additional Advocate General Haryana, submits that interest of the State would suffer, if the matter is not heard and adjudicated on merits.

As indicated above, no response has been submitted by the non-applicant-petitioners to the applications. The factual position, as sketched out above, is not disputed either.

Ex facie, the writ petitions were disposed of on the statement of learned counsel for the parties that the matter was squarely covered by a decision in **Nirmal Kanta (supra)**. Therefore, there was no occasion for this Court to examine the dispute on merits or even to determine if the matter in issue, was covered by the decision in **Nirmal Kanta (supra)**, in the wake of

the decisions that are being relied upon by the State. Accordingly, I do not find it expedient and appropriate to examine the said question, that too, in review proceedings. Needless to assert, for the order under review is being recalled, the writ petitions shall be heard on merits and the non-applicant/petitioners shall be at liberty to press their claim on merits.

By way of abundant caution, it is clarified that this order shall not constitute an expression of opinion on the merits of the case of either party.

As a result, the review applications are allowed. The order 13.03.2018, is recalled and the writ petitions are restored to their original numbers.

CWP-18850-2012 and CWP-21093-2011

List as per roster.

A photocopy of this order be placed on the file of connected case.

(ARUN PALLI)
JUDGE

07.02.2024
Manoj Bhutani