

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

**C.W.P No. 5967 of 1994
Date of decision : 27.01.2016**

Jai Dev Beniwal & ors.

....Petitioners

versus

State of Haryana & anr.

..Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.N. Lohan, Advocate
for the petitioners.

Mr. Gaurav Goel, AAG, Haryana

Mr. Ajay Chauhan, Advocate
for respondent No. 2

1. To be referred to the Reporters or not? Yes
2. Whether the judgment should be reported in the Digest?

RITU BAHRI , J.

The present writ petition has been filed under Articles 226/227 of the Constitution of India seeking issuance of writ in the nature of mandamus directing respondents to grant the pay scale of Rs.1640-2900 to the petitioners (Foremen) equivalent to that foremen working in the Haryana Government w.e.f 01.05.1990 along with interest.

Petitioners are working in Haryana Land Reclamation and Development Corporation Ltd (for short respondent-Corporation)

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I attest to the accuracy and
integrity of this document

and are posted in various places in its branches. The respondent-Corporation is wholly owned and controlled by State of Haryana and thereafter, Haryana Government revised to pay give pay scale to its employees w.e.f 01.01.1986 and placed the foremen in the pay scale of Rs.1600-2660/-, which was further modified to Rs.1640-2900 w.e.f 01.05.1990, vide Haryana Government letter dated 23.08.1990 (P-1). Petitioners gave a representation dated 18.03.1991 (P-2) to respondent No 2 to release the scale of Rs.1640-2900 w.e.f 01.05.1990 to the petitioners. Thereafter, meeting of the Board of Director of respondent-Corporation was held on 16.09.1993, who approved the revision of pay scale of the Deputy Manager, Service Manager and Foremen in their meeting held on 29.07.1993. The pay scale of Rs. 1640-2900 was approved for foremen w.e.f 01.05.1990. But respondent No. 2 revised the pay scale of Service Engineer and Deputy Manager vide order dated 12.01.1994 (P-4) but the pay scale of foremen were not revised.

Petitioners again gave a representation dated 20.01.1994 (P-5) to respondent No. 2 requesting for revision of pay scale of the foremen to Rs.1640-2900, as the same scale is being paid in other Corporation/Board and in Haryana Government Department.

On notice a written statement has been filed on behalf of respondent No. 1 admitting that the petitioners are working as

Foremen in the respondent-Corporation and took a stand that the Board while revising the pay scale of the petitioners to Rs.1640-2900 w.e.f 01.05.1990 subject to the approval of Standing Committee on Public Enterprises duly constituted by Haryana Government vide notification dated 20.11.1989 (R-1) for creation of posts and grant of scale etc. Petitioners are seeking their equation of pay scale with that of Foremen working in the Transport department but the prayer of the petitioners was declined as there is difference between job reliability and responsibilities between the two. Due to closing of land levelling activities, respondent-Corporation has retrenched 91 employees and at present respondent-Corporation is having only one foremen namely J.D. Beniwal and other petitioners have been reverted as Mechanics. J.D. Beniwal is required to supervise only a fleet of sixteen tractors while a foremen in the State Transport Department is supervising maintenance and repair work of more than hundred buses and have to work under difficult conditions and constraints.

Learned counsel for the petitioner has placed reliance on the judgment passed by this Court in CWP No. 9262 of 2013, decided on 12.09.2013 titled as ***Pawan Kumar and others vs. Uttar Haryana Bijli Vitran Nigam Limited and another*** wherein petitioners were seeking quashing of order passed by State of Haryana rejecting the proposal of the Standing Committee on Public Enterprises without

jurisdiction. The writ petition was allowed by setting aside the impugned order and it was left open to the petitioners to seek implementation of the order of the Board of Directors and consequential reliefs in accordance with law as the financial burden is to be borne by none else but the Corporation itself. It was further left open to the Board of Directors to implement its decision w.e.f any date decided by the Board. The relevant portion of the judgment read as under:-

“In the present case as per Article 43 of the Articles of Association the Board of Directors is competent to revise the pay scales of its employees.

Clause 43 of the Articles of Association reads as follow: -

“Power of Directors 43. Without prejudice to the general powers conferred by the last preceding Article and so as not in any way to limit or restrict those powers, and without prejudice to the other subject to the restrictions contained in the last preceding Articles, it is hereby declared that the Directors shall have the following powers, that is to say, power: -

1	xxx	xxx	xxx
2	xxx	xxx	xxx
3	xxx	xxx	xxx

4	xxx	xxx	xxx
5	xxx	xxx	xxx
6	xxx	xxx	xxx
7	xxx	xxx	xxx
8	xxx	xxx	xxx
9	xxx	xxx	xxx
10	xxx	xxx	xxx
11	xxx	xxx	xxx
12	xxx	xxx	xxx
13	xxx	xxx	xxx

14 To appoint, and at their discretion remove or suspend such General Managers, manager, Secretaries, Assistants, Supervisors, Scientists, Technicians, Engineers, Consultants, Legal, Medical or Economic Advisers, Research Workers, Labourers, Clerks, agents and Servants for payment, temporary or special services as they may from time to time think fit, and to determine their powers and duties and fix their salaries, or emoluments or remuneration's and to acquire security in such instances and to such amounts as they may think fit.”

The Board of Directors in view of above said article is competent to fix the salaries or emoluments or remuneration of its

employees. Following the judgment in cases of Deva Singh (supra) and Surjit Singh (supra), I am of the considered opinion that the Board of Directors can take decision for grant of higher pay scales to the petitioners as mentioned in Annexure P8. It is also not out of place to observe here that pay scales had earlier been enhanced by the Board of Directors without the approval of Haryana Bureau of Public Enterprises in the case of other employees which is apparent from the following instances:

(i) UHBVNL enhanced the pay scale of Rs.5000- 8000 to Rs.5450- 8000 vide order No.7/Finance Dated 20.2.2004, without seeking approval of the HBPE.

(ii) UHBVNL revised the ACP pay scales of its employees for all the categories vide office Order No.8/Finance Dated 20.2.2004. These ACP pay scales were higher than that of the State Govt. employees. The approval of HBPE was not sought.

(iii) The UHBVNL revised the pay scale for the post of Private Secretary in UHBVN and circulated vide O/O No.74/Finance/UH-111 dated 18.3.2008 without the approval of the HBPE.

(iv) Erstwhile HSEB was granting local outdoor duty allowance/transport allowance to its employees @ Rs.150/- and Rs.400/-. After formation of UHBVNL the rate has been enhanced/doubled vide office order No.22/Finance Dated

6.7.2006. No approval of HBPE was sought. The information was also supplied under the RTI Act that no approval of HBPE was taken before granting the said benefit.

(v) UHBVNL granted Time Scale to the post of Company Secretary vide office Order No.178/UH/GA-382 dated 16.6.2005 without seeking approval of the HBPE and the said decision has already been implemented since June 2005.

(vi) UHBVNL has granted time scale to the post of System Analyst vide order No.11/FA/Hq/F&B/UH dated 9.4.2013. No time scale for the post of System Analyst is there in the State Govt. No approval of HBPE was sought for granting time scale for the post of System Analyst in UHBVNL.

(vii) HPGCL issued orders for grant of entry level pay to the Engineers in spite of the rejection of the proposal by the HBPE.”

Thereafter Nigam filed LPA No.383 of 2014 titled as “Uttar Haryana Bijli Vitran Nigam Limited and another Vs. Pawan Kumar and others” decided on 18.02.2015, which was dismissed and it was held that the decision of the Board of Directors would be final and the Haryana Bureau of Public Enterprises would have no jurisdiction to interfere therewith.

Further SLP filed against an order passed by a Single Bench of this Court and Division Bench of this Court, has also been dismissed

on 14.08.2015, vide SLP No. 21263/2015.

Learned counsel for the respondents has not been able to cite any judgment contrary to the above judgment.

In the present case, once the Board of Directors in its meeting held on 29.07.1993 given the pay scale of Rs. 1640-2900 for foremen w.e.f 01.05.1990, the Haryana Bureau of Public Enterprises has no jurisdiction to interfere therewith.

Thus, the ratio of the above mentioned judgment is directly applicable to the facts of the present case.

Accordingly, the present writ petition is allowed and order dated 16.09.1993 (P-3) is set aside to the extent that the revision of pay scale shall be subject to the approval of Standing Committee on Public Enterprises duly constituted by Haryana Government.

It is left open to the petitioners to seek implementation of the order of the Board of Directors and consequential reliefs in accordance with law as the financial burden is to be borne by none else but the Corporation itself.

(RITU BAHRI)
JUDGE

27.01.2016

G Arora