

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

CWP No.1402 of 2002 (O&M)

J.R.Saluja and others

...Petitioners

versus

Board of School Education
Haryana and others

...Respondents

and

CWP No.9079 of 2005 (O&M)

H.C.Verma and others

...Petitioners

versus

State of Haryana and others

...Respondents

Date of Decision: **February 18, 2016**

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: - Mr.Rajesh Arora, Advocate
for the petitioners.

Mr.D.K.Khanna, Advocate for
respondent No.1 – Board.

Mr.D.K.Mittal, DAG, Haryana.

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HARINDER SINGH SIDHU, J.

This judgment shall dispose of two writ petitions, referred to
above, as similar question is involved in both.

For decision facts are being taken from CWP No.1402 of
2002.

Petitioners No.1 to 4 are Deputy Secretaries and petitioners
No.5 to 22 are the Assistant Secretaries in the respondent No. 4 –

Haryana Board of School Education (“the Board”).

They are aggrieved of the decision of the Pay Revision Committee communicated vide letter dated 14.2.2001 (Annexure P-6) whereby the decision of the respondent- Board regarding revision of the pay scales of the petitioners at par with the pay scales of Kurukshetra University was not approved.

The Board considered an agenda regarding non-availability of suitable candidates for appointment to various posts including the posts of Assistant Secretary/ Deputy Secretary due to inadequate pay-scales. It took a decision on 15.10.1993 (Annexure P-1) to give pay-scales to the aforementioned posts at par with equivalent posts in the Kurukshetra University so as to enable the Board to achieve its objectives of bringing about higher standard of education within the State of Haryana. Accordingly the pay scales as per Annexure 9 were approved subject to the condition that qualifications of equivalent posts be at par with level of Kurukshetra University.

The Director School Education Haryana (respondent No. 3) sent a letter dated 23.12.1998 (Annexure P-2) to the Financial Commissioner & Secretary, Department of Finance, (respondent No.2), recommending grant of equivalence as per the decision of the Board. It was stated therein that the matter pertaining to implementation of the pay scales recommended by the 5th Pay Commission had been placed before the Board in its meeting held on 11.11.1998 and that the same had been approved, that the Board was an autonomous body, it had its own budget, it had been excluded from the purview of the Bureau of Public Enterprises vide letter dated 20.5.1994 (Annexure P-3), Service Regulations of the employees of the Board had been framed on

11.11.1998 and the service Regulations and pay-scales of the employees of the Board had been approved by the Government of Haryana vide letter dated 11.11.1998. As the pay scales to employees of the Board were being given at par with the scales as payable to employees in the Haryana Civil Secretariat earlier, therefore, the same equivalence be maintained now as well.

This was followed by a letter dated 6.5.1999 (Annexure P-5) from Secretary of the respondent Board to respondent No.2 to take a decision regarding the revised pay scales in respect of posts as per list attached.

In response, vide letter dated 1.2.2001 (Annexure P-6), respondent No.3 informed respondent Board that a decision had been taken by the Pay Revision Committee of the Finance Department, Govt. of Haryana (Committee of Bureau of Public Enterprises) as per which pay scales sought by employees of the Board at par with the employees working in the Haryana Civil Secretariat could not be granted and therefore, the claim was rejected.

As on account of the aforesaid decision, the respondent Board was not implementing the scale of Rs.3700-5000+400 S.P. in the case of Deputy Secretaries and Rs.3000-4500+400 S.P. in case of Assistant Secretaries, the instant writ petition has been filed praying for directions to the respondent 1 to 3, to not restrain the Board from implementing the pay scales to the petitioners as approved by it. And further that the Board be directed to release the scales to the petitioners as approved by it.

regulated in accordance with the provisions of the Haryana Board of School Education Act, 1969 (for short, referred to as 'the Act') as also the Board of School Education Haryana, Bhiwani (Employees Service) Regulations, 1990 framed under Section 19(2)(d) of the Act (for short, referred to as 'the Regulations'). It is their case that as per the Act and the Regulations, the Board is autonomous and not subject to the control of the Government in respect of the service conditions including the pay scales to be given to its employees. Hence there was no question of the pay scales as approved by the Board to be further got approved from the Government or any Committee. The petitioners are entitled to the revised pay scales as approved by the Board.

Reference has been made to the following provisions of the Act and Regulations.

Section 3 deals with the establishment and Constitution of the Board. Sub-sections 1 and 2 thereof are as under:

“3. Establishment and Constitution of Board. (1) On and with effect from the 31st January, 1970, the Board as it existed immediately before such date shall stand dissolved and the State Government shall by notification establish for carrying out the purposes of this Act a new Board to be known as “the Board of School Education, Haryana” with headquarters at such place as the State Government may by notification specify.

(2) The Board shall be a body corporate with the name aforesaid having perpetual succession and a common seal with power subject to the provisions of this Act, to acquire, hold or dispose of property, and to contract, and may by that name sue and be sued.”

Section 12 refers to the officers and other employees of the Board and their appointment, powers and duties as under:

“12. Officers and other employees of Board and their appointment, powers and duties.-

(1) There shall be the following officers of the Board, namely:-

- (a) *the Chairman;*
- (b) *the Vice-Chairman;*
- (c) *the Secretary; and*
- (d) *such other officers as may be prescribed.”*

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(7) : The Board may appoint on such terms and conditions of service as it may think fit such other employees as may be considered necessary for carrying out the provisions of this Act and the regulations made thereunder.”

Section 16 outlines the Control of State Government over the Board and is as under:

“16. Control of State Government over Board.-

(1) The State Government shall exercise superintendence and control over the Board and its officers and may call for such information as it may deem necessary and, in the event of its being satisfied that the Board is not functioning properly or is abusing its powers or is guilty or corruption or mismanagement, it may, by notification, suspend the Board:

Provided that the Board shall be reconstituted within a period of one year from the date of its suspension.

(2) When the Board is suspended under sub-section(1), the following consequences shall ensue, namely:-

(a) all members of the Board and its committees, including the Chairman and Vice-Chairman thereof, shall, from the date of the notification, vacate their offices;

(b) all powers, duties and functions, which under the provisions of this Act or any regulation made thereunder, are to be exercised by the Board or any committee thereof or by the Chairman or Vice-Chairman of the Board or any other officer of the Board, shall, during the period of suspension, be exercised and performed by such person (to be called the administrator) as may be appointed by the State Government, in this behalf:

Provided that the administrator may, subject to the aproval of the State Government, delegate any of his powers, duties or functions to such other person as he may think fit;

(c) all properties, including the Board Fund vested in the Board shall, until it is reconstituted, vest in the State Government.”

Section 17 empowers the Government to appoint

Committees to enquire into various matters concerning the Board.

“17. Power of State Government to appoint committees.- (1) The State Government may at any time appoint a committee consisting of such number of persons as it may think fit to enquire into and report on any one or more of the following matters, namely;-

- a) the working of the Board;*
- b) the financial position of the Board;*
- c) the change to be made in the provisions of this Act or the regulations of this Act or the regulations made thereunder;*
- d) any other matter which the State Government may think fit to refer.*

xxx xxx xxx”

Section 19 authorizes the Board, with the previous sanction of the Government, to make regulations for carrying out the provisions of the Act .

In exercise of these powers, the Board has framed ‘The Board of School Education Haryana, Bhiwani (Employees Service Regulations), 1990’. Relevant provisions of which read:

“4.(f) ‘employee’ means a person appointed to any post under the administrative control of the Board ;

(g) ‘Establishment Committee’ means the committee constituted by the Board for each financial year consisting of the Chairman and two members of the Board for the purpose of these regulations; Definitions.

(h) ‘Government’ means the Government of Haryana in Education Department

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(k) “Service” means a service under the Board of School Education Haryana to which these regulations apply ;

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7. Persons appointed to a post in the service shall be entitled to such scales of pay including special pay, as may be sanctioned by the Board from time to time. The scales of pay and special pay at present in force in respect of specified posts are given in appendix-‘B’

On notice, the respondents have filed separate written

statements. On behalf of respondent No.1, it has been stated that vide instructions dated 16.1.1998 (Annexure R-1/1), it has been decided that revision of the pay scales of Boards/Corporations shall be considered by the Committee headed by Financial Commissioner-cum-Secretary, Finance Department. The Member Secretary had directed the respondent Board to send the pay revision case of the employees and the Board vide letter dated 8.5.1998 (Annexure R-1/3) recommended the case of its employees for revision of pay scales. The Finance Department vide letter dated 12.10.1998 (Annexure R-1/4) revised the pay scales of the employees of the Board including the categories of the petitioners i.e. Deputy Secretary were granted the pay scale of Rs.10000-13900 and Assistant Secretary were granted the pay scale of Rs.8000-13500. Further, the Board in its meeting held on 11.11.1998 (Annexure R-1/5) in item No.32 has approved the scale granted by the Government.

In the written statement filed by respondents No.2 to 4, it has been stated that the respondent Board has been established and constituted under Section 3 of the Act for regulation of School Education in the State of Haryana and as per the Act, the powers, objectives and functions have been given to the Board subject to the control of State Government. It is the case of these respondents that the overall control on the Board lies with the State Government and only the State Government is empowered to give pay scales to the employees. Regulation 7 has been misinterpreted by the petitioners since power of the Board to make regulations under Section 19 of the Act permits the Board only to have the terms and conditions of service of other officers

referred in Clause I(D) of Section 12 and Clause I(D) has to be read with sub-section 7 of Section 12. It is further submitted that the Board is only empowered to make terms and conditions at the time of appointment of such other employees and not make any terms and conditions or pay scale during the service tenure of such other employees at its own level and, moreover, the matter relates to pay revision of the scales, which is the prerogative of the State Government and that is why case of the revision of pay scales of Assistant Secretary and Deputy Secretary was sent by the Board to the Government, which further referred the matter to the Pay Revision Committee constituted by the Government vide order dated 16.1.1998, which rejected the case of the petitioners. However, it is admitted in the written statement that the Board is out of the purview of the Haryana Bureau of Public Enterprises, but it is stated that the revision of the pay scales of the petitioners were not considered by the Haryana Bureau of Public Enterprises and the same were considered by the Pay Revision Committee, which was constituted by the State Government for revision of pay scales of Board/ Corporation/ Companies/ Cooperative Institutions, etc. and Universities in Haryana including Government aided college, schools/colleges. It was the unanimous view of the Committee that the respondent Board should not be treated at par with either Kurukshetra University or Haryana Civil Secretariat.

I have heard Learned counsel for the parties and have gone through the paper-book.

The short issue raised herein is, whether the Act and the

Regulations governing the respondent - Board confer powers on the

Board to revise pay-scales of its officials without the concurrence of the Department of Education of the State of Haryana.

This question stands settled by various decisions of this Court interpreting these very provisions as also analogous provisions of different Acts constituting statutory Boards and Corporations.

In **RSA No.4737 of 2004** titled **State of Haryana and others vs. R.K.Garg and another**, decided on 13.02.2008 these very provisions were in issue.

In that case, the question to be adjudicated was framed as under:

“Whether the pay scale of the employees of Haryana Education Board would be governed by the recommendations made by the Pay Revision Committee constituted under Section 17 of the Act or the pay scale of the employees of the Board are to be governed by the decision taken by the Board?”

The contention of the State was that it had superintending and supervisory powers over the Board under Sections 16 and 17 of the Act, therefore, the Board has to adhere to the directions of the Government. On behalf of the employees it was argued that the Regulations do not provide for approval of decisions of the Board by the Government and that the pay-scales granted and revised by the Board cannot be interfered with in view of Regulations 5 and 7 of the Regulations. The Court held that the decision of the Pay Revision Committee was illegal, it being contrary to the Regulations :

“The defendant-appellant has not brought any material on the record to show that a Committee had been constituted with a reference on the issue involved in the present case under Section 17 of the Act

of 1969. In the absence of any such exercise of power, I fail to comprehend how the report of the Committee is being interpreted to have been given under the provisions of Section 17. Also, there is no material to show how the provisions of Regulations 5 and 7 are sought to be superseded by the Government during their existence.

In view of the above, I am of the opinion that the decision of the Pay Revision Committee is illegal as it is contrary to the Regulations, contrary to Annexure A-1 & P-14 dated 11.10.193. The issue was not referred to the Committee under the provisions of Section 17 of the Act of 1969.”

Another **RSA No.4738 of 2004** titled **State of Haryana and others vs. Paras Ram and another** involving identical issue was dismissed on 1.5.2008.

S.L.P.(C) No. 12698 of 2009 titled as State of Haryana and others Vs. R.K. Garg and another and SLP (C) No. 16526 of 2009 titled as State of Haryana and others Vs. Paras Ram filed by the State of Haryana against the aforesaid decisions were dismissed by the Hon'ble Supreme Court on 20.01.2012, though, the question of law was kept open.

In another case **Chander Prakash vs. Government of Haryana through Commissioner and Secretary to Government Haryana, Industries Department, Haryana, 2012(4) SCT 139**, wherein, broadly analogous provisions of the Punjab Khadi and Village Industries Board Act, 1955 and the Haryana Khadi & Village Industries Board Service Regulations, 1976 were under consideration, this Court observed:-

“5. There is another issue as well of whether the Government would be in a position to render invalid a decision of the Board to the disadvantage of an employee after a decision was taken by the Board and had given effect to it. A Board established under law cannot be treated as a department of Government to secure the concurrence of

*the State on every occasion. The width of power of a State to give direction must be seen through the relevant provision of enactment that has constituted the Board. I have not been shown through any special power reserved to the State to tinker with day-to-day activities of the Board or annul a decision taken by the Board other than when in the perception of the State, the Board was being mismanaged and when the power existed under law to dissolve the Board. The very purpose of constituting of the Board will be lost if it must be treated as a department of the State. This Court has had an occasion to deal with the extent of power that a State can exercise over the administrative decision of an autonomous Board in **Dharam Singh and others v. Punjab School Education Board, SAS Nagar, Mohali, District Ropar, Punjab, through its Secretary, and others in 2012(3) S.C.T. 325 : CWP No. 16452 of 2008, decided on 01.02.2012.** The Bench of this Court has held in **Punjab School Education Board Employees' Association, SAS Nagar, Mohali, District Ropar v. State of Punjab and others in CWP No. 11546 of 1993, decided on 09.02.2010** that a decision of a Board to give special allowance to its employees cannot be controlled by any decision to the contrary by the Government. This decision in turn relied on a Division Bench ruling in **Paramjit Kaur and others v. State of Punjab and others in CWP No. 11983 of 2001** which recognised the power of the Electricity Board to mind its affairs as regards the conditions of service without in any way being impeded by the directives of the State Government in its administrative functioning. I would hold, therefore that the impugned decision cannot stand judicial scrutiny for more than one reason, that even apart from the fact that a Board decision could not be invalidated by State instructions, it could not have been done also to the disadvantage of an employee after a promotion had been given on the basis of the educational qualification laid down by the Board. This educational qualification itself was stipulated and the promotion given with the approval from the State on 14.09.1989 and it was not competent for the State to issue instructions in violation of the sanction which had been given."*

Ld. Counsel for the respondents state that Regulation 7 of the 1990 Regulations has been deleted with effect from 12.3.2004 and now the powers of the Board for fixing the pay scales of its employees at its own level have been withdrawn. It is argued that RSA No.4737 of

2004 had been decided keeping in view the provisions contained in Regulation 7 and the same can have no application after its deletion.

In my view this argument cannot further the case of the respondents. Implicit in the argument is a recognition of the fact that prior to withdrawal of the Regulation 7, the Board had the power to fix the pay scales of its employees on its own without any reference to the government. The decision of the Board which is in issue in the present case, was taken much prior to the amendment deleting Regulation 7 which accordingly cannot have any effect thereon. Thus, this decision viewed in the light of the power conferred by Regulation 7 as then existing has to be held to be valid.

Accordingly, the petitions are allowed. The petitioners are held entitled to the pay-scales as recommended by the respondent – Board in its meeting dated 15.10.1993 (Annexure P-1) and the decision Annexure P-6 rejecting the same is held to be without authority of law and not binding on the respondent Board.

February 18, 2016

(HARINDER SINGH SIDHU)
JUDGE

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