

Before Permod Kohli, J.

**HARYANA PRIVATE COLLEGES NON-TEACHING
EMPLOYEES UNION (REGD.),—Petitioner**

versus

STATE OF HARYANA AND OTHERS,—Respondents

CWP No. 6220 of 2009

10th November, 2010

Constitution of India, 1950—Art.226—Haryana Civil Services (Assured Career Progression) Rules, 1998—Rl.2—Circular dated 12th October, 1998 issued by State Government—Grant of benefit of Assured Career Progression (ACP) Scheme to employees of State Government—Circular dated 12th October, 1998 extending benefit of ACP to various Boards/Corporations including Government aided private Colleges—Govt. providing grant-in-aid to private schools—Non-teaching employees of private recognized Govt. aided schools held entitled to grant of benefit of ACP in terms of 1998 Rules.

Held, that by virtue of Circular dated 12th October, 1998 issued after the Promulgation of the statutory rules under proviso to Article 309, the Government itself decided to extend the benefit not only to the Government employees, but even to the employees of various Boards/Corporations/Companies/Cooperative Institutions etc. and Universities in Haryana including Government Aided Colleges/Schools. In the present case, admittedly, the schools are being granted grant-in-aid by the Government and by virtue of the Circular the benefit which was hitherto available to the Government employees was extended to the aided institutions and various other Government controlled institutions as well. The contention of respondents is, therefore, rejected.

(Paras 7 & 9)

R. K. Malik, Sr. Advocate with Surya Partap Singh, *Advocate for the petitioner.*

R. D. Sharma, DAG, Haryana.

PERMOD KOHLI, J. (ORAL)

(1) Keeping in view the controversy involved and with the consent of learned counsel for the parties, this petition is disposed of at motion stage itself.

(2) The petitioner is a registered union of Haryana Private Colleges Non-Teaching Employees. This petition has been filed for grant of benefit of Assured Career Progression (ACP) Scheme to the non-teaching employees of the Government aided private colleges. It is admitted case of the parties that the higher standard pay scale which was earlier notified by the State Government for its employees has been substituted and replaced by new ACP scheme notified by the Finance Department for the employees of the State Government. ACP rules, namely, Haryana Civil Services (Assured Career Progression) Rules, 1998 framed under proviso to Article 309 of the Constitution of India were notified *vide* notification dated 7th January, 1998. These rules were made applicable by virtue of Rule 2 to various categories of the Government employees. Relevant extract of the 1998 Rules is reproduced as under :—

“1. Short title, commencement and objective :—

- (1) These rules may be called the Haryana Civil Services (Assured Career Progression) Rules, 2008.
- (2) They shall be deemed to have come into force on the first day of January, 2006, unless otherwise provided by the Government for any class or category of persons.
- (3) The objective of these rules is to provide two categories of assured career progression schemes for the Government servants of Haryana— the first category of scheme is cadre-specific Assured career progression schemes for some cadres/post prescribing time scales. The second category of scheme is primarily to remove stagnation in service, in the form of a general assured career progression scheme. The second category scheme seeks to ensure that all Government servants, whose cadres are not covered by any cadre-specific assured

career progression scheme, get at least three financial upgradations, including financial upgradation, availed by such Government servants as a consequence of functional promotion during his entire career. It also seeks to ensure that no Government servant stagnates without any financial upgradation for more than ten years unless he has already availed three financial upgradations in his career.

2. Categories of Government servants to whom the rule apply :—

(1) Save as otherwise provided by or under these rules, these rules shall apply to persons appointed to civil services and posts of group 'A', 'B', 'C' and 'D' in connection with the affairs of the Government of Haryana and to those who are under the administrative control of the Government of Haryana and whose pay is debitable to the Consolidated Fund of the State of Haryana and are mentioned in the Schedule I of these rules.

(2) These rules shall not apply to :—

(a) officers of judiciary working in connection with the affairs of Haryana State ;

(b) persons not in whole time employment ;

(c) persons paid out of contingencies ;

(d) persons paid otherwise than on monthly basis, including those paid on a piece-rate basis or on the basis of daily wages or on consolidated contractual payment ;

(e) any other class or category of persons whom the Government may by order, specifically exclude from the operation of all or any of the provisions contained in these rules ;”

(3) The State Government issued another memo dated 12th October, 1998 (Annexure P-2) with the concurrence of the Finance Department which was addressed to all Financial Commissioner/Commissioner/Secretary

to Government of Haryana whereby the benefit of the pay revision was extended to various categories of employees not confining to the Government employees. The Preamble of this Circular indicates the categories of the employees to whom the benefit was extended. The relevant extract of the Preamble of the Circular reads as under :—

“The Government of Haryana (in Finance Department) had constituted a Pay Revision Committee to consider the revision of pay scales of various categories of employees 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 Government for its employees. After examining the details of each category deliberation on various issues, the pay revision committee had submitted the recommendations, which have been approved by the Finance Department.”

(4) The aforesaid Circular further prescribes the replacement of the higher standard pay scale after 10/20 years of service by new Assured Career Progression Scheme, as is evident from para 2 of the Circular which reads as under :—

“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 the State Government (Schedule-I, Part-II).

(5) Based upon the aforesaid Circular dated 12th October, 1998, the petitioner is claiming the benefit of ACP scheme at par with the government employees. Apart from above, the petitioner has also placed reliance upon a judgment of the Hon'ble Supreme Court in the case of **State of Haryana and Others versus Champa Devi and Ors. (1)**. In the aforesaid case also, the employees of the privately managed aided schools claimed benefit of the higher standard pay scale at par with the Government employees. Their claim was based upon various Circulars of the State Government

referred to in the aforesaid judgment. On consideration of the claim of the employees of the private aided schools, Hon'ble Supreme Court made following observations :—

“4..... This court in Haryana Adhyapak Sangh's case (supra) has unequivocally indicated that the teachers of aided schools must be paid the same scale and dearness allowance as teachers of Government schools. In Rajpal Sharma's case (supra), the same principle has been reiterated. That being the position, the conclusion of the High Court that the teachers of the private schools would be entitled to the benefits of the circular dated 8th February, 1994 is unassailable and we, therefore, sustain that part of the conclusion of the impugned judgment.”

(6) On the basis of the aforesaid observations, it is contended by Mr. Malik, learned Sr. Counsel for the petitioner that the employees of the aided schools cannot be deprived of the benefit of the ACP Scheme, particularly, when they were found entitled to the benefit of the pay scales notified under the Scheme i.e. Higher Standard Pay scale for the State government employees. It is further contended that the new ACP Scheme is in replacement and in lieu of the earlier Higher Standard Pay Scale as is evident from para 2 of the Circular dated 12th October, 1998.

(7) Mr. Sharma, learned counsel for respondents has, however, seriously opposed the claim of the petitioner. His first contention is that the benefit of ACP has been granted to the Government employees by virtue of statutory rules framed under Proviso to Article 309 which, *inter alia*, grants the benefit only to the employees of the State Government and since the statutory rules do not provide for any benefit to the employees of the government aided schools, no directions can be issued de hors the rules. The contention, though seems to be attractive, but is fallacious by reading the Circular dated 12th October, 1998 which has been issued after the Promulgation of the statutory rules under proviso to Article 309. By virtue of this Circular, the Government itself decided to extend the benefit not only to the government employees, but even to the employees of various Boards/ Corporation/Companies/Cooperative Institutions etc. and Universities in Haryana including Government Aided Colleges/Schools. The intention seems to be unequivocal and clear in its term. Similar issue came up before hon'ble

Supreme Court in the case of Champa Devi (supra). In that case also, the Higher Standard Pay Scale was notified only for the government employees and it was only by virtue of Circular dated 9th February, 1994, the benefit was extended to the employees of the government aided institutions. The position continued to be so in view of the Circular dated 12th October, 1998.

(8) Mr. Sharma has also referred to the following observations of the Hon'ble Supreme Court in Champa Devi (supra) :—

“6. In course of arguments, Mr. Anand, appearing for the State of Haryana, placed before us the subsequent rules framed under proviso to Article 309 of the Constitution of India in support of his contention that even the so-called pay scale granted by the circular dated 8th February, 1994 would not be available to the teachers of the private schools. We, however, do not express any opinion as to the effect of the aforesaid rules framed under the proviso to Article 309 of the Constitution and parties should work out remedies available to them under the said rules.”

(9) These observations have no relevance so far as the present controversy is concerned. The observations relate to non-aided schools/private schools where the government is not giving grant-in-aid. In the present case, admittedly, the schools are being granted grant-in-aid by the government and by virtue of the Circular the benefit which was hitherto available to the government employees was extended to the aided institutions and various other government controlled institutions as well. The contention of respondents is, therefore, rejected.

(10) In view of the above, this petition is allowed. Respondents are directed to extend the benefit of ACP in terms of Haryana Civil Services (Assured Career Progression) Rules, 1998 to the non-teaching employees of private recognised government aided schools within a period of six months from the date a certified copy of this order is served upon the competent authority.