

K.C. Kaushik and Ors. Vs. State of Haryana and Ors.

Civil Appeal No. _____ of 2024 arising out of SLP (C) No. 5017 of 20231 · Supreme Court of India · 2024-10-21 · Pankaj Mithal · R. Mahadevan · F2J-C-1512

Full judgment text

K.C. Kaushik and Ors. Vs. State of Haryana and Ors.

[Civil Appeal No. _____ of 2024 arising out of SLP (C) No. 5017 of 2023 1]

K.R. Malik and Ors. Vs. State of Haryana and Ors.

[Civil Appeal No. _____ of 2024 arising out of SLP (C) No. 5018 of 2023 2]

Inderjeet Bharti and Ors. Vs. State Of Haryana and Ors.

[Civil Appeal No. _____ of 2024 arising out of SLP (C) No. 5019 of 2023 3]

Savitri Malik and Ors. Vs. State of Haryana and Ors.

[Civil Appeal No(s). _____ of 2024 arising out of SLP (C) Nos. 8613 - 8619 of 2023 4]

R. Mahadevan, J.

1. Leave granted.

2. The challenge in these appeals is to the common judgment and order dated 29.09.2022 passed by the Division Bench of the High Court of Punjab and Haryana at Chandigarh 5 , in LPA Nos. 2396 of 2017 (O&M) etc. cases 6 , by which, the High Court has allowed the appeals filed by the State / respondent(s) and set aside the orders of the learned Single Judge dated 30.11.2016 in CWP No.8988 of 2015 and other connected cases, insofar as the grant of interest to the writ petitioners/ appellants herein.

3. The appellants were working as Lecturers / Principals in the Government Aided Private Colleges in the State of Haryana and they retired from service prior to 01.01.2006. Claiming parity with the Lecturers/Librarians of the Government Colleges in relation to the increase of their pension, based on the Haryana Civil Services (Revised Pension) Part I Rules, 2009 7 , the appellants preferred the aforesaid civil writ petitions for issuance of a Writ of Certiorarified Mandamus, to quash the orders of the respondent authorities denying revised pension to the appellants as that of the employees / teachers of the Government Colleges in Haryana, and to direct the respondent(s) to grant pension to the appellants in the corresponding scale of Rs.37400 - 67000 + AGP 8 Rs.9000/- with effect from 01.01.2006 with interest.

4. In the course of hearing of the civil writ petitions, the State counsel produced a copy of the letter dated 07.11.2016 sent by the Principal Secretary to Government of Haryana, Higher Education Department, Chandigarh, addressed to the Director Higher Education, Haryana, Panchkula, by which the State had agreed to give revised pension to the retired employees of the Private Aided Colleges, and also gave an undertaking on the basis of the instructions furnished by one Assistant by name Preet Singh, who was present in the Court, to the effect that the State would also pay interest on the delayed payment.

In view of the said letter and the oral instructions, the learned counsel for the appellants sought to withdraw the petitions. The learned Single Judge recorded all these statements and dismissed the civil writ petitions as withdrawn on 30.11.2016, besides issuing a direction to release the arrears of pension to the appellants within a period of three months. Subsequently, on applications, by order dated 23.12.2016, the word "w.e.f. 01.01.2006" was inserted after the words "revised pension" in the said orders dated 30.11.2016 passed by the learned Single Judge in CWP No.8988 of 2015 and connected cases.

5. Between 2017 and 2018, the State disbursed the arrears of revised pension to the appellants. However, they preferred a Review Application bearing No.RA-CW-383-2017, seeking to review the learned Single Judge's orders dated 30.11.2016 passed in CWP No.8988 of 2015 and connected matters, on the premise that payment of interest on the amount of arrears to be paid w.e.f.

01.01.2006 was not justified as the decision to revise the pension in the pay band of Rs. 37400 - 67000 + 9000 AGP was taken and approved by the Government of Haryana, Finance Department, vide U.O.No. 66/5/2016-2FD5 II/28139 dated 07.10.2016 and therefore, interest on belated payment of pension was payable not from 01.01.2006 but from 07.10.2016. By order dated 16.08.2017, the learned Single Judge dismissed the Review application, with liberty to the State to approach the appellate forum.

6. Feeling aggrieved and dissatisfied with the order passed in the Review Application, the State preferred LPA(s) before the Division Bench seeking to set aside the orders of the learned Single Judge dated 30.11.2016, to the extent of granting payment of interest as clarified on 23.12.2016 in the civil writ petitions and on 16.08.2017 in the review application. The High Court allowed the State's appeals and set aside the orders of the learned Single Judge with respect to grant of interest on delayed payment of revised pension to the appellants, by the common judgment and order impugned herein.

7. In the given facts and circumstances of the case, more particularly that the appellants were paid the revised pension with effect from 01.01.2006, the only question to be answered in all these cases is, whether they are entitled to interest on belated payment of revised pension.

8. Let us first examine the genesis of the present lis. The Haryana Government, Department of Finance, vide Notification dated 17th April, 2009, framed the Haryana Civil Services (Revised Pension) Part - I Rules, 2009 9 , which were deemed to have come into force on the 1st January, 2006. The Rules, 2009 applied to all pensioners / family pensioners, who were drawing their pension/ family pension or who were eligible / entitled to pension/family pension as on 01.01.2006 under the Punjab Civil Services Rules, Volume II as amended from time to time and as applicable to the pensioners/family pensioners under the rule making power of Haryana Government. Rule 6 deals with 'minimum ceiling of pension/family pension', which reads as under:

"6(1). The fixation of revised entitlement of pension shall be subject to the provision that the revised entitlement of pension so worked out shall, in no case, be lower than fifty percent of the minimum of the pay in the pay band + grade pay in the corresponding revised scale in terms of Haryana Civil Services (Revised Pay) Rules, 2008, or as the case may be, Haryana Civil Services (Assured Career Progression) Rules, 2008, to the pre-revised pay scale from which the pensioner had retired.

(2) The entitlement of pension calculated at 50 per cent of the minimum of pay in the pay band plus grade pay would be at the minimum of the pay in the pay band (irrespective of the pre-revised scale of pay) plus the grade pay corresponding to the pre-revised pay scale. For example, if a pensioner had retired in the pre-revised scale of pay of Rs.18400-22400, the corresponding pay band being Rs.37400-67000 and the corresponding grade pay being Rs.10,000/- per month his minimum guaranteed pension would be 50 per cent of Rs.37400/- + Rs.10,000 that is Rs.23,700/-.

(3) The entitlement of pension is worked out in terms of sub-rules (1) and (2) above shall further be reduced pro-rata in all cases, where the pensioner had less than the minimum service required for full pension as per rules as applicable on 1st January, 2006 and in no case, it will be less than Rs.3500/- per month."

Pursuant to the aforesaid Rules, pay scale was revised and the teachers working in the Government Colleges were receiving the revised pension. While so, the Higher Education Commissioner, Haryana, sent a communication dated 07.09.2010 to the banks, stating that the revised pension will be payable only to those, who were in service as on 01.01.2006 and not to those who had retired prior to 01.01.2006 and accordingly, ordered to reduce the pension and recover the excess payment made. The said order was challenged in CWP No.19266 of 2010 and connected cases, titled as Satyapal Yadav v. State of Haryana and others.

By order dated 25.07.2012, the said civil writ petitions came to be allowed, by setting aside the order dated 07.09.2010 passed by the Higher Education Commissioner, Haryana, after having held by the learned Single Judge that the petitioners therein had completed 3 years of service in the prerevised scale of Rs.12000 - 18300 prior to their retirement, i.e., before 01.01.2006, and hence, they are entitled to the fixation of pension by placing them in the minimum pay band of Rs.37400 - 67000 with AGP of Rs.9000/- or revision of their pension / family pension with effect from 01.01.2006.

The appeals 10 preferred by the State before the Division Bench of the High Court of Punjab and Haryana as well as this Court, ended in dismissal. Since the order dated 25.07.2012 passed in CWP.No.19266 of 2010 and connected cases, attained finality, the Haryana Government complied with

the same, by order dated 07.11.2014.

9. In the meanwhile, the appellants approached the respondent authorities seeking pension in the corresponding scale of Rs.37400- 67000 + AGP Rs.9000/- with effect from 01.01.2006 on par with the employees/teachers of the Government Colleges in Haryana, which was rejected on the ground that such benefit was granted only to the teachers working in the Government colleges and not for the teachers working in Government Aided Colleges. Challenging the said rejection, CWP.No.8988 of 2015 etc. cases were filed. During the pendency of the same, the State accepted the claim of the appellants and hence, the writ petitions came to be dismissed as withdrawn on 30.11.2016.

Seeking to review the order in respect of grant of interest on delayed payment of pension, the State preferred the Review application, which was dismissed. However, the Letter Patent Appeals 11 filed by the State were allowed by the High Court, by observing that the appellants were fence-sitters and were seeking the benefits on the strength of the original litigation, which others had successfully contested upto Apex Court and therefore, they cannot be placed at a better footing than the original litigants, who never got interest. The said order of the High Court is questioned in these appeals by special leave.

10. The common submission made by the learned counsel appearing for the appellants in all the appeals is that by the order impugned herein, the appellants have been illegally and arbitrarily denied interest on the belated payment of revised pension w.e.f 01.01.2006, by observing that they were fence-sitters and hence cannot be placed at a better pedestal than the original litigants, who had successfully contested and won the case and were not granted interest.

According to the learned counsel, the said observation of the High Court is in complete disregard to the fact that the original litigants referred to in the order impugned herein, were Lecturers/Librarians in the Government Colleges, who had started getting the revised pension w.e.f. 01.01.2006 and from whom recovery was initiated by the respondent authorities on the premise that they were made excess payment and therefore, the issue of interest on delayed payment of pension did not arise therein.

It is further elaborated that the appellants who had retired from Government Aided Private Colleges prior to 01.01.2006 were claiming parity with the pension allowed and paid to the Lecturers of Government Colleges and hence, by no stretch of imagination they could be termed as fence sitters; and by payment of interest on the delayed payment of pension, it cannot be said that they will be placed at a better footing than the original litigants, since the original litigants continued to get the revised pension, whereas in the case of the appellants, even the revised pension was not paid to them until the year 2017-2018, despite the passing of the orders dated 30.11.2016 by the learned Single Judge.

11. Continuing further, the learned counsel for the appellants submitted that denial of grant of interest to the appellants is contrary to the stand taken by the State in the writ proceedings, in which, the Learned Single Judge passed the orders dated 30.11.2016 on the basis of the undertaking given by the State Counsel that the revised pension is allowed to the appellants, who had retired prior to 01.01.2006 and the Government shall pay interest on the delayed payment. Thus, it is urged that in terms of the orders dated 30.11.2016 passed in CWP No.8988 of 2015 etc. cases, the appellants were entitled to revised pension along with interest on the delayed payment.

12. It is also pointed out by the learned counsel for the appellants that in the Contempt Petition bearing COCP No.2846 of 2017 in CWP No. 8988 of 2015, titled as Banarsi Dass and Ors. v. Jyoti Arora and another, an affidavit was filed by Mrs. Jyoti Arora, Additional Chief Secretary to the Government of Haryana, Higher Education Department, Chandigarh, on 01.05.2018 stating inter alia that the writ petitioners therein are entitled to interest from the date of issuance of the Policy dated 12.10.2010 by the Principal Secretary, Higher Education, Government of Haryana, regarding revision of pension/ family pension of the retirees of Non-Government Affiliated Aided Colleges in the State; and accordingly, interest at 9% was calculated w.e.f. 12.10.2010.

However, on 22.10.2018, an additional affidavit dated 22.10.2018 was filed by the said Mrs. Jyoti Arora, stating that the writ petitioners therein are not entitled to any interest. Thus, the respondent authorities have taken different stand at every stage of the proceedings, thereby depriving the appellants from getting their legitimate claim of interest on the delayed payment. Without properly appreciating the same, the High Court erred in allowing the State's appeals by setting aside the orders

of the learned Single Judge in respect of grant of interest on the delayed payment to the appellants and hence, the same is liable to be quashed.

13. Opposing the claim of the appellants, the learned counsel for the State / respondent(s) made the following submissions:

- (i) Rule 6 of the Rules, 2009 specifically deals with the case of Retired Government employees and there is no provision in the Rules, 2009 to award interest for any belated payment;
- (ii) Earlier and present litigations only pertain to grant of revised pension to the Government College Lecturers and Private Aided College Lecturers, both on the basis of 2009 Rules;
- (iii) The pay scale revisions are retrospective in nature and are without interest;
- (iv) interest cannot be offered, based on equitable considerations 12 ; and
- (v) Concessions made by a Government counsel cannot be granted, unless there are written instructions from a responsible officer 13 . Thus, the learned counsel submitted that considering the facts and circumstances of the case, the High Court correctly denied the grant of interest on the delayed payment, which does not call for any interference by this court.

14. As a riposte, the learned counsel for the appellants submitted that the decisions relied on the side of the State are not applicable to the facts of the present case, wherein the case was not contested on merits and based on the statement made by the State in the writ proceedings, the learned Single Judge passed the orders dated 30.11.2016 relating to grant of interest on the delayed payment.

It is also submitted that on behalf of the State, one Assistant by name Preet Singh was present in the Court and after obtaining instructions from him, the State counsel made the statement before the learned Single Judge that the Government shall pay interest on the delayed payment. Therefore, the learned counsel prayed to this Court that the State may be directed to grant interest at the rate of 9% from 01.01.2006 or at least from the date on which the Government approved the grant of revised pension to the retired teachers of the Government Aided Private Colleges.

15. We have considered the submissions made by the learned senior counsel and learned AAG appearing for the parties and perused the materials on record.

16. Concededly, the appellants were paid the arrears of revised pension w.e.f. 01.01.2006, on par with the employees / Lecturers of the Government Colleges, during 2017-2018. Claiming interest on such payment, which was originally granted by the learned Single Judge and was subsequently, denied by the High Court, the appellants are before us.

17. As we have already stated, in terms of the order dated 25.07.2012, which attained finality on 10.07.2014, the retired employees / Lecturers of the Government Colleges were given revised pension with effect from 01.01.2006, on 07.11.2014. However, they were not granted any interest for the payment of arrears of pension due to them. Having compared with them, the appellants sought revised pension, by filing CWP No.8988 of 2015 and connected cases. During the writ proceedings, the State accepted the claim of the appellants and paid the arrears of revised pension with effect from 01.01.2006. Therefore, since the appellants were claiming parity with the employees / Lecturers of the Government colleges, they should not be entitled to any payment of interest.

18. Apparently, the entire case of the appellants rests on the factum recorded by the learned Single Judge in his orders dated 30.11.2016 to the effect that the Assistant, Preet Singh gave oral instructions to the State counsel that interest will be given by the Government on delayed payment of revised pension. However, it is interesting to note that there was no written instruction furnished by the State; the appellants did not argue the matter on merits; and the learned Single Judge passed the orders dated 30.11.2016, only on the concessions made on behalf of the State. In such circumstances, the claim of the appellants seeking interest, has no legs to stand.

19. It is also required to be pointed out that the revised structure of pay of teachers and equivalent teachers in Universities and Colleges in Haryana, was issued by the Government of Haryana, Finance Department, on 27.08.2009, which was subsequently clarified on 02.09.2009. On the basis of the same, the employees / teachers working in the Government colleges received the revised pay. In the meanwhile, the Rules, 2009 relating to all pensioners / family pensioners, who were drawing their pension/ family pension or who were eligible / entitled to pension / family pension as on 01.01.2006, were notified on 17.04.2009, and they were deemed to have come into force with effect from

01.01.2006.

As per Rule 6 of the Rules, 2009, and the subsequent clarification issued by the Higher Education Commissioner, Haryana, the person, who had completed 3 years of service in the pre-revised scale of pay and/ or the corresponding pay scale applicable prior to 01.01.1996, shall be placed in the minimum of the pay band of Rs.37400 - 67000 + AGP of Rs.9000/- for revision of pension / family pension, with effect from 01.01.2006. Pursuant to the same, the retired employees / Lecturers of the Government colleges started litigation in the year 2010, which attained finality in the year 2014 and consequently, they were paid the arrears of revised pension on 07.11.2014.

Only thereafter, the appellants initiated the writ proceedings in the year 2015. Thus, it is manifestly clear that the appellants waited till the rights of the retired employees / Lecturers of the Government Colleges, were crystalised and thereafter, made representation to the respondent authorities and hence, they are not entitled to get any interest, by treating them as fence-sitters. Though there may be some lapses on the part of the officials representing the State in furnishing instructions about the case, to the Court, however that by itself will not give any room for the appellants to get unjust enrichment.

20. In view of the above stated reasons, we do not find any infirmity or illegality in the common judgment passed by the High Court, setting aside the orders of the learned Single Judge qua grant of interest on the belated payment of pension to the appellants.

21. Therefore, all the Appeals are devoid of merits and are accordingly dismissed. However, there is no order as to costs. Pending application(s), if any, shall stand disposed of.

22. Before parting, we wish to observe that each party should present truthful and accurate information to the court to facilitate fair adjudication. Such information should be provided in the form of writing. Relying on the oral instructions may lead to factual errors, misunderstanding / misrepresentations, etc., ultimately compromising the integrity of the judicial process.

Misleading representations not only affect the parties involved, but also erode public trust in the judicial system as a whole. The Court should also pass orders only based on the written instructions, so as to enable it to fix the liability on the correct official(s), responsible for any such wrongful representations / instructions.

Therefore, it is imperative that the official(s)/counsel(s) appearing before the Court to represent the Government authorities should equip with proper written instructions from the competent authority(ies).

Needless to state that if any misrepresentation is made on the part of the parties, in particular, Government authorities, the court should not shy away from it, rather act sternly by mulcting with costs on the official(s) who make the same.

.....J. [Pankaj Mithal]

.....J. [R. Mahadevan]

New Delhi

October 21, 2024

1 Arising from the judgment and order dated 29.09.2022 in LPA No.2396 of 2017 in CWP No.8988 of 2015 (High Court of Punjab and Haryana at Chandigarh)

2 Arising from the judgment and order dated 29.09.2022 in LPA No.1490 of 2018 in CWP No.10318 of 2015 (High Court of Punjab and Haryana at Chandigarh)

3 Arising from the judgment and order dated 29.09.2022 in LPA No.578 of 2018 in CWP No.11702 of 2015 (High Court of Punjab and Haryana at Chandigarh)

4 Arising from the judgment and order dated 29.09.2022 in LPA No.2396/2017 against CWP No. 8988/2015, LPA No.1454 of 2018 in CWP No.10207/2015, LPA No.1490/2018 in CWP No.10318 of 2015, LPA No.1102/2018 in CWP No.22924/2015, LPA No.1766/2018 in CWP No.11288/2015, LPA No.578/2018 in CWP No.11702/2015 and LPA No.1841 /2018 in CWP No.11654/2015 (High Court of Punjab and Haryana at Chandigarh)

5 For brevity, "the High Court"

6 State of Haryana and another v. Banarsi Dass and others

7 Hereinafter shortly referred as "the Rules, 2009"

8 Academic Grade Pay

9 For short, "the Rules, 2009"

10 LPA No.1955 of 2012 was dismissed on 14.01.2013 and SLP (C) No.26907 of 2013 was dismissed on 10.07.2014

11 LPA Nos.2396 of 2017 etc. cases against the order dated 30.11.2016 in CWP No.8988 of 2015 and connected cases

12 Union of India and others v. Dr. J K Goel (1995) Supp (3) SCC 161

13 Periyar & Pareekannai Rubber Ltd v. State of Kerala (1991) 4 SCC 195

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