

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

Date of Decision: December 22, 2021

1. LPA-114-2020

Punjab Financial Corporation

...Appellant

Versus

Bajinder Singh Malik (deceased)
thr. LR's & ors.

...Respondents

2. LPA-170-2020

Punjab Financial Corporation

...Appellant

Versus

Abhey Kumar Mehta & ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA

HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. G. S. Bal, Senior Advocate with
Mr. Sewa Singh, Advocate for the appellants.

Mr. Rupinder S. Khosla, Senior Advocate with
Mr. Aman Sharma, Advocate
for the applicant-respondent no. 1
in LPA-170-2020 and for respondent no. 2
in LPA-114-2020.

Ms. Pooja Chopra, Advocate for respondents no. 2 & 3
in LPA-170-2020 & for respondent no. 1 in LPA-114-2020.

Ms. Monica Chhibber Sharma, Sr. DAG Punjab.

VIKAS SURI, J.

This order shall dispose of *LPA-114-2020* and *LPA-170-2020* arising from common order(s) passed by learned Single Judge in a batch of two writ petitions. For reference and convenience, facts are being taken from LPA-114-2020 titled as *Punjab Financial Corporation Vs.*

Baljinder Singh Malik (deceased) through LRs & others.

Present appeals are directed against the orders dated 14.05.2019 and 19.11.2019 whereby the writ petitioners have been granted the benefit of ACP w.e.f. 01.11.2006 i.e. prior to the fixation of their revised pay scales as per the recommendations of 5th Punjab Pay Commission and the Punjab Government Instructions in that regard.

The writ petitioners (respondents herein) are stated to be working in the appellant-Corporation and were promoted as Deputy General Manager (DGM) on 21.03.2000. It is further averred that as on 21.03.2000, the pay scales of the petitioners was 13500-16800 and basic pay was 17250/- with grade pay of 8400/-. The Punjab Government vide letter/Instructions dated 03.11.2006 (Annexure P-1) granted Assured Career Progression Scheme (ACP Scheme) on completion of 4, 9, 14 years of service in a cadre w.e.f. 01.11.2006. The said scheme was made optional. Petitioners who had been promoted on 21.03.2000, thus, became entitled to the benefit under ACP scheme on 01.11.2006, though the writ petitioners had completed 4 years of service after promotion on 21.03.2004. In terms of the ACP scheme and Instructions dated 08.01.1998 (Annexure P-2) of the Punjab Government, the petitioners were entitled to next higher pay scale of 14300-18600 and after increment, the basic pay of 17,700/- (i.e. 17,250/- basic pay + 450 increment). It is further averred that pay of an employee was to be fixed at next higher pay scale and they were to be given the next increment from the date when the employee would have earned his next increment had he continued in the lower pay scale. It is also pointed out that there was no scale of 14300-

reiterated that after the scale of 13500-16800, the next higher scale was 14300-18600, to which the petitioners were entitled.

The appellant-Corporation in its meeting held on 29.11.2006, approved the ACP scheme for the employees of the Corporation on completion of 4, 9, 14 years of service w.e.f 01.04.2006. Pursuant thereto the writ petitioners were granted the next higher pay scale of 14300-18600 with benefit of an increment, vide verbatim letters dated 10.02.2010 (Annexure P-3). In terms of the benefit so granted, the writ petitioners are stated to have exercised their option within the stipulated time on 18/22.03.2010 (Annexure P-7). However, vide communication dated 07.04.2010 (Annexure P-8) the aforesaid benefit granted in view of letter/Instructions dated 08.01.1998, was withdrawn. The basis for withdrawing the aforesaid financial benefit was renewed interpretation of the Punjab Civil Services (Revised Pay) Rules, 2009 (Annexure P-4) w.e.f. 01.01.2006, based on the report of 5th Punjab Pay Commission, notified on 27.05.2009.

The writ petitioners made various representations to the appellant-Corporation from time to time, of even dates being 12.05.2010, 22.11.2010, 01.03.2011, 03.03.2011 & 15.03.2011 (Annexures P-9 to P-13). In the meantime, the appellant-Corporation had also sought clarification/guidance from the State Government and vide the communications dated 26.04.2011 (Annexure P-21 colly), it was directed that matters pertaining to pay of officials/employees of the Boards/Corporations are to be resolved by the Director of

Personnel Branch-I had already issued direction dated 27.05.2009 that the Corporation has to act at its own level.

The writ petitioners, thereafter, also made many representations of even dates being 05.05.2011, 20.06.2011, 27.01.2012, 16.02.2012, 06.05.2012, 03.09.2013 & 06.01.2014 (Annexures P-14 to P-20). Aggrieved, against the inaction of the appellant-Corporation and the delay being deliberately caused at the hands of employer in resolving the issue despite clarifications having been given by the State Government vide letters dated 26.04.2011, the writ petitioners approached this Court by way of CWP-8665-2014. The said writ petition was disposed of in the preliminary hearing itself, without calling upon the respondents therein, vide order dated 07.05.2014 directing the appellant-Corporation to dispose of the representations of the writ petitioners by passing a speaking order, preferably within three months from the receipt of certified copy of the order. The order dated 07.05.2014, reads as under:-

“Petitioners have filed this petition seeking a direction to the respondents to fix the pay of the petitioners in the correct pay scale by giving them due benefits under the ACP Scheme.

Learned counsel for the petitioners has submitted that petitioners have moved numerous representations to the respondents for redressal of their grievance but no action has been taken on the same so far. Last representation moved by the petitioners is Annexure P-20.

Accordingly, without adverting to the merits of the case, this petition is disposed of with a direction to respondent No. 3 to dispose of the representation (Annexure P-20) moved by the petitioners, expeditiously, in accordance with law, by

passing a speaking order, preferably within three months from the receipt of the certified copy of this order.”

In compliance to the aforesaid directions, the appellant-Corporation passed the order dated 30.07.2014 (Annexure P-23), declining the claim made by the writ petitioners in their representation (treating it to be dated 07.05.2014 i.e. the date of passing of the order by this Court).

The writ petitioners challenged the aforesaid order dated 30.07.2014 by way of CWP-17683-2014 & CWP-9885-2016. The said writ petitions were allowed vide common judgment dated 14.05.2019, directing the respondents therein to grant the benefit of ACP to the writ petitioners w.e.f. 01.11.2006 i.e. prior to the fixation of their revised pay scales as per the recommendations of the 5th Punjab Pay Commission. The writ petitioners were also held entitled to arrears of salary owing to the re-fixation of the pay scales alongwith 6% p.a. interest with effect from the date of their entitlement until actual date of disbursement. The said exercise was to be completed within a period of three months from the date of receipt of certified copy of the order.

Aggrieved against the aforesaid judgment dated 14.05.2019, appellant-Corporation preferred an intra court appeal bearing LPA-1705-2019. Before the learned Letters Patent Bench a limited grievance was raised that the writ petitioners ought not to have been granted the arrears of pay w.e.f. 01.11.2006 and rather their claim be restricted to a period of 38 months immediately preceding May, 2014 i.e. when they first approached this court. The appellant therein, sought permission to withdraw the LPA

to approach the learned Single Judge in that regard. Vide order dated 14.05.2019, LPA-1705-2019 was dismissed as withdrawn with liberty as prayed for. The order passed by learned Letters Patent Bench, reads as under:-

“Learned senior counsel for the appellant, at the outset, submit that the limited grievances, that the appellant has, is that even if the respondents/petitioners were entitled to the relief prayed for, but still they ought not to have been granted arrears of pay with effect from 01.11.2006 and preceding May, 2014 i.e. when they first approached this Court. However, having argued the matter at some length, he submits that he be permitted to withdraw the appeal so as to enable the appellant to move the learned single Judge in this regard.

Per contra, learned counsel for the respondents-caveators asserts that the claim of the respondents has rightly been granted and, in fact, no interference is warranted in the impugned judgment.

Be that it may, for we simply intend to grant the limited prayer made by learned senior counsel, we need not delve into the merits of the controversy.

Dismissed as withdrawn with the liberty prayed for.”

In terms of the liberty granted, the appellant-Corporation sought review of the order dated 14.05.2019 by way of CM-16446-CWP-2019 for modification of the order. The said application was dismissed vide order dated 19.11.2019 after noticing that the writ petitioners had been jointly representing to the appellant-Corporation from time to time, when the order dated 07.04.2010 (Annexure P-8), impugned in CWP-17683-2014, was passed withdrawing the benefit granted in terms of the revised

pay Rules. The appellant-Corporation did not decide the representations and rather choose to approach the State Government seeking clarification on the issue vide its letter dated 06.08.2010, which was duly responded to by the State Government vide letters dated 26.04.2011, (Annexure P-21 colly.). It was specifically advised therein that the matters with regard to pay of the officials of the Boards and Corporations are to be resolved by the Director of Disinvestment/Bureau of Public Enterprises. The appellant-Corporation was also specifically advised to act at it's own level and take a decision on its own. It was, thus, held that it is expected of the appellant-Corporation to take a fresh decision but it choose to sit over the matter and eventually took a decision only after intervention of this Court by issuing directions vide order dated 07.05.2014 passed in CWP-8665-2014.

It is in those circumstances that the issues raised by the writ petitioners in the year 2010, came to be decided vide the order dated 30.07.2014 (Annexure P-22) rejecting the claim made by the representationists.

In view of the aforesaid observations, learned Single Judge categorically held that the petitioners cannot be faulted for the delay caused by the Corporation and as such the application for modification of the judgment dated 14.05.2019 was dismissed on 19.11.2019.

The learned Senior Counsel for the Corporation has again urged in the present appeals that the impugned orders passed by learned Single Judge in as much as the arrears have been granted w.e.f. 01.11.2006 alongwith interest, be restricted to 38 months immediately preceding May,

Per contra, counsel for the writ petitioners have relied upon the findings recorded by the learned single judge to argue that the view taken therein in accordance with law and is also equitable. As such, it is sought that these appeals may be dismissed and the appellant-Corporation be directed to comply with the directions already issued, in a time bound manner.

Heard learned counsels for the parties and with their able assistance perused the pleadings and records of the case.

A perusal of the record would go to show that on merits with regard to entitlement of the writ petitioners of their re-fixation of pay in the revised pay scales notified on 27.05.2009 (Annexure P-4) w.e.f 01.01.2006, is not contested. Rather the same is conceded. The State in its reply dated 06.12.2016 (para 10), has rather supported the case of the writ petitioners. The relevant portion of which reads as under:-

“However, if it is presumed to be correct that the petitioners did opt for the revised pay structure with effect from 1.11.2006 then their pay in terms of 5th Punjab Pay Commission/Rules (Annexure P-4) should have been fixed by granting them new Pay Scales in the revised pay structure after granting the benefit of the Assured Career Progression Scheme on 1.11.2006 corresponding to their unrevised pay scales under proviso 2 to the rule 5 of Punjab Civil Services (Revised Pay) Rules 2009 dated 27.05.2009.”

It may also be noticed here that in the additional affidavit dated 23.07.2016 filed on behalf of the appellant-Corporation, the contention raised is that it will have to be presumed that the writ petitioners

made their claim for the first time in May, 2014 and it would be assumed from 01.05.2014. On the said basis, the arrears were sought to be restricted for 38 months preceding 01.05.2014 i.e. 01.03.2011 onwards.

Learned counsel for the appellant is unable to point out any material from the record, so as to give semblance to any explanation for the non-action on the part of the appellant-Corporation to decide the issues urged in the various representations, commencing from the one dated 12.05.2010 (Annexure P-9) upto the one dated 06.01.2014 (Annexure P-20), more particularly in light of the specific clarification/advised given by the State Government vide letters dated 26.04.2011 (Annexure P-21 colly.).

Another Division Bench in ***Punjab Financial Corporation Employees Welfare Association Chandigarh and another vs. Punjab Financial Corporation and others***, 2004(2) PLR 159 and ***PSIDC Karmchhari Union and others vs. State of Punjab and others***, 2004(4) RSJ 744, relying upon the decisions of the Apex Court, interpreted the provisions of Section 39 of the State Financial Corporation Act, 1951 to hold that the instructions given by the State Government are advisory in nature and the Board of Directors of the Corporation has to take an independent decision on question of policy.

It is also not *res integra* that matters relating to pay and conditions of service of the employees of the Financial Corporation cannot be construed as a policy decision, which requires the guidance of the State Government. It has been held by a coordinate Bench in ***Deva Singh and***

Government has nothing to do with the regulation of the employees of the Financial Corporation or the revision of pay of its employees and the Corporation is the sole authority to take a decision in that regard.

Thus, reference of the matter regarding revision of pay scales and grant of benefit of ACP as raised in the representations made by the writ petitioners, by the appellant-Corporation to the State Government in the present case was nothing less than neglect of its statutory duty.

We are of the considered view that the writ petitioners cannot be made to suffer on account of failure of the appellant-Corporation to decide the issue of re-fixation of pay, in terms of the notification dated 27.05.2009 (Annexure P-4) and as advised by the State Government vide letters dated 26.04.2011 (Annexure P-21 colly). We are also unable to accept the contention of the appellant that the writ petitioners be presumed to have agitated their claim for the first time in the year 2014, when the earlier writ petition had been instituted. Moreover, the legal and factual position on merits of the claims of the writ petitioners is not in dispute. It may also be noticed here that the decision dated 30.07.2014 (Annexure P-23) which was finally taken by the appellant-Corporation, is in pursuance to the directions issued vide order dated 07.05.2014 (Annexure P-22) passed by this court in CWP-8665-2014 and as such, it cannot be treated that the writ petitioners agitated their claim for the first time in the year 2014. The attempt of the appellant-corporation appears to be only to curtail passing of financial benefits to the writ petitioners (respondents herein), which is also ill founded, especially when the inaction to take a

decision is on its part.

In the aforesaid circumstances, the appellant has failed to point out any error or legal infirmity in the impugned judgments and orders dated 14.05.2019 and 19.11.2019.

Resultantly, the present appeals fail and as such are dismissed.

No order as to costs.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

December 22, 2021
Ajay

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No