**IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH**

1. CWP No.8178 of 2010

The Managing Committee and others …Petitioners

Versus

Rajinder Singh Kaler and others … Respondents

2. CWP No.8179 of 2010

The Managing Committee and others …Petitioners

Versus

D.S. Bedi and another … Respondents

3. CWP No.8180 of 2010

The Managing Committee and others …Petitioners

Versus

Urmeet Chaudhary and another … Respondents

Date of Decision:20/04/2015

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. D.S. Patwalia, Sr. Advocate with
Mr. B.S. Patwalia, Advocate for the petitioners.

Mr. Manu K. Bhandari, Advocate
for the respondents.

1. To be referred to the reporters or not?
2. Whether the judgment should be reported in the digest.

DEEPAK SIBAL, J.

This judgment of mine disposes of three writ petitions being CWP Nos.8178, 8179 and 8180 of 2010 through which challenge is made to same order dated 10.3.2010 passed by the Educational Tribunal Punjab (hereinafter referred to as "the Tribunal").

Shorn of unnecessary details, the facts in brevity, leading to the filing of the present petitions are that the petitioner-The Managing Committee, Baba Banda Singh Bahadur Education Trust (hereinafter referred to as "the-committee") decided to implement the recommendations of the 5th Pay Commission with regard to revision of pay scales for its employees but through resolution dated 24.11.2001, it decided that the benefit of revision of pay scales would be granted w.e.f. 1.1.1996 to its employees who were in service as on 24.11.2001 but so far as the employees who were not in the service of the petitioner-committee as on 24.11.2001, they would not be granted the benefit of the revision of pay scales w.e.f. 1.1.1996 and for them the benefit was decided to be prospective in nature i.e. from 24.11.2001. The respondents-employees are those who were not in the service of the petitioner-committee as on 24.11.2001 and therefore question the above fixation of the cut off date. In the first instance, they made a claim to the petitioner-committee and when the same was not responded to some of them got served upon the petitioner-committee a legal notice. While responding to the legal notice, the petitioner-committee rejected the claim of the respondent-employees on the ground that the petitioner-committee was an unaided institution receiving no grant from the Government and therefore, it was upto the petitioner-committee to decide from which date they were to implement the revised pay scales.

The above rejection of the claim made by the respondents-employees gave them a cause to approach this Court through separate writ petitions being CWP No.14365 of 2006; Urmeet Chaudhary v. Managing Committee and others, CWP No.8883 of 2004; Dr. D.S. Bedi v. Manading Committee and others and CWP No.18828 of 2004; Rajinder Singh Kaler v. Managing Committee and others. To these writ petitions preferred by the respondents-employees, written statements were filed by the petitioner-committee and in two of such written statements filed in CWP No.8883 of

2004; Dr. D.S. Bedi v. Manading Committee and others and CWP No.18828 of 2004; Rajinder Singh Kaler v. Managing Committee and others, it was simply stated that they being an unaided institution were well within its rights to determine the date from which they wanted to give the benefit of revised scales to its employees. However, in the written statement filed on a much later date in Urmeet Chaudhary's case, for the first time, the petitioner-committee, sought to justify its actions pleading financial crunch.

During the pendency of the above said writ petitions, on the formation of the Tribunal, they were ordered to be transferred to the Tribunal for adjudication and on such transfer, the Tribunal after considering the issues raised by both sides, through order dated 10.3.2010 decided the lis in favour of the respondent-employees. Challenging the said order dated 10.3.2010 passed by the Tribunal, the petitioner-committee has filed the present three writ petitions.

I have heard the learned counsel for the parties and have gone through the record of the case with their able assistance.

Mr. D.S. Patwalia, learned senior counsel appearing on behalf of the petitioner-committee has sought to lay an attack on the impugned order passed by the Tribunal on the ground that the petitioner-committee was well within its right to fix a date with regard to payment of arrears on account of re-fixation of revised pay scales and while fixing the date, the petitioner-committee could validly put serving and non-serving employees in different categories. It was submitted that no plea of discrimination or violation of Article 14 of the Constitution of India could be raised by the respondents-employees as classification between serving and non-serving employees was a permissible classification. It was argued that the petitioner-committee was facing a financial crunch and on that basis different dates for payment of arrears had been fixed for serving and non serving employees. It was further submitted that classification of employees while granting fiscal benefits was permissible on the ground of financial constraints of the employer and to buttress this argument, following judgments of the Apex Court were relied upon: ***State of Punjab and others v. Amar Nath Goyal and others***; 2005(6) SCC 754 and ***Confederation of Ex-Servicemen Associations and others v. Union of India and others***; 2006(8) SCC 399.

The judgment of the Apex Court in ***Union of India and another v. S. Thakur***; (2008) 13 SCC 463 was also cited by Mr. Patwalia to urge that in the matter of fixation of cuts off dates with regard to payment of fiscal benefits, the Courts should generally stay their hands.

In response to the arguments raised on behalf of the petitioner-committee, Mr. Manu K. Bhandari, learned counsel appearing on behalf of the respondents-employees submitted that the stand taken by the petitioner-committee that the arrears were not being given to the respondents-employees on account of financial constraints was false and as a result of an after thought as in the initial stand taken by the petitioner-committee in response to the legal notice sent on behalf of some of the respondents-employees, they had not sought to justify the fixation of the cut off date on account of financial constraints. It was submitted that even in the written statements filed to the writ petitions preferred by the respondents-employees before the same were transferred to the Tribunal for adjudication, in two of the cases i.e. in Rajinder Singh Kaler's case and in Dr. D.S. Bedi's case, the issue of financial constraints being the basis to deny the benefit to the respondent-employees was never raised. In fact, in the written statement filed in Urmeet Chaudhary's case, which was filed on a later date, a vague plea of financial constraints was taken. It was still further submitted that the plea of financial constraints as taken by the petitioner-committee was vague and unsubstantiated and therefore, no reliance could be placed on the same. It was urged that the stand taken by the petitioner-committee was completely arbitrary and violative of Articles 14 and 16 of the Constitution of India as there was no ineligible differentia and no rational nexus with the object sought to be achieved while fixation of the cut of date with regard to payment of arrears amongst serving and non-serving employees.

Article 14 of the Constitution of India permits classification but as per settled law that classification has to pass through a twin test. Firstly, the classification must be founded on an ineligible differentia and secondly such classification should have a rational nexus with the object sought to be achieved.

In the case in hand, though serving and non serving employees could be distinctly classified but as per the stand taken by the petitioner-committee, such classification was made on account of financial constraints being suffered by the petitioner-committee. Thus, the object of classifying the serving and non serving employees with regard to payment of arrears on account of re-fixation of pay scales was to prevent further losses as according to the petitioner-committee at the time when the distinction was made, the petitioner-committee was already facing a financial crunch.

In the initial response to the legal notice got served by the respondents-employees, the petitioner-committee had nowhere pleaded that the petitioner-committee was facing a financial crunch and it was for this reason that the claim of the respondent-employees had being not accepted. The response dated 6.10.2003 by the petitioner-committee to the legal notice sent on behalf of the respondents-employees is reproduced below for ready reference:

> *"Baba Banda Singh Bahadur Engg. College, Fatehgarh Sahib-140407*
>
> *No.2024* *Dated:6.10.2003*
>
> *REGISTERED*
>
> *Sh. Mayank Malhotra*
> *Advocate, Punjab and Haryana High Court, Chandigarh*
> *Kothi No.A-12, D.L.F. Colony,*
> *Patiala*
>
> *Subject: Legal Notice on behalf of Dr. D.S. Bedi, Ex-Principal, Baba Banda Singh Bahadur Engineering College, Fatehgarh Sahib*
>
> *It is admitted that Sh. D.S. Bedi was appointed as Principal in this institute in the scale of 6300-7300 with a starting salary of Rs.7300/- plus permissible allowances and the principal joined the service on 9.7.1993. Initially Principal was appointed for two years however a resolution was passed by the Trust to extend the services of the Principal up to the age of 64 years.*
>
> *That Managing Committee approved to revise the pay scales of existing employees w.e.f. 1.4.2000 as per recommendations of 4th Pay Commission of Punjab. According to Sr. No.6 of Service & Conduct Rules of BBSBEC the Trust is authorized to decide the pay scales, DA and other allowances to its employees. So in the case of Sh. D.S. Bedi, the Trust did not approve his arrears, however the revised scale was given to the Principal w.e.f. 1.4.2000. In addition, a fully furnished house and a full time maid servant on Rs.1600/- as per month salary, was also provided. The Managing Committee unanimously did not agree to pay the arrears of the officer. It is not binding on the Trust/Managing Committee to pay arrears or any higher scale to any of its employees since it is purely a private organization and is not getting any grant from the govt. or any other agency.*
>
> *So it will be of no use to go to the court for the dues. It will waste the time of the institution as well as the officer. So he may please be*

advised accordingly.

Yours Sincerely,

Sd/-

Principal-cum-Secretary

Managing Director"

In fact the plea of fiscal crunch being the basis to deny the claim of respondents-employees was not even raised in the written statements filed in Dr. D.S. Bedi's case being CWP No.8883 of 2004 and in Rajinder Singh Kaler's case being CWP No.18828 of 2004. This plea was taken for the first time in a written statement filed on a much later date in Urmeet Chaudhary's case being CWP No.14365 of 2006.

In the order impugned by the petitioner-committee in the present writ petitions, the Tribunal has categorically held that the stand of the petitioner-committee seeking to justify its action on the ground of financial constraints was unsubstantiated as no documents pertaining to the accounts of the petitioner-committee had been placed on the record. Findings recorded by the Tribunal in this regard are reproduced below:

> "*14. First of all, the defence offered by the respondents in its written statement is not corroborated from the reply Annexure P-8 dated 6.10.2003. There is not an iota of indication that the benefits are being denied on account of financial crunch but the defence was that respondent college was un-aided institution therefore the petitioners were not entitled to the arrears w.e.f. 1.1.1996, the respondents have not placed on record the agenda items presented before the Board to show that there was any financial crunch. Further no audited balance sheet or bank statement has been placed on record. Otherwise also, there is no reasonable classification. The Trust is ready to pay the arrears w.e.f. 1.1.1996 to the serving employees who were on roll but they are not ready to pay the petitioners under the garb of financial difficulties. The Management is liberal and can afford to pay a particular set of employees without caring for the so called financial crunch but is unwilling to give benefits to a few who*

were in service as on 1.1.1996 with this institution."

(Emphasis supplied)

In spite of the above finding, even while challenging the above order by way of the present writ petitions, neither any account statement nor any document whatsoever has been placed on the record of this Court to substantiate the plea of financial crunch being the basis to deny the claim of the respondents-employees.

Further, the respondent-employees in their respective written statements filed to the present writ petitions have specifically taken a stand that the petitioner-committee's plea of financial constraints being the basis to deny their claim was a false plea being taken by them only by way of an after thought. This stand taken by the respondent-employees has also not been rebutted by the petitioner committee through any rejoinder or replication.

In view of the above, I unhesitatingly hold that the stand taken by the petitioner-committee of their being a financial crunch which they say formed the basis to deny arrears to the respondents-employees is a stand which has been taken by them by way of an after thought and in fact is a false stand.

Even otherwise, the petitioner-committee has, in fact, granted the benefit of revised pay scales w.e.f. 1.1.1996 to all its employees who were in service on 24.11.2001. To deny the benefit to only a handful of them on the ground of fiscal constraints would be unfair and arbitrary.

I have gone through the judgements of the Apex Court cited on behalf of the petitioner-committee. In ***Amar Nath Goyal's*** case (supra) the classification of employees for the grant of fiscal benefits was permitted after the Court was satisfied that the basis of such distinction was actually on account of financial constraints of the employers therein. In this regard, the following paragraph in ***Amar Nath Goyal's*** case (supra) can be usefully referred to which are as under:

> *"23. The learned counsel for the Union of India and the State Governments contended that, though it is a fact that certain percentage of dearness allowance was to be merged with the basic pay with effect from the said dearness allowance admissible to the employees on 1.7.1993 was to be treated as dearness pay for reckoning emoluments for the purpose of death gratuity and retirement gratuity, financial constraints impelled the Governments, both at the Centre and the State, to restrict such payments only to the employees who had died or retired on or after 1.4.1995.*
>
> *24. The learned counsel for the Union of India made available the Government's file from which it is seen that the Government took a conscious decision that the benefit of the increase in the quantum of gratuity, pursuant to the merged portion of the dearness, allowance and the revised ceiling shall be made available from 1.4.1995, which was the date recommended in the Interim Report of the Fifth Central Pay Commission. The Government noticed that the consequential financial burden would be very heavy. Hence, the Central Government decided that these benefits would be made available only from 1.4.1995. The State Governments followed suit."*
>
> (Emphasis supplied)

In the case of ***Confederation of Ex-Servicemen Associations*** (supra), the Apex Court has held as under:

> *"In our opinion, such a contributory scheme cannot be held illegal, unlawful or unconstitutional. Ultimately, the State has to cater to the needs of its employees past and present. It has also to undertake several other activities as a "welfare" State. In the light of financial constraints and limited means available, if a policy decision is taken to extend medical facilities to ex-defence personnel by allowing them to become members of contributory scheme and by requiring them to make "one-time payment" which is a "reasonable amount", it cannot be said that such action would violate the fundamental rights guaranteed by Part III of the Constitution."* (Emphasis supplied)

As per the above quoted judgment, classifications of employees was permitted after the Court was satisfied that the employer therein was facing financial constraints. In the case in hand the issue of fiscal constraint as raised by the petitioner-committee has been found to be a false one.

Thus, the above referred judgments are clearly distinguishable.

In ***S. Thakur's*** case (supra) cited on behalf of the petitioner-committee, paragraph 8 of the said judgment is relevant, which is reproduced below for ready reference:

> *"The plea that as restructuring of cadre and redistribution of posts was involved insofar as the Assistant Directors were concerned and therefore the policy decision taken by the State Government to give benefit of upgraded scale to an Assistant Director (Executive) with effect from 1.10.1997 should not have been interfered with by the Tribunal and by the High Court is devoid of merits. There is no dispute nor there can be any, to the principle that fixation of pay and date from which the benefit of revised pay scale would be admissible is the function of the executive and the scope of judicial review of such an administrative decision is very limited. However, it is equally well settled that the courts would interfere with the administrative decisions pertaining to pay fixation and pay parity as well as the date from which the revised pay scales would be made applicable if it is found that such a decision is unreasonable, unjust and prejudicial to a section of the employees." (emphasis supplied)*

A perusal of the above quoted portion of the judgment shows that the Apex Court has held that the Courts would interfere with the administrative decision pertaining to pay fixation and pay parity as well as date from which the revised pay scales would be made applicable if it is found that such a decision is unreasonable, unjust and prejudicial to the interest of the employees.

In the case in hand, I have found the decision of the petitioner-committee with regard to the fixation of the date for payment of arrears to the respondents-employees to be a decision which is unreasonable, unjust and based on a false plea.

I have also gone through the order of the Tribunal challenged in these findings and I found that each and every issue raised by the petitioner-committee has been considered and aptly decided. I fully concur with such findings returned by the Tribunal.

In view of the above, finding no merit in these petitions, I order dismissal of the same with costs quantified at Rs.10,000/- in each of the petitions.

(DEEPAK SIBAL)
JUDGE

dated:20.04.2015
rajeev