

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 12.02.2015

C.W.P.No.7398 of 2013

Punjab Aided Colleges Retired Employees Association & another

...Petitioners

Versus

State of Punjab & others

...Respondents

**CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE HARI PAL VERMA**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Satya Pal Jain, Senior Advocate, with
Mr. Dheeraj Jain & Mr. Vijay Kumar Chaudhary, Advocate,
for the petitioners.

Mr. P.S.Bajwa, Additional Advocate General, Punjab.

Mr. Bhupinder Ghai, Advocate, for respondent No.9.

Mr. H.S.Saggu, Advocate, for respondent No.10.

HEMANT GUPTA, J.

This order shall dispose of the aforementioned writ petition as well as the writ petitions, mentioned at the foot of the order, challenging the Punjab Privately Managed Affiliated and Punjab Government Aided Colleges, Pensionary Benefits Scheme, 1996 (Repeal) Act, 2012 (Punjab Act No.16 of 2013) (for short 'the Act'). However, for the facility of reference, the facts are taken from the aforementioned writ petition.

The petitioner is an Association of retired employees of the Government Aided Privately Managed Colleges in Punjab. The members of the petitioner-Association retired during the period 1997 to 2012 after attaining

the age of superannuation. The service condition of the members, when in service, was regulated under the provisions of the University Calendar of the respective Universities to the college were affiliated. The members of the petitioner-Association were the members of the Contributory Fund Scheme.

The State of Punjab enacted Punjab Affiliated Colleges (Security of Service of Employees) Act, 1974. The said Act dealt with security of service and not with service conditions of the employees. Initially, the State Government circulated a Scheme called 'Grant-in-Aid' on 21.03.1979 w.e.f. 01.09.1978 granting 95% Grant-in-Aid against all the posts existing as on 01.11.1977 in the affiliated colleges. The members of the petitioner-Association have joined after 01.11.1977.

The retired employees from Non-Government Colleges were pressing hard with the Government to make provisions for the pensionary benefits in lieu of prevalent Contributory Provident Fund Scheme (for short 'the CPF Scheme'), as the Government was meeting expenditure up to 95% of the employee's share of the CPF component. The amount of gratuity was being paid by the Managements of the concerned private colleges. Consequent to such efforts of the retired employees, the State Government framed a scheme for grant of Death-cum-Retirement Gratuity/ Pension/ Family Pension in lieu of Contributory Provident Fund w.e.f. 01.04.1992 vide circular dated 14.02.1996. Vide such circular, the pension was ordered to be granted not only to the teaching staff, but non-teaching staff as well in lieu of the Contributory Provident Fund.

On 18.12.1996, the State Government circulated a scheme called 'Privately Managed Affiliated and Punjab Government Aided Colleges, Pensionary Benefits Scheme, 1996' (for short 'the Scheme'). It is the said scheme, which has been repealed by the Act.

It may be mentioned here that Punjab Affiliated Colleges and (Security of Service of Commencement, Employees) (Amendment) Act, 1999 was enacted on 26.04.1999. Section 9-B and 9-C inserted vide the aforesaid Act empowered the State Government to grant pensionary benefits on such terms and conditions as may be prescribed and also to take penal action, if the provisions of the Act are not complied with. It may be noticed that in terms of the aforesaid provisions, the State Government has framed Punjab Privately Managed Recognized Affiliated Aided Colleges (Pension and Contributory Provident Fund) Rules, 2002. Such Rules have been repealed vide notification dated 12.01.2012 (Annexure R-2), when Punjab Privately Managed Recognized Affiliated Aided Colleges (Pension and Contributory Provident Fund) Repeal Rules, 2012 were promulgated.

In the written statement filed by the Special Secretary, Department of Higher Education, Punjab, on behalf of respondent Nos.1 & 3, it has been pointed out that the Scheme has not got a single beneficiary and all employees under the employment of Aided Colleges were established to withdraw their Contributory Provident Fund on retirement. It is also pointed out that the retirement age of the lecturers/employees of Aided Colleges is already 60 years instead of 58 years of a Government employee; therefore, they are already enjoying a benefit of two additional years in service. It is pointed out that in order to avoid undue and unreasonable financial liabilities on the State Exchequer, it was considered expedient to enact a law in public interest; therefore, the Act was enacted to repeal the pension scheme with retrospective effect. On merits, it is pointed out that the Scheme was not implemented, as it was only circulated. None of the aided colleges deposited CPF amount in the corpus fund created for granting pension to the employees of Privately Managed College nor the Managements of the Government Aided College

opted for this Scheme nor the employees did exercise the options. Therefore, they are not eligible for any pensionary benefits under the Act.

Mr. Satya Pal Jain, learned senior counsel representing the petitioner-Association, has vehemently argued that the Act has been enacted with retrospective effect to nullify the orders passed by this Court from time to time to give effect to the Scheme. By enacting Act with retrospective effect, the Legislature has only undone the judgments of this Court, which is not permissible. Though the State Legislature has got plenary power to legislate, but it has no power to nullify a judgment of the Court. He relies upon the judgment of the Hon'ble Supreme Court reported as State of Tamil Nadu & others Vs. K. Shyam Sunder & others (2011) 8 SCC 737. Mr. Jain has further relied upon Nirbhai Singh Vs. State of Punjab & others 2011 (3) PLR 393, whereby Section 19 of the Punjab Panchayati Raj Act, 1994 deleted with retrospective effect from 01.07.2010 was set aside.

Mr. Puneet Jindal, learned counsel representing the petitioner in CWP No.25031 of 2014, has argued that the Act is colourable exercise of the power, therefore, not sustainable. It is also argued that there are factual mistakes in the Objects & Reasons while introducing the Bill in the State Legislature inasmuch as the State Legislature has been made to believe that the options for grant of pensionary benefits in lieu of Contributory Provident Fund Scheme has not been exercised by the employees so far. Therefore, the Act in question cannot be sustained.

Learned counsel for the petitioners refers to an interim order passed by a Division Bench of this Court on 10.10.2012 in CWP No.17341 of 2003 titled 'Principal Narinder Singh Tuli & others Vs. State of Punjab & others' dealing with the enforcement of the scheme after the repeal of 2002

Rules. The Bench has observed as under:

“.....Learned Additional Advocate General, Punjab submits that once the Rules are repealed, there is no Pension Scheme in vogue. The matter cannot be given such simplistic overturn as sought to be projected by learned Additional Advocate General, Punjab. As already noted above, way back in the year 2001, this Court wanted to issue mandamus directing the respondents to enforce the pension scheme that was obviated simply because the undertaking was given by the Government that the necessary steps would be taken within three months. This scheme was sought to be implemented vide aforesaid Rules, 2002. However, it remained in abeyance because of the pendency of these petitions wherein all these rules have been challenged and now these rules have been repealed. That would not mean that the government can get away and back out from the undertaking which it had given from time to time to this Court for enforcement of the Pension Scheme. We would also like to point out that in all these writ petitions, as recent on 16.03.2012, time was given to learned Additional Advocate General, Punjab, who wanted to discuss the matter to explore the possibility of accepting the application of scheme framed in 1996 under which pension had been made applicable to teachers of privately aided colleges. Though, almost seven months have passed, when statement was made, even today the stand now taken that since these teachers had retired from service and has taken their CPF, they cannot claim pension. Whether petitioners would be entitled to pension under the pension scheme or not is a different aspect altogether. We are first concerned with the issue of enforcement of the Pension Scheme which was formulated way back in the year 1996 and the matter was dragged by the Government for all these years. In these circumstances, we are giving last opportunity to the respondents to deliberate on the issue and inform this Court on the next date of hearing about the implementation of 1996 Scheme. The officials while taking a decision would be well advised of the consequences of the undertaking, which were given and the contempt which had been committed earlier, but the proceedings were not initiated because of their undertaking. For this reason, we also order personal presence of the Secretary, Department of Education as well as Secretary Finance on the next date of hearing, in case positive decision is not taken by the date.”

It is, thereafter, the impugned legislation was introduced in the State Legislature on 18.12.2012; passed by the legislature and notified on 18.02.2013 in the official gazette.

On the other hand, Mr. Bajwa relies upon a Division bench judgment of this Court reported as Beant Singh & others Vs. State of Punjab & others 2011 Labour and Industrial Cases 869, wherein the claim for higher scales of pay on the basis of circular dated 23.07.1957 given effect to by the judgments of this Court and the Hon'ble Supreme Court was withdrawn by enacting Punjab Pay Scale of Teachers Act, 2004 delinking the qualifications from the pay-scale. The Court has upheld the validity and legality of the enactment that too with retrospective effect. It is also argued that Legislature in exercise of its plenary power has the jurisdiction to enact a law with retrospective effect so as to repeal a scheme framed so as to avoid the financial burden on the State Exchequer. Since the legislation has in exercise of the plenary power enacted the impugned legislation, therefore, the challenge to such enactment was found not tenable in law.

We have heard learned counsel for the parties and find no merit in the present bunch of writ petitions. The Act is a short legislation, which reads as under:

“THE PUNJAB PRIVATELY MANAGED AFFILIATED AND PUNJAB GOVERNMENT AIDED COLLEGES, PENSIONARY BENEFITS SCHEME, 1996 (REPEAL) ACT, 2012

(Punjab Act No.16 of 2013)

AN
ACT

To provide for the repeal of the Punjab Privately Managed Affiliated and Punjab Government Aided Colleges, Pensionary benefits Scheme, 1996 and for the matters connected therewith.

WHEREAS, the Director of Public Instructions (C), Punjab circulated the aforesaid Scheme framed by the State Government vide memo No.6/105-87-Pension dated the 18th December, 1996;

AND WHEREAS, the said Scheme was deemed to have come into force with effect from the 1st April, 1992;

AND WHEREAS under the aforesaid Scheme, all the employees (Teaching and Non-Teaching) in the employment of an affiliated college who were covered under 95% grant-in-aid scheme were made eligible for grant of pensionary benefits in lieu of the Contributory Provident Fund Scheme subject to the exercise of options through their respective Managing Committees;

AND WHEREAS it is on record that the aforesaid options have not been exercised by the employees so far;

AND WHEREAS in these circumstances, it is expedient to enact a law in public interest to avoid undue and unreasonable financial liabilities on the State Exchequer.

BE it enacted by the Legislature of the State of Punjab in the Sixty-third Year of the Republic of India as follows:

1. (1) This Act may be called the Punjab Privately Managed Affiliated and Punjab Government Aided Colleges, Pensionary Benefits Scheme, 1996 (Repeal) Act, 2012.
(2) It shall be deemed to have come into force on and with effect from the 1st day of April, 1992.
2. (1) On and with effect from the 1st April, 1992, the Punjab Privately Managed Affiliated and Punjab Government Aided Colleges, Pensionary benefits Scheme, 1996 circulated vide memo No.6/105-87-Pension dated the 18th December, 1996, shall be and shall always be deemed to have been repealed.
(2) Notwithstanding anything contained in any instructions, rule or other law for the time being in force and any order or decision of any Court, Tribunal, all the employees of the affiliated colleges (Teaching and Non-Teaching) covered under 95% grant-in-aid scheme shall not be entitled to any pensionary benefits under the Scheme so repealed under sub-section (1).”

Sub-section (1) of Section 2 repeals the Punjab Privately Managed Affiliated and Punjab Government Aided Colleges, Pensionary Benefits Scheme, 1996 as always be deemed to have been repealed, whereas sub-Section (2) of Section 2 contemplates that notwithstanding anything contained in any instructions, rules, or other law for the time being in force and any order

or decision of any Court, Tribunal, all the employees of the affiliated colleges (Teaching and Non-Teaching) covered under 95% grant-in-aid scheme shall not be entitled to any pensionary benefits under the Scheme so repealed.

All the judgments and/or orders of this Court are to give effect to the Scheme. Once the Scheme has been repealed by a Statute, the very foundation of the judgments is knocked down. It is not nullifying the judgment, but knocking down the foundation of the judgment that is Scheme itself. Therefore, the judgment of the Hon'ble Supreme Court in K. Shyam Sunder & others's (supra) referred to by Mr. Jain is of no help to the argument raised and also of Mr. Jindal that the Act is colourable exercise of powers. The Court, in fact, held as under:

“36. In State of Punjab & another Vs. Gurdial Singh & others (1980) 2 SCC 471, this Court held that when power is exercised in bad faith to attain ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal, it is called colourable exercise of power. The action becomes bad where the true object is to reach an end different from the one for which the power is entrusted, guided by an extraneous consideration, whether good or bad but irrelevant to the entrustment. When the custodian of power is influenced in exercise of its power by considerations outside those for promotion of which the power is vested, the action becomes bad for the reason that power has not been exercised bona fide for the end design.

37. It has consistently been held by this Court that the doctrine of mala fides does not involve any question of bona fide or mala fide on the part of legislature as in such a case, the Court is concerned to a limited issue of competence of the particular legislature to enact a particular law. If the legislature is competent to pass a particular enactment, the motives which impelled it to an act are really irrelevant. On the other hand, if the legislature lacks competence, the question of motive does not arrive at all. Therefore, whether a statute is constitutional or not is, thus, always a question of power of the legislature to enact that statute. Motive of the legislature while enacting a statute is inconsequential: “Malice or motive is beside the point, and it is not permissible to

suggest parliamentary incompetence on the score of mala fides.” The legislature, as a body, cannot be accused of having passed a law for an extraneous purpose. This kind of “transferred malice” is unknown in the field of legislation. [See: K.C. Gajapati Narayan Deo & Ors. Vs. State of Orissa, AIR 1953 SC 375; R.S. Joshi, Sales Tax Officer, Gujarat & Ors. Vs. Ajit Mills Limited & Anr., AIR 1977 SC 2279; K. Nagaraj & Ors. Vs. State of Andhra Pradesh & Anr., AIR 1985 SC 551; Welfare Assocn. A.R.P., Maharashtra & Anr. Vs. Ranjit P. Gohil & Ors., AIR 2003 SC 1266; and State of Kerala & Anr. Vs. Peoples Union for Civil Liberties, Kerala State Unit & Ors., (2009) 8 SCC 46].

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63. In Madan Mohan Pathak Vs. Union of India (1978) 2 SCC 50, a seven-Judge Bench of this Court considered a similar issue and held that the act of legislature cannot annul a final judgment giving effect to rights of any party. A declarative judgment holding an imposition of tax invalid can be superseded by a revalidation statute. But where the factual or legal situation is retrospectively altered by an act of legislature, the judgment stands, unless reversed by an appeal or review. Bringing a legislation in order to nullify the judgment of a competent court would amount to trenching upon the judicial power and no legislation is permissible which is meant to set aside the result of the mandamus issued by a court even though, the amending statute may not mention such an objection. The rights embodied in a judgment could not be taken away by the legislature indirectly. A similar view has been reiterated in K. Sankaran Nair Vs. Devaki Amma Malathy Amma (1996) 11 SCC 428.

64. “68. ... the legislature cannot by bare declaration, without anything more, directly overrule, reverse or override a judicial decision. However it can, in exercise of the plenary powers conferred upon it by Articles 245 and 246 of the Constitution, render a judicial decision ineffective by enacting a valid law fundamentally altering or changing the conditions on which such a decision is based.”

(Vide A. Manjula Bhashini Vs. A.P. Women’s Coop. Finance Corpn. Ltd. (2009) 8 SC 431, SCC pp. 465-66, para 68)

65. In view of the above, the law on the issue can be summarised to the effect that a judicial pronouncement of a competent court cannot be annulled by the legislature in exercise of its legislative powers for any

reason whatsoever. The legislature, in order to revalidate the law, can reframe the conditions existing prior to the judgment on the basis of which certain statutory provisions had been declared ultra vires and unconstitutional.”

In the same judgment, while considering the relevance of Objects & Reasons, the Court held that the Statements of Objects & Reasons appended to the Bill is not admissible as an aid to the construction of the Act to be passed, but it can be used for limited purpose for ascertaining the conditions, which prevailed at that time which necessitated the making of the law and the extent and urgency of the evil, which it sought to remedy. The Court observed as under:

“66. The Statement of Objects and Reasons appended to the Bill is not admissible as an aid to the construction of the Act to be passed, but it can be used for limited purpose of ascertaining the conditions which prevailed at that time which necessitated the making of the law, and the extent and urgency of the evil, which it sought to remedy. The Statement of Objects and Reasons may be relevant to find out what is the objective of any given statute passed by the legislature. It may provide for the reasons which induced the legislature to enact the statute. “For the purpose of deciphering the object and purport of the Act, ... the court can look to the Statement of Objects and Reasons thereof.” (emphasis supplied) (Vide Kavalappara Kottarathil Kochuni Vs. States of Madras and Kerala AIR 1960 SC 1080 and Tata Power Co. Ltd. Vs. Reliance Energy Ltd. (2009) 16 SCC 659, SCC p. 686, para 79)

67. In A. Manjula Bhashini Vs. A.P.Women’s Coop. Finance Corporation Ltd. (2009) 8 SCC 431, this Court held as under: (SCC p. 459, para 40)

“40. The proposition which can be culled out from the aforementioned judgments is that although the Statement of Objects and Reasons contained in the Bill leading to enactment of the particular Act cannot be made the sole basis for construing the provisions contained therein, the same can be referred to for understanding the background, the antecedent state of affairs and the mischief sought to be remedied by the

statute. The Statement of Objects and Reasons can also be looked into as an external aid for appreciating the true intent of the legislature and/or the object sought to be achieved by enactment of the particular Act or for judging reasonableness of the classification made by such Act.” (..emphasis added)

68. Thus, in view of the above, the Statement of Objects and Reasons of any enactment spells out the core reason for which the enactment is brought and it can be looked into for appreciating the true intent of the legislature or to find out the object sought to be achieved by enactment of the particular Act or even for judging the reasonableness of the classifications made by such Act.”

Therefore, even if any of the statute is not correct, but does not render the act of legislature voidable, the act being within legislative competence. Even in terms of the aforesaid judgment relied upon the learned Counsel for the petitioner; we do not find any case is made out to strike down any provision of the Statute. The undisputed law is that the State Legislature has got the plenary power to enact a law on the subject of pensionary benefits. Therefore, the scheme framed in exercise of the executive powers of the state, could be withdrawn with retrospective effect.

Earlier, a Full Bench of this Court in CWP No.18504 of 1997 titled 'Sandesh Singh & another Vs. State of Punjab & others' decided on 22.05.1998 examined the vires of the Punjab Special Recruitment of Teachers Act, 1998. The Full Bench examined the judgments in Prithvi Cotton Mills Ltd. & another Vs. Borach Borough Municipality & others (1969) 2 SCC 283; Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad (1964) 2 SCR 608; Bhubaneshwar Singh & another Vs. Union of India & others (1994) 6 SCC 77; The State of Haryana & others Vs. The Karnal Co-op. Farmers' Society Limited etc. JT 1993 (2) SC 235 and Indian Aluminum Co. Vs. State of Kerala AIR 1996 SC 1431. It was held that the Government could have changed the very basis of the judgment under its plenary power of

legislation and could have provided a legal platform for the ad hoc appointees to be appointed again. The Bench held that the impugned legislation is violative of Articles 14 & 16 of the Constitution. The Bench observed as under:

“.....The power of the Legislature to enact validating laws including the law to render an ineffective earlier judicial decision by removing, altering and neutralizing the legal basis of the judgment is well recognized. However, to stand the test of judicial scrutiny, the new enactment must be within the competence of the Legislature and must be consistent with Part-III of the Constitution. It is also one of the well recognized canon of law that in exercise of its legislative power, the State cannot by mere declaration, without anything more directly over-rule, revise or over-ride a judicial decision. This question fell for consideration in Prithvi Cotton Mills Ltd. and another Vs. Borach Borough Municipality and others (1969) 2 SCC 283, a constitution Bench examined the vires of Gujarat Imposition of Taxes by Municipalities (Validation) Act, 1963. Rejecting the challenge to the competence of the Legislature to enact the validating law so as to nullify the effect of the judgment of the Supreme Court in Patel Gordhandas Hargovindas Vs. Municipal Commissioner, Ahmedabad, (1964) 2 SCR 608, the Supreme Court held:

“If the Legislature has the power over the subject matter and competence to make a valid law, it can at any time make such a valid law and make it applicable retrospectively so as to bind even past transactions. The validity of a validating law depends upon whether the Legislature possesses the competence which it claims over the subject-matter and whether in making the validation it removes the defects which the Courts had found in the existing law and makes adequate provisions in the validating law for a valid imposition of the Tax.”

In Bhubaneshwar Singh and another Vs. Union of India and others (1994) 6 SCC 77, the Supreme Court considered the validity of the Coal Mines Nationalisation Laws (Amendment) Ordinance and Act, 1986. The Apex Court upheld the amendment and observed:

“Parliament and State Legislature have plenary powers to legislation on the subjects within their field. They can legislate on the said subjects prospectively as well as retrospectively. If the intention of the legislature is clearly expressed that it purports to introduce the legislation or to amend an existing legislation retrospectively, then subject to the legislative competence and the exercise being not in violation of any of the provisions of the Constitution, such power cannot be questioned.

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In Indian Aluminium Co. case (supra), referred to by the Full Bench in Sandesh Singh’s case (Supra) and by the Division Bench in Beant Singh’s case (supra), the Hon’ble Supreme Court held as under:

“56. From a resume of the above decisions the following principles would emerge:

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[2] The Constitution delineated delicate balance in the exercise of the sovereign power by the Legislature, Executive and Judiciary,

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[6] The Court, therefore, need to carefully scan the law to find out: (a) whether the vice pointed out by the Court and invalidity suffered by previous law is cured complying with the legal and constitutional requirements; (b) whether the Legislature has competence to validate the law; (c) whether such validation is consistent with the rights guaranteed in Part III of the Constitution.

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[8] In exercising legislative power, the Legislature by mere declaration, without anything more, cannot directly overrule, revise or override a judicial decision. It can render judicial decision ineffective by enacting valid law on the topic within its legislative field fundamentally altering or changing its character retrospectively. The changed or altered conditions are such that the previous decision would not have been rendered by the

Court, if those conditions had existed at the time of declaring the law as invalid. It is also empowered to give effect to retrospective legislation with a deeming date or with effect from a particular date. The Legislature can change the character of the tax or duty from impermissible to permissible tax, but the tax or levy should answer such character and the Legislature is competent to recover the invalid tax validating such a tax or removing the invalid base for recovery from the subject or render the recovery from the State ineffectual. It is competent for the legislature to enact the law with retrospective effect and authorize its agencies to levy and collect the tax on that basis, make the imposition of levy collected and recovery of the tax made valid, notwithstanding the declaration by the Court or the direction given for recovery thereof.

[9] The consistent thread that runs through all the decisions of this Court is that the legislature cannot directly overrule the decision or make a direction as not binding on it but has power to make the decision ineffective by removing the base on which the decision was rendered, consistent with the law of the Constitution and the legislature must have competence to do the same.”

The Hon’ble Supreme Court in Virender Singh Hooda & others Vs. State of Haryana & another (2004) 12 SCC 588, has held to the following effect:

“33. The legislative power to make law with retrospective effect is well recognised. It is also well settled that though the legislature has no power to sit over Court's judgment or usurp judicial power, but, it has, subject to the competence to make law, power to remove the basis which led to the Court's decision. The legislature has power to enact laws with retrospective effect but has no power to change a judgment of court of law either retrospectively or prospectively. The Constitution clearly defines the limits of legislative power and judicial power. None can encroach upon the field covered by the other. The laws made by the legislature have to conform to the constitutional provisions. Submissions have also been made on behalf of the petitioners that by enacting law with retrospective effect, the legislature has no power to

take away vested rights. The contention urged is that the rights created as a result of issue of writ of mandamus cannot be taken away by enacting laws with retrospective effect. On the other hand, it was contended on behalf of the respondent- State that the power of the legislature to enact law with retrospective effect includes the power to take away vested rights including those which may be created by issue of writs.

34. Every sovereign legislature possesses the right to make retrospective legislation. The power to make laws includes power to give it retrospective effect. Craies on Statute Law (7th Edn.) at page 387 defines retrospective statutes in the following words. "A statute is deemed to be retrospective which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past". Judicial Dictionary: (13th Edition) K.J. Aiyar, Butterworth, pg.857, states that the word 'retrospective' when used with reference to an enactment may mean (i) affecting an existing contract; or (ii) re-opening up of past, closed and completed transaction; or (iii) affecting accrued rights and remedies; or (iv) affecting procedure. Words and Phrases: Permanent Edition: Vol.37A page 224/225. defines a 'retrospective' or retroactive law" as one which takes away or impairs vested or accrued rights acquired under existing laws. A retroactive law takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past."

The Division Bench in Beant Singh's case (supra) considered the judgment in Indian Aluminum Co.'s case (supra) followed in A. Manjula Bhashini Vs. Managing Director, Andhra Pradesh Women's Co-operative Finance Corporation Limited AIR 2010 SC 3143. The Court held that the Legislature cannot directly overrule the decision or make a direction as not binding, but has power to make the decision ineffective by removing the base on which the decision was rendered in consonance with the law of the

Constitution provided that the legislature must have competence to do the same. Considering the long title of the Act, the Court observed as under:

“13. A bare perusal of the aforesaid recitals and long title of the Act would show that the legislature has made an endeavour to delink the pay scale from the higher qualification but have confined the pay scale to the post held by a Teacher/Master/Mistress etc. By way of illustration if a JBT Teacher holds the degree of B.Ed., which is higher qualification for Master then such a JBT Teacher would continue to work with the pay scale admissible to that post. He would not get any extra increment for higher qualification or get the pay scale of Master on account of qualification which answers the higher post of Master. The Act has rendered ineffective the policy instructions dated 23.7.1957 and 19.2.1979, which in fact, were the basis of various judgments including State of Punjab Vs. Kirpal Singh Bhatia (1975) 4 SCC 740. Therefore, the Act cannot be regarded as mere declaration by the legislature directly overruling, revising or overriding a judicial decision. The Act enacted by the State legislature is concededly within its competence. There is not even any challenge to the competence of legislature to frame such a law. It does not suffer from any vice of arbitrariness or discrimination. On the contrary it seeks to bring parity in the pay scale of all the incumbents holding same post without granting any higher pay for higher qualification than the necessary ones.”

For the reasons recorded therein in respect of exercise of the legislative power, which has the effect of rendering a decision ineffective, we find that no ground is made out to challenge the aforesaid enactment for the reason that it has retrospectively repealed the ‘Privately Managed Affiliated and Punjab Government Aided Colleges, Pensionary Benefits Scheme, 1996’.

In Nirbhai Singh’s case (Supra), Section 19 of the Punjab Panchayati Raj Act, 1994 was deleted with retrospective effect from 01.07.2010. In the said case, Section 10 dealt with the No Confidence Motion against a Sarpanch. The Court found that No Confidence Motion, when the statutory provision was in force, cannot be nullified by retrospective deletion of

Section 19. In the said case, the Court found that retrospective legislation is not per se beyond the legislative competence, but it can be tested on the anvil of Article 14 and if it is found that retrospectivity is arbitrary, the same can be struck down. It was found that effect of the amendment is to nullify a lawfully passed No Confidence Motion and to undo a removal of an elected Sarpanch. Such judgment is on the facts of the case, where No Confidence Motion resolution passed with majority of 2/3rd members against the Sarpanch, was sought to be brought back by virtue of retrospective amendment. We find that such judgment provides no assistance to the argument raised.

In view of the above discussion, we find that the repeal of the Privately Managed Affiliated and Punjab Government Aided Colleges, Pensionary Benefits Scheme, 1996 by the impugned statute cannot be said to be ultra vires of the Constitution.

Consequently, we do not find any merit in the present bunch of petitions. The same are dismissed.

(HEMANT GUPTA)
JUDGE

12.02.2015
Vimal

(HARI PAL VERMA)
JUDGE

Sr. No.	Case No.	Title
1.	CWP No.11227 of 2013	Raj Kumar Sofat Vs. State of Punjab & others
2.	CWP No.15168 of 2013	Rajnish Kumar & others Vs. State of Punjab & others
3.	CWP No.17120 of 2013	Kuldip Singh & others Vs. State of Punjab & others
4.	CWP No.11294 of 2014	Non-Government Aided Private Colleges, Non Teaching Employees Union Vs. State of Punjab & others
5.	CWP No.12913 of 2014	Thapar Institute of Engineering & Technology Employees Association (Regd.) Vs. State of Punjab & others
6.	CWP No.25031 of 2014	Iqbal Singh Cheema & others Vs. State of Punjab & another