IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.3969 of 2012
Date of decision: 08.07.2016

Ram Pal and others

...**Petitioners**

versus

Haryana Rural Development Fund Administration Board and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.K. Malik, Senior Advocate,
with Mr. Tejpal Singh Dhull, Advocate,
for petitioner Nos.1, 6, 7, 9, 10, 11, 12, 13, 14, 15, 17, 20, 21, 23, 24 and 25.

Mr. Sanjeev Man Rai, Senior Advocate,
with Mr.Vikas Bishnoi, Advocate,
for petitioner Nos.2, 3, 4, 5, 8, 18, 19, 22 and 26.

Mr. D.s. Nalwa, Advocate,
for respondent Nos. 1 and 4.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

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RITU BAHRI , J.

The petitioners are seeking quashing of the orders dated 24.08.2009, 18.02.2010 and 07.10.2011 (Annexure P-6, P-8 & P-10), vide which, Haryana Rural Development Fund Administration Board-respondent No.1 has been restrained to implement the decision taken by the Board of Directors in its meeting held on 15.01.2003 for implementation of Pension Scheme to its employees at par with Haryana Government employees.

Haryana Rural Development Fund Administration Board was constituted by the Government of Haryana under Section 3 of the Haryana Rural Development Act, 1986 (for short 'the Act'). For reference, Section 3

(1) (2) and (3) of the Act are reproduced as under:-

> "3 (1) The State Government shall for exercising powers conferred on and performing the functions and duties assigned to the Board by or under this Act, establish and constitute the Haryana Rural Development Fund Administration Board.
>
> (2) The Board constituted and established by the State Government in terms of Sub Section (1) shall consist of a Chairman and such other official and non-official member as the Government may determine and appoint.
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> (3) The Board so constituted shall be a Body Corporate having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire and hold property and shall by the said name sue and be sued."

The petitioners were appointed on regular basis in the Haryana Rural Development Fund Administration Board on 29.01.1988, 02.07.2002, 31.03.1992, 23.12.1987, 18.12.1990, 24.08.1995, 18.01.1993, 14.04.1993, 19.02.1988, 01.06.1992, 08.02.1993, 28.05.1992, 29.05.1992, 12.01.1993, 19.01.1993, 18.01.1993, 13.03.1996, 15.03.1996, 02.04.1996, 04.09.1992, 29.03.1996, 08.02.1992, 02.09.2005, 28.04.1993, 10.01.2005, 27.02.1998, 02.05.1995, 24.01.2003, 04.07.2005 and 23.03.2001 respectively and are continuing in service. As per Section 4 of the aforesaid Act, the Board is competent to prescribe the service conditions, function and duties of the officers and servants of the Board. Sections 4 of the Act is reproduced as under:-

> "4. Officers & Servants of Board:-
>
> (1) The Board may with the prior approval of the State Government create such posts and appointment of officers and servants thereto as it may consider necessary for the efficient discharge of its duties.
>
> (2) The conditions of service, functions and duties of the officers and servants of the Board shall be such as maybe prescribed."

Section 6 (1) of the Act provides for the constitution of Rural Development Fund in the following manner:-

"There shall be constituted a fund called the Haryana Rural

Development Fund which shall vest in the Board."

The petitioners were appointed by the Board. One of the appointment letter has been annexed as Annexure P-1. The Board of Directors in its meeting dated 15.01.2003 (Annexure P-2) had decided to grant the benefit of pension and other facilities, which are admissible to Haryana Government employees. However, this decision was not implemented. Thereafter, the employees made a number of representations (Annexures P-3 to P-5) to the Managing Director to implement the pension scheme as per the decision dated 15.01.2003 (Annexure P-2). Vide letter dated 24.08.2009 (Annexure P-6), Haryana Bureau of Public Enterprises informed the Managing Director that w.e.f. 01.01.2006, the Haryana Government has adopted the New Pension Scheme and Old Pension Scheme could not be implemented. A request (Annexure P-7) was again sent to the Haryana Bureau of Public Enterprises that since the decision had been taken way back on 15.01.2003 and at that time the Old Pension Scheme of 1992 was in force for the employees of the Haryana Government, therefore, the said scheme may be allowed to be implemented for the employees of the Board. However, this request was again declined vide letter dated 18.02.2010 (Annexure P-8). Finally, vide letter dated 07.10.2011 (Annexure P-10), the Board was advised not to refer the matter again and further directed that Old Pension Scheme cannot be implemented for the employees of the Board.

Mr. Malik has argued that as per Section 4 of the Act, the Board with prior approval of the State Government, is competent to create posts and appoint officers and servants. However, the service conditions, functions and duties of the officers are to be regulated by the Board. He has referred to the appointment letter (Annexure P-1), wherein one of the conditions is that the petitioner(s) were to be governed by the Rules as applicable to Haryana Government employees till such time the rules are adopted by the Board.

Upon notice, written statement on behalf of respondent Nos. 1 and 4 has been filed, wherein it has been admitted that the petitioners are employees of the Haryana Rural Development Fund Administration Board. It has been further stated that the Board has been established under Section 3 of the Act. As per Section 4, the Board with prior approval of the State Government, can create posts and appoint officers and servants. The service conditions of the officers and servants of the Board shall be such as may be prescribed. The meaning of word 'prescribed' is given in definition (f), which is as under:-

> "(f) "prescribed" means prescribed by rules made under this Act."

Further, as per Section 8 of the Act, it is the State Government, which may make rules to carry into effect the purposes of this Act. It has been further stated that the State of Haryana had issued instructions dated 26.06.1992 (Annexure R-1) for introduction of pension scheme in lieu of Contributory Provident Fund in Boards and Corporations. As per these instructions, the Government had decided that the Boards and Corporations may introduce Pension Scheme as per Pension Rules of Haryana Government and instructions issued from time to time in lieu of Contributory Provident Fund w.e.f. 01.06.1992. There was a further provision that the employees of the Boards and Corporations would exercise their option within three months. In the Board, there was no provision of

Contributory Provident Fund and the instructions issued by the State Government on 26.06.1992 are not applicable to the employees of the respondent-Board. These instructions are applicable only to those Boards and Corporations, which are having the provisions of Contributory Provident Fund. It has been further stated that the Haryana Government had introduced New Pension Scheme on 04.12.2008 (Annexure R-2). As per this scheme, an employee is required to make a contribution of 10% of his pay. The said scheme was introduced in State Public Enterprises vide letter dated 18.03.2009 (Annexure R-3). The scheme further provides that all the State Public Enterprises and Autonomous Organizations funded by the State Government, which have already adopted the Pension Scheme as per the Pension Rules of the Haryana Government, had to switch over to the New Pension Scheme circulated by the Government vide letter dated 04.12.2008 for the employees joining the Organizations on or after 01.01.2006. Since the respondent-Board had not adopted the pension scheme as per the pension rules of the Haryana Government, therefore, the petitioners are not entitled for grant of any benefit of pension as per the New Pension Scheme.

A short reply has been filed by the Additional Director, Panchayats on behalf of respondent No.3, wherein the stand taken by respondent Nos. 1 and 4 has been reiterated.

Learned counsel for the petitioners has placed on record the information received from the Haryana Vidyut Prasaran Nigam Ltd. under the Right to Information Act, 2005, to show that the Nigam has granted the benefit of Pension Scheme to the work-charge/contractual employees, who are in service prior to 01.01.2006. Annexure P-13 is the information received from the Haryana Urban Development Authority to the effect that the work-charge/contractual/daily wages staff working in HUDA were covered under the Pension Scheme w.e.f. 22.10.2001. As per the decision dated 30.03.2000 (Annexure P-15) taken by the Haryana Urban Development Authority, employees who were covered under EPF/CPF have been converted into the Pension Scheme. The respondents cannot take a stand that since the petitioners were members of the CPF, they cannot be extended the benefit of Pension Rules, 1992. The petitioners have further placed on record a letter dated 21.08.2002 (Annexure P-17), whereby option was sought from the employees to opt for Pension Scheme in lieu of EPF Scheme. After taking their option, the decision dated 15.01.2003 (Annexure P-2) was taken. Thereafter, in compliance of the order dated 24.03.2014, an affidavit dated 21.04.2014 was filed by the Managing Director, Haryana Rural Development Fund Administration Board, explaining that the Haryana Rural Development Fund Administration Board was constituted and established in the year 1987 under the provisions of Haryana Rural Development Act, 1986 and its Rules of 1987. As per sub section 8 of Section 3 of the Act, the Government would 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 its guilty of corruption or mismanagement, it may suspend the Board and, till such time as a new Board is constructed, make such arrangements for the exercise of the functions of the Board as it may think fit. After suspending the Board, it is to be constituted within six months from the date of suspension. The Gratuityof the officers and servants of the Board is being implemented through the Life Insurance Corporation of India Limited, therefore, the pension scheme, if allowed, will be implemented through the same Corporation. The financial liability in respect of pension has been got assessed from the Life Insurance Corporation of India Limited. Further, as per assessment (Annexure R/1) given by the Life Insurance Corporation of India Limited, if the pension scheme is implemented w.e.f. 01.04.1992, the 'past' liability will be of Rs.3.01 cr and in future the annual liability will be of Rs.4.90 lac. It has been further stated that no financial assistance is required from the Government for implementation of pension scheme. No grant or financial assistance is being provided by the Government to the Board. The rural development fee collected by the Board under Section 5 of the Act was the only source of income of the Board. Hence, the financial liability in implementing the pension scheme will be of Board and not of the Government. When the matter was referred to the Government, the HBPE (FD)-respondent No.4, vide letter dated 24.08.2009 (Annexure P-6), advised that the Board cannot implement the Old Pension Scheme of 1992 because the Scheme applicable to the employees of the State Government had already been discontinued w.e.f. 01.01.2006.

After perusing the aforesaid affidavit filed by the Managing Director, Haryana Rural Development Fund Administration, Board, it stands clarified that no grant of financial assistance is being provided by the Government to the Board. The only source of income of the Board is the fee which is being collected by the Board under Section 5 of the Act. As far as the Pension Scheme is concerned, since the Gratuity of the officers of the Board is being implemented through the Life Insurance Corporation of India Limited, the financial liability in respect of pension has been got assessed from the same Corporation vide Annexure R-1.

The question for consideration would be, "whether the Board was required to take approval from the Government and Haryana Bureau of Public Enterprises for implementing the Old Pension Scheme of 1992 to the employees after taking their option and passing of the resolution in its meeting held on 15.01.2003 (Annexure P-2)."

A reference can now be made to a judgment passed in ***Pawan Kumar and others Vs. Uttar Haryana Bijli Vitran Nigam Limited,*** 2014 (2) PLR 209, wherein a Co-ordinate Bench of this Court had examined the competence of the Nigam to fix salaries/emoluments or remuneration of its employees. In that case, all the Managing Directors of Haryana Power Corporations had constituted a Coordination Committee to consider the proposal of pay revision of its employees. The Committee recommended that the pay scales of Finance, Audit & Accounts Officers should be at par with those in the Engineering. The post of Accounts Officer was higher than that of Assistant Engineer and this difference would continue. The recommendations of the Committee were put up before the Board of Directors, which had approved the recommendations and sent the case to the Government and Bureau of Public Enterprises. The Government sent the case back to the company to consider the financial position of the power companies. The company again sent the proposal, which was declined by the Government. The writ petition was allowed and it was held that the Board of Directors, as per Clause 43 of the Articles of Association, was competent to revise the pay scales of its employees. Even on earlier occasion, the pay scales had been enhanced by the Board of Directors without approval of the Haryana Bureau of Public Enterprises. Against the said judgment, Uttar Haryana Bijli Vitran Nigam Ltd. had filed LPA No.383

of 2014, which was dismissed by a Division Bench of this Court vide order dated 18.02.2015. While dismissing the LPA, it was observed as under:-

> "12. A learned Single Judge of this Court by a judgment dated 26.11.2010 passed in Civil Writ Petition No.5993 of 1990, ***Deva Singh and others Vs. State of Haryana and others,*** held that:-
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> > "**24**. It is held that the 3rd respondent is the sole authority to take a decision as to the revision of pay of its employees. In the guise of an instruction with respect to the policy decision, the 1st respondent cannot issue an instruction with respect to the pay scales of the employees or the revision of pay scales of the employees of 3rd respondent-Corporation. The instructions, issued by the 1st respondent in the above facts and circumstances of this case, would not bind the 3rd respondent Corporation. The 3rd respondent has virtually surrendered its powers with respect to the revision of pay scales of its employees to the State Government which has no say in the matter. As the State Government has no authority to interferre with the revision of pay scales of the employees of the 3rd respondent-Corporation, the impugned order passed by the 2nd respondent has no legal sanctity. Therefore, the impugned order passed by the 2nd respondent is liable to be quashed."
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> We do not thing it necessary for the purpose of this case to express an opinion regarding the correctness of the judgment. It was not contended before us that the State Government has the power under any statute or other principle of law to issue the directions to the Haryana Power General Corporation Ltd. (HGPCL). Nor was it their case that there was any separate agreement or understanding entitling the State Government to issue such directions to it. It is also important to note that neither the Board of Directors of HGPCL-appellant No.1 nor the Committee of the Managing Directors made their decision subject to the approval of the State Government on the basis that the State Government being only the share-holder ought to have a say in the matter."

SLP filed against the aforesaid judgment was also dismissed on 14.08.2015.

In the present case, the respondents have not been able to dispute the conversion of EPF Scheme to that of Pension Scheme made by the Haryana Vidyut Parsaran Nigam vide Annexure P-12, Haryana Urban

Development Authority vide Annexure P-13 and Haryana State Electricity Board vide Annexure P-14. All the aforesaid Boards/Corporations were earlier governed by the EPF Scheme and the employees who were appointed prior to 01.01.2006, were covered under Pension Scheme. Hence, in the case of present petitioners, the respondents now cannot take a stand that on account of introduction of EPF Scheme, the Old Pension Scheme could not be introduced.

In view of the above discussion, impugned orders dated 24.08.2009, 18.02.2010 and 07.10.2011 (Annexure P-6, P-8 & P-10) are set aside and a direction is given to respondent No.1 to implement its decision taken on 15.01.2003 (Annexure P-2) regarding implementation of Pension Scheme to its employees at par with the employees of other Nigams, Boards etc. i.e. HUDA/Electricity Board/HVPNL along with all consequential benefits. This exercise be completed within a period of six months.

Allowed accordingly.

(RITU BAHRI)
JUDGE

08.07.2016
ajp