IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: January 08, 2015

Haryana State Federation of Consumers Cooperative Whole Sale Stores Ltd., Panchkula

...Appellant

Versus

Sita Ram Barvaria and others

...Respondents

CORAM: HON'BLE MR.JUSTICE S. J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH, JUDGE

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. Baldev Raj Mahajan, Advocate General, Haryana with
Mr. Padamkant Dwivedi, Advocate,
for the appellant.

Mr. R. K. Malik, Sr.Advocate with
Mr. Vijay Dahiya, Advocate,
for the respondent-Caveators.

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AUGUSTINE GEORGE MASIH, JUDGE

C.M. No.41 LPA OF 2015

For the reasons mentioned in the application, which are supported by an affidavit, delay of 21 days in filing the appeal is condoned.

Application stands allowed.

L.P.A. No.19 of 2015

1. In this appeal, challenge is to the judgement dated 03.11.2014 passed by the learned Single Judge, vide which the writ petition preferred by private respondents Nos.1 to 35, praying for grant of arrears of revised pay scale with effect from 01.01.2006 to 18.09.2010, stands allowed. Challenge in the writ petition was to the order dated 08.08.2011 passed by the appellant, whereby an anomaly in the revised pay scale of the petitioners (private respondents herein) was removed with effect from 01.01.2006 but the financial benefits were granted with effect from 18.09.2010. This action of the appellant was found to be violative of Article 14 of the Constitution of India as the other categories of the employees, except the Accountants, were granted the revised pay scales with effect from 01.01.2006 alongwith arrears.

2. Learned Advocate General, Haryana, contends that the arrears of the private respondents were restricted because of the poor financial position of the Haryana State Federation of Consumers Cooperative Whole Sale Stores Ltd., Panchkula (hereinafter referred to as "the appellant-Federation"). On the factual aspect, he contends that although the appellant-Federation had recommended the grant of revised pay scale to the Accountants with effect from 01.01.2006 alongwith other categories of employees of the appellant-Federation but the Government of Haryana, Department of Finance (respondent No.36), on consideration of the recommendation of the Board of Governors, put a query as to how the pay scale of the Accountants could be higher than the promotional post of

Assistant Accounts Officer and there being an anomaly, the matter needed to be considered. Even the position was required to be clarified with reference to the judgement of this Court in favour of the Accountants. A joint meeting was held on 17.08.2010 with the Government, Department of Finance, where it was decided that there being 37 posts of Accountants, revised pay scale, as recommended by the appellant-Federation, may be granted as a personal measure to these posts, which may be put in the dying cadre i.e. the diminishing cadre with the effect that the posts, on falling vacant, shall stand abolished and the revised pay scale was to be given with effect from the date of decision. The Board of Directors considered the matter in its meeting held on 02.12.2010 and resolved that the Accountants be granted the revised pay scale with effect from 01.01.2006 instead of 17.08.2010. The Department of Finance, vide order dated 18.07.2011, agreed to the proposal of the Administrative Department for revision of the pay scale with effect from 01.01.2006. However, the actual financial benefits were granted from the date of the order i.e. 18.09.2010. As an effect thereof, the private respondents, who are Accountants, were granted the notional fixation of pre-revised scale with effect from 01.01.2006 but the actual financial benefits were granted to them with effect from 18.09.2010.

3. Learned Advocate General, on the basis of the above, submits that the State Government, having taken a conscious decision not to grant the actual financial benefits of upgradation of the pay scale with effect from 01.01.2006 but from 18.09.2010, cannot be interfered with by the Court as this decision was based upon the fact that the financial position of the

appellant-Federation was not good and the burden could not be borne by it. He submits that in these circumstances it cannot be held that there has been any different treatment meted out to the private respondents.

4. Learned senior counsel for the private respondent-Caveators, on the other hand, contends that there cannot be discrimination in grant of revised pay scales to one category of employees vis-a-vis other category of employees within the same organization. It is admitted by the appellant-Federation that the other categories of employees have been granted the arrears with effect from 01.01.2006 and, therefore, the Accountants alone cannot be isolated for grant of revised pay scale with effect from 18.09.2010. The judgement passed by the learned Single Judge, being in accordance with law, does not call for any interference in appeal.

5. We have considered the submissions made by counsel for the parties and with their able assistance have gone through the records.

6. Learned Advocate General, Haryana, has not disputed the fact that the private respondents were granted the higher pay scale in the pre-revised pay scale in pursuance of the judgement passed by this Court. It is also not disputed that the said judgement has attained finality. The assertion of the Advocate General that because of the judgement passed by the Court, pre-revised scale of the Accountants has reached a stage, which is higher than the promotional post, is an aspect which should have been considered by the appellant and the official respondents while granting the revised pay scales at the very outset. The revised pay scale, as per the fixation-table on the basis of the pre-revised pay scales, stands granted to the private

respondents i.e. to the category of Accountants in the appellant-Federation as per the decision dated 18.09.2010 of the Government of Haryana with effect from 01.01.2006. However, the actual financial benefits were restricted to a period beyond the said date of decision i.e. 18.09.2010. This action has been found to be arbitrary and without any basis by the learned Single Judge. A finding has been returned by the learned Single Judge that once an anomaly in the pay scales was removed with effect from 01.01.2006, the private respondents were entitled to grant of benefit of such decision with effect from 01.01.2006. There is no basis for grant of said benefit from 18.09.2010 except the fact that the decision was taken on the said date for grant of revised pay scale, whereas other similarly placed employees have been granted the revised pay scale with effect from 01.01.2006.

7. As is apparent from the records, the revision of the pay scale of the Accountants was kept in abeyance when the other categories of employees were granted the benefit of revised pay scales. With regard to grant of revised pay scale to the private respondents, decision was taken for the first time on 17.08.2010, where the corresponding pay scale of the pre-revised pay scale drawn by the Accountants was granted as a personal measure to the posts held by them by putting those posts in the diminishing cadre with the effect of abolition of such posts. The words `with immediate effect' in the decision taken on 17.08.2010 were subsequently modified vide order dated 18.07.2011, while agreeing with the proposal of the Board of Governors of the appellant-Federation in its meeting held on 02.12.2010,

granting the revised pay scale with effect from 01.01.2006. This decision, with regard to grant of benefit of revised pay scale with effect from 18.09.2010, did not indicate any reason whatsoever for fixing such a date for restricting the grant of actual monetary benefits to the category of Accountants. There is no mention of any financial constrains or financial crunch being faced by the appellant-Federation. No pleadings to this effect are available on record and this finding has been recorded by the learned Single Judge, holding that the appellant-Federation did not raise the issue of poor financial condition in the reply, which has been filed to the writ petition. On perusal of the reply filed by the appellant-Federation, the said fact is found to be correct.

8. Learned Advocate General, Haryana, has referred to the grounds of appeal where this plea has been taken but a perusal of the same would show that the assertions made therein relate to the losses as on 31.03.2014 and 30.09.2014, which cannot be taken into consideration with regard to the decision, which had been taken in the year 2010.

9. In view of the above, we do not find any infirmity in the impugned judgement dated 03.11.2014 passed by learned Single Judge, which would call for any interference by us.

10. Learned Advocate General then prayed for some more time for implementing the judgement passed by learned Single Judge. While accepting this request, we grant the appellant-Federation time upto and including 31.03.2015 to implement the judgement dated 03.11.2014 passed by the learned Single Judge.

11. With the above observations, the present Letters Patent Appeal stands dismissed.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(AUGUSTINE GEORGE MASIH)
JUDGE

January 08, 2015
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