

210(8) CWP-25272-2015 (O&M)

**BHOOP SINGH AND OTHERS VS STATE OF HARYANA AND
OTHERS**

Alongwith

CWP-3398-2016, 3865-2016, 21089-2015, 3416-2016, 12063-2016, 13276-2016 and 10330-2016

114	CWP-16403-2016
123	CWP-22312-2016
126(2)	CWP-22347 and 22381-2016
131	CWP-22358-2016
216	CWP-723-2016
219	CWP-9505-2016
220(2)	CWP-9821 and 13726-2016
281(2)	CWP-16402 and 16493-2016
282(4)	CWP-17663, 17665, 19635 & 21066-2016
285	CWP-19840-2016

Present: Mr.J.P.Sharma,Advocate
Mr.Nitin Rathee, Advocate
Ms.Mannu Chaudhary, Advocate
Mr.Sanjay Vashisth, Advocate
Mr.Bhupinder Malik, Advocate for
Mr.Samrat Malik, Advocate
Mr.,Rakesh Chaudhary, Advocate for
Mr.Jagbir Malik, Advocate
for the petitioner.

Ms.Palika Monga, DAG, Haryana.

.....

It is stated that similar matters are listed on 05.12.2016.

List on 05.12.2016 for final disposal.

No further adjournment shall be granted to either party.

The respondents are not required to file separate written statement in all the cases. Written statement filed in the lead case shall be treated as filed in all the cases and the same may be put on the web-site of the Office of Advocate General, Haryana, so as to enable the counsel for the

petitioners to download the same and argue the case on merit.

Let a photocopy of this order be placed on the files of other connected cases.

(SURYA KANT)
JUDGE

October 26, 2016
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(SUDIP AHLUWALIA)
JUDGE

IN THE HON'BLE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 25272 of 2015

Bhoop Singh & Others

.....Petitioner

Versus

State of Haryana & others

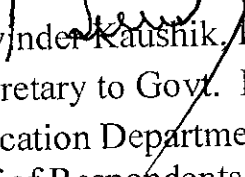
.....Respondents

INDEX

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1.	Written Statement	2-12-2016	1 to 9
2.	Annexure R-1 (Order in CWP No. 352/2012)	11.01.2012	10-13

Place: Panchkula

Dated: 2-12-2016


(Devinder Kaushik, HCS),
Joint Secretary to Govt. Haryana,
Higher Education Department Panchkula
on behalf of Respondents No. 1 to 3

**IN THE HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

C.W.P. No. 25272 of 2015

Bhoop Singh & others

..... Petitioners

Versus


State of Haryana & Others

..... Respondents

Written statement of Devinder Kaushik,
HCS, Joint Secretary to Govt. Haryana,
Department of Higher Education, Panchkula
on behalf of respondents No. 1 to 3.

RESPECTFULLY SHOWETH:

PRELIMINARY SUBMISSIONS:

- 
1. That the present writ petition has been filed with a prayer to quash the condition imposed in the Notifications (Annexure P-1 and P-2) that the benefit of Notification (Annexure P-1 and P-2) shall be applicable only to the retirees who retired after 17.04.2009 and 29.08.2014, but to all the retirees irrespective of the date of retirement are entitled to the benefit of Notification (Annexure P-2) and if not retrospectively then at least from the date of issue of these notifications. The petitioners in the present writ petition are relying upon the judgment of Hon'ble Supreme Court of India in D. S. Nakara's case with the plea that in D. S. Nakara's case it has been held that all retirees who were in service at the time of issuance of notification (Annexure P-1 & P-2) form one class and the employees who retired prior to issuance of notification (Annexure P-1 & P-2) form another class cannot be treated discriminatory on the basis of date of retirement.

In this way, the petitioners who retired prior to the date of issuance of Notifications (P-1 and P-2) are claiming the benefit which is applicable to the employees who retired after the date of issuance of the said notifications.

In this regard, it is submitted that while disposing of the bunch of Civil Appeals in main Civil Appeal No. 3174 of 2006 K. S. Krishnaswami and others Vs Union of India, the Hon'ble Supreme Court of India considered & distinguished the judgment of D. S. Nakara's case. The relevant paragraph of the judgment is reproduced as under:-

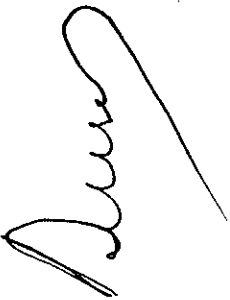
" Nakara's case (supra) has been distinguished by this Court in State of Punjab & Ors. Vs. Boota Singh & Anr. (2000) 3 SCC 733; State of Punjab & Anr., J.L. Gupta & Ors. (2000) 3 SCC 736; State of West Bengal and Anr., W. B. Govt. Pensioners, Association & Ors. (2002) 2 Scc 179; and State of Punjab & Ors., Amar Nath Goyal & Ors. (2005) 6 SCC 754.

Nakara's case (Supra) was a case of revision of pensionary benefits and classification of pensioners into two groups by drawing a cut off line and granting the revised pensionary benefits to employees retiring on or after the cut off date. The criteria made applicable was "Being in service and retiring subsequent to the specified date". This Court held that for being eligible for liberalised pension scheme, application of such a criteria is violative of Article 14 of the Constitution, as it was both arbitrary and discriminatory in nature. It was further held that the employees who retired prior to a specified date, and those who retired thereafter formed one class of pensioners. The attempt to classify them into separate classes/groups for the purpose of pensionary benefits was not founded on any intelligible differentia, which had a rational nexus with the object sought to be achieved. The fact of Nakara's case\ (supra) are not applicable in the facts of the present case. In other words, the facts in Nakara's case are clearly distinguishable."

In the present case notification (Annexure P/1 and P/2) are applicable to the employees who were in service at the time of issuance of notification (Annexure P/1 and P/2). Thus the employees who were in service formed a different class, and the employees retired prior to issuance of the notification (Annexure P/1, P/2) formed a different class, thus they can be treated differently being falling in two different categories.

In Indian Ex-Services League Vs. Union of India (1991) 2 SCC 104, this Court distinguished the decision in Nakara's case (supra) and held that the ambit of that decision cannot be enlarged to cover all claim by retirees or a demand for an identical amount even though the emoluments for the purpose of computation of pension be different. In K. L. Rathee Vs. Union of India (1997) 6 SCC 7, this Court after referring to various judgments of this Court, has held that Nakara case cannot be interpreted to mean that emoluments of persons who retired after a notified date holding the same status, must be treated to be the same. In our view, therefore, the ratio in Nakara's case (supra) is not applicable in the facts of the present case".

In the present case, the petitioners are claiming the same benefit which is admissible to employees who were in service on the date of issuance of the notification and retired subsequent to the issuance of Notifications (P-1 and P-2), the law on this issue has already been laid down by Hon'ble Supreme Court of India after considering the judgement in D. S. Nakara's case, therefore, the ratio of the judgement in D. S. Nakara's case is not applicable in the present case.

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2. That the Government of Haryana, Finance Department on 17.04.2009 (Annexure P-1) issued notification regarding framing of the Haryana Civil Services (Revised Pension) Part-1 Rules, 2009 with the condition that these rules shall be deemed to have come into force on 01.01.2006 unless otherwise provided by the Government for any clause or category of pensioners. It is submitted that these rules shall apply to all pensioners/ family pensioners or who were drawing their pension/ family pension or who were eligible/ entitled to pension/family pension on 01.01.2006 under the Punjab Civil Services Rules, Volume-II as amended from time to time except as saved & provided, the Department revised the petitioners pension w.e.f. 01.01.2006 in compliance of above notification dated 17.04.2009 i.e. Haryana Civil Services (Revised Pension) Part-I Rules, 2009 as applicable to them. Any amendment will be applicable to the Govt. Employees who were in service at the time of issuance of Notification and retires subsequently, give no cause to claim parity with those who retires subsequently.

It is further submitted that the Haryana Government, Finance Department on 17.04.2009 issued notification regarding framing of

Haryana Civil Services (Revised Pension) Part-II Rules, 2009. These rules shall apply to government employees who retire/die in harness pre-01.01.2006 retirees and post 01.01.2006 retirees. According to these rules, linkage, of full pension with 33 years of qualifying service shall be modified to the extent that once a Government servant retires after rendering the minimum qualifying service of 28 years, pension shall be sanctioned @ 50% of the emoluments drawn as defined in rule 4 subject to other conditions regulating the same.

According to notification dated 17.04.2009 (Annexure P-1), the Rule-8 (iii) is reproduced for ready reference:-

8(iii) "The revised provision for calculation of pension shall come into force w. e. f. date of issue of this notification and shall be applicable to Govt. servants retiring on or after that date. The Govt. servants who have retired on or after 01.01.2006 but before the date of issue of this notification it continue to be governed by the rules which enforce immediately before these rules came into effect as regard qualifying service."

And vide notification dated 25.08.2014 (Annexure P/2) the Finance Department, Haryana amended the Haryana Civil Service (Revised pension) Part-II Rules, 2009, sub-rule (1) of Rule, 8 which is reproduced below for ready reference:-

"1 (A) for the persons retiring after the date of notification of this amendment, linkage of full pension with twenty eight years of qualifying service as mentioned in sub section (1) above, shall be modified to the extent that once a Government servant retires after rendering the minimum qualifying services of twenty years, pension shall be sanctioned at fifty percent of the emoluments as defined in rule 4 above subject to other conditions regulating the same."

From the above, it is evident that the notification dated 25.08.2014 (Annexure P-2) is applicable from the date of issuance of the notification i. e. 25.08.2014, so the employees who stood retired prior to the date of issuance of the notification dated 25.08.2014 will not be covered under this notification. Hence the instant writ petition is liable to be dismissed as all the petitioners are either pre -01.01.2006 retirees or retired after 01.01.2006,

but before issuance of the notification (Annexure P/1 & P/2). The above amendments have the prospective effect and will be applicable to in service employees from the date of issuance of notification i. e. 25.08.2014. Hence the above amendments are not applicable in the case of petitioners.

3. That the Division Bench of this Hon'ble Court in CWP No. 352 of 2012 titled as "Gurtek Singh Versus State of Haryana & Others" vide order dated 11.01.2012 decided the controversy in which validity of annexure P/I notification dated 17.4.2009 which is also involved in this case. The relevant extracted order dated 11.01.2012 passed by Hon'ble Division Bench of this Hon'ble Court in the above writ petition is reproduced below:-

"Faced with this situation learned counsel for the petitioners argued that Rule 8 (3) of the Revised Pension Rules of 2009 is arbitrary and ultra verse to the Constitution of India. We do not find any merit in this argument. Under Rule 8 (1), benefit of full pension has been given to the employees on completion of 28 years of qualifying service. Under sub-rule (3), this benefit has been made available to the employees who have retired after 17.04.2009, i.e. after coming into force of the Revised Pension Rules of 2009. Undisputedly, the petitioners have retired much earlier to the aforesaid date. However, they have been given the benefit of revision of pay scales w.e.f. 01.01.2006, which has been given to all the employees under the Revised Pay Rules of 2008, whether they have retired on or after 01.01.2006, because the revision of pay was made effective w.e.f. 01.01.2006. Thus, the clarification made by these Rules is not arbitrary. Hence, we do not find any discrimination or violation of Articles 14 and 16 of the Constitution of India in Rule 8 (3) of the Revised pension Rules of 2009. Dismissed."

The true copy of the judgment is annexed as **Annexure R-1** for kind perusal of this Hon'ble High Court.

So, the claim of the petitioner is not legally sustainable in the eyes of law and accordingly the instant writ petition is liable to be dismissed as the Govt. can fix cut off date due to financial constraints. The said notification regarding revision of pension vide which the benefit of minimum qualifying service for full pension reduced from 33 years to 28 years w.e.f. 17.04.2009

and further reduction to 20 years w.e.f. 25.08.2014 from 28 years & pension shall be sanctioned at 50% of the emoluments as defined in Rule 6.19 C of Punjab Civil Service Rules Vol. - II instead of 28 years service upto 25.08.2014 respectively subject to other condition regulating the same has been come into force w.e.f. the dates of notifications i.e. 17.04.2009 and 25.08.2014. The petitioner had retired prior to the date of issuance of these notification as applicable from time to time, hence petitioners cannot claim any benefit as majority of the petitioners retired prior to 01.01. 1996 & 01.01.2006 as depicted in pare 2 of the CWP.

4. That in the instant writ petition, petitioners are claiming full pension i.e. 50% of the last drawn emoluments as defined in Rule-4 after rendering the 20 years qualifying service and further they are claiming full pension i. e. 50% of the last pay drawn after rendering the 28 years qualifying service in spite of the fact that when the petitioners retired from service for getting full pension total length of service required was 33 years as per the rules prevalent then. The Haryana Govt. has issued notification dated 17.04.2009 and has decided that who retired prior to issuance of the notification should be allowed 50% of the last emoluments on the total length of service of 33 years & who retired after 17.04.2009 tenure of 33 years reduced to 28 years and who had retired after 25.08.2014 be given the benefit of 50% of the last pay drawn who had rendered 20 years of service instead of 28 years. It is submitted that the pensionary benefits were released to the petitioners proportionately calculating the service rendered by them in the department as per prevalent Punjab Civil Services Rules vol II as applicable to state of Haryana. Thus no fault can be found with the clauses under challenge in annexure P/1 & P/2 which are applicable to the employees who were in service & retired thereafter.
5. That it is also submitted that the Government of Haryana is competent to frame its rules and to issue necessary instructions from time to time governing the service conditions of its employees under Article 309 of the Constitution of India and also to decide the date of applicability of any rules issued for governing the service conditions of its employee under the proviso to Article 309 of the Constitution of India.
6. That the notification dated 17.04.2009 (Annexure P-1) and dated 25.08.2014 (Annexure P-2) carrying order of the Government has been

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applicable prospectively w.e.f. 17.04.2009 and 25.08.2014 and the same are not applicable to the petitioners, who had already been retired from service much prior to issuance of these notifications. It is submitted that it is the prerogative of the State Government to fix a cut off date keeping in view the financial circumstances prevalent at the time of issuance of notification/instructions. Cut off date on the basis of financial constraints/expediency/compulsion has also been held to the justifiable ground for fixing a particular cut of date being a policy decision.

In view of the position explained above, the present writ petition is liable to be dismissed being devoid of merits.

REPLY ON MERITS

1. That the contents to Para 1 of the instant writ petition are admitted to the extent that the petitioners are retired employees of department of Education Haryana and are citizens of India whereas rest of the contents of this para are wrong and denied as no legal/ fundamental right of the petitioners have been infringed by the answering respondents which entitle the petitioners to invoke the extra-ordinary writ jurisdiction of this Hon'ble Court under Article 226 of the Constitution of India.
2. That the contents of Para 2 of the instant writ petition are admitted being matter of record only qua their date of appointment & retirement as shown by the petitioners.
3. That the contents of Para No. 3 of the instant writ petition are matter of record as far as issuance of the notification Annexure P-1 is concerned. However submissions made in the Preliminary paras are reiterated and are not being reproduced for the sake of brevity.
4. That the contents of Para No 4 of the instant writ petition are matter of record as far as issuance of the notification annexure P-2 is concerned. However submissions made in the Preliminary paras are reiterated and are not being reproduced for the sake of brevity.
5. That in reply to contents of Para 5 of the writ petition, it is submitted that the quoted judgment (Annexure P-3) is not applicable in the present case as per Rule 3 of Haryana Civil Services (Revised Pension) Part-II Rules 2009 to the employees who retired prior to 01.01.2006, and for them separate rules were issued. It is further submitted that petitioner No. 1 only has given the representation vide letter dated 07.10.2014 and accordingly it was filed on

the ground that the demand of the petitioners is contrary to norms and instructions issued by the Govt./department from time to time. A perusal of tabulated form given in the para 2 of the petition shows that petitioner No. 1-4, 6, 7, 10, 11, 15-23, 27-32 and 34-36 retired prior to 01.01.2006 hence Annexure P-1 is not applicable as separate rules has been issued for them, which is not under challenge. However submissions made in the Preliminary paras are reiterated and are not being reproduced for the sake of brevity. The judgment annexed at Annexure P-3 is not applicable as both the state Govt. retirees and Central govt. retirees are differently governed by different rules, hence no wholesale parity can be claimed as Annexure P-3 judgment pertains to Central Govt. retirees only.

6. That the content of Para 6 of the instant writ petition are wrong, incorrect and hence denied because the Govt. of Haryana can fix cut off date keeping in view the financial constraints, for detailed discussion, submissions made in the Preliminary submissions are reiterated to avoid repetition. Hence notification dated 17.04.2009 (Annexure P-1) and dated 25.08.2014 (Annexure P-2) is perfectly legal and valid.

6 (i) That in reply to para 6(i) of writ petition, it is submitted that as per submissions made in para no.1 of preliminary submissions, the ratio of judgment in D.S. Nakara has no applicability in the present case.

6 (ii) That in the reply to para 6(ii) of the writ petition it is submitted that the judgment annexed as annexure P-3 has no applicability to the facts and circumstances of present case

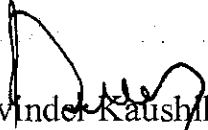
7. That in reply to the contents of Para No. 7 of the instant writ petition, it is submitted that no law point/issue involves in the present writ petition which requires to be adjudicated by this Hon'ble High Court for which, submissions made in preliminary submission and forgoing paras of reply on merits are reiterated for the sake of brevity.

8. That the contents of Para 8 of the writ petition are denied for want of knowledge.

9. That in reply to contents of Para 9 of the writ petition, it is submitted that no legal/ fundamental right of the petitioners have been infringed by the answering respondents which could entitle the petitioners to invoke the

extra-ordinary writ jurisdiction of this Hon'ble court under Article 226 of the Constitution of India.

In view of the submission made above, it is, therefore, respectfully prayed that the present writ petition may kindly be dismissed in the interest of justice.


(Devinder Kaushik)

Place: Panchkula

Dated: 2-12-2016

Joint Secretary to Govt. Haryana,
Department of Higher Education, Panchkula
on behalf of Respondents

Verification

Verified that the contents of Para 1 to 6 of the Preliminary submission and para No. 1 to 9 of the reply on merits of the written statement above are correct to my knowledge and based on the information derived from the official record which I believed to be true. No part of it is false and nothing material has been concealed therein. Legal submissions have been made on advice.


(Devinder Kaushik)

Place: Panchkula

Dated: 2-12-2016

Joint Secretary to Govt. Haryana,
Department of Higher Education, Panchkula
on behalf of Respondents

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.W.P. No. 352 of 2012

DATE OF DECISION : 11.01.2012

Gurtek Singh and others

.... PETITIONERS

Versus

State of Haryana and others

..... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL

HON'BLE MR. JUSTICE T.P.S. MANN

Present: Mr. Sanjiv Gupta, Advocate,
for the petitioners.

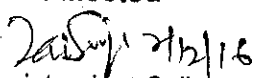
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SATISH KUMAR MITTAL, J.

In the present petition filed under Articles 226/227 of the Constitution of India, the petitioners have challenged the order dated 30.9.2011 (Annexure P-6), passed by the Director, Secondary Education, whereby claim of the petitioners for grant of full pension has been declined. The petitioners have also prayed that Rule 8 (3) of the Haryana Civil Services (Revised Pension) Part-II Rules 2009 (hereinafter referred to as 'the Revised Pension Rules of 2009') be declared as ultra vires and contrary to the provisions of Articles 14 and 16 of the Constitution of India.

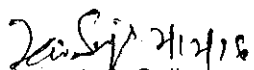
We have heard learned counsel for the petitioners and gone through the impugned order.

Attested


Superintendent Colleges
O/o Director Higher Education
Haryana, Panchkula

Undisputedly, the petitioners have retired from service on superannuation, in between 1.1.2006 to 16.4.2009 . It is also undisputed fact that none of the petitioners has completed 33 years of qualifying service, which would have made them entitled for full pension under the Pension Rules existing at the time of their retirement. With effect from 17.4.2009, the Revised Pension Rules of 2009 came into force. It is an admitted fact that all the petitioners retired from service before coming into force of the Revised Pension Rules of 2009. It is further admitted position that as per the Pension Rules, applicable prior to the Revised Pension Rules of 2009, a retiree was entitled for full pension on completion of 33 years of qualifying service. Under Rule 8.1 of the Revised Pension Rules of 2009, the linkage of full pension with 33 years of qualifying service was modified to the extent that once a Government servant retires after rendering the minimum qualifying service of 28 years, pension shall be sanctioned at 50 per cent of the emoluments as defined in Rule 4 of the Rules subject to other conditions relating the same. However, under sub-rule (3), it was provided that the revised provisions for calculation of pension shall come into force with effect from the date of issue of the notification of the Rules and shall be applicable to Government servants retiring on or after that date. The Governments servants who have retired on or after 1st January, 2006 but before the date of issue of the notification of the Rules, will continue to be governed by the Rules which were in force immediately before these Rules came into effect as regards qualifying service. With regard to the grant of

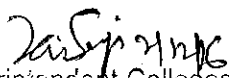
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Superintendent Colleges
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Haryana, Panchkula

revised pay scales, the Haryana Civil Services (Revised Pay) Rules, 2008 (hereinafter referred to as 'the Revised Pay Rules of 2008') were implemented with effect from 1.1.2006, but as far as the provisions regarding calculation of revised pension of the employees who retired between 1.1.2006 to 17.4.2009 (the date of issuance of notification enforcing the Revised Pension Rules of 2009) are concerned, the Revised Pension Rules of 2009 will apply, but as regards the qualifying service, the old Rules were made applicable. Therefore, it has been found by the Director, Secondary Education, that the petitioners, who have though retired after 1.1.2006, but before 17.4.2009, are not entitled for full pension, as they have not completed 33 years of qualifying service. However, the amount of their pension shall be calculated as per the revised pay in Revised Pension Rules of 2009. Under Rule 8(3) of the Revised Pension Rules of 2009, they cannot be given full pension on completion of 28 years of qualifying service. Thus, we do not find any illegality in the order passed by the Director, Secondary Education.

Faced with this situation, learned counsel for the petitioners argued that Rule 8 (3) of the Revised Pension Rules of 2009 is arbitrary and ultra vires to the Constitution of India. We do not find any merit in this argument. Under Rule 8 (1), benefit of full pension has been given to the employees on completion of 28 years of qualifying service. Under sub-rule (3), this benefit has been made available to the employees who have retired after 17.4.2009, i.e. after coming into force of the Revised Pension Rules of

Attested


Superintendent Colleges
O/o Director Higher Education
Haryana, Panipat

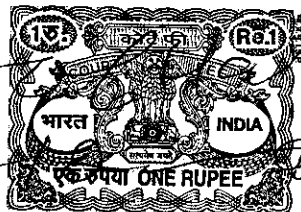
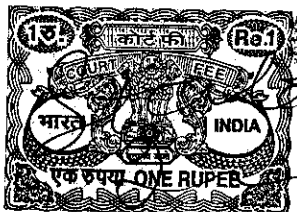
2009. Undisputedly, the petitioners have retired much earlier to the aforesaid date. However, they have been given the benefit of revision of pay scales with effect from 1.1.2006, which has been given to all the employees under the Revised Pay Rules of 2008, whether they have retired on or after 1.1.2006, because the revision of pay was made effective with effect from 1.1.2006. Thus, the clarification made by these Rules is not arbitrary. Hence, we do not find any discrimination or violation of Articles 14 and 16 of the Constitution of India in Rule 8 (3) of the Revised Pension Rules of 2009.

Dismissed.

(SATISH KUMAR MITTAL)
JUDGE

January 11, 2012
ndj

(T.P.S. MANN)
JUDGE



Attested

[Signature] 4/11/12
Superintendent Colleges
O/o Director Higher Education
Haryana, Panchkula