

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH

**CWP-7239-2015
and 88 connected cases**

Date of decision: 18.12.2019

LABH SINGH DHALIWAL AND ORS

...PETITIONERS

V/S

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Suvir Sidhu, Advocate,
for the petitioner in CWP No. 7239 of 2015.

Mr. A.D.S. Jatana, Advocate,
for the petitioner in CWP No. 24829 of 2015.

Mr. Vikas Chatrath, Advocate,
for the petitioner(s) in CWP Nos. 10771, 10772, 12957, 14850,
15811 of 2015 and CWP No. 10626 of 2017.

Mr. Rakesh Kumar, Advocate &
Mr. Nafees Ahmed, Advocate &
Mr. Mukand Gupta, Advocate for the petitioner(s)
in CWP Nos. 4292 of 2014 & 23219 of 2015.

Mr. Simranjot Singh, Advocate for
Mr. P.S. Khurana, Advocate,
for the petitioner in CWP-10713-2014.

Ms. Monika Mehta, Advocate for
Mr. Rakesh Kumar, Advocate, for the petitioner(s).

Mr. Amrik Singh, Advocate
for the petitioner(s) in CWP No.17911 of 2014 & 10939 of
2015.

Mr. Puneet Gupta, Advocate,
for the petitioner(s) in CWP-8926- 2015.

Mr. Madhur Panwar, Advocate for
Ms. Supriya Garg, Advocate
for the petitioner(s) in CWP No.25945 of 2018.

Mr. Samrit Gill, Advocate for
Mr. Deepak Arora, Advocate
for the petitioner(s) in CWP Nos. 5774 of 2014, 20123 of 2015,
6374 of 2014 and 23815 of 2016.
Mr. J.P. Rana, Advocate
for the petitioner in CWP No. 9748 of 2015.

Mr. Ramesh Goyal, Advocate with
Mr. Arihant Goyal, Advocate
for the petitioner(s) in CWP No. 23523 of 2016.

Mr. Nirmal Singh, Advocate
for the petitioner(s) in CWP Nos. 15804, 10917, 13949 and
15266 of 2015 & 28005 of 2013.

Mr. Maninder, Advocate for Ms. Kusum Chopra, Advocate &
Ms. Gagandeep Kaur, Advocate
for the petitioners in CWP-15256-2015.

Mr. Jugam Arora, Advocate for
Mr. R.K. Arora, Advocate for the petitioner(s) in
CWP Nos. 16001 of 2015 & 26318 of 2016

Mr. Rajinder Sharma, Advocate
for the petitioner in CWP No. 3147 of 2016.

Mr. Vijay Sharma, Advocate for the petitioner(s)
in CWP No. 29081 of 2017 & CWP No. 20632 of 2018.

Mr. C.M. Chopra, Advocate for the petitioner(s) in CWP Nos.
10183, 10196, 10233 and 10319 of 2015.

Mr. S.S. Khaira, Advocate
for the petitioners in CWP No. 9199 of 2016 & 21719 of 2015.

Mr. Sunny Singla, Advocate &
Ms. Riti Aggarwal, Advocate
for the petitioner in CWP Nos. 13258, 13379, 15024, 16255,
1567, 25879, 26144, 17606, 10036 of 2015 & CWP Nos. 800,
2683 of 2014 & CWP Nos. 20340, 25335, 25370, 25393,
17010, 4356 of 2016 & CWP Nos. 6265, 14257, 14258, 14267,
14335 of 2017 & CWP No. 8444 of 2018.

Mr. P.K. Goklaney, Advocate
for the petitioner(s) in CWP No. 4400-2014 & CWP-6813-
2016.

Mr. Vivek Sethi, Advocate
for the petitioner in CWP-19998-2013.

Mr. Jashan Jot Singh, Advocate
for the petitioners in CWP No. 10682 of 2017.

Mr. Harpal Singh, Advocate for Mr. Peeush Gagneja, Advocate
for the petitioners in CWP No. 13124 of 2017.

Mr. Rishav Jain, Advocate & Mr. Nitesh Singla, Advocate
for the petitioners in CWP No.10788 of 2019.

Mr. C.L.Sharma, Advocate
for the petitioners in CWP No. 25141 of 2015
10600 of 2019, 12123 of 2019 & 27493 of 2013.

Mr. S.K.Rattan, Advocate for the petitioners in CWP
No.11673 of 2015.

Mr. Shalli Mahajan, Advocate
for Mr.Sharwan Sehgal, Advocate
for the petitioners in CWP No.18382 & 22036 of 2016.

Ms. Monika Chhiber Sharma, D.A.G. Punjab.

Mr. S.P.S. Tinna, Advocate
for respondent No. 5 in CWP No. 13124 of 2017.

Mr. Manvir Singh Rana, Advocate for
Mr. Sanjeev Soni, Advocate in CWP No.13926 of 2019.

AUGUSTINE GEORGE MASIH, J.

By this order, I propose to decide a bunch*of 89 writ petitions where the challenge is to the letter dated 06.01.2015 issued by the Punjab Government, Finance Department (Finance Pension Policy & Co-ordination Department) reiterating its earlier decision with regard to the date of implementation of the Instructions of the Government accepting the recommendations of the 5th Punjab Pay Commission on pension and other cumulative benefits with effect from 01.12.2011 in pursuance to and in compliance with the judgment dated 09.07.2014 passed by the Division Bench of this Court in LPA No. 1857 of 2013 titled as State of Punjab vs. Rattan I and others vide which directions were issued to the State of Punjab to take a fresh decision with regard to the date of implementation of the

decision contained in the letter dated 15.12.2011.

2. The grievance of the petitioners is that vide letter dated 15.12.2011, Government of Punjab dispensed with the linkage of full pension with qualifying service of 33 years and took a decision that a Government employee having rendered minimum qualifying service of 25 years, would be admissible to pension equal to 50% of the emoluments or average emoluments received during the last 10 months of his service, whichever is beneficial to him. It was clarified that these Instructions would not be applicable to the employees governed by the New Pension Scheme. Para No. 3 of the said Letter/Instructions stated that the orders shall come into force w.e.f. 01.12.2011 instead of 01.01.2006.

3. Aggrieved by this Letter, the employees who had retired between 01.01.2006 to 30.11.2011, approached this Court by filing various writ petitions challenging the cut off date fixed by the Government of Punjab which came up for hearing before the Single Bench and on consideration of the stands taken by the parties, the writ petitions were allowed vide judgment dated 16.08.2013 with the lead case being CWP No. 11373 of 2012 titled as Rattan I and others vs. State of Punjab, wherein it was held as follows:-

“ The judgments relied on by the parties as referred to above, when seen and on analyzing the principles set down therein would lead this Court to a conclusion that the cut-off date can be fixed by the State for applicability of the date of the benefit to be granted to a particular category of persons. However, for reaching the cut-off date, there must be a reasonable criteria to satisfy the test of it not being an invalid

classification. For classification to be a valid one, it must necessarily be based on a just objective having a reasonable nexus to the object sought to be achieved. Such a classification should be based on well-founded intelligible differentia which should have a rational relationship with the object sought to be achieved. Where the benefit is one time benefit on the date of retirement, the cut-off date would be germane to the object which could be held to be justified. It has also been held that when the date is fixed on the basis of the recommendation made by the Pay Commission itself, the same is rational and based on a justifiable differentiable criteria. However, where the benefit is of a nature which is a continuous one and inures for the entire length of the lives of the retired employees then the reasons have to be based on a just objective sought to be achieved. Cut-off date on the basis of financial constraints/expediency/compulsions has also been held to be justifiable ground for fixing a cut-off date being a policy matter.

While wading through the expanse of the sea of knowledge which is reflected in the judgments cited by the counsel for the parties, one common thread which runs through these beads of wisdom is the requirement of a well considered, reasoned, conscious decision reached and taken by the government on the basis of the financial constraints or circumstances which forced the government to fix a cut-off date based on justifiable differntia which can pass the test of

reasonableness so as to bring it within the permissible parameters laid down by the courts so as to catapult it to a plane that does not violate Articles 14 and 16 of the Constitution. Thus, each case has to be individually considered on its own peculiar facts as no hard and fast rule has been laid down rather it has been observed that no straight jacket formula can be framed which would cover each and every situation, requiring this court to go into the facts of this case to decide the issue in hand i.e. the validity of the fixed cut-off date.

In the present case the only ground, which has been taken by the respondent-State for non-implementation of the benefit as contained in decision dated 15.12.2011 with effect from 1.1.2006, the date as recommended by the Pay Commission, is the 'financial constraints'. But bald statement of the Government would not suffice to pass the tests as laid down by the Hon'ble Supreme Court. The requirement thus, is a positive and cautious decision taken by the Government with respect to the same supported by such consideration and reasoning and that too on the basis of records. As no specific details were mentioned in the reply filed by the State nor was there any reference to the records, this Court had called for the original records of the Government where the decision was taken fixing the cut-off date.

On perusal of the produced records of the Government, this Court could not find any specific decision dealing with

this aspect of the matter and, therefore, had called upon Mr. Sethi, the learned Additional Advocate General for the State to assist with the help of government officials to locate such a decision, if any, taken by the Government in this regard. Records were made available to the State counsel on 5.8.2013 and on going through the same with the help of the officials assisting him, he has referred to various pages of the record and made an effort to justify the stand taken by the State. He stated that apart from the records produced, there is no other record dealing with the decision of the pensionary benefits.

I have gone through the relevant pages and record which had been pointed out by the State counsel. At page-70 of the noting file where the recommendations of the Pay Commission with regard to delinking of qualifying service of 33 years and instead taking 20 years as the qualifying service for grant of full pension has been dealt with. At page-72 of the file, a comparative chart has been prepared showing burden per annum upon the exchequer in case of full pension of 33 years being given at the age of 58 years with an average qualifying service of 30 years, 23 years and 25 years. It may be pointed out here that this relates only to the fixing of the length of qualifying service of the employee which would entitle him to full pension on retirement. At page-74, it has been noted that the Council of Ministers in its meeting held on 20.10.2011 had decided that the qualifying service for the Punjab Government employees shall be 25 years instead of 33

years. At page-75, the decision with regard to issuance of the notification has been ordered to be kept pending to await the decision of the Council of Ministers. At page-76, it has been noted that the Council of Ministers had decided in its meeting held on 19.11.2011 that the decision with regard to grant of full pension on completion of 25 years of qualifying service would be effective from 1.12.2011, instead of 1.4.2012 decided earlier in the meeting held on 20.10.2011. In between, reference has been made to the meeting held by the Cabinet Sub Committee, but nothing is forthcoming on the record which would suggest that a decision with regard to the cut-off date has been taken on the basis of financial compulsions or exigencies. Proceedings of the Cabinet Sub Committee also do not indicate that the financial constraints was the ground for fixing the cut-off date as 1.12.2011 nor does it indicate or point to the fact that this aspect was put up before the Cabinet for fixing the cut-off date or that the decision of fixing the date as 1.12.2011 with regard to the implementation of the minimum qualifying service as 25 years which would make admissible to an employee pension equal to 50% of the emoluments or average emoluments received during the last 10 months whichever is beneficial to him.

The only noting relating to financial burden on the exchequer is at page-72 which deals with the fixation of the length of qualifying service for grant of benefit of full pension on retirement where a comparative chart has been prepared

depicting the average length of service on retirement as 30, 25 and 23 years. But this has no relation to fixing the cut-off date with regard to grant of benefit. There is no consideration with regard to the financial constraints after a decision was taken on fixing the qualifying service as 25 years for grant of full pension on 20.10.2011 by the Council of Ministers. It stands virtually conceded as the officials failed to point out any consideration on the aspect of financial constraints or burden if the benefit is granted w.e.f. 1.1.2006. There this appears to be no basis or reason much less reasonable justification for fixing the effective date as 1.12.2011.

The ground, therefore, taken by the respondents that the cut-off date has been fixed keeping in view the financial circumstances prevalent at the time of the issuing the instructions is without any basis and is not supported by the record which has been produced in Court nor have the State counsel with the help of officials been able to point out anything from the record which would show that the said financial circumstances were the reason behind fixing the cut-off date as 1.12.2011. In the absence of material on the record which would justify the fixing of the cut-off date, especially with regard to the financial constraints/situation/circumstances, the said decision cannot be said to be in accordance with law and would amount to discrimination amongst the homogenous class of retirees.

Discrimination is not legally acceptable and the

present is such which need to and can be redressed by granting the writ as sought for by the petitioners in these petitions. It cannot be said that the decision of the Government fulfills the basic principle with regard to the concept of valid classification which would justify valid discrimination as has been laid down by the Hon'ble Supreme Court in the case of State of Kerala Versus N.M. Thomas (1976) 2 SCC 310, which has been discussed by the Hon'ble Supreme Court in Kallakurichi Taluk Retired Official Association's case (supra) in para-27, where it has been stated as follows :-

"27. At this juncture it is also necessary to examine the concept of valid classification. A valid classification is truly a valid discrimination. Article 16 of the Constitution of India permits a valid classification (see, State of Kerala V. N.M. Thomas (1976) 2 SCC 310). A valid classification is based on a just objective. The result to be achieved by the just objective presupposes, the choice of some for differential consideration/treatment, over others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective. And secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. Legalistically, the test for a valid classification may be summarized as, a distinction based on a classification founded on an intelligible differentia, which

has a rational relationship with the object sought to be achieved. Whenever a cut off date (as in the present controversy) is fixed to categorise one set of pensioners for favourable consideration over others, the twin test for valid classification (or valid discrimination) must necessarily be satisfied.”

The present case does not satisfy the two tests, as has been referred to above, and, therefore, the decision of the State Government fixing the cut-off date as 1.12.2011 cannot sustain and, therefore, deserves to be quashed. The question now would be with regard to the date of applicability of the notification dated 15.12.2011, para-3 whereof fixes the date of its enforceability as 1.12.2011 which has to be struck down in view of the above discussion. The obvious conclusion would be that the said decision would be effective from 1.1.2006 the date which was recommended by the Pay Commission with effect from which the pensionary benefits were revised such as basic pension, commutation of pension, gratuity as per notification dated 17.8.2009. The Government letter dated 15.12.2011 refers to para-3.1 of the Government letter dated 17.8.2009 and it is in continuation thereof where the said decision has been made effective from 1.1.2006, therefore, the letter dated 15.12.2011 would relate back to 1.1.2006 and would be implemented with effect thereof. However, the said decision shall not apply to the employees covered by the new pension scheme as specified in

this letter dated 15.12.2011.

In view of the above, these writ petitions are allowed.

Para-3 of the Government letter dated 15.12.2011, which fixes the effective date of the decision of the Government to be 1.12.2011, stands quashed. Direction is issued to the respondents to consider the claims of the petitioners and similarly placed employees treating the decision of the Government as conveyed in letter 15.12.2011 to be effective from 1.1.2006 and grant consequential benefits to the employees who have retired between 1.1.2006 to 30.11.2011 within a period of four months from the date of receipt of certified copy of this order.” (underlining is mine)

4. Letters Patent Appeal was preferred by the State of Punjab i.e. 1857 of 2013 titled as State of Punjab vs. Rattan I and others along with other appeals, where the Division Bench of this Court in its judgment dated 09.07.2014 held as follows:-

“ The Ld. Single Judge while accepting that financial implications can be a valid ground for fixing a cut- off date for implementing a decision granting liberalized benefits to pensioners, has quashed the cut-off date only on the ground that the record did not reflect that the fixing of the cut-off date was resultant to a conscious decision based on financial implications worked out with particular reference to the cut-off date sought to be fixed.

Despite the above, there is no denying the fact that the appellant had sought to justify the fixation of the cut-off date

primarily on the ground of financial considerations/constraints. That was their pleaded case before the Ld. Single Judge and that is the primary argument pressed in appeal. The record also reflects that financial implications were worked out with regard to fixing different lengths of qualifying service for grant of full pension.

Though no exact details have been furnished to the Court, the Ld. State Counsel has sought to project that the financial implications of implementing the decision would be huge, staggering and unbearable. Besides, it would be an annual recurring expenditure. To the contrary, the respondents have submitted that the pensioners who retired between 1.1.2006 and 31.11.2011 are limited in number and the financial implications in implementing the decision would be meager and would not justify the discriminatory treatment meted out to them.

In the light of the above, in our considered opinion the Ld. Single Judge was correct in holding that the records did not reflect that the fixing of the cut-off date of 1.12.2011 was the result of a conscious decision based on financial considerations/ constraints and consequently para 3 of the letter dated 15.12.2011 was rightly quashed. However, in view of the pleaded case of the appellant and the official record reflecting that financial considerations were the dominant factor in fixing the length of qualifying service for grant of full pension, the Ld. Single Judge, instead of, directing that the

decision be implemented w.e.f., 1.1.2006 ought to have directed the appellant to reconsider the question of fixation of the cut-off date. Hence to this extent the appeals are allowed. The order of the Ld. Single Judge directing that the benefits conferred vide letter dated 15.12.2011 be implemented w.e.f., 1.1.2006 and, resultantly, the benefits of this letter be also given to employees who retired between 1.1.2006 and 31.11.2011 is set aside.

The appellant is directed to reconsider the issue and take a fresh decision with regard to the date of implementation of the decision contained in the letter dated 15.12.2011.”

5. In compliance with the order passed by the Division Bench of this Court, referred to above, State of Punjab has issued a letter dated 06.01.2015, wherein the operative part reads as follows:-

“ The Government while following the directions given by the Hon'ble Punjab and Haryana High Court has reconsidered the matter and has decided that if the Instructions of the Finance Department dated 15.12.2011 are implemented from 01.01.2006 instead of 01.12.2011, the Government will suffer heavy losses and much financial debt will arise. For this reason, the Instructions by the Finance Department dated 15.12.2011 will be implemented as was being done before and the cut off date for qualifying service for claiming full pension being 33 years to 25 years will remain 01.12.2011.”

6. Aggrieved employees sought information under the Right to

Information Act for finding out the reasons and the exercise carried out by the State of Punjab for coming to a decision resulting in the issuance of the Letter dated 06.01.2015. The said information was supplied to the applicants vide communication dated 16.02.2015 by the Finance Pension Policy and Co-ordination Branch of the Finance Department, Government of Punjab, wherein it came out that for giving benefit to the retired employees from 01.01.2006 to 30.11.2011 as per the Government of Punjab Letter dated 15.12.2011, on the said date, the financial burden on the Government was assessed to be ₹932 crore which, as per the financial situation of the State, is unbearable and, therefore, the earlier decision taken vide letter dated 15.12.2011 regarding the benefit to be given from 01.12.2011 is only feasible which was up-to December, 2014 assessed at ₹977 crore and as on December, 2019, it would come to ₹2057crore.

7. It is in this background that the petitioners have approached this Court by filing these writ petitions. Apart from reiterating the grounds, which had been taken in the earlier round of litigation with regard to the power of the State to fix a cut off date, some additional grounds have also been taken relying on various judgments as also on the merits of the case with regard to their entitlement from 01.01.2006, which was dealt in detail by the Single Bench in its earlier judgment dated 16.08.2013 in CWP No. 11373 of 2012 where the principles were culled out including its scope, applicability and considerations etc. which stands upheld by the Division Bench in its judgment dated 09.07.2014. This Court is, thus, restricting itself to the realms of the earlier judgments herein and not delving to deal with the additional grounds taken as these cases have to be considered and decided within the permissible parameters as laid down by the Division

Bench while deciding the appeal.

8. In this regard, what has been asserted by the petitioners is that the monetary burden for implementation of the decision of the letter dated 15.12.2011 w.e.f. 01.01.2006 instead of 01.12.2011 projected by the State of Punjab was highly exaggerated and without any actual economic evaluation and arithmetical calculations having been carried out. Referring to information under the Right to Information Act, petitioners as also their counsel have asserted that the State has proceeded on pure hypothesis without taking into consideration the various aspects such as the fact that the employees, who are already getting full pension as they had more than 33 years of service to their credit when they retired, had to be excluded from the list of beneficiaries and similarly, those retirees, who had qualifying service more than 10 years on superannuation but less than 25 years, would also not get the benefit of these Instructions. It is only the retired employees with qualifying service between 25 years and 33 years on the date of their retirement who would get the benefit of Instructions dated 15.12.2011. The period, therefore, comes out to mere 8 years. The respondents have proceeded to calculate and assess the financial burden taking 10,000 employees to have retired in a financial year, out of which, 45% of the employees have been treated in this category, which is, by no means, acceptable. Taking that to be the figure, the Government has proceeded to calculate the financial burden. Referring to the examples of some of the departments from where, under the Right to Information Act they have extracted some information, it was asserted that the said figure comes to less than 10% on an average of the total retirees who would be the beneficiaries whereas the Government had taken the figure as 45%.

9. A perusal of the Division Bench judgment of this Court would show that the judgment of the Single Bench, on the principles and touchstones for testing the decision of the Government for fixing the cut off date, were approved and the decision on facts holding that the records did not reflect fixing of the cut off date as 01.12.2011 to be a conscious decision based on financial considerations/constraints, which was the only ground taken by the State, was approved and the decision to quash para 3 of the letter dated 15.12.2011 fixing the cut off date has held to have been rightly quashed. It was, however, observed that the Single Bench, instead of directing implementation of the decision in the letter dated 15.12.2011 w.e.f. 01.01.2006, ought to have directed the State to reconsider the question of fixation of the cut off date. The judgment of the Single Bench to this limited extent was set aside and a direction was issued to the State of Punjab, the appellant, to reconsider the issue and take a fresh decision with regard to the date of implementation of the decision contained in the letter dated 15.12.2011.

10. The above being the scope and parameters for reconsideration as per the judgments in the earlier round of litigation as summarized above, when this matter came up for hearing before this Court on 31.05.2019, following order was passed:-

“ Notice of CM-8860-CWP-2019 to the Advocate General, Punjab.

On the asking of the Court, Ms. Monika Chhiber Sharma, D.A.G. Punjab, accepts notice on behalf of the State. Not only reply to CM-8860-CWP-2019 be filed but apart from that, respondents to file a consolidated statement with regard to the employees, who have retired between 01.01.2006 and 30.11.2011 and would have attained 25 to 33 years of

qualifying service to their credit. It should also be mentioned therein as to how much would be the liability of the State each year starting from 01.01.2006 till 30.11.2011 apart from the consolidating liability. The said details be filed within a period of four weeks.

*Adjourned to **24.07.2019** for further consideration.*

Copy of this order be placed on the files of connected cases.”

11. In compliance with the said order, a short affidavit of the Deputy Secretary, Department of Finance, Government of Punjab dated 20.07.2019 was filed in Court, wherein the State was not able to give the figures, as have been called for by this Court in the order dated 31.05.2019. Consolidated information of some of the departments of State of Punjab was appended along with the said affidavit regarding the retirees from 01.01.2006 to 30.11.2011 along with the financial burden. The total number of departments was 73 and the liability between 01.01.2006 to 30.11.2011 came to ₹28,84,54,788/- and the total number of retirees in these 73 departments was 2089.

This being the position despite the present set of writ petitions having been filed in the year 2015 and the State having put in appearance in this matter in the year 2015 and filed a reply in July, 2015, all through the State was aware of the fact that they would be called upon to give the financial details as per the mandate of the Division Bench of this Court where, while considering the stand of the respondents, it mentioned that no exact details were furnished to the Court but what has been projected by the State was that the financial implications on implementation of the decision w.e.f. 01.01.2006 were huge, staggering and unbearable with the annual

recurring expenditure. The Division Bench had, therefore, in its judgment dated 09.07.2014, given an opportunity to the State to reconsider the issue and take a fresh decision with regard to the cut off date for implementing the decision as contained in the letter dated 15.12.2011.

12. The exercise, which has been carried out by the State, is based upon conjectures and surmises as is apparent from the written statement filed by the State coupled with the information supplied to the petitioners under the Right to Information Act as placed on record by them. It would not be wrong to conclude that the State has proceeded on assumptions with regard to the facts and figures which is not expected from the State especially when having lost before the Single Bench of this Court, in an appeal, another opportunity had been given to reconsider the matter by the Division Bench after giving a finding that decision with regard to the cut off date having been fixed in the communication dated 15.12.2011 was not sustainable.

13. On the basis of data made available as also the pleadings, this Court, with great anguish and pain, observes that the State has proceeded with an intention to just carry out the formality with a premeditated and predetermined mind to reiterate its earlier decision without actually delving into a serious exercise for coming to a well considered conclusion as per the judgment passed by the Division Bench of this Court.

14. The so called and claimed conscious decision, which is said to have been taken by the State, was from the very outset meant to reiterate its earlier decision without even carrying out a semblance of an exercise to find out the actual expenditure or liability keeping in view the correct and relevant considerations. This cannot be said to be an over statement rather

it would be an understatement in the light of the following narrated conduct of the State.

15. The above is patently visible from the fact that the State has proceeded on the assumption that 45% of the employees, who retire in a financial year, would fall in the category of employees who would get the benefit of the Instructions dated 15.12.2011 in case the said Instructions are made applicable w.e.f. 01.01.2006 instead of 01.12.2011. The documents, which have been placed on record by the petitioners, clearly indicate that the position is different as around 10-15% of the employees who retire in a financial year would become eligible for the benefit of the Instructions. It has rightly been projected by the petitioners that the employees, who retired between 01.01.2006 and 01.12.2011, would not be large in number because the employees with less than 25 years and more than 33 years of qualified service to their credit on the date of their retirement would not be entitled to the benefit of these Instructions. It is only those employees, who retired between 01.01.2006 and 01.12.2011 and have between 25 to 33 years of qualifying service to their credit on the date of their retirement who would be entitled to the benefit of the Instructions dated 15.12.2011. This aspect has been overlooked by the State.

16. Another aspect, which the State Government has failed to appreciate, is that the liability primarily had to be assessed as it existed on the date of issuance of the Instructions dated 15.12.2011 as that would be the relevant date on which the decision was taken. The calculations, as have been projected by the respondents, reflect altogether different picture on the basis of the figures, which have been taken and that too, hypothetically. This is so, even after the decision of the Division Bench

dated 09.07.2014 giving them ample time to make the relevant actual calculations and thereafter, these writ petitions being pending since the year 2015 i.e. for more than 4 years. On various dates, this Court had orally called upon the State counsel to submit the actual figures with regard to the liability but without any success. Ultimately, when the said oral observations were not being given effect to, order dated 31.05.2019 had to be passed in response whereof, an affidavit dated 20.07.2019 has been filed to which, the calculations, as have been appended, are based upon firstly assumptions and presumptions and secondly, without taking into consideration the correct number/category of employees who would be entitled to the benefit of the Instructions dated 15.12.2011. The details in this regard have been referred to in the earlier part of the order and, therefore, are not being given here for brevity.

17. The subsequent/future annual recurring expenditure no doubt is a relevant factor, which is ascertainable, to start with, on the cut off date. But the same it is likely to reduce with the retirees dropping out over a period of time as the period for which the beneficiaries have to be included is fixed i.e. for 01.01.2006 to 15.12.2011 i.e. five years and secondly only to the limited number of employees as per their eligibility as discussed earlier. Above all the calculations made by the State are based on misconceived and misleading factors which are far from truth and reality as demonstrated above. The same cannot, thus, be accepted to be the estimated burden on the exchequer as they are apparently inflated beyond proportion to be relied upon.

18. Despite the order passed by this Court on 31.05.2019, the State has not been able to furnish the details, as called for by this Court, as is

apparent from the affidavit dated 20.07.2019 filed by the Deputy Secretary, Department of Finance, Government of Punjab, which clearly indicates that no exercise has been carried out in earnest as per the requirement of the Division Bench judgment of the Court to assess the liability and the burden, if any, upon the Government in case the letter dated 15.12.2011 is given effect to from 01.01.2006. After the opportunity granted by the Division Bench and by this Court also during the pendency of these cases, no further opportunity needs to be granted to the State in these matters. The action of the State, therefore, is unsustainable and the letter dated 15.12.2011 of the Government of Punjab being in violation of the settled proposition of law, as has been so held by the Single Bench and upheld by the Division Bench of this Court referred to above, cannot sustain and deserves to be set aside.

19. In view of the above, these writ petitions are allowed. Letter dated 06.01.2015 issued by the Punjab Government, Finance Department (Finance Pension Policy & Co-ordination Department) is hereby quashed.

20. Since the Division Bench of this Court vide order dated 09.07.2014 passed in LPA No. 1857 of 2013 had set aside the judgment of the Single Judge dated 16.08.2013 to the limited extent of conferring the benefit of the letter dated 15.12.2011 w.e.f. 01.01.2006 with a direction to re-consider the issue and take a fresh decision with regard to the date of implementation of the decision contained in the letter dated 15.12.2011 which cut off date i.e. 01.12.2011, as fixed by State of Punjab in its letter dated 06.01.2015, has been quashed, the employees, who had retired w.e.f. 01.01.2006 and fulfil the requirements of letter dated 15.12.2011, shall be entitled to the benefit of the letter dated 15.12.2011. This is being so held in the light of the fact that the cut off date, as fixed by the State, has failed

to pass the test as laid down by the Single Bench in its judgment dated 16.08.2013, which had been upheld by the Division Bench of this Court in its judgment dated 09.07.2014 as reproduced and summarized in the earlier part of this judgment.

21. Let the consequential benefits be released to the eligible petitioners and similarly placed retired employees within a period of four months from today.

December 18th, 2019
pj

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No