(2013) 11 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 20085 of 2003

Labh Singh Kadian APPELLANT

Vs

State of Haryana RESPONDENT

Date of Decision : 07-11-2013

Acts Referred:

Citation : (2014) 3 SCT 725

Hon'ble Judges : M.M. Singh Bedi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.M. Singh Bedi , J.—Five petitioners in the present petition have retired from Private Government aided schools before May 11, 1998 after having rendered full time regular service against permanent sanctioned posts. Though the petitioners as members of Haryana State Adhyapak Sangh, an association of private Government aided schools had been contesting to claim parity with teachers of Government schools, so far as allowances, pension and other retiral benefits are concerned w.e.f. 1984 and had been able to get relief from the Apex Court vide judgment in Haryana State Adhyapak Sangh and Others Vs. State of Haryana and others, on February 21, 1990 and judgment in Haryana State Adhyapak Sangh, Gurgaon and others Vs. State of Haryana and others, decided on December 9, 1999 yet they were not able to derive the financial benefits of Haryana Aided Schools (Special Pension and Contributory Provident Fund) Rules, 2001, hereinafter referred to as ''2001 Rules'', only because they attained the age of superannuation before the cut-off date fixed by the Government as May 11, 1998. A legal battle was initiated by the petitioners in the year 1984 which culminated in the victory in the shape of framing of 2001 Rules but the petitioners have been deprived of the benefit of the pension scheme as the said 2001 Rules do not apply to the employees who retired from the sanctioned posts before May 11, 1998, as per Rule 2 of the said 2001 Rules. Brief facts which are relevant for the decision of the present case are that the petitioners were teachers of private government aided schools. They rendered full time regular service against permanent aided posts sanctioned by the State Government in different Government aided institutions of Haryana mentioned against their names in the heading of the petition. The petitioners initiated a movement for parity of pay scales of teachers of private aided Schools with those of the Government Schools claiming that the duties and functions of the said sets of teachers are similar and identical. As the Government was not extending the benefits of allowances, pension and other retiral benefits which were admissible to the Government School teachers, to the teachers of the aided Schools, the petitioners filed Civil Writ Petition No. 5353 of 1984 for parity of allowances, pension and other retrial benefits with the Government School teachers. The said writ petition was dismissed in 1984. The petitioners alongwith their Union i.e. Haryana State Adhyapak Sangh filed an SLP in the Supreme Court in which leave was granted and SLP filed by the petitioners was allowed on July 28, 1988, vide historical judicial dictum - Haryana State Adhyapak Sangh and Others Vs. State of Haryana and Others, The Apex Court gave a direction that the teachers of the aided schools must be given same pay scales and Dearness Allowance as are admissible to the teachers of the Government Schools. Regarding the other allowances, the Apex Court directed the State Government to formulate a scheme relating to parity. The State Government did not formulate any policy regarding the parity between the two sets of teachers as such the petitioners alongwith their Union again filed an SLP. The said case was decided on February 21, 1990 vide judgment reported as Haryana State Adhyapak Sangh and Others Vs. State of Haryana and others, granting more time to the State to formulate the policy for parity. The Hon''ble Supreme Court vide order dated July 13, 1990 extended the time uptill December 31, 1990 for formulating the parity policy. The State Government, despite a direction failed to frame any policy till December 31, 1990 as a result of which the Apex Court further extended the time till June 30, 1991 vide order dated April 4, 1991 passed in C.A. No. 2366 of 1989. Despite the above said directions, the State Government failed to frame any policy as such the petitioners filed a Contempt Petition before the Apex Court. The Apex Court while deciding the said petition held that the teachers of the aided Schools are entitled to the City Compensatory allowance, house rent allowance and gratuity. So far as the question of entitlement of other retrial benefits such as pension, medical allowance, LTC and bonus etc. are concerned, these were left open. The petitioners thereafter filed a petition in the Apex Court bearing C.A. No. 578 of 1984 but the Apex Court dismissed the said petition on October 3, 1994 but observed that dismissal of said petition will not preclude the petitioners from approaching the High Court. The petitioners thereafter filed a Civil Writ Petition No. 7945 of 1997 for grant of benefits of similar allowances, pension and other retrial benefits, as admissible to the teachers of Government Schools. The said petition was allowed on December 9, 1999 with the following directions:-

"It may be concluded that the petitioners are entitled to parity in respect of other allowances and other retrial benefits also. The matter has already been examined by the Supreme Court and a scheme was required to be formulated by the State Government in consultation with the managements of the privately managed schools. It appears that the State Government has done little in this direction. The reasons are not known. The scheme regarding pension has been prepared and implemented 7 years after their Lordships of the Supreme Court directed the State/Government to evolve the scheme in this behalf. Thus, the State Government has shown little interest in the matter. There is found no valid reason. Once the principle of parity has been accepted, it should not be left half way. It must be given full effect.

In the result, the writ petition is allowed with a direction to the respondents to prepare a scheme with regard to the remaining other allowances like medical allowances, bonus, leave travel concession and retrial benefits like leave encashment etc. Respondents No. 4 to 12 (managements of the aided schools) shall prepare a scheme afresh regarding parity in respect of the aforesaid allowances and benefits which are admissible to the teachers of Government schools but are not paid to the teachers of aided schools. The scheme shall be furnished to the State Government within six months from the date of this order. The scheme shall be prepared in consultation with the association of teachers C.W.P. No. 20085 of 2003 [6] of the aided schools. The state Government shall thereafter take a decision thereon within three months from the date of submission of the scheme to it by respondents No. 4 to 12.

No order as to costs.

December 9, 1999

Sd/- N.K. Agrawal, Judge."

2. The petitioners claimed that when the above said writ petition was allowed, the State Government had submitted that in the month of May 1998, the State had approved the scheme with regard to the payment of pension to the teachers of aided Schools. Later on pension was granted to the teachers of private aided schools vide 2001 Rules but a cut-off date i.e. May 11, 1998 was provided in the said Rules, for the purpose of pension. Relevant part of Rules 3 and 4 of 2001 pension Rules are reproduced as under:-

"3. Application:- (1) Except as otherwise provided in any rule, and subject to the condition that the Management of an aided school executes an agreement in Form I, duly supported by a resolution of the Management to abide by the provisions of these rules and undertaking of the employee in triplicate in Form II and instructions CWP No. 20085 of 2003 [7] issued by the Government from time to time, these rules shall apply to all the employees who:-

(a) are appointed to the aided sanctioned post on or after the 11th day of May, 1998;

(b) were working on the aided sanctioned posts immediately before 11th day of

May, 1998 and continue to work as such thereafter:

Provided that the employees who were appointed to the aided sanctioned posts and have attained the age of superannuation on or after the 11th day of May, 1998 to the date of publication of these rules shall have the right to exercise option in triplicate in Form III as to whether to be governed by these rules or not within a period of three months from the date of publication of these rules in Official Gazette. (2) These rules shall not apply to:-

(i) xxx xxx xxx

(ii) xxx xxx xxx

(iii) the employees who retired from the sanctioned posts before the 11th day of May, 1998 and the employee who attained the age of superannuation before the said date except those who have been re-employed by the Department after the age of superannuation on sanctioned posts; and

(iv) xxx xxx xxx

4. The following retirement benefits shall be admissible under these rules, namely:-

(1) Pension:-

(a) Superannuation Pension;

(b) Invalid Pension;

(c) Compensation Pension;

(d) Voluntary Retirement Pension/Compulsory Retirement Pension;

(2) Death-Cum-Retirement-Gratuity;

(3) Service-Gratuity;

(4) Family-Pension."

3. Petitioners claim that the cut-off date was not mentioned by the State Government while filing written statement in CWP No. 7945 of 1997 decided on December 9, 1999 rather claim of pension of the petitioners was admitted at that time by the respondents before the High Court as such the writ was allowed and the petitioners were held entitled for pension. A copy of the judgment in CWP No. 7945 of 1997 has been placed on record as annexure P-1 which indicates that the petitioners have been granted the benefit of parity of allowances and other retiral benefits as have been granted to the teachers of Government Schools. The Pension Rules of year 2001 were made applicable from retrospective date i.e. from May 11, 1998 CWP No. 20085 of 2003 [9] and were made applicable to the employees who retired from sanctioned posts on or after May 11, 1998. The grievance of the petitioners is that they have been deprived of their valuable right to pension despite the fact that they had fought several rounds of litigation

for providing pension to the teachers of private aided institutions. The 2001 Rules are the result of the litigation initiated by the petitioners. The petitioners filed a Misc. application No. 11504 of 2000 in CWP No. 7945 of 1997 which was decided on December 9, 1999 praying that the above said pension Rules made effective from May 11, 1998 and notified in the Gazette of May 31, 1999 may be directed to be admissible to the members of the petitioners Association including those who have retired during the pendency of the litigation. The said Civil misc. was dismissed on December 19, 2002 with an observation that such plea cannot be raised and decided by a civil misc. application. The petitioners thereafter made a representation to the concerned authorities that their claim to the pension had been admitted by the State and the Management of the concerned institutions and no point was raised regarding the cut off date of retirement thus by principle of estoppel, they were entitled to the benefit of pension. The petitioners have averred that the cut off date provided by the respondents in the notification has got no nexus with the objective sought to be achieved and that the date could not be picked from the hat but it must have some rational nexus to the object. The State Government has fixed the cut-off date in an unreasonable and unjustified manner in order to debar the petitioners from getting the benefits of the litigation initiated by them in the year 1984. The petitioners have challenged the action of the respondents in depriving them the benefit of pension despite the directions of Apex Court and this Court vide judgment annexure P-1.

4. In the written statement filed by respondents No. 1 and 2, it has been averred that the Government of Haryana had notified the pension scheme, namely, Haryana Aided Schools (Special Pension Contributory Provide Fund) Rules, 2001 w.e.f. May 11, 1998 wherein it is clearly stipulated that there is no obligation placed on the Government to necessarily introduce a pension scheme for employees against aided sanctioned posts of private institutions as they are employees of Schools managed by private Management and Government only provide assistance in the shape of grant-in-aid for smooth running of their private institutions with no day-today interference in their working. However, driven by desire to improve existing service of the employees working in the privately managed and government aided institutions, the Government has decided to provide additional grant-in-aid for the purpose of the special pension scheme which is quite different from the one applicable to Government employees but which at the same time results in improved retrial benefits to them. In the written statement it is averred that the cut-off date fixed as May 11, 1998 is based on intelligible differential and is based on rational classification. The fixation of cut-off date on the ground of financial implication and paying capacity of the competent authority was sought to be defended. Relying upon the judgment of Apex Court in State of Rajasthan and anothers etc. Vs. Amrit Lal Gandhi and others etc., , reliance has also been placed on the judgment of this Court in K.C. Thakur v. State of Haryana and others, 2003 (3) S.C.T. 863 : 2004 (1) SLR 56 in which case the validity of cutoff date fixed as May 11, 1998 in

Haryana Affiliated Colleges (Pension and Contributory Provident Fund) Rules, 1999 was held to be valid holding that the employees who had retired earlier and were getting CPF are not at loss in any manner on account of fixing cut off date of the policy which came in to being after their retirement and have no right to challenge the same. The factual averments regarding the petitioners having initiated litigation for parity of service conditions with the Government teachers and the judgment passed by the Apex Court and this Court has been admitted but in view of the cut-odd date having been fixed as May 11, 1998 and petitioners having retired prior to said date, the respondents have refused to acknowledge the right of the petitioners. However, it is admitted that the pension Scheme was notified for employees of aided Schools working on aided sanctioned posts on May 31, 1999 and further notified on March 29, 2001 but it was insisted that the scheme would be effective from May 11, 1998, the date decided by Council of Ministers, State of Haryana.

5. The petitioners have filed replication reiterating that the petitioners are claiming their right of parity for allowances and pensionary benefits on the basis of the directions of the Apex Court dated July 28, 1988 directing the State to evolve a scheme to bring about the parity between the teachers of aided schools and teachers of Government Schools having regard to the different allowances claimed by the petitioners. Though the parity was granted but the Apex Court had left the question of pension open. The petitioners claimed that they are not assailing the cut-off date or the authority of the respondents to fix a cut-off date but in the peculiar facts and circumstances of this case, the claim of pension has been raised by the petitioners on the basis of the admission made by the respondents during the pendency of Civil Writ Petition No. 7945 of 1997 which was allowed by this Court on December 9, 1999.

6. I have heard learned counsel for the petitioners as well as counsel for the respondents. Counsel for the petitioners - Mr. Anil Aggarwal claims that the petitioners being teachers of private aided schools are entitled to the parity in the pay scales and other emoluments with teachers of Government schools. The controversy regarding the parity of remuneration of conditions of work and service between the teachers of Government Schools and private aided Schools had been a matter of controversy since 1964 when Kothari Education Commission was constituted by the Government of India vide resolution dated July 14, 1964. The said Education Commission was headed by Sh. D.S. Kothari to advise the Government on the national pattern of education and on the general principles and policies for the development of education at all stages and in all aspects. The said Commission recommended principle of parity. Para. 3.09 of the report of recommendation of the Commission reads as follows:-

"Recommendations of the Commission on the principles of parity, in brief, were as under:

i. With regard to the intra-State differences, we recommend that the remuneration of teachers working under different managements should also be the same and that all teachers having the same qualifications and the same responsibilities should have the same, or at least similar, remuneration and conditions of work and service.

ii. We recommend that the scales of pay of school teachers belonging to the same category but working under different managements such as government, local bodies or private organizations, should be the same.

iii. We are happy to note that a move in this direction has already been initiated and is well on the way. The principle of parity has been accepted at all levels of school education in seven States (Andhra Pradesh, Kerala, Madhya Pradesh, Madras, Mysore, Punjab and Rajas-than).

iv. The third argument put forward is financial and it is said that the funds needed to upgrade the salaries of teachers in local authority and private schools to the level of those in government schools are not readily available. We recognize the force of this argument and recommend that the principle of parity should be accepted as a State policy forthwith but that its full implementation should be spread over a phased programme of about five years."

7. The Kothari Commission report was adopted by Haryana Government on January 17, 1968 and the Haryana Government revised the grades of teachers of privately managed schools on the pattern of the grades of teachers working in Government Schools in accordance with the recommendations of Kothari Commission w.e.f. December 1, 1967. As the deficit between the original grades and the revised grades was found too burdensome for the managements of the aided schools to bear, the State decided to meet the increased expenditure entirely in regard to pay and dearness allowance. The State Government followed the principle of parity between the teachers working in aided schools and Government schools till 1979. But on the recommendation of Pay Commission, the State of Haryana revised the pay scales of teachers in government schools w.e.f. April 1, 1979, but the pay scales of private aided schools were revised two years later. Though the parity between the private aided schools and Government schools was declined by the High Court of Punjab and Haryana but SLP was allowed by the Apex Court in the case of Haryana State Adhyapak Sangh and others (supra) in Civil Appeal No. 2366 of 1988 with the following directions:-

"3. We have heard learned counsel for the parties at considerable length, and we find general agreement between the parties that there is no reason for discrimination between the teachers employed in aided schools and those employed in Government schools so far as the salaries and Additional Dearness Allowance are concerned. The State Government does not accept the claim to parity in respect of other heads of allowance put forward by the petitioners. We were at one time disposed to ruling on the question whether the responsibility for providing education in schools belongs to the State Government, and therefore whether there is a corresponding responsibility on the State Government to ensure that in aided schools the teachers are entitled to the same emoluments as are provided for teachers in Government schools. We do not, however, propose to enter upon this question in these cases as we are satisfied from the developments which have followed after the hearing on the merits that it would be more appropriate to dispose of these cases by a short order. The State Government has expressed its readiness to reimburse the payment of the ten installments of the additional Dearness Allowance, but not the twenty five additional Dearness Allowance installments released after 1st April, 1981. It appears that the grant-in-aid given by the State Government to these aided schools covers the deficit to the extent of seventy five per cent of the approved expenditure. The approved expenditure extends to the salaries paid to the teaching and non teaching staff, which includes the Pay and Dearness Allowance and Interim Relief before 1 April, 1981 and the Pay and Additional Dearness Allowance beyond 1 April, 1981, the deficit expenditure minus income and certain other items, but does not include House Rent Allowance, Medical Allowance, City Compensatory Allowance and the other heads claimed by the petitioners. In our opinion, the teachers of aided schools must be paid the same pay scale and Dearness Allowance as teachers in Government schools for the entire period claimed by the petitioners, and that the expenditure on that account should be apportioned between the State and the Management in the same proportion in which they share the burden of the existing emoluments of the teachers. The State Government meets the Dearness Allowance liability to the extent of seventy five per cent of the amount. Ten installments representing the State Government''s liability shall be paid by the State Government in two equal parts, the first part being payable within three months from today and the remaining part being payable by 31 March, 1989. The State Government shall also pay the remaining twenty five installments, the entire amount being payable in five equal parts, each part being paid every six months, the first such part being payable by 30 Sept., 1989. The State Government shall not be liable to pay for the period covered by these 35 installments any amount on account of House Rent Allowance, City Compensatory Allowance and the other allowances claimed by the petitioners.

4. The State Government will also take up with the managements of the aided schools the question of bringing about parity between the teachers of aided schools and the teachers of Government schools for the period following that to which the aforesaid thirty five installments relate, so that a scheme for payment may be evolved after having regard to the different allowances claimed by the petitioners."

8. The petitioners alongwith Haryana State Adhyapak Sangh and other teachers filed Civil Misc. application No. 15049 of 1989 when the State of Haryana did not pay the revised pay scales and dearness allowance besides not formulating the scheme for bringing about parity between the teachers of aided schools and the teachers of Govt. schools. The Apex Court on February 21, 1990 allowed the said Misc. application and directed that pay scales of the teachers of private aided schools shall be revised so as to bring them at par with pay scales of teachers of

Government schools w.e.f. April 1, 1979 and the teachers of aided schools shall also be paid additional dearness allowance on the basis of the revised pay scales w.e.f. April 1, 1979 to December 31, 1985. It was further directed that the parity in pay scales and dearness allowance shall be maintained w.e.f. January 1, 1986.

9. It is not disputed that the Government of Haryana vide notification dated January 6, 1989 had constituted a Committee under the Chairmanship of Deputy Chief Minister-cum-Finance Minister, Haryana for a report regarding the implementation of the Supreme Court judgment and evolve a formula for bringing about the parity between the teachers of private aided schools and teachers of Government schools. The tenure of the Committee was earlier six months. A fresh notification was issued on August 29, 1990 by Government of Haryana constituting a Committee under the Chairmanship of Finance Minister, Haryana to give its report regarding the implementation of the Supreme Court judgment and evolve a formula for bringing about the parity between the teachers of private aided schools and teachers of Government schools. The tenure of the Committee was six months. On November 21, 1990, the Finance Minister, the Education Minister, Finance Secretary, Director Secondary Education, the representative of Teachers'' and other officials participated in High Powered Committee and it was decided that HRA, CCA and gratuity will be paid w.e.f. January 1, 1986. The issue of leave encashment, medical reimbursement and other balance allowances was kept pending. It was also approved that the expenditure would be apportioned between the State and the Management in the ratio of 90:10 respectively. As the matter was pending with the High Powered Committee, State of Haryana again filed an application before the Apex Court for extension of time for framing the scheme of parity. The Apex Court vide order dated April 4, 1991 granted extension of time to the State of Haryana for framing the scheme till June 30, 1991. The Apex Court had passed the following order:-

"By order of 13th July, 1990, we had allowed time till 31st December, 1990 for the State of Haryana to frame scheme and furnish the same. The State has again applied for extension of six months for complying with the directions. The prayer is seriously opposed by counsel for the appellants.

Having heard counsel and taking note of the prevailing political situation in the State, we allow a final extension till 30th June, 1991 in terms of the prayer. In case there is a default of compliance, it shall be assumed that the State of Haryana is not implementing the Court''s order."

10. The petitioners alongwith Haryana State Adhyapak Sangh and other teachers filed a Contempt Petition No. 206 of 1991. The said petition was disposed of on October 22, 1991 with the following order:-

"We, therefore, hold the petitioners should be entitled to their claims on the three heads, namely city compensatory allowance, house rent allowance and gratuity. On a reasonable construction of the judgment it appears that the liability adjudicated is from 01.01.1986. We have given anxious consideration to the submissions advanced by Mr. Sachar and taken into account the fact that the liability would work out to a heavy sum and the State would find it difficult to meet. Considering the matter in all relevant aspects, we direct that the payment on the three heads indicated above should operate from 01.01.1987. Payment be made within two years of the entire amount in four equal half yearly installments. The first payment be made on or before 31.12.1991. Whether pension and the other allowances which have not paid are payable for the future period are left open. Apart from the three heads on which we have given directions, the others are not covered for the past period. The contempt petition is disposed of by the above orders and no other direction is necessary."

11. The petitioners had filed C.A. No. 578 of 1998 but it was dismissed with liberty to the petitioners to approach the High Court. The petitioners thereafter filed Civil Writ Petition No. 7945 of 1997 alongwith Haryana State Adhyapak Sangh and other teachers for grant of pension and other benefits. Vide order dated December 9, 1999, the writ petition was allowed. The operative part has already been reproduced hereinbefore.

12. A perusal of the judgment indicates that the petitioners were held entitled to the parity in respect of other allowances and retiral benefits as per the directions of the Supreme Court after formulation of the scheme by the State Government in consultation with the management of the privately managed schools. The Apex Court while deciding SLP of Haryana State Adhyapak Sangh and the petitioners on July 28, 1988 had issued directions to the State to take up the matter with the Management of the aided Schools to bring about the parity between the teachers of aided schools and teachers of Government schools, for payment of different allowances. When the revised pay scales and Dearness Allowance were not paid and any scheme for bringing about the parity was not framed, a misc. application was filed as Civil Misc. Application No. 15049 of 1989. The Apex Court had allowed such misc. application on February 21, 1990 and reiterated the earlier directions dated July 28, 1988 for evolving a scheme to bring about parity between the teachers of private aided schools and teachers of Government schools. It was on the basis of said directions that High Powered Committee was constituted by Government of Haryana for implementation of the order vide notification dated January 6, 1989. The State of Haryana had filed applications for extension of time to prepare the scheme of parity.

13. The sequence of above said events indicate that the pension scheme formulated for the benefits of the aided Schools was the result of directions of the Apex Court granted w.e.f. July 28, 1988 when the SLP was allowed and the judgment of this Court dated February 21, 1985 was set aside. The mandate of judgment of the Apex Court has got a binding effect under Article 141 of the Constitution of India. Since the proceedings before the High Powered Committee were not finalized by the time, a Contempt Petition No. 206 of 1991 was decided by the Apex Court on the subject matter regarding pension and other allowances which had not been paid to the petitioners and similarly circumstanced teachers

of the private aided Schools, such matter was left open and had to be again raised and decided by this Court in CWP No. 7945 of 1997 decided on December 9, 1999. The order dated December 9, 1999 passed by this Court in Civil Writ Petition No. 7945 of 1997-Haryana State Adhyapak Sangh v. State of Haryana and others is just an implementation of the directions of the Supreme Court in SLP which was decided on July 28, 1988. A claim which had been raised by the petitioners in CWP No. 5354 of 1984 before this Court and was rejected on February 21, 1985 was ultimately decided in favour of the petitioners on December 9, 1999 when CWP No. 7945 of 1997 was allowed by this Court. A relief which the petitioners could not get in the writ petition filed in 1984 was finally made available to them after having approached Supreme Court in SLP and filing various misc. applications for implementation of the orders of the Supreme Court, contempt petition before Supreme Court and ultimately a writ petition before this Court which was finally decided in favour of the petitioners on December 9, 1999. The petitioners cannot be penalized for the delay in adjudication of the claim of parity. Had the State implemented the directions of the Court and granted financial relief to the petitioners or similarly circumstanced persons, they would have been able to get the benefit of the scheme framed under the directions of the Supreme Court and subsequently by the High Court of the year 1988 and 1999 respectively. The breach of duty is an actionable wrong. The negligence or inaction of the State authorities have negative consequences. There is an obligation on the authorities vested with powers to act with greater and higher standard of care. If there is a right under the law, there must be remedy for its violation as law commands nothing vainly-Lex nil frustra jubet. Timely action is the essence of Government functioning. In this context, the observations of the Delhi High Court in Sh. Ram Kishan Dass and Others Vs. Sh. Banwari Lal Suri and Others, are relevant which are reproduced as under:-

"6. Another facet of statutory duty is to impose negative obligations on the State not to encroach upon the rights of the individual or to frustrate what is granted under law to the citizen. Declaration of rights would be meaningless unless there is effective machinery for enforcement of the rights. Remedy is the essence of a right. A right really become effective and meaningful when its enforceability is accepted by the procedure of law. The legality or illegality of a State action, particularly when they are acting in furtherance to the statutory powers vested in them, would be subject to judicial review, not in its narrowest sense. Wherever a cause is relatable to breach of statutory or implied duty of a public officer, the rule of law would essentially provide for a remedy even if it is not so specifically spelled out in the provisions of the Act. Arbitrariness and unreasonableness being facets of Article 14 are available as grounds not only for questioning an administrative action but in certain cases may even invalidate subordinated legislation. Timely action is the essence of government functioning and unreasonable delay questions the very correctness of such orders. Wherever the records offer no explanation for prolonged unreasonable delay, the equity will tilt more in favour of the petitioners than uphold the action of the authorities to be correct, being done in the normal course of its business."

14. I have considered and appreciated the contention of learned State counsel regarding the discretion of the State to fix any cut-off date. He has argued that when a pension scheme is introduced by fixing a particular cut-off date taking into consideration the financial implications and capacity of the Government to meet the liability under the Scheme, such date cannot be complained of. He has placed reliance on Rikhi Ram Sharma and Others Vs. State of Punjab and Others, a case in which while introducing new pension scheme from a particular cut-off date, the employees of privately managed recognized aided schools in the State of Punjab had challenged the cut-off date as they were not granted the benefit of pension scheme having retired prior to February 5, 1987. The Full Bench of this Court held that cut-off date was not arbitrary or discriminatory. He has also placed reliance on judgment of K.C. Thakur''s case (supra) in which validity of the cutoff date of enforcement of pension scheme from May 11, 1998 was challenged by the retired employees of private affiliated colleges in Haryana. The said writ petition was dismissed holding that it is always open to the government to enforce such schemes and policies from any date.

15. In State of Gujarat and others v. Narsindas Krishandas Agravat, LPA No. 610 of 2005, decided on June 22, 2005, the cut off date was specified in pension scheme by the State Government which was quashed by a single Bench of Gujarat High Court. The Division Bench allowed the appeal. The Division Bench had set aside the judgment holding that State could legitimately fix cut-off date for applicability of pension scheme to the teachers of primary schools of privately aided institutions as Court has given discretion for framing pension scheme. The date fixed i.e. January 1, 1997 for commencement of the scheme for entitlement of the teachers to get pension w.e.f. said date and execution of teachers who retired prior to the said date was held to be valid.

16. I have carefully considered the contention of learned counsel for the State and am of the opinion that there is no dispute that State has got an authority to implement the pension scheme by adopting any cut-off date. The said discretion certainly is not subject to judicial review unless and until some malafide is alleged or cut-off date fixed is apparently unreasonable or arbitrary. The said principle is not applicable in the present case because the petitioners had approached this Court for parity with the Government school teachers in the year 1984. The writ petition was dismissed on February 21, 1985 but their claim was recognized and allowed in SLP by the Apex Court vide order dated July 28, 1988. The directions of the Apex court for parity and framing of scheme was finally materialized after different bouts of litigation by the petitioners when their CWP No. 7945 of 1997 was allowed on December 9, 1999. The claim of the petitioners had finally been crystallized with the formation of 2001 Rules, framed under Sections 8 and 24 of the Haryana School Education Act, 1995. The pension scheme of the year 2001 is the result of continued struggle of the petitioners to get justice w.e.f. year 1984. A right of parity had accrued to the petitioners after

July 28, 1988. Though the execution of the order of the Apex Court has taken a sufficient long time, the petitioners cannot be deprived of the fruits of the litigation. In case the petitioners are not held entitled to the benefit of pension scheme after having fought for it w.e.f. 1984, it will tent amount to setting at naught the fruits of the entire litigation and the results of the order obtained by them from the Court of Law. The judgment which attains finality must not only appear to be respected it should be enforced and implemented with respect to Lex nil frustra jubet. The incorporation of the pension scheme is the consequential relief granted to the petitioners pursuant to the judgment of the Apex Court in Haryana State Adhyapak Sangh''s case (supra) rendered on February 21, 1990. It is mandatory for all the Courts of the country to ensure that any order made by the Supreme Court shall be enforceable throughout the territory of India in such a manner as may be prescribed by or under any law made by the Parliament. In case the State authorities failed in taking timely action which is the essence of Government functioning, the rights of the petitioners cannot be frustrated on account of the delay especially when the records offer no explanation for prolonged and unreasonable delay, as it was observed in Ram Kishan Dass case (supra) that wherever a cause is relatable to the breach of an implied duty of the public officer, the rule of law would essentially provide for a remedy even if it is not so specifically spelled out in the provisions of the Act. A right which had accrued to the petitioners from the date of initiating litigation in the year 1988 and 1999 cannot be snatched away on account of delay in the action of the functionaries of the Government which includes the legislative authorities or the Administrative authorities. The dictate of the judgment of the Apex Court should not only be respected but appear to have been respected also. As flex nil frustra jubet directs that law commands nothing vainly, the legislative law or the law which emerges from judicial pronouncements should be given effect to, as per the observations in Delhi Transport Corporation Vs. Jagdish Chander, The petitioners are thus held entitled to the benefits of pension scheme formulated in 2001 Rules irrespective of the bar of Section 3(2)(iii) providing that the said Rules shall not apply to employees who retired from the sanctioned posts before May 11, 1998 on attaining the age of superannuation. As the petitioners are entitled to parity for the purpose of allowances and pensionary benefits at par with the teachers of the Government Schools on the basis of the directions of the Apex Court dated July 28, 1988 implemented through Civil Writ Petition No. 7945 of 1997 on December 9, 1999 which finally crystallized in the Pension Rules of 2001. Denying the pension to the petitioners will tantamount to violating the orders of the Apex Court dated July 28, 1988 and the orders of this Court in CWP No. 7945 of 1997. The petition is allowed and it is held that the petitioners are entitled to pension Scheme of 2001 i.e. Haryana Aided Schools (Special Pension and Contributory Provident Fund) Rules, 2001 in view of their preexisting right for the benefits arising out of the said Rules on the basis of judgment of the Apex Court dated July 28, 1988 and this Court dated December 9, 1999 which has resulted in the formulation of the Pension Rules, 2001. The petitioners will be permitted to exercise option as per the Rules to be governed by the abovesaid rules within the period of one month. They would also be required to deposit the full amount of employers share along-with interest at the rate of 6% per annum on the actual amount drawn by them from the date of drawal of the said amount, with the Director within a period of two months after the same is calculated by the respondent State and respective management of the petitioners and communicated to the petitioners. It is further made clear that in case the petitioners make a request for adjustment of the amount out of the pension amount released to them, the same may be permitted as per relevant rules as provided under Rule 16(3) of the 2001 Rules. It is observed that as the petitioners are senior citizens, unnecessary harassment should be avoided to them and that they should be granted the relief within a period three months. It is observed that this judgment is not meant to be treated as a precedent and should be considered as a special relief to the petitioners as they have been denied fruits of prolonged contested litigation.