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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-18268-2014

Date of Decision : October 22, 2018

Nisha Sharma and others

.... Petitioners.

Versus

National Institute of Pharmaceutical Education
and Research and another.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Gaurav Chopra, Advocate
for the petitioners.

Mr. Bhavnik Mehta, Advocate,
for the respondents.

SHEKHER DHAWAN, J.

Petitioners herein, who are the employees of National Institute of Pharmaceutical Education and Research (for short, “the respondent-Institute”), are aggrieved of order dated 11.2.2014 (Annexure P/13) passed by the Director of the Institute, respondent no.2, whereby implementation of Part-B of the First Schedule to the Central Civil Services (Revised Pay) Rules, 2008 (for short, “the 2008 Rules”) and Central Secretariat Service Rules was stayed by superseding the decision taken by the Board of Governors of NIPER in its 56th meeting held on 29.3.2012.

2. As per the petitioners, NIPER, respondent No. 1 – Institute is

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creation of Statute and is an autonomous body under the aegis of the Department of Pharmaceuticals, Ministry of Chemicals & Fertilizers, Government of India. Petitioners No.1 to 5 are employed against the post of Stenographer Grade-C, whereas petitioner No. 6 is currently employed as Stenographer Grade-B and petitioners No. 7 and 8 are employed as Assistant Grade-I in the respondent-Institute. Government of India vide Memo No. F.No. 1/1/2008-IC dated 30.08.2008 had notified the implementation of the recommendations of 6th Central Pay Commission. Pursuant thereto, Board of Governors of the respondent-Institute approved the recommendations of 14th Finance Committee meeting held on 3.11.2008. As per the recommendations of 6th Central Pay Commission to the employees of autonomous organizations. Subsequently, Ministry of Finance, Government of India vide Memo dated 7.10.2008 extended Part-B of the First Schedule of 2008 Rules to the employees of autonomous bodies. In the light of that, the matter was considered by the Finance Committee, Statutory Committee of respondent-Institute and the recommendations were made by the Finance Committee for revision of pay scales w.e.f. 1.1.2006. The recommendations made by the Finance Committee of respondent-Institute were discussed in 56th meeting of Board of Governors held on 29.3.2012 and the recommendations of the Finance Committee were accepted. Subsequently, the Revised Personal Promotion Scheme was also approved by the Board of Governors in its 59th meeting held on 23.3.2013 and communication was issued on 20.8.2013 (Annexure P/11) by respondent-Institute.

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3. Despite the approval having been obtained from the Board of Governors, respondent No.2 without having any authority under the statutory provisions of National Institute of Pharmaceutical Education & Research Act, 1998 (for short, "the Act") and during the currency of the tenure of the Board of Governors, illegally proceeded to pass the impugned order dated 11.2.2014 (Annexure P/13) thereby directing suspension of implementation of Part-B of the 6th Central Pay Commission. The said order lacks jurisdiction and the same has been passed in gross disregard and violation of the provisions of the Act and the Statute framed thereunder and the same be declared as illegal.

4. In the reply filed by the respondents, plea has been taken that the respondent-Institute is fully funded by the Government of India in the shape of grant-in-aid, both plan and non-plan, provided annually by the Union Ministry of Chemical and Fertilizers, the nodal Ministry for NIPER. Allocation under the Plan grant-in-aid are for research and other infrastructure etc., as approved by the Planning Commission. The non-plan grant-in-aid are for the other obligatory expenditure such as salaries, stipends to students and other recurring office expenditure, etc. The respondent-Institute has been meeting the deficit out of its internal resources, which consist of the savings of the Institute, the interest earned on the fixed deposits (FDs) and receipts under various heads such as tuition fee, etc. It is not possible for the respondent-Institute to survive and/or meaningfully and effectively discharge its functions under the NIPER Act without complete financial backing of the Government of India.

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As per the respondents, the relief claimed by the petitioners-applicants for revision of pay scales/implementation in the respondent-Institute is subject to imperative of prior approval of the Government of India, the funding authority of the respondent-Institute without whose approval and funding, the said pay revision would not only be completely unlawful and in patent breach of financial discipline, but in the very nature of things, would be manifestly impossible to implement. Any attempt to bypass or circumvent the Government of India or to impose unilaterally upon the Government of India any additional financial liability, obligation or expenditure, whether towards salaries or any other hand, would undermine the fundamental postulates of Central funding of autonomous institutions. The decision taken by the Board of Governors of the respondent-Institute in its 56th meeting held on 29.3.2012 could not be given effect without the prior approval of the Government of India. The Board of Governors could not step into the shoes of Government of India or to act behind its back especially in view of the huge financial implications involved. The decision of the Board of Governors attracts extra financial liability to the tune of approximately Rs. 40.00 lakhs by way of payment of arrears w.e.r. 1-1-2006 as the revision of pay scales was to be implemented retrospectively. As a consequence thereto, the other employees and group of employees of the Institute would also seek similar revision and enhancement for themselves. As a matter of fact, the scientific staff of the respondent-Institute have already agitated their grievance vide representation dated 14.2.2014 (Annexure R/1).

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5. Plea was also taken that in the year 2008, the Government of India, Ministry of Finance, Department of Expenditure vide Office Memo dated 7.10.2008 (Annexure P/3) clarified that the pay revision effected by Part-B of First Schedule to the 2008 Rules, was to be considered by the Ministry concerned, whether the same was justified or not and as such, Part-B of the First Schedule will not automatically applicable to the employees of autonomous bodies and that the Ministry concerned would taken an individual view in each case. It was prayed that the respondent petition filed by the petitioners be dismissed.

6. Learned counsel for the parties have advanced their respective arguments on the above lines.

7. Having considered the submissions made by learned counsel for the parties and appraisal of the record, this Court is of the considered view that there is no dispute on the fact that respondent-Institute is creation of a Statute and is an autonomous body under the aegis of the Department of Pharmaceuticals, Ministry of Chemicals & Fertilizers, Government of India. The Government of India vide Memo No. F.No. 1/1/2008-IC dated 30.08.2008 notified the implementation of the recommendations of 6th Central Pay Commission vide Annexure P/1. The matter was before the Board of Governors of the respondent-Institute in its meeting held on 3.11.2008 and approved the recommendations of the 14th Finance Committee held on 10.10.2008 and consequently, revision of pay scales had taken place. Subsequently, vide Office Memorandum dated 30.09.2008, Government of India extended the revised pay structure

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implemented by the Government for Central Government employees to the employees of autonomous organizations and on 7.10.2008 (Annexure P/3), the Ministry of Finance, Government of India had extended Part-B of the First Schedule to the 2008 Rules to the employees of autonomous bodies while noting that such an autonomous body should be in a position to bear the additional expenditure on account of upgradation involved with a further stipulation that only those categories of employees would be considered for such upgradation, whose pre-revised rules were the same as those in Part-B of the First Schedule to the 2008 Rules.

8. Thereafter, the said issue was duly examined and considered by the Finance Committee, a statutory Committee of respondent-Institute and recommendations were made by the Finance Committee for revision of pay scales w.e.f. 1-1-2006 after extending the benefit of Part-B of the First Schedule to 2008 Rules. The Finance Committee of the respondent-Institute again vide agenda No. 26.8 considered the implementation of Part-B of the First Schedule to 2008 Rules and the Central Secretariat Rules in the respondent-Institute. The Agenda was deliberated in the 26th meeting of the Finance Committee of respondent-Institute held on 6.3.2012 and the same was approved and recommendation was made for implementation of Part-B of First Schedule to the 2008 Rules w.e.f. 1-1-2006. The recommendations made by the Finance Committee of the respondent-Institute were put up for consideration before the Board of Governors in its 56th meeting held on 29.3.2012 and the said recommendations were accepted/approved. Even respondents have not

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denied this fact. However, the respondents have come with the plea that the matter in controversy involves huge financial implication and for that purpose, specific permission was required to be taken from the Government of India on the basis of communication dated 7.10.2008 and without that, the decision taken by the Finance Committee and the Board of Governors could not be implemented. Contention was also raised in the written statement having been filed by the respondent-Institute that in case such demand of the petitioners and other similarly situated employees is accepted, the other employees working on technical side would be raising similar demand and the Institute will not be in a position to meet the said demand.

9. While taking into consideration the said plea, taken by the respondent-Institute, this Court is of the considered view that as per the provisions of the Act and the Statute of the respondent-Institute, the control and management of the respondent-Institute is with the Board of Governors. For ready reference, Statute 3.1.2 of the NIPER Statutes, which deals with Functions and Powers of the Board of Governors, is extracted below:-

3.1.2 Functions and Powers

In addition to the provisions under Section 8 of Act, the Board shall have the following powers:-

- (a) to create posts subject to availability of funds, the determine the number and emoluments of such posts and to define the duties and conditions of service of the employees of the Institute;
- (b) to appoint Professor, Associate Professors, Assistant

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Professor and other staff in equivalent grades, as may be necessary on the recommendation of the selection committees constituted for the purpose;

(c) to regulate and enforce discipline among employees in the accordance with the Statutes, the Ordinances and the Regulations;

(d) to manage and regulate the finances, accounts, investments, property, business and all other administrative affairs of the Institute and for that purpose, to appoint such agents as it may think fit;

(e) to fix the limit of recurring and the non-recurring expenditure for a year on the recommendations of the Finance Committee;

(f) subject to the provisions of the Act, to invest any money belonging to the Institute including any unapplied income in any manner it thinks fit or in the purchase of immovable property in India;

(g) subject to the provisions of the Act to transfer or accept transfers of any movable or immovable property on behalf of the institute;

(h) to provide buildings, premises, furniture, apparatus and other means needed for carrying on the work of the Institute;

(i) to enter into, vary, carry out and cancel contracts on behalf of the Institute;

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- (j) to entertain, adjudicate upon and if thought fit, to redress any grievances of the employees of the Institute;
- (k) to select a common seal for the Institute and provide for the custody and use of such seal;
- (l) to delegate any of its powers to the Chairman, the Director, the Dean, the Registrar or such other employee or authority of the Institute or to a committee appointed by it, as it may deem fit;
- (m) to exercise such other powers and perform such other duties as may be conferred or imposed on it by the Act, or the Statutes.

10. At the same time, functions and powers of the Director of the respondent-Institute have been detailed in Section 16 of the NIPER Act as well as Statute 14 of the NIPER Statutes. Section 16 of the NIPER Act is extracted below:-

“Section 16:-

- (1) The Director of the Institute shall be appointed by the Board with the prior approval of the Visitor.
- (2) The Director shall be the principal academic and executive officer of the Institute and shall be responsible for the proper administration and academic performance of the Institute and for imparting of instruction and maintenance of discipline therein.
- (3) The Director shall submit annual reports and accounts to the Board.
- (4) The Director shall exercise such other powers and perform such other duties as may be assigned to him by this

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Act or the Statutes or the Ordinances.”

11. In the present case, the Board of Governors while relying upon the recommendations of the Finance Committee, which is otherwise a Statutory Committee of the respondent-Institute, accepted the recommendations. Meaning thereby that the Board of Governors who was competent to take such a decision as per the Statute must have considered all these aspects including financial health of the Institute and the liability involved in the matter. After having done so by the competent authority, respondent No.2, i.e. the Director of the respondent-Institute, cannot pass the impugned order 11.2.2014 (Annexure P/13) by over-reaching the recommendations made by the competent authority under the Act and the Statute. While passing the impugned order, respondent No. 2 has sought to assume jurisdiction and authority which does not vest in him under the NIPER Act and Statute. As such, the impugned order, issued by respondent no.2, is liable to be set-aside.

12. Resultantly, the present writ petition is accepted and the impugned order dated 11.2.2014 (Annexure P/13), passed by respondent No.2 stands set-aside.

(SHEKHER DHAWAN)
JUDGE

October 22, 2018.
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Whether speaking/reasoned? :	Yes
Whether reportable? :	Yes