IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.4131 of 1995
Date of Decision: 13.07.2016

Sarvjit and others ... Petitioners

Versus

The State of Haryana and others ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.K. Malik, Sr. Advocate,
with Mr. Samrat Malik, Advocate,
for the petitioners.

Ms. Shruti Jain Goel, AAG, Haryana.

Mr. Som Nath Saini, Advocate,
for respondent No.3.

Mr. Gaurav Singla, Advocate,
for Mr. Ashok Aggarwal, Advocate,
for respondent No.5.

RAJIV NARAIN RAINA, J.

1. Paragraphs 2 to 17 of this order deal with facts and events as they stood till the pleadings were completed in the late '90s. In paragraph 18 and 20 lies the ironical twist to the tale. For the present, I would confine to the case history and the facts asserted and refuted by the parties as are thought essential to the understanding of the respective stands, as they unfolded till the admission of the matter. Without them the judgment would not be complete rendition of the grievances of the petitioners and how the

relief was sought and how it came in substantial measure at the end.

2. The petitioners are low paid employees. They are Class IV Chowkidars, Malis, Sweepers etc., except petitioner No.24 who works as a Clerk in Class-III service of the respondent management-Board of Trustees/Society which runs two Orphanages described as Haryana Rajya Bal Bhavan, Madhuban, Karnal and the Bal Gram, Rai. These orphanages were run by the Board of Trustees appointed by the State Government and its officers in Government service to be the ex officio trustees holding superior positions under the State. According to the petitioners in their case stated, these orphanages are maintained from grant-in-aid given by the State Government to meet the expenditure and maintenance of the two institutions under one umbrella. The petitioners belong to the maintenance wing. They assert they were in receipt of regular scales of pay and allowances including benefit of gratuity and leave encashment as well as membership of Contributory Provident Fund (CPF) scheme. The Board of Trustees all of a sudden decided to stop contributions towards CPF w.e.f. January 01, 1995 leaving the petitioners without pension and provident fund rights for which they have no other protection scheme. Similarly, regular pay scales have been converted and consolidated w.e.f. January 01, 1995 by the same decision of the Board of Trustees.

3. The petitioners' case is that the decision was taken by the Standing Committee of the management whereas the regular pay scales were allowed previously by the Board of Trustees. They stake claim to regular pay scales and continuance of the CPF scheme so that at the time of superannuation they have something to fall back on. Hence, the writ

petition.

4. The 3rd respondent- Board of Trustees have contested the petition by putting in reply through its Secretary. It is there objection that the Board of Trustees is not amenable to writ jurisdiction as it does not fall within the ambit of Article 12 of the Constitution of India. The management of the 3rd respondent is neither State nor an instrumentality or agency of State or a public authority exercising statutory powers and is not established under any statute and bears no statutory character. The Trust was registered under the Societies Registration Act in the year 1957 and is governed by its own Articles and Memorandum of Association. The main object of the Trust is to run the two above named charitable institutions which look after orphans and destitute children. The funds of the Trust are raised by donations received from voluntary organizations and other institutions either in cash or in kind. The management earns some money from usufruct of land donated to the Society by a prominent retired ICS officer. The State Government is under no statutory obligation which binds it to provide grant. The State only provides aid like it provides to other voluntary organizations including the Red Cross Society and the Child Welfare Council. The State Government has no financial stake in the two institutions run by an autonomous body. The Society applies every year to the State Government for providing some financial assistance to it in the manner other charitable institutions do and it is on an application made that Government provides some aid in amounts which vary from year to year. For instance to raise resources, the Trust had prior to the filing of the petition in 1995 sold trees felled, numbering 14645, located on the land of the Trust falling in Village

Jagdauli, District Yamunanagar. On these premises, the objection is maintained that the Society is not amenable to writ jurisdiction since the State Government does not exercise deep and pervasive control over the administration/finance or functions of the Society and no statutory obligations are imposed on it and its institutions are voluntary in character set up for charitable purposes. There are no statutory service rules or regulations governing the affairs of the Society or the service conditions of the few employees engaged by it. The Bal Gram at Rai, Sonipat was established on the pattern of SOS Children's Villages which follows an internationally recognized structure under which about ten children are placed under the care of a House Mother. The Bal Gram, Rai is no different from many such similar privately run villages established all over the world. It runs on the generosity of society who sponsor children to read in nearby Model Schools. The tuitions as well as special coaching are also arranged through voluntary efforts with minimum expenditure to improve the standards of education to orphans and destitute children to make them employable.

5. The answering respondent society has controverted the assertion of the petitioners in their reply refuting that they were appointed in the scale of, in principle, ₹ 750-940 except petitioner No.24. A table has been inserted in para.3 of their written statement which incorporates the dates of appointment and the salary/pay scale admissible at the time of appointment of the 15 petitioners, all of whom were placed on consolidated salary except one Balwan, Sweeper appointed on December 01, 1988 in the pay scale of ₹ 750-940/- + 65 Special Pay whereas the some of the

employees of Bal Bhawan, Madhuban at Karnal from Sr. Nos.16 to 23 were appointed in the pay scales: ₹ 30-1/2-35, 70-2-80/3-95, 300-5-360/8-400/10-480 and 750-940 respectively while Smt. Kamlesh, Clerk at Sr. No.24 was appointed in Balgram, Rai, Sonipat on September 18, 1986 in the pay scale of ₹ 400-660/-. However, the House Mothers [non-petitioners] were granted regular scale of pay of ₹ 750-940 w.e.f. April 01, 1991 as per the decision of the Standing Committee taken in its meeting held on March 19, 1991. The management admits that proposal for allowing Contributory Provident Fund [CPF] to the employees was approved by the Standing Committee in its meeting held on July 12, 1989 w.e.f. October 01, 1986 but no decision was taken in principle to provide benefit of gratuity and leave encashment. Nevertheless, the benefit was given to one Pan Singh, Cook keeping in view the services rendered by him and his financial position which was within the discretion of the Standing Committee. [This appears to the me be a decision based on sympathetic considerations and compassion]. The management further avers that Government of India is made party respondent even though it does not provide any help to the answering respondents for the running of its welfare activities and thus an impression should not go by mere impleadment that Union of India exercises any control over the functioning of the Society. Similarly, the respondent Central Provident Fund Commissioner, Haryana, Chandigarh has no authority to intervene in the affairs of voluntary and charitable institutions. The CPF scheme was introduced by the answering respondent at its own level and no prior permission or sanction was received from the Commissioner - 5th respondent which authority has been unnecessarily dragged in the present petition and no relief could possibly be claimed by the petitioners against the organization.

6. The departure came and trouble fomented when the Board of Trustees had to abruptly discontinue the CPF scheme w.e.f. January 01, 1995 keeping in view the weak financial position faced by the answering respondent. It was no longer in position to contribute an amount of ₹ 3300/- approximately every month keeping in view its financial status. If the scheme was not discontinued then the very purpose of the Society to look after orphan and destitute children would have been defeated by draining out its meagre resources and money the Society was able to raise and had the scheme continued no money would have been left in its coffers to look after the children. The answering respondent says that it pays its employees to the maximum it can afford keeping in view its limited resources and the voluntary spirit for which both the institutions are run, which services cannot be treated at par for the petitioners to stake a legal claim equal to the employees of the State Government. The petitioners are not employees of the State Government and it is contended that Articles 39, 45 & 46 of the Constitution of India are not applicable to the case on the facts presented by the answering respondents. The Standing Committee reviewed the financial position of the Society in its meeting held on August 19, 1993 for the year March 31, 1993 and budget estimate for the year 1993-94. It was observed in the minutes that financial discipline and strict control over the expenditure is required to be exercised to handle the weak financial position of the answering respondent. In the meeting, it was decided to take immediate measures to reduce the expenditure on establishment. It was

decided that all the sanctioned posts in regular scale and other benefits at par with State Government be abolished and as per requirement the posts be filled up on a consolidated salary. However, the Committee decided to protect the existing salary of the serving employees. As a part of other remedial measures taken to improve the financial position a special drive was started to raise funds.

7. In these special circumstances, the Court is called upon to make a decision whether it can direct continuance of CPF scheme and enhanced pay on the lines of Government keeping in view the nature of the activity of providing succour to orphan and destitute children brought up in the two orphanages. The answering respondents may not be wrong when they assert that provisions of Payment of Gratuity Act, 1972 ("1972 Act") are not applicable to the answering respondent since charitable activity does not fall within the ambit of sub-section (3) of section 1 of the 1972 Act. The activity neither falls within the meaning of the word "establishment" and the Central Government has not notified orphanages to fall under the 1972 Act and, therefore, the assertion of the petitioners in para.11 of the petition that they are entitled to gratuity is wholly misconceived.

8. The Regional Provident Fund Commissioner has filed a short reply dated October 07, 1995. The Commissioner recognizes that the main activity of the institution is to shelter destitute children. Education is being provided to the children in State Government run institution/schools. In the past, the institution provided industrial training to the children for a few years which were later stopped. The Commissioner is non-committal on the applicability of the 1972 Act and states that the possibility to cover the

institution is under active examination. This was the position at the time of completion of pleadings. More on this would come later in the course of the order since the position changed during the pendency of the petition instituted two decades ago in 1995.

9. The State of Haryana has filed a separate written statement. It is admitted therein by deposing officer that financial assistance is granted to the Board of Trustees for the welfare of destitute and orphan children under the "Scheme of Children in Need of Care and Protection and grant-in-aid Scheme under Child Welfare" but it is only after receipt of application in the prescribed form that case of grant of funds is processed. The grant-in-aid is being provided out of yearly budget sanctioned and for the scheme as per Directorate of Social Welfare Punjab notification No.959-3SW-61/4563, dated 20th July, 1961 (Annex R-1), after considering the case on merit. The grant-in-aid given to this institution varies from year to year keeping in view the Budget position available with the department.

10. The petitioners have filed replication in which many important and new facts have been stated. They submit that previously the State Orphanage Advisory Board (SOAB) was constituted by notification issued in Joint Punjab dated September 14, 1956 to look after the State Orphanage at Madhuban, Karnal. The membership of the Board comprised the Chief Minister, Punjab; Planning & Development Commissioner, Punjab; Commissioner, Ambala Division; DPI; Director of Industries and the Director of Social Welfare, Punjab.

11. Thereafter, vide another notification dated February 06, 1958 constituted the SOAB, Punjab consisting of the Minister for Planning &

Social Welfare, Punjab, the Deputy Minister, Health & Social Welfare, Punjab and six other senior officers of the Punjab Government and six well-known personalities as its members. The regulations of the SOAB provided that no amendment in the rule shall be made without prior approval of the State Government. It is, thus, evident that for all intents and purposes, the Board was funded by the State Government and membership of the Board was by majority drawn from Government and its officers. The institution brought under the supervision of the Director, Social Welfare, Punjab.

12. Sh. R.P. Kapoor, ICS (Retd), one of the members of the Advisory Board, who had donated the land and provided funds initially filed a civil suit in the Courts at Karnal in which he sought the relief praying that the old Board of Orphanage be dissolved and new Board of Trustees constituted to administer the State Orphanages at Madhuban and the property of the State Orphanage should rest with the new Board. Ultimately, the matter came up before this Court in RFA No.405 of 1976 titled R.P. Kapoor v. Collector, Karnal and this Court held that State Orphanage is a Public Trust created for charitable purposes with the Advisory Board as its governing body registered under the Registration of Societies Act, 1860 ("1860 Act"). Thenceforth, the Board of Trustees comprised 11 members including The Hon'ble Chief Minister, Haryana as the Chairman and ten other members of whom only one was a private person i.e. Sh. R.P. Kapoor, ICS (Retired), the founder of the Orphanage.

13. On these premises, the petitioners submit that the two institutions run by the Society are by way of Public Trust performing public and social duty under the deep and pervasive control of the Government

and, therefore, qualifies as 'State' within the meaning of Article 12 of the COI and is thus amenable to writ jurisdiction of this Court. They place reliance on the decision of SCI in Ajay Hasia v. Khalid Mujib Saravardi and others, (1981) 1 SCC 722 holding that society registered under the 1860 Act or any other statute, would be an instrumentality or agency within the meaning of Article 12 since the State exercises deep and pervasive control over its functioning and provides funds from its treasury. Even the State admits of the presence of "Rules Governing Grant-in-aid by the Social Welfare Department, Punjab to Voluntary Welfare Organizations" vide notification dated July 20, 1961 at Annex R-1 although the scheme is partially run on applications made in prescribed form addressed to the Government for consideration. Still further, the petitioners refer to SCI ruling in Sheela Barse v. The Secretary, Children Aid Society and others, AIR 1987 SC 656 holding that the Children Aid Society set up to look after destitute children and registered under the Registration of Societies Act is a Public Trust which when run on grant from State Government would qualify to be a 'State' within the meaning of Article 12 of the COI and an instrumentality of the State and within the purview of Article 226 of the COI. They submit that the case of Board of Trustees is identical and similar to the case which fell for consideration before the Supreme Court. The decision buttresses their assertion that the Board of Trustees is amenable to writ jurisdiction.

14. The petitioners also rely on notification dated January 27, 1971 issued by the Government of Haryana in the Home Department which provides measures as under:-

> *"The Governor of Haryana, in exercise of the powers conferred by Section 93 of Civil Procedure Code, 109, hereby appoints the Collector of the Karnal District to exercise the powers conferred on the Advocate General by sections 91 and 92 of the Civil Procedure Code for the purpose of filing a civil suit in respect of the affairs of the institution commonly known as State Orphanage, Madhuban (Karnal), managed by the State Orphanage Advisory Board, Punjab, Chandigarh.*
>
> *Sd/- Secretary to Govt., Haryana*
> *Home Department"*

15. Even for this reason, it is urged the writ is maintainable when it confers power on the Collector, Karnal District to exercise powers conferred on the Advocate General by Sections 91 and 92 of the CPC for the purpose of filing a civil suit in respect of the affairs of the State Orphanage, Madhuban, Karnal managed by the SOAB of which Sh. R.P. Kapoor, ICS (retired) was the founder member of the Orphange and donated his personal property to the Trust.

16. The petitioners have demonstrated in the replication the financial position of the society for the years 1992-93, 1993-94 and 1994-95 of grants and utilization of funds for Bal Bhavan Madhuban and Bal Gram at Rai, Sonipat that there were surplus unspent funds amounting to ₹ 3,83,000/-, ₹ 7,10,000 and ₹ 5,30,000/- respectively. Out of unspent funds the grant-in-aid obviously was sanctioned on lower amounts as a necessary consequence of non-utilization of substantial moneys over the years.

17. The petitioners would rely on authority of the Supreme Court in <u>Consumer Education & Research Centre v. Union of India</u>, AIR 1995 SC 922 holding that workmen have a right to live meaningful, dignified and decent lives while in service and after retirement and the State is obliged to

provide facilities towards minimum standards of health, economic security and civilized living to assure life to be meaningful. For these reasons, the petitioners assert that they are entitled to receive after having toiled long years of service to minimum guarantees of pensionary benefits by allowing CPF as was being done previously. They say that the Society/Board of Trustees in their written statement have incorrectly stated that Government does not provide funds finalized through budgetary proposals which include expenditure on account of dearness allowance and other benefits. They refer to the written statement of the Provident Fund Commissioner, Karnal who has stated in his short reply that applicability of the 1972 Act is not ruled out but is under active consideration. The dis-continuation of CPF scheme is against all canons of justice and is unjust and inequitable action of the management. It is also not that employees were never granted pay scales, as many of them were, while others not and there is arbitrariness written large in the matter of providing running pay scales and in reducing the petitioners whimsically to consolidated salary without any real justification. The decision to abolish the posts and ordering them to be filled on consolidated salary was not a fair thing to do, to sacrifice the interests of the petitioners on the altar of financial discipline which has left the petitioners high and dry. After all, funds have remained unutilized. The impugned decision is castigated as arbitrary and based on extraneous considerations and deserves to be quashed. Even the Haryana State Council for Child Welfare, Chandigarh is dependent on grant-in-aid from the Government although it is a society established under the 1860 Act. Council gives benefits to its employees like DA, TA, pay scales and pensionary benefits. There is no reason why the same pattern should not be adopted for the present institution. They rely on letter dated June 25, 1995 at Annex P-7 with the replication. They reiterate that the respondents are under legal obligation to pay gratuity to the employees of the institution for long and good service. The above was the position so far as the Regional Provident Fund Commissioner, Karnal was concerned till the replies were received on file many years ago.

The Supervening Facts

18. Presently, the tectonic plates of the case have shifted when major supervening events have transpired during the pendency of the petition altering the very fabric of the case leaning it heavily in favour of the petitioners. To start with, the Regional Provident Fund Commissioner, Karnal vide order dated October 14, 1999 has held that the Bal Gram Rai, Sonipat including all its branches is an "establishment" covered under the Schedule Head "Educational Institute" and is covered by the provisions of the Employees Provident Fund & Miscellaneous Provisions Act, 1952. The right to contributory provident fund is established beyond doubt. The date of coverage has been held to be active since April 20, 1991 subject to further verification of record to decide the exact date of coverage as per Section 16(1) (d) of the 1952 Act. The State department concerned has been directed to initiate all necessary action to recover dues from the society as per provisions of the 1952 Act. Even the Standing Committee of the Haryana Rajya Bal Bhawan, Madhuban (Karnal) and Bal Gram, Rai (Sonipat) in its meeting held on November 16, 2005 decided to grant regular pay scales to the employees of the two voluntary organizations headed by

his Excellency the Governor of Haryana on the pattern of Red Cross Society & Child Welfare Council as against the regular employees of the Board of Trustees w.e.f. December 01, 2005. The decision was taken and exhibits social responsibility, though it came late for no fault of the petitioners. It may be noted that the Government of India has already sanctioned grants for considering both the institutions as State Government run institutes bringing them under the purview of The Integrated Child Protection Scheme (ICPS) which is centrally sponsored. This decision was taken in the meeting of the State Advisory Board constituted under the Juvenile Justice (Care & Protection of Children) Act, 2000 held on February 06, 2013 under the Chairmanship of Minister-in-Charge of Women and Child Development, Government of Haryana with a proposal that the two State Orphanages at Karnal and Sonipat be declared as Government institutions. Finally, the Haryana Government in the Women & Child Development Department has issued notification dated August 06, 2015 (P-12) declaring them as Government institutions and falling within the structure of the Juvenile Justice (Care & Protection of Children), Act, 2000 as amended in 2006.

19. In view of these crucial turn of events, relief prayed for has broadly come to the petitioners with the crucial declaration by State Government that the two orphanages are 'Government institutions'. No doubt, the rest will follow in pecuniary and non-pecuniary ways. Accordingly, the original prayer for issuing a mandamus directing the respondents to continue to give the benefit of Contributory Provident Fund which was stopped and regular scales of pay and allowances at par with Haryana Government employees is no longer required to be issued and to

that extent the petition is disposed of as largely infructuous. Also no specific directions are presently required to be issued with respect to Contributory Provident Fund in view of the declarations already made by the Regional Provident Fund Commissioner, Karnal in his order dated October 14, 1999 placed on record by the petitioners and the Government. It will now be a matter between the Board of Trustees, the State Government and the Regional Provident Fund Commissioner, Karnal to take decisions on past accumulations of contributions towards the Fund and to take final calls in denouement, if not already taken, to consider converting the petitioners to the CPF/Pension Scheme in view of the declaration of status of Government institution on August 06, 2015.

20. Necessary and consequential decisions may be taken tripartite by the three stakeholders i.e. the State Government, the Board of Trustees and the Regional Provident Fund Commissioner, Karnal, the fourth being the petitioners and similarly-placed persons, to bring the desired relief to the petitioners etc. in the current prevailing circumstances obtaining as a result of supervening events transpiring after the filing of the petition in 1995. The decisions if not already taken on past dues, which have become available to the petitioners as their legitimate dues, be determined and finalized within reasonable time of say 3 to 4 months from receipt of certified copy of order and the resulting benefits as have become available may be handed over accordingly to the quarters concerned. Still, if any grievance remains unresolved after the exercise is completed, the petitioners would be at liberty to approach court for directions in accordance with law.

21. Disposed of with the directions issued as above in tune with the changed circumstances.

(RAJIV NARAIN RAINA)
JUDGE

13.07.2016
manju

Whether speaking/reasoned Yes/No

Whether reportable Yes/No