IN THE HIGH COURT OF JUDICATURE, AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH

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P.I.L.No.115 OF 2015

Between:

"Forum for Better Living",
Rep. by its Founder Chairman D.Padmaja

….Petitioner

A n d

The State of Telangana,
Department of Finance (HRM IV Department),
Rep. by its Principal Secretary,
Secretariat, Hyderabad
and another

….Respondents

DATE OF JUDGMENT PRONOUNCED: 13.07.2015

SUBMITTED FOR APPROVAL:

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
THE HON'BLE SRI JUSTICE S.V. BHATT

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals? Yes/No

3. Whether their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND

THE HON'BLE SRI JUSTICE S.V. BHATT

<u>P.I.L.No.115 OF 2015</u>

<u>PC</u>: *(Per the Hon'ble Sri Justice S.V.Bhatt)*

The petitioner through the instant public interest litigation prays for Mandamus declaring the action of respondent No.1 in issuing G.O.Ms.Nos.25, 26, 27 and 28 dated 18.03.2015 sanctioning 43% fitment as against 29% recommended by the Pay Revision Commission (PRC), as arbitrary, illegal and *non est* in the eye of law.

The averments, in brief, are as follows:-

The petitioner is a Society registered under the A.P. Societies Registration Act 35 of 2001 vide Regn.No.224/2009. The petitioner-Society, as one of its objects, promotes for public interest and awareness on issues concerning society and public grievances.

The petitioner refers to ACB raid on two Doctors of MGM Hospital, Warangal and the fact of these doctors receiving huge sums as salaries. According to the petitioner, the Government servants at large are well placed in relation to emoluments/salaries.

The Government constituted 10th Pay Revision Commission (PRC) vide G.O.Ms.No.95 GA (SPL.A) Department dated 28.02.2013 for submitting a report in this behalf. On 29.05.2014, the PRC submitted the report to the Government for consideration and decision. Through G.O.Ms.No.5 GA (SPL.A) Department dated 12.01.2015, a High Power Committee was constituted to study or examine the recommendations of PRC dated 29.05.2014, hold discussions with the stakeholders and gather their views on the PRC recommendation. On 05.02.2015, the Chairman of the High Power Committee has briefed the Government on various options available in the matter of pay revision. The grievance of petitioner is against the following recommendations, decisions in implementation of pay revision to the employees:

i. A fitment benefit of 43% would be given for fixing the pay in the Revised Pay Scales, 2015 as against the fitment benefit of 29% recommended by the Tenth Pay

Revision Commission. The Dearness Allowance of 63.344% as on 01.07.2013 will be merged in the pay as recommended by PRC.

ii. The Revised Pay Scales will be implemented notionally from 01.07.2013 with monetary benefit from 02.06.2014.

iii. The benefit of the Revised Pay Scales 2015 will be paid in cash for the salary of March, 2015 payable in April, 2015.

iv. The other demands of the Joint Action Committee of Employees, Teachers, and Workers, Telangana and Telangana Secretariat employees will be pleased before the High Power Committee constituted vide G.O.Ms.No.35, Finance (HRM-iv) Department, dated 01.10.2014.

The petitioner states that the employees of State Government are provided with several facilities and abnormal hike is unnecessary and affects other segments of the society.
The implementation of 43% fitment contrary to the recommendation of PRC is irrational and unscientific. The petitioner alleges that the determination to pay 43% fitment is arbitrary and adversely affects the exchequer either directly or indirectly and slows down the welfare measures and development activities undertaken by the respondent. The petitioner in support of the alleged arbitrariness and unscientific approach states that the employees constitute a very small portion in the society.
The employees at any time are garnering substantial revenues generated by the State Government and the impugned actions shall be set aside as arbitrary and irrational. Hence, the writ petition.

The respondents filed counter-affidavit and by way of reply it is stated that the State PRC is constituted once in 5-6 years and the PRC for Central Government Employees is constituted once in 10 years. The fitment sanctioned by Government from the first PRC 1974 has been either equal or more than the sum recommended by the PRC. The recommended and sanctioned fitment from 1974 till 2015 reads as follows:

P.R.C	Fitment recommended by PRC	Fitment sanctioned by Govt.

1974	5%	5%
1978	Up to 3 years - one increment 3-7 years - two increments Above 7 years – three increments	Same as recommended by PRC
1986	10%	10%
1993	10%	10%
1999	20%	25%
2005	10%	16%
2010	27%	39%
2015	29%	43

It is further stated that the employees unions, in fact, demanded a fitment of 60% - 69.10%. The Government, after holding deliberations with the employees of the associations and considering the financial position, decided to sanction 43% fitment to implement the revised pay scales w.e.f., 01.07.2013. It is stated that notional enhancement is provided for between the period from 01.07.2013 to 02.06.2015. The financial benefit of revised pay scale is granted w.e.f., 02.06.2015. The financial implications on the State budget are brought on record. The reply reads as follows:

> ......the total budget outlay during financial year 2015-16 is Rs.1,15,689.19 crores, in which, the share of the salaries of the employees is Rs.22,614.77 crores and it is about 20% of the total outlay of the budget. The financial implications for 29% fitment as recommended by the PRC is about Rs.3511.42 crores, as against Rs.5913.65 crores for the 43% fitment sanctioned by the Government. Adequate provision is made for various health, welfare and development programmes in the budget, like 'Mission Kakatiya', 'Haritha Haram' and 'Water grid' projects etc.

It is contended that the actual implication of salaries on the overall budget is well within the manageable position and the Government have provided necessary budget sanction or facility for several welfare/development programmes undertaken by the Government. The Government is well within its authority in sanctioning 43% fitment and the sanction is based on relevant material.

The respondents pray for summary dismissal of the writ petition.

Sri Lakshmikanth, learned counsel for the petitioner, challenges the Government Orders impugned on the ground that the sanction of 43% fitment to employees is arbitrary and while sanctioning 43% fitment to the employees, the recommendations of pay commission should not have been ignored by the Government. The sanction of 43% fitment, according to the learned counsel for the petitioner, is without basis or alternatively completely unscientific. The factual grievance pointed out by the petitioner is that firstly by spending huge sums on employees, the welfare measures undertaken by the Government are being affected and people suffer from denial of benefits. Therefore, he prays for setting aside the impugned Government Orders.

The learned Government Pleader for Finance and Planning contends that the acceptance of higher percentage of fitment over and above what is recommended by the PRC is not unprecedented and the objections raised by the petitioner are untenable. According to him, from 1974 till date, the Government sanctioned more fitment than recommended by the PRC. Therefore, it is contended that the Government have kept in consideration the interest of employees and other relevant factors as noted above and on proper advise and correct material, the decision to pay 43% fitment has been approved by the Government. No welfare scheme or development activity is affected on account of sanction of 43% fitment. He prays for dismissal of the writ petition.

Perused the material available on record and noted the rival submissions.

The petitioner through the instant public interest litigation challenges various benefits extended by the State Government to the employees and other similarly situated persons. The basis for challenge is that the sanction of higher fitment than what is recommended by the PRC will result in hardship and amounts to arbitrary exercise of power by the Government. The petitioner, in support of the challenge that the impugned Government Orders suffer from arbitrariness and unscientific, does not place any material and the grounds of *ipse dixit* challenge do not appeal to reason. The counter affidavit filed by the 1st respondent clearly indicates that the practice now followed is not unprecedented and the Government, with a view to implementing the welfare measures and having taken into confidence the employees associations, fixed the fitment. *Prima facie,* it appears that the decision of pay revision is exclusively in the policy domain of Government. In the case on hand, justification is shown by way of reply that the present pay revision does not in any manner cause extra burden on the exchequer or deny to other eligible persons the fruits of welfare measures implemented by the Government. *Prima facie*, we are of the view that the issue canvassed in the instant PIL does not fit within the scope of judicial review of this Court under Article 226 of the Constitution of India and on mere assumption that the impugned Government Orders are arbitrary and in excess of the jurisdiction conferred on the Government, the GOs cannot be set aside. The challenge to impugned Government Orders is completely misconceived and is accordingly rejected.

The writ petition is dismissed.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

DILIP B. BHOSALE, ACJ

S.V.BHATT, J

Date: 13.07.2015

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