

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 24319 of 2016 (O&M)
Date on Reserved : 09.04.2024
Date of Pronouncement : 16.04.2024

Ravinder Pal Malhotra (since deceased) through his LR's

..... Petitioner

Versus

Union of India and others

..... Respondents

CWP No. 2864 of 2012

R.K.Thakur and others

..... Petitioners

Versus

Under Secretary and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. P.K.Goklaney, Advocate and
Mr. Ashish Goklaney, Advocate
for the petitioners in CWP No. 2864 of 2012.

Mr. Aalok Jagga, Advocate
for the petitioner in CWP No. 24319 of 2016.

Mr. Amit Jhanji, Senior Standing Counsel and
Ms. Sukhmani Patwalia, Advocate
for the U.T.Chandigarh.

Mr. R.S.Cheema, Advocate
for respondent No.4 in CWP-2864-2012.

JAGMOHAN BANSAL

1. By this order, CWP No. 24319 of 2016 and CWP-2864-2012 are disposed of as the issues involved and prayer sought are common. For the sake of convenience, the facts are borrowed from CWP No. 24319 of 2016.

2. The petitioner through instant petition under Articles 226/227 of Constitution of India is seeking setting aside of order dated 06.09.2017 (Annexure P-19) whereby respondent has rejected his claim qua Assured Career Progression Scheme (for short 'ACP'). The petitioner is further seeking direction to the respondents to extend benefits flowing from ACP as are available to teachers of Government Schools of Chandigarh Administration.

3. The petitioner is a school teacher and working with respondent No.4 i.e. DAV Senior Secondary School, Sector 8-C, Chandigarh which is a privately managed school and getting 95% grant in aid from Chandigarh Administration. The petitioner joined respondent-School in August' 1992 on *ad hoc* basis and thereafter, in August' 1994, was made regular as Trained Graduate Teacher (Maths). The petitioner during his tenure taught mathematics to students of 10th and 12th standards.

4. The Secretary, Department of Education, Chandigarh addressed a letter dated 23.05.1989 to Director, Public Instructions (Schools), Chandigarh stating that pay scales of teaching staff of Government aided schools in Chandigarh shall be at par with teachers of Government schools in Chandigarh and on the same terms and conditions as laid down in Finance Department letter dated 08.02.1989. The respondents awarded senior scale to officials of privately managed government aided school on completion of 12 years of service. In January' 1997, the respondent granted proficiency step up on completion of 8/18 years of regular service.

5. The Secretary, Department of Education (respondent No.2) vide letter dated 08.06.1998 (Annexure P-6) addressed to Director, Public Instructions (respondent No.3) stated that Chandigarh Administration is pleased to adopt revised pay scales w.e.f. 01.01.1996 on the pattern of Punjab in respect of teaching and non-teaching employees of Govt. Aided Schools on the same terms as are

applicable to their counterparts working in Govt. Schools and Colleges subject to the condition that duties, functions and educational qualification of these officials are exactly similar to those of corresponding category of employees. The relevant extracts of communication dated 08.06.1998 are reproduced as below :

Subject: Revision of Pay Scale of Teaching/Non-Teaching employees of Aided Schools and non-Teaching employees of Aided Colleges on Punjab pattern.

The Administrator, U.T., Chandigarh is pleased to adopt the revised pay scales w.e.f. 01.01.1996 on Punjab pattern in favour of teaching & Non-Teaching employees of Govt. Aided Schools and Non-Teaching employees of Govt. Aided Colleges as per letter No. F & PO (7) 98/1156 dated 3rd February, 1998 (copy enclosed) on the same terms as are applicable to their counterparts working in Govt. Schools and Colleges, subject to the condition that the duties, functions and educational qualification of teaching & non-teaching employees working in these organizations are exactly similar to those of corresponding category of employees of Govt. Schools and Colleges.

This issues with the prior concurrence of Finance Department, Chandigarh, Administration conveyed vide their U.O No.501- F&PO (7)6897 dated 19.05.1998.

6. The Director, Education Department(s), Punjab vide communication dated 01.10.2001 (Annexure P-7) addressed to Director, Education Department, Chandigarh Administration, intimated that State of Punjab has neither granted proficiency step up to teaching and non-teaching staff of the privately managed recognized and aided schools prior to 1996 nor any benefit of revised pay scales has been granted post January' 1996. The relevant extracts of the letter dated 01.10.2001 are reproduced as below :

Subject : For granting promotion to Senior Scale and one increment under A.C.P

In context to the above subject, in context to your memo No 579-D.P.1 - U.T. A-4-24 (58) 93 dated 28-8-2001, it is requested that in State of Punjab, no proficiency step-up has been granted to Teaching and Non Teaching Staff of the Privately Managed Recognized and Aided Schools, prior to 1-1-96, neither any benefit of revised pay scales after 1-1-96 has been granted.

7. On 17.12.1998 (Annexure P-8), the Chandigarh Administration implemented recommendations of 4th Punjab Pay Commission under Assured Career Progression Scheme. It was decided that recommendations of 4th Punjab Pay Commission with respect to ACP are adopted from the date specified by Punjab Government in respect of employees of Union Territory, Chandigarh governed by the Punjab Civil Services (Revised Pay) Rules, 1998. The relevant extracts of communication dated 17.12.1998 are reproduced as below:

Subject: Implementation of the recommendations of the Fourth Punjab Pay Commission under 'Assured Career Progression Scheme'.

Sir/Madam,

I am directed to say that the Punjab Government on the recommendations of Fourth Punjab Pay Commission with regard to 'Assured Career Progression Scheme' has notified the 'Assured Career Progression Scheme' as contained in their letter No.7/37/98-5PPI/12851-54 dated 25th September, 1998 (copy enclosed) which is effective from 1st January, 1996, which inter-alia provide for the grant of next higher pay scale in the hierarchy of pay scales and proficiency steps up to the employees governed by the Punjab Civil Services (Revised Pay) Rules, 1998.

2. *In pursuance of the Government of India, Ministry of Home Affairs Notification No.14012/2/88-CHD dated 13.01.1992, the Administrator, Union Territory, Chandigarh is pleased to adopt the aforesaid Punjab Government's circular letter No.7/37/98-5PPI/12851-54 dated 25th September, 1998*

from the date specified by the Punjab Government in respect of the employees of the Union Territory, Chandigarh governed by the Punjab Civil Services (Revised Pay) Rules, 1998 adopted by Chandigarh Administration, Finance Department (Accounts Branch) vide letter No.F & PO (7)-98/1156-1160-A dated the 3rd February, 1998 and drawing Punjab pay scales w.e.f. 01.01.1996.

8. The State of Punjab w.e.f. 01.01.2006 granted ACP on completion of 4, 9 and 14 years of service. The respondent vide communication dated 04.02.2011 (Annexure P-10) decided to grant pay and allowances on Punjab pattern as per recommendations of 5th Punjab Pay Commission to the Teaching and non-teaching staff of Privately Managed Government Aided Schools. In the said communication, letters dated 18.08.1989 and 15.03.1993 whereby it was decided to grant parity in release of Punjab Pay scales to the teaching and non-teaching staff of privately managed government aided schools, was noticed. The relevant extracts of the communication dated 04.02.2011 are reproduced as below:

Subject: Grant of Pay and allowances on Punjab pattern as per recommendations of Fifth Punjab Pay Commission to the Teaching and non Teaching staff of Privately Managed Governments Aided Schools and Non- Teaching employers of Aided Colleges on the basis of parity with counterparts working Chandigarh In Govt. Colleges, UT, Chandigarh.

I am directed to refer your office letter no. F.No. 2-4/2010-UT-1 dated 30th December 2010 on the subject cited above. Point-wise reply of the information asked vide above referred later is as under :

1. *The proposed replacement scales have been implemented in the Education Department, U. T. Chandigarh the employees working in the govt. Schools and Colleges.*

2. *The Punjab got has extended the benefit of revision of pay scales to the non-teaching staff working in Privately Managed Aided Colleges of their State w.e.f. 1.6.2010 basis of 5th pay commission report (copy enclosed)*
3. *If Chandigarh is allowed to extend the benefits of fifth Punjab Pay Commission it will not create further anomalies vis-a-vis employees of Privately Managed Govt. Aided Schools in Punjab, as the Chandigarh Administration follows Punjab Pay Scales and Punjab does not follow Chandigarh Administration.*

*Copies of letters dated 18.8.1989 and 15.3.1993 where earlier a decision has already been taken to grant parity in release of Punjab Pay scales to the teaching and Non-teaching staff of privately managed aided schools on the same terms and conditions as in the case of their **counterparts is Govt. schools of U.T. Chandigarh** are sent herewith. Further, copy of letter No. 7000/12-F&PO(7)- 2009-4029 dated 11.6.2009 whereby pay scales of teaching and Non-leaching staff of Govt. **Schools/Colleges according to whom they are gelling revised Punjab Pay Scales w.e.f. 1.1.2006 is also sent herewith.***

You are therefore requested to take further necessary action to the grant of benefit of pay scales w.e.f. 1.1.2006.

9. The Director Public Instruction, Chandigarh Administration vide communication dated 02.01.2004 (Annexure P-11), returned proposal of extension of ACP to employees of Government Aided Privately Managed Schools. The contents of said letter are reproduced as below :

The cases for the approval of ACP in respect of teaching and non-teaching staff of DAV Sr. Sec. School, Sector 8, Chandigarh is returned herewith with the remarks that ACP

Scheme is not applicable to the employees of Govt. Aided Privately Managed Schools.

10. The Education Secretary addressed a letter dated 16.07.2010 (Annexure P-13) to Under Secretary to Govt. of India, Ministry of HRD wherein it was observed that teachers working in grant-in-aid schools of U.T. Administration should be extended benefit of ACP as is available to Govt. school teachers as well as non-teaching staff. In the said letter, it was also noticed that Government of Punjab has not allowed ACP to employees of Privately Managed Schools, thus, Finance Department has formed an opinion that ACP should not be made applicable to privately managed Schools in U.T. Chandigarh. The Secretary was of the opinion that to bring parity with Govt. staff of U.T. Administration benefit of ACP should be extended to Privately Managed Schools. The relevant contents of said letter are reproduced as below:

It is stated that the teachers working in grant-in-aid schools of U.T. Chandigarh are getting the same pay scales at par with teachers working in Govt. Schools of Education Department, U.T., Chandigarh on Punjab pattern. The benefit of ACP Scheme is being availed by the Chandigarh Administration, Education Department Govt. Schools Teaching as well as Non-teaching staff. However, the benefit of ACP has not been extended to the staff working in Govt. Privately Managed Aided Schools in Punjab. As per instructions issued by Ministry of Human Resource Development letter No.F.3-25/88 UT-1, dated 22.9.87 it has been clarified that "the pay scales applicable to school teachers of the categories mentioned in this letter to the incumbents of such teaching posts are analogous to the above mentioned categories of posts of teachers working in the schools in UT Chandigarh included Govt. Aided Schools."

Further, the Finance Deptt. U.T., Chandigarh has clarified vide letter NO.423-DPI-UT-A2-24(27)88, dated 5.5.93

that Punjab Pay Scale and other facilities i.e. DA, HRA, CCA and fixed medical allowances as allowed by the Govt. of India, Ministry of Human Resource Development vide their letter No.F.2/16/92/UT.1, dated 15.3.93 in favour teaching and non-teaching employees working in Privately Managed Govt. Aided Schools in UT Chandigarh w.e.f. 1.1.86 on the same terms and conditions as has been done in the case of their counter parts in Govt. Schools of U.T. Administration. Now it has been advised by the Finance Department that as the Government of Punjab has not allowed the ACP to the employees of the Privately Managed Schools and Colleges, as such, the benefit can not be allowed to the employees working in the Privately Managed/Govt. Aided Schools and Colleges in U.T. Chandigarh. However, in case AD still wants to grant this benefit, in that case, the issue can be taken up by the AD with the Government of India first.

Keeping in view the position explained above, it is considered appropriate to bring parity with Govt. staff of UT. Education Department the request of Union of Govt. Grant-in-Aid Privately Managed Schools Teacher to grant/extend benefit of ACP on completion of 8, 16, 24 & 32 years and subsequently switched over 4/9/14 years of service w.e.f. 1.11.2006 to the employees working in Privately Managed Govt. Aided Schools & Colleges in U.T., Chandigarh on similar pattern, as is being enjoyed by the UT Govt. School Teaching and Non-Teaching Staff in order to redress the grievances of Union for all times to come as per decision contained in letter dated 15.3.93.

11. The Director, Public Instruction(s), Chandigarh vide communication dated 16.08.2010 (Annexure P-14) requested to Govt. of India to consider the proposal of grant of ACP w.e.f. 1.11.2006 (sic.) to employees working in Privately Managed Govt. Aided Schools. The relevant extracts of the said letter are reproduced as below:

Subject : *Assured Career Progression Scheme (8, 16, 24 & 32 years of service)*

Sir,

I am directed to refer to this office letter No.452-DPI-UT-A4- 24(58)93/1185 dated 16.7.2010 vide which it was requested to consider the proposal for the grant of benefit under Assured Career Progression Scheme on completion of 4/9/14 years of service w.e.f. 1.11.2006 to the employees working in Privately Managed Govt. Aided Schools and Colleges in UT. Chandigarh, on the pattern of similarly situated Govt. employees of the Education Department.

It is again requested to expedite the matter as early as possible.

12. The Ministry of HRD, Department of School Education and Literacy vide communication dated 14.09.2011 (Annexure P-15) intimated the Finance Secretary, Chandigarh Administration that teaching and non-teaching employees of Government aided schools of UT Administration may be extended Punjab pay scales of Chandigarh w.e.f. January 01, 2006 and on the same terms and conditions as are applicable their counterparts in the Government schools of UT Administration. The relevant extracts of the said communication are reproduced as below :

Subject: Release of Punjab pay scales to the Teaching and Non- teaching employees working in the Govt. Aided-privately managed schools in the U.T. Administration of Chandigarh- approval thereto.

Sir,

I am directed to refer to your letter No.DHE-UT-AD.III-24 (14) 95-96, dated 16 November, 2010 on the subject cited above and to convey the approval of the Government of India to the extension of Punjab pay scales to the teaching and

non-teaching employees of Government aided privately managed schools under the UT Administration of Chandigarh w.e.f. January 01, 2006 on the same terms and conditions as has been done in the case of their counter-parts in the Government schools of UT Administration subject to the following conditions:-

- (i) The duties, functions and educational qualifications of the teaching and non-teaching employees working in privately managed aided schools are exactly similar to those of the corresponding-employees of the Government schools, and*
- (ii) The expenditure involved will be met by the UT Administration from within its sanctioned budget.*

2. This issues with the approval of the Integrated Finance Division of this Ministry vide their Dy.No.3693 dated 07 September, 2011.

13. The Education Department, Chandigarh Administration vide letter dated 25.10.2011 (Annexure P-16) decided to adopt revised pay scales in favour of Teaching and Non-Teaching employees of Privately Managed Government Aided Schools w.e.f. 1.1.2006 on the pattern of Punjab Govt. The contents of said letter are reproduced as below :

The Administrator, U.T., Chandigarh is pleased to adopt the revised pay scales in favour of Teaching and Non-Teaching employees of Privately Managed Govt. Aided Schools of U.T. Chandigarh w.e.f. 1.1.2006 on Punjab pattern in pursuance of the Punjab Govt. letter No.4/62/10-4S13/1867 dated 6.6.2011 subject to the condition that the decision about the arrears prior to 1.4.2011 will be taken as and when Punjab Govt. takes decision.

This is further subject to the condition that the duties, functions and educational qualification of teaching and non-teaching employees working in these organizations are exactly similar to those of corresponding category of employees of Govt. Schools.

This issues with the concurrence of Finance Department. Chandigarh, Administration conveyed vide their U.O.No. 7000/1/116/F & PO (7)/9139 dated 25.10.2011.

14. The respondent as narrated hereinabove adopted revised pay scales for teaching and non-teaching staff of Govt. aided schools on the pattern of State of Punjab. The respondent extended pay scale to teaching and non-teaching staff of privately managed schools on the pattern of Punjab. In the State of Punjab, employees of privately managed government aided schools are not getting benefit of ACP, thus, respondent formed an opinion that employees working in Govt. Aided schools are not entitled to benefit of ACP.

15. During the pendency of present petition, this Court vide order dated 25.07.2017 directed the respondents to pass a speaking order with reference to representation dated 10.08.2009 of the petitioner. The respondent vide impugned order dated 06.09.2017 (Annexure P-19) has rejected his claim. The respondent has formed an opinion that employees of Govt. aided schools are not getting ACP in the State of Punjab, thus, employees of Govt. aided school in U. T. Chandigarh are not entitled to said benefit. The relevant extracts of the said order are reproduced as below :

5. The matter was also considered by the Administration and referred to the Finance Department. It was observed by the Finance Department that as the Government of Punjab has not allowed the ACP to the employees of the Privately Managed Schools and Colleges, as such the benefit cannot be allowed to the employees working in the Privately

Managed Govt. Aided Schools and Colleges in UT. However, in case the Education Department still wants to grant this benefit, in that case, the issue can be taken up with the Government of India.

6. *The matter was taken-up with the Ministry of Human Resource Development, New Delhi seeking their approval. The Under Secretary to the Government of India vide letter dated 20th August, 2014 informed that the UT Administration of Chandigarh is following the pay pattern of the State Government of Punjab. The State Government of Punjab has not granted the benefit of ACP to the teaching and non-teaching staff in Govt. Aided Schools and requested to take up the matter with the Government of Punjab.*

7. *The Director Public Instruction(S), Punjab vide letter dated 20.7.2015 and 7.11.2016 again reiterated the reply as conveyed vide letter dated 11.5.2015.*

8. *The Director Public Instruction(S), Punjab, SAS Nagar Mohali has again been requested to intimate the latest status about the admissibility of ACP benefit to the employees of aided schools in the State of Punjab vide letter dated 3.8.2017 which is awaited.*

9. *In a similar nature of Civil Writ Petition bearing No 2064/2012 titled as R.K. Thakur and others versus Union of India and others, the Department has already filed written statement and Affidavit thereby contesting the claim of the petitioner for grant of benefit under ACP Scheme.*

10. *On consideration of the Legal Notice given by the Petitioner and clarification given by DPI(S), Punjab vide letter dated 11.5.2015, advice given by Finance Department, Chandigarh Administration vide U.O No.7000/1/116-F&PO(7)/9068 dated 31.12.2009 and clarification given by Ministry of Human Resource Development, Govt. of India, New Delhi vide letter dated 20.8.2014 and 8.2.2016, the undersigned has found as such that the benefit of ACP is not admissible to*

the petitioner at par with the employees working in the Govt. Schools of U.T. Chandigarh.

[Emphasis Supplied]

16. Mr. Aalok Jagga and Mr. P.K.Goklaney, Advocates submit that prior to 2006, the respondent extended benefit of proficiency step up to employees of Govt. aided schools of Chandigarh, however, has declined benefit of ACP w.e.f. 01.01.2006 on the ground that employees of Govt. aided schools in State of Punjab are not getting ACP, thus, the petitioners are not eligible to said benefit. The respondent has adopted pay pattern of State of Punjab, however, in different communications, it has been categorically stated that employees of Govt. aided schools would be eligible to benefits as are available to their counterparts in U. T. Chandigarh. The employees of U.T. Chandigarh are getting ACP and the petitioners' counterparts are teachers of Govt. schools at U.T. Chandigarh. The petitioners cannot be compared with employees of Govt. aided schools of State of Punjab whereas petitioners should be treated at par with employees working in the Govt. schools of U.T. Chandigarh. The Govt. of India, Ministry of Home Affairs, has issued a notification dated 23.05.2018 whereby Punjab Privately Managed Recognised Schools Employees (Security of Service) Act, 1979 (for short '1979 Act') and the Punjab Privately Managed Recognised Schools Employees (Security of Service) Amendment Act, 2013 (Punjab Act No.48 of 2013) (for short '2013 Act') have been extended to U. T. Chandigarh. In the said notification, it has been made clear that words 'State Government' shall be substituted by 'Administrator of the Union territory of Chandigarh' and 'State of Punjab' by 'Union Territory of Chandigarh'. The 1979 Act categorically provides that pay scale and dearness allowance of employees of Govt. aided schools shall not be less than of employees of State Government holding corresponding posts in the schools run by the State Government.

The expression “pay scale” includes ACP. A two-judge Bench of Supreme Court in *Union of India and Ors. vs. Balbir Singh Turn & Anr., Civil Appeal Diary No.3744 of 2016 , decided on 08.12.2017* has categorically held that MACP is part of pay structure. The Court has further held that ACP is not an allowance but part of pay.

17. Per contra, Mr. Amit Jhanji, Senior Standing Counsel and Mr. R.S. Cheema, Advocate submit that U. T. Administration has adopted pay pattern of State of Punjab. There is no cavil that employees of privately managed schools of State of Punjab are not getting ACP. The petitioners are at par with employees of Govt. aided schools in State of Punjab. They cannot claim parity with Government employees of U. T. Chandigarh. The employees of Govt. aided schools form a different class and they cannot be treated at par with Govt. employees. There is no discrimination if petitioners are denied benefits of ACP though it is extended to employees of Govt. schools. With respect to notification dated 23.05.2018 issued by Ministry of Home Affairs they feigned ignorance. To counter judgment cited by petitioner, they relied upon judgment of Supreme Court in *Union of India vs. R.K.Sharma and others, (2021) 5 SCC 579* and judgment of this court in *Haryana State Adhyapak Sangh vs. State of Haryana and Others, CWP No. 11686 of 2004.*

18. I have heard the arguments of learned counsel for the parties and perused the record.

19. From the perusal of pleadings and arguments, it comes out that the petitioners are claiming that they are entitled to benefits of ACP at par with employees working with Govt. schools of Chandigarh Administration whereas respondent- Chandigarh Administration has rejected their claim on the ground that employees working in the government aided schools of State of Punjab are not

getting ACP at par with Punjab Govt. employees, therefore, the petitioners are not entitled to benefits of ACP at par with employees of U.T. Administration. Thus, the question which arises for the consideration of this court is: Whether petitioners who are working with Privately Managed Government Aided Schools of Chandigarh are entitled to ACP at par with employees of government schools of Chandigarh Administration?

20. The conceded position emerging from record is that the petitioners are working with privately managed government aided schools. They were extended benefits of ACP and proficiency step up prior to 1996 at par with government school teachers. The respondent time to time issued letters confirming that employees of government aided schools are entitled to pay scale on the pattern of Punjab State. It was further confirmed that they are entitled to benefits at par with their counterparts. The administration requested Government of India to extend ACP w.e.f. 01.01.1996 to petitioners at par with government schools of U.T. Administration. The State of Punjab has not extended ACP to employees of its government aided schools. The Ministry of Home Affairs vide Notification dated 23.05.2018 made 1979 Act and 2013 Act applicable to employees of government aided schools of U.T. Chandigarh. The words 'State of Punjab' and 'State Government' used in 1979 Act have been substituted by 'Union Territory of Chandigarh' and 'The Administrator of Union Territory of Chandigarh'. The petitioners are claiming parity with employees of government schools of Chandigarh Administration and respondent is treating them at par with employees of government aided schools of the State of Punjab.

21. From the perusal of letter dated 04.09.2011 issued by Ministry of HRD as well as letter dated 25.10.2011 issued by Chandigarh Administration, it comes out that Chandigarh Administration as well as Govt. of India has extended

Punjab scales to the employees of Govt. Aided Privately Managed Schools of U. T. Administration. The Govt. of India as well as Administration has further formed an opinion that aforesaid employees would be entitled to benefits at par with their counterparts i.e. employees of Govt. schools of U.T. Chandigarh. The respondent is not disputing that employees of U.T. Administration are getting ACP. The respondent is claiming that petitioners being employees of Govt. aided schools are at par with employees of Govt. aided schools in the State of Punjab. As per respondent, employees of Govt. aided schools of the State of Punjab are petitioners' counterparts and not employees of Govt. schools of U.T. Chandigarh. The contention of respondent seems to be misconceived, thus, deserves to be rejected. The petitioners have successfully pointed out that U.T. Administration itself vide communication dated 16.07.2010 requested to Govt. of India to extend ACP to employees of Govt. aided schools at par with employees of Govt. schools of U.T. Administration. The stand of respondent is apparently self-contradictory. The respondent has further ignored the fact that even prior to 01.01.2006, the employees of Govt. aided schools in Chandigarh were extended proficiency step up at par with employees of govt. schools of Chandigarh Administration. The State of Punjab has not extended said benefit to employees working in Govt. aided schools.

22. The respondent has primarily recorded finding in the impugned order as well as pleaded during the course of arguments that petitioners are at par with employees working in Govt. aided schools in the State of Punjab. The respondent is treating employees of Govt. aided school in the State of Punjab as petitioners' counterpart.

23. From the perusal of letter dated 04.09.2011 of Govt. of India and letter dated 25.10.2011 of Chandigarh Administration, it is evident that respondent itself has

treated employees of Govt. schools of U.T. Administration as counterparts of petitioners. The respondent just to avoid its liability is taking somersault. The argument of respondent further falls flat in view of notification dated 23.05.2018 issued by Ministry of Home Affairs. The said notification is reproduced as below :

New Delhi, the 23rd May, 2018

G.S.R. 474(E)-In exercise of the powers conferred by section 87 of the Punjab Reorganisation Act, 1966 (31 of 1966) and in suppression of the notification of the Government of India in the Ministry of Home Affairs number G. S. R. 1221, dated the 27th August, 1971, published in the Gazette of India, Part II, section 3, sub-section (i) except as respects things done or omitted to be done before such suppression, the Central Government hereby extends to the Union territory of Chandigarh, the Punjab Privately Managed Recognised Schools Employees (Security of Service) Act 1979 (Punjab Act No. 18 of 1979) and the Punjab Privately Managed Recognised Schools Employees (Security of Service) Amendment Act, 2013 (Punjab Act No.48 of 2013), as in force in the State of Punjab, on the date of publication of this Notification, subject to the following modifications, namely:-

MODIFICATIONS

THE PUNJAB PRIVATELY MANAGED RECOGNISED SCHOOLS EMPLOYEES (SECURITY OF SERVICE) ACT, 1979

(PUNJAB ACT 18 OF 1979)

1. Throughout the Punjab Privately Managed Recognised Schools Employers (Security of Service) Act. 1979 (Punjab Act 18 of 1979) hereinafter referred to as the Act, for the words "State Government" wherever they occur, the words "the Administrator of the Union territory of Chandigarh" shall be substituted.
2. In section I of the said Act,
 - (a) in sub-section (1), after the words "the Punjab Privately Managed Recognised Schools Employees (Security of Service) Act, 1979", the words "as extended to the Union territory of Chandigarh" shall be inserted;

(b) In sub-section (2), for the words "State of Punjab", the words "Union Territory of Chandigarh" shall be substituted.

24. From the perusal of above-quoted notification and modified 1979 Act, it can be culled out that 1979 Act as well as 2013 Act has been extended to employees working with Privately Managed Govt. Aided Schools of U.T. Chandigarh. It has been categorically provided that word ‘State Government’ wherever occurred would be substituted by ‘the Administrator of the Union territory of Chandigarh’. The expression ‘State of Punjab’ has been substituted by ‘Union Territory of Chandigarh’. Section 7 of 1979 Act provides that pay scale and dearness allowance of the employees of privately managed schools shall not be less than of employees of U.T. Administration. The expression 'privately managed recognized school' has been defined under Section 2(g) of the Act and Section 7 provides for pay parity. Section 2(g) and Section 7 of the Act are reproduced as below :

(g) 'privately managed recognized school' means a school, which is not run by the Central Government, the State Government, a local authority or any other authority designated or sponsored by the Central Government. State Government or local authority, as the case may be, and is recognized by the State Government for imparting pre-primary, primary, middle, high and higher secondary education or training below the degree level, but does not include an institution which imparts technical education,

X X X X X

Section 7:

Notwithstanding anything contained in section 3, the scale of pay and dearness allowance of the employees shall not be less than those of the employees of the State Government holding corresponding posts in the schools run by the State Government:

Provided that where the scales of pay and dearness allowance of the employees are less than those of the employees of the State Government holding corresponding posts in the schools run by the State Government, the Director shall direct the concerned managing committee to bring the same at par with those of such employees of the State Government.

25. The notification dated 23.05.2018 has substituted word “State Government” by "the Administrator of the Union territory of Chandigarh". The natural corollary is that employees of privately managed schools of Chandigarh are at par with employees of schools of Chandigarh Administration. The counterparts of petitioners are not employees of privately managed schools in the State of Punjab whereas their counterparts are employees of Govt. schools of Chandigarh Administration.

26. From the above discussion, it comes out that notification dated 23.05.2018 has cleared the clouds. There is no scope for doubt. For the purpose of pay scale and dearness allowance, the employees of privately managed schools are at par with employees of Chandigarh Administration. The respondent has rejected claim of the petitioner on the sole ground that employees of privately managed schools of State of Punjab are counterparts of the petitioners whereas the above discussion makes it clear that employees of Chandigarh Administration are their counterparts.

27. The petitioners have been denied benefit of ACP on the sole ground that employees of privately managed schools of State of Punjab are not getting ACP. The respondent has not denied benefit on the ground that pay scale does not include ACP. The object of extending pay scale and dearness allowance to Privately Managed Govt. Aided School as available to Govt. teachers is to bring parity among both classes of employees. The Govt. has introduced 1979 Act to

obliterate disparity in the pay scale of Privately Managed Govt. Aided Schools and Govt. Schools. It is apt to mention here that Govt. aided schools are getting 95% grant-in-aid from Administration. The appointment of teachers in these schools is made as per parameters as well as terms and conditions laid down by Administration. The respondent during the course of arguments pleaded that petitioners may be entitled to pay scale and dearness allowance as available to Govt. teachers, however, ACP cannot be treated as part of the pay scale. The respondent has not raised this ground in the impugned speaking order. It is a settled proposition of law that authorities cannot be permitted to travel beyond the impugned order, nevertheless, I deem it appropriate to look at judicial precedents adverting with the nature of ACP.

As pleaded by petitioners, a two-judge Bench of Supreme Court in **Balbir Singh Turn's case (supra)** while adverting with decision of Armed Forces Tribunal has held that benefit of ACP granted to an employee is part of pay structure which not only affects grade pay but also his pension, therefore, it is not an allowance but a part of pay. In this case, Armed Forces Tribunal held that MACP is part of pay structure and employees despite decision of Govt. to extend MACP w.e.f. 01.09.2008 would be entitled to said benefit w.e.f. 01.01.2006 i.e. date from which recommendations of the 6th pay commission with regard to pay and benefits were made applicable. The relevant extracts of the said judgment read as :

5. *For the purpose of this judgment we are dealing with the facts of Civil Appeal Diary No. 3744 of 2016. It would be pertinent to mention that all the petitioners before the Armed Forces Tribunal ('AFT' for short) who are respondents before us are persons below officer rank. The respondents in this case retired after 01.01.2006 but prior to 31.08.2008. They claim that the benefit of the Modified Assured Career Progression*

(‘MACP’ for short) was denied to them on the ground that the MACP was made applicable only with effect from 01.09.2008. The respondents approached the AFT praying that they are entitled to the benefit of MACP w.e.f. 01.01.2006, i.e., the date from which the recommendation of the 6th CPC with regard to pay and benefits were made applicable. The stand of the Union of India was that the MACP was applicable only w.e.f. 01.09.2008 and, therefore, the respondents who had retired prior to the said date were not entitled to the benefit of the MACP. The AFT vide the impugned order dated 21.05.2014 held that the benefit of ACP granted to an employee is part of the pay structure which not only affects his pay but also his pension and, therefore, held that the ACP is not an allowance but a part of pay and, therefore, in terms of Clause (i) of the Government Resolution the MACP was payable w.e.f. 01.01.2006.

6. The question that arises for decision is whether the benefit of MACP is applicable from 01.01.2006 or from 01.09.2008. 7. The answer to this question will lie in the interpretation given to the Government Resolution, relevant portion of which has been quoted hereinabove. A bare perusal of Clause (i) of the Resolution clearly indicates that the Central Government decided to implement the revised pay structure of pay bands and grade pay, as well as pension with effect from 01.01.2006. The second part of the Clause lays down that all allowances except the Dearness Allowance/relief will be effective from 01.09.2008. The AFT held, and in our opinion rightly so, that the benefit of MACP is part of the pay structure and will affect the grade pay of the employees and, therefore, it cannot be said that it is a part of allowances. The benefit of MACP if given to the respondents would affect their pension also.

X

X

X

X

X

10. *As already held by us above, there can be no dispute that grant of ACP is part of the pay structure. It affects the pay of the employee and he gets a higher grade pay even though it may be in the same pay band.*

28. The respondent to counter aforesaid judgment has relied upon a two-judge Bench judgment of Supreme Court in **R.K.Sharma (supra)**. Supreme Court in this judgment has noticed its earlier judgment in **Balbir Singh Turn's case (supra)**, however, neither has declared per incuriam nor disturbed its findings. The Court has observed that benefits flowing from MACP and ACP are incentives and not part of pay. The relevant extracts of **R.K.Sharma's case (supra)** read as :

9. *For a better understanding of the dispute in these cases, it is necessary to examine the judgments of this Court in Balbir Singh Turn (supra) and M.V. Mohanan Nair (supra). The point that was considered by this Court in Balbir Singh Turn (supra) relates to the applicability of the benefit of MACPS from 01.01.2006. The Respondents therein approached the Armed Forces Tribunal which held that the benefit of ACP granted to an employee is part of the pay structure which affects the pay and also his pension. The Armed Forces Tribunal held that an ACP is not an allowance but a part of pay and therefore, in terms of the Government resolution, the employees were entitled for MACP w.e.f. 01.01.2006. This Court in Balbir Singh Turn (supra) upheld the said finding recorded by the Armed Forces Tribunal. Instructions issued on 30.05.2011 were found to be contrary to the resolution dated 30.08.2008 as, according to the resolution 01.01.2006 was the effective date for implementation of MACPS in matters relating to pay and dearness allowance.*

10. *In M.V. Mohanan Nair (supra) a three Judge Bench of this Court considered the ACPS as well as the MACPS to hold that the schemes are in the nature of incentive schemes which were brought into force to relieve stagnation. This Court was of*

the considered view that the Respondents therein were entitled only to the benefit of next grade pay in the pay band and not to the benefit of grade pay of next promotional post. As the MACPS is a matter of Government policy pursuant to the recommendations made by the Pay Commission, this Court refused to accept submissions of the employees that MACPS should be made applicable w.e.f. 01.01.2006.

11. In view of the judgment of this Court in M.V. Mohanan Nair (supra), the Respondents and other similarly situated employees are entitled for financial upgradation under MACPS only to the next grade pay and not to the grade pay of next promotional post. It is clear from the resolution dated 30.08.2008 that the recommendation of the 6th Pay Commission was accepted by the Government and was made effective from 01.01.2006 in respect of civilian employees with regard to revised scales of pay and dearness allowances. In so far as the revised allowances other than dearness allowance, recommendation of the 6th Pay Commission were given effect from 01.09.2008. The judgment in M.V. Mohanan Nair (supra) clinches the issue. Benefits flowing from ACP & MACP Schemes are incentives and are not part of pay. The resolution dated 29.08.2008 is made effective from 01.09.2008 for implementation of allowances other than Pay and DA which includes financial upgradation under ACP & MACP Schemes. Therefore, the Respondents and other similarly situated officers are not entitled to seek implementation of the benefits of MACPS w.e.f. 01.01.2006 according to the resolution dated 29.08.2008. Moreover, the implementation of MACPS by granting financial upgradation only to the next grade pay in the pay band and not granting pay of the next promotional post w.e.f. 01.01.2006 would be detrimental to a large number of employees, particularly those who have retired. We find force in the submission made by the learned Additional Solicitor General that uniform implementation of MACPS for civilian

employees w.e.f. 01.01.2006 would result in large scale recoveries of amounts paid in excess.

This Court finds it appropriate to rely upon judgment of Supreme Court in **Balbir Singh Turn's case (supra)** rather than **R.K.Sharma's case (supra)** because both the judgments have been delivered by equal strength of Benches and subsequent judgment has noticed earlier judgment but not commented upon it in any manner.

The respondents have further relied upon judgment of this Court in **Haryana State Adhyapak Sangh (supra)**. The said judgment is distinguishable and is inapplicable to present case. The legislative provisions governing service conditions of the petitioners are contemplating a different scheme than discussed in the said case, thus, said judgment does not advance the case of respondents.

29. In the wake of above discussion and findings, present petitions deserve to be allowed and accordingly allowed. The impugned order dated 06.09.2017 (Annexure P-19) is hereby quashed.

30. There is one petitioner in CWP No.24319 of 2016 and there are two petitioners in CWP No. 2864 of 2012. The petitioners are claiming ACP w.e.f. 01.01.1996 and extension of ACP to them is going to create additional financial burden upon Chandigarh Administration. It may also create rights in favour of other similarly situated employees who have not approached this Court. The respondent prior to 23.05.2018 was extending pay scales of the State of Punjab by way of different letters/instructions, however, respondent by way of notification dated 23.05.2018 has made 1979 Act and 2013 Act applicable to the employees of Privately Managed Govt. Aided Schools of Chandigarh Administration. To maintain balance and avoid burden on public exchequer, this Court finds it appropriate to hold that benefits of ACP would be available to similarly situated

employees w.e.f. 23.05.2018 and the petitioners who are 03 in number would be entitled to benefits of ACP at par with employees of schools of Chandigarh Administration w.e.f. 01.01.1996. It is made clear that they shall not be entitled to interest on the arrears. The respondent shall calculate and release arrears of petitioners within three months from today.

31. Both the petitions are disposed of in above terms.

(JAGMOHAN BANSAL)
JUDGE

16.04.2024
anju

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