

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

**Reserved on 23rd of January, 2023
Pronounced on 27th of March, 2023**

CWP No.14666 of 2015

Baljit Kaur and others

....Petitioners

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. M.S. Gill, Advocate for
Mr. A.D.S. Jatana, Advocate
for the petitioners.

Mr. Charanpreet Singh, Asstt. Advocate General, Punjab
for respondent No.1-State.

Mr. G.S. Bal, Senior Advocate with
Mr. J.S. Randhawa, Advocate
for respondents No.2 and 3.

PANKAJ JAIN, J.

Petitioners have invoked writ jurisdiction of this Court by way of present writ petition filed under Article 226/227 of the Constitution of India seeking writ in the nature of mandamus in the form of directions to implement order dated 17th of August, 2006 reconsidered and affirmed by respondent-Board as per order dated 17th of November, 2006 (Annexure P-13) w.r.t. grant of 4 tier pay scales to the petitioners.

2. Petitioners No.1 and 3 held posts of Subject Experts and

petitioner No.2 worked as Deputy Director in the Academy Wing of the Punjab School Education Board (hereinafter referred to as 'the Board') which is a Statutory Body constituted under the provisions of Punjab School Education Board Act, 1969. The pleaded case of the petitioners is that prior to 1st of January, 1986 the Board was governed by 2nd Pay Commission and the employees were being paid single tier pay scale which was attached to the post. As per the recommendations of 3rd Pay Commission accepted by State of Punjab, the posts held by the petitioners were granted 3 tier pay scales. The object of such 3 tier pay scale was to compensate an employee for stagnation. Entry scale was payable on entry in the cadre. On completion of 8 years of regular service 2nd tier pay scale was admissible and after 10/18 years of service the incumbent used to be paid 3rd tier pay scale. The petitioners were also granted 3 tier pay scale at parity with the employees of the State. After the State of Punjab adopted recommendations of 4th Pay Commission, Punjab Civil Services (Revised Pay) Rules, 1988 which were notified w.e.f. 1st of January, 1996 vide Notification dated 16th of January, 1998, the same were adopted by the Board in its decision dated 4th of February, 1999 also w.e.f. 1st of January, 1996. Under the said Rules, General Conversion Table was issued giving revised pay scales of the old pay scales. Vide said table the revision of pay scales was *viz-a-viz* old pay scales and

was not terminus with the posts. The said Conversion Table was duly adopted by the Board as well. Later on amendment carried on by Notification dated 17th of March, 1999 in 1998 Rules the pay scales were categorized according to the posts. The Amended Rules have been placed on record as Annexure P-4. As import of the said amendment 4 tier pay scale was made admissible to 9 posts. The follow up notification was also adopted by the respondent-Board vide Notification dated 27th of July, 2000. Certain class of employees of the Board were granted benefits as well. State extended 4 tier pay scales to more categories vide Notification dated 4th of September, 2000 which was again adopted by the Board vide Notification dated 26th of September, 2000. After the petitioners were not granted 4 tier pay scales, some of the employees approached the Board. After the employees could not find favour with the Board they approached this Court by way of **CWP No.19692 of 2005** titled as **“Dharam Singh and others vs. Punjab School Education Board, SAS Nagar Mohali, District Ropar, Punjab through its Secretary and another”**. The same was disposed off vide following order dated 19th of December, 2005 :-

“Heard the learned counsel at length.

Learned counsel for the petitioners submits that the relief claimed in the present writ petition has already been claimed before the respondents through representation, Annexure P-17,

but no decision has been taken on the same by the respondents till date.

In view of the above, the present writ petition is disposed of with a direction to the respondents to decide the representation dated 22.6.2005, Annexure P-17, by passing a speaking order within a period of two months of the receipt of a certified copy of this order. In the event, the request made by the petitioners is accepted by the respondents, necessary relief be granted to the petitioners within a period of one month thereafter.”

3. In compliance of the aforesaid orders passed by Writ Court, respondent Board passed speaking orders dated 17th of August, 2006 and 17th of November, 2006 placed on record at Annexures P-12 and P-13. Reiterating their decision to grant relief of 4 tier pay scales to the posts held by similarly situated employees in terms of Punjab Government Notification dated 17th of April, 2000. Writ petitioners in CWP No.19692 of 2005 again approached this Court by way of **CWP No.16452 of 2008** titled as **'Dharam Singh and others vs. Punjab School Education Board, SAS Nagar Mohali, District Ropar, Punjab, through its Secretary and others'** seeking implementation of the aforesaid orders dated 17th of August, 2006 and 17th of November, 2006 which was disposed off vide order dated 1st of February, 2012. Operative part thereof reads as under :-

“4. The Education Board that had constituted a Special Committee to consider the representations provided for a 4-tier revised pay scales in the manner that the Punjab Government has done by its letter dated 17.04.2000. One issue that becomes clear is

that in the recommendations of the Board in its meeting dated 06.07.2006, although it has held that the employees of the Board would not draw any scale higher than the pay of the Punjab State Government services performing corresponding/equivalent functions, it has not set out such equivalent posts in the Punjab State service for the Subject Experts with the Board. The additional affidavit of the State states in its objections that in terms of clauses 21(1) to 21(3) of the Punjab School Education Board Act of 1969, the respondent-Board is bound to comply with the directions of the Department of Education, Government of Punjab.

5. There have been certain assumptions in the decision of the Board regarding the Special Committee's recommendations, namely, that the notification of the Government dated 17.04.2000 providing for 4-tier pay scales could be simply imported for application to the petitioners without minding whether there were equivalent posts in the State Government who had obtained such benefits. I find that the Board itself has not spelt out the equivalence of posts of Subject Experts with the posts available in the Punjab Government service. After all, the Special Committee had clearly invoked a proviso that none of the categories would obtain a scale higher than the Punjab Government's scale. The State points out that the Government letter dated 17.04.2000 does not set out experts or other employees working in various educational institutions and, therefore, it would be unjustified to include specific categories of employees at the level of the Board and grant them the higher benefit of pay scales. The Government has stated, at best, the petitioners would be entitled only to the same pay scales which were sanctioned by the State Government to the employees of the same categories as stipulated in the instructions of the State Government dated 10.05.2002. The Government affirms that the State Government has already issued instructions dated 03.11.2006 regarding the grant of higher pay scales under ACP scheme w.e.f. 01.11.2006 to its employees and completing service of 4, 9 and 14 years. The employees of the Board could have the benefit only of these instructions.

6. I see merit of the contentions raised by the State but I do not have the materials to see if Committee had duly adverted to the Government's instructions in that regard. The question still is whether the government can put on hold any decision of the board when there involves no additional financial liability for the state and the financial burden shall be of the board only. The learned counsel appearing on behalf of the petitioners refers to a decision of this Court in **Punjab School Education Board Employees' Association, SAS Nagar, Mohali, District Ropar Versus State of Punjab and others in CWP No.11546 of 1993, decided on 09.02.2010**, where this Court has held that the decision of the Board to give special allowance to its employees cannot be controlled by any decision to the contrary by the Government. In so doing, this Court has relied on the Division Bench ruling in **Paramjit Kaur and others Versus State of Punjab and others in CWP No.11983 of 2001**, that recognized the power of the Electricity Board to mind its affairs as regards the conditions of service without in any way impeded by the directives by the State Government in its administrative functioning. The issue of autonomy that the Electricity Board enjoys by virtue of the provisions contained in the Act constituting the Board could be tested only in the light of the provisions contained in the Punjab School Education Board itself. The Punjab School Education Board Act of 1969 delineates the extent of powers of the Board and the control that is possible through state action. Some of the provisions are required to be seen. Section 16(2) reads as follows:

“Subject to the provisions of this Act, the Board shall exercise and perform the following powers and functions with the prior approval of the State Government, namely:—

(a) arrange for the preparation, writing, compilation, printing, publishing and sale of text books, other educational material and undertake the publication of any other educational work, book or periodicals.

However, copy right of any material developed, published, printed by the Board, shall vest with the State Government;

and

(b) prescribe conditions for affiliation of institutions in terms of teachers and their qualifications, curriculum, equipments, buildings and other educational facilities

18. (1) The Board shall for the purpose of carrying out the provisions of this Act and the regulations made there under set up the following committees and councils, namely :—

(a) finance committee consisting of :—

(i) the Chairman;

(ii) the Vice-Chairman;

(iii) the Secretary to Government in the Department of 'Education or an officer of that Department not below the rank of a Deputy Secretary nominated by him;

(iv) the Secretary to Government in the Department of Finance or an officer of that Department not below the rank of a Deputy Secretary nominated by him;

(iv-a) the Director General, School Education, Punjab; and

(v) three persons selected by the members from amongst themselves.

.....

18(2): (2) The finance committee shall examine all financial matters pertaining to the Board including the budget estimates and the annual accounts and balance sheets.

.....

18(5): The accounts of the Board shall be audited annually by such agency and on payment of such fees, as may be specified by the State Government and a copy of the annual audited accounts, balance sheet and annual administrative reports shall be submitted by the Board to the State Government each year by such date, as the State Government may specify and as soon as possible, shall be laid before the House of the State Legislature.

.....

23(1) The State Government shall exercise superintendence, direction and control over the Board and its officers and may call for any information which it may consider necessary.

(2) If the State Government is of the opinion that the Board is not functioning properly in accordance with the provisions of this Act, and is abusing its powers or there is mismanagement, it may, by notification in the Official Gazette, supersede the Board:

Provided that the period of supersession shall, in no case, exceed one year.

(4) The State Government may, at any time appoint a committee consisting of such persons, as it may think fit to enquire into and report on any policy, administrative, financial or any other matter which the State Government may think fit in the interest of school education and functioning of Board. The State Government may, after considering the report of such committee, issue such directions to the Board, as it may think fit, and the Board shall comply with such directions.”

7. The prior approval of the government that Section 16 contemplates is to arrange for the preparation, writing, compilation, printing, publishing and sale of text books, other educational material and undertake the publication of any other educational work, book or periodicals. The financial matters of the Board shall be the affairs of the Board itself with its power to examine the same through Finance Committees constituted under Section 18. Section 21 itself makes possible only the power of supervision. It is not worded in the same way of immediate control as in section 16. Beyond advising the Board on financial proprieties, I cannot find that the State will be justified in holding back any decision of the Board even on financial matters. If the view of the State government is that the recommendations of the Special Committee are properly not understood and without specifically adverting to the equivalence of posts in the Punjab Government service, it shall not become possible to apply the 4-tier pay scales, the matter shall be placed before the Board again for reconsideration of the Committee's recommendations, identify the equivalence of posts with the state service for subject experts posts in the schools under the control of the Board, and shall reconsider the decision in the

light of the instructions of the State through its letter dated 17.04.2000 and the subsequent Government instructions issued on 03.11.2006 regarding the grant of higher scales of pay under the ACP scheme to its employee on completing service of 4, 9 and 14 years. The Board shall take a decision within a period of 8 weeks and it shall be free to implement the same without further waiting for state concurrence. The Board shall conduct itself in such a way that it does not jeopardize its own standing by possibility of action under section 21 (2) of the Act.

8. The writ petition is disposed off on the above terms.”

4. The present petitioners claiming parity with the petitioners in the aforesaid CWP served legal notice upon the respondent-Board for implementing 4th Pay Commission *qua* them as well.

5. Respondent-Board has not opposed the claim of the petitioners and stands by its decision. However, it has been claimed that the objection raised by the Deputy Controller (Local Audit), Punjab School Education Board serves as the impediment in implementing the decision taken by Board. While considering this objection, this Court on 7th of March, 2018 passed the following order :-

“At the initiation of arguments, it has been pointed out by learned counsel for respondents No.2 and 3 that the Board is ready to extend the benefit to some of the categories of its employees in the light of the instructions dated April 17, 2000 issued by the State of Punjab and an order dated April 01, 2015 has already been passed by the Board. The only reason for which it could not be implemented is, an objection raised by the Deputy Controller (Local Audit), Punjab School Education Board-

Respondent No.4 that these posts do not exist as described in notification dated April 17, 2000.

At this juncture, the question has arisen whether for the grant of benefit by the Board to its employees as given vide order dated April 01, 2015 requires any sanction or approval from the State of Punjab.

Learned State counsel seeks time to have instructions in this regard.

List on 28.03.2018.

To be taken up after the urgent list.”

6. Pursuant to the aforesaid order, State of Punjab has filed affidavit wherein refuge is being taken under the provisions of Punjab School Education Board Act to claim as under :-

“10. That it is further respectfully submitted that the Department of Finance, Government of Punjab in the issued Letter No.:1/65/2001-3PP.1/3020-21 dated 08.05.2002 to the Accountant General (Audit), Punjab and Examiner Local Fund Accounts, Punjab, regarding grant of Higher Pay Scales/Allowances and other perks to the employees of the various Public Sector Undertaking, Local Authorities, Universities, Boards and Corporations and Public and quasi-Public Bodies in the State, which are higher than those admissible to the similar placed employees of the State Government. It was observed by the Government that the Bodies/Institutions being creature of the State, the cardinal principle to be followed is that the General Rules of Administration and financial discipline applicable to Government Departments should be strictly followed by all Institutions, Public Sector Undertaking, Local Authorities, Universities, Boards, Corporations and other Public and quasi-Public Bodies and the scales of pay and other allowances etc. of their employees should not exceed those admissible to corresponding Government employees. If it is

noticed during audit that any Public Sector Undertaking, Boards, Corporations, Universities, Local Authority or other Public/quasi-Public Body is allowing higher pay scales/allowances or other perks in excess of those admissible to their counterparts in the Government, the matter may be brought to the notice of Finance Department through a special report. (A copy of Letter No.1/65/2001-3PP.1/3020-21 dated 08.05.2002 is annexed herewith as Annexure R-3)

That finally it is submitted that it is incumbent upon the Board to seek prior sanction or approval from the Government before extending any benefits to its employees.”

7. Short reply by way of affidavit of B. Pursharth, Secretary Expenditure, Department of Finance dated 26th of July, 2018 has been filed in compliance of order dated 11th of July, 2018 wherein it has been claimed as under :

“3. That in compliance of order dated 11.07.2018 of this Hon'ble Court, it is submitted that audit of accounts of Punjab School Education Board, Mohali is conducted as provided under clause 29(1) of Punjab School Education Board (Financial) Regulations 1979 (Annexure R-4) which is reproduced here below:

“29(1). The account of the board shall be got audited day to day by an audit officer assisted by necessary staff on the establishment of the Examiner, Local Fund Accounts, Punjab.”

A copy of provisions of Clause 29(1) of the Punjab School Education Board (Financial) Regulations 1979 is annexed as Annexure R-4.”

8. I have heard counsel for the parties and have gone through the records of the case.

9. It is not disputed that the petitioners are working as Subject Experts/Assistant Director in the Academic Wing of the respondent-Board. It is also not in dispute that the State of Punjab accepted and implemented recommendations of 6th Pay Commission and granted 4 tier pay scale to all its employees. The respondent-Board adopted the notification of the State and has given the pay-scale/increments under this ACP scheme under the pattern of Punjab Government to all its employees up to level of Superintending Engineers. However, vide Annexure P-8, the benefit given to the petitioners stands withdrawn in the light of clarification issued by Punjab Government dated 3rd of July, 1998. The petitioners impugned the action of the respondent before this Court in CWP No.19692 of 2005. Vide order dated 19th of December, 2005 this Court directed the respondent-Board to take decision by passing a speaking order on the claim of the petitioners. Board vide order dated 28th of July, 2006 held those employees entitled for 4 tier pay scale. The matter again came before this Court in CWP No.16452 of 2008 wherein the objection of the State and its power over the functions of the Board was dwelled upon and it was held as under :-

“The question still is whether the government can put on hold any decision of the board when there involves no additional financial liability for the state and the financial burden shall be of the board only. The learned counsel appearing on behalf of the petitioners refers to a decision of this Court in **Punjab School Education**

Board Employees' Association, SAS Nagar, Mohali, District Ropar Versus State of Punjab and others in CWP No.11546 of 1993, decided on 09.02.2010, where this Court has held that the decision of the Board to give special allowance to its employees cannot be controlled by any decision to the contrary by the Government. In so doing, this Court has relied on the Division Bench ruling in *Paramjit Kaur and others Versus State of Punjab and others in CWP No.11983 of 2001*, that recognized the power of the Electricity Board to mind its affairs as regards the conditions of service without in any way impeded by the directives by the State Government in its administrative functioning. The issue of autonomy that the Electricity Board enjoys by virtue of the provisions contained in the Act constituting the Board could be tested only in the light of the provisions contained in the Punjab School Education Board itself. The Punjab School Education Board Act of 1969 delineates the extent of powers of the Board and the control that is possible through state action. Some of the provisions are required to be seen. Section 16(2) reads as follows:

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(a) finance committee consisting of :—

(i) the Chairman;

(ii) the Vice-Chairman;

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(2) If the State Government is of the opinion that the Board is not functioning properly in accordance with the provisions of this Act, and is abusing its powers or there is mismanagement, it may, by notification in the Official Gazette, supersede the Board:

Provided that the period of supersession shall, in no case, exceed one year.

(4) The State Government may, at any time appoint a committee consisting of such persons, as it may think fit to enquire into and report on any policy, administrative, financial or any other matter which the State Government may think fit in the interest of school education and functioning of Board. The State Government may, after considering the report of such committee, issue such directions to the Board, as it may think fit, and the Board shall comply with such directions.”

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The Board shall conduct itself in such a way that it does not jeopardize its own standing by possibility of action under section 21 (2) of the Act.”

(emphasis supplied)

10. The present petitioners are the employees similarly situated to the one which were the petitioners in the case of **Dharam Singh and others vs. Punjab School Education Board** (supra). Thus, the Court does not find any reason to deny the relief granted to the petitioners **Dharam Singh's case** (supra).

11. Resultantly, the present writ petition is disposed off with the direction to the respondents to take a decision on the legal notice served by the petitioners (Annexure P-15) in the light of law laid down by this Court in **Dharam Singh's case** (supra). If any decision has been taken by the Board in the case of petitioners in Dharam Singh's case, the claim of the petitioners herein shall be adjudicated in the light of the same. Section 21(2) cannot be held to be a bar on the rights of the Board to adjudicate upon the rights of its employees as held by this Court in CWP No.16452 of 2008 *ibid*.

12. Necessary exercise be concluded within a period of 8 weeks from the date of receipt of certified copy of this order. In case, the petitioner are entitled, their claims be released within a period of 4 weeks thereafter.

13. In case, the respondents found that the claim of the petitioners merits rejection, the same shall be rejected by passing a Speaking Order.

14. Disposed off.

March 27, 2023
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No