2024:PHHC:131760

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-9888 of 1999
Reserved on: 18.09.2024
Pronounced on: 01.10.2024

S.K. Khosla and others
......Petitioners

Versus

The State of Punjab and others
......Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: Mr. V.K. Sharma, Advocate, for the petitioners.

Mr. Rajesh Sehgal, Addl. A.G., Punjab, for respondents No.1 and 2.

Mr. B.S. Patwalia, Advocate, for respondents No.3 to 7.

NAMIT KUMAR, J.

1. The petitioners have invoked the jurisdiction of this Court by filing the instant petition under Articles 226 and 227 of the Constitution of India, seeking a writ of *mandamus*, directing the respondents to grant the pay scale of Rs.2000-3500 w.e.f. 01.01.1986 at par with the Accountants of the Punjab Government, Housefed and the Superintendent (Admn), Milkfed, who have throughout been placed in the identical pay scale.

2. The brief facts, as have been pleaded in the petition, are that the petitioners are working as Accountants in the Punjab State Co-operative Milk Producers' Federation Limited, Chandigarh (hereinafter referred to as 'the Milkfed'). It has been averred in the petition that the service conditions of the petitioners are governed by the 'Co-operative

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2024.10.03 18:01
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Milk Producers Union Employees Service (Non-common cadre) Rules, 1996 framed by the Registrar, Co-operative Societies, Punjab, exercising the powers vested with him under Rule 28 of the Co-operative Societies Rules, 1963 and the said authority has also granted approval to the staffing pattern for Milkfed Unions and Plants in the State of Punjab along with the prescribed qualifications and pay scales under Rule 23 of 1963 Rules. The petitioners, before being absorbed in the Milkfed/Milk Unions, were previously working in the Punjab Dairy Development Corporation (hereinafter referred to as 'PDDC'). On their absorption in the Milkfed, their pay was protected and in the appointment letters issued to the petitioners by PDDC, it was clearly mentioned that they would be entitled to the pay scales which were being given to the employees of the Punjab Government from time to time. On the acceptance and implementation of the conditions of Third Punjab Pay Commission by the Punjab Government for its employees, the Registrar, Co-operative Societies, Punjab, accorded approval for the revision of the pay scales of the employees of Milkfed/Milk Unions w.e.f. 01.01.1986 on the pattern of Punjab Government vide letter dated 02.06.1989 and as per the recommendations, DA/HRA/CCA/RA or any compensatory allowances were also to be given to the employees of the Milkfed and Milk Unions at par with the Punjab Government employees from the date these allowances were given by the Punjab Government to its employees. The Milkfed issued letter dated 05.06.1989 to all the Milk Unions/Plants to fix the pay of the employees in the revised pay scales on the pattern of Punjab

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2024.10.03 18:01
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Government. The Punjab Government vide its notification dated 15.06.1990 further substituted the revised pay scales of a number of categories, including the ministerial staff to which the petitioners belonged i.e. Accountant on the basis of Third Punjab Pay Commission report by promulgating the Punjab Civil Services (Revised Pay) (Third Amendment) Rules, 1990 and as per this notification, Punjab Government granted revised pay scales of Rs.1800-3200 to the Accountants. The State Government further revised the pay scales of its employees in pursuance to Rule 3(b) of the Punjab Civil Services (Revised Pay) Rules, 1998, whereby revised pay scale of Rs.2000-3500 was granted to the Accountants, vide order dated 15.11.1990, issued by the Local Self-Government, Punjab. Similarly, the Housefed revised the pay scale of its Accountants to Rs.2000-3500 and re-designated them as Senior Accountants. It has further been averred that the Superintendents (Admn), Milkfed and the Accountants of Milkfed and Milk Unions and the Accountants of the Punjab Government Undertakings like Housefed, were enjoying the identical unrevised pay scale of Rs.700-1200 prior to 01.01.1986. The Accountants of Punjab Government and Housefed were initially granted the same revised pay scale of Rs.1640-2925 and then Rs.1800-3200 w.e.f. 01.01.1986 and finally Rs.2000-3500 w.e.f. 01.01.1986 and the Superintendent (Admn) have also been granted the pay scale of Rs.2000-3500 though w.e.f. 01.01.1994. However, the petitioners have been discriminated and have not been granted the said pay scale, therefore, they are entitled for the pay scale of Rs.2000-3500 w.e.f. 01.01.1986, which has been

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granted w.e.f. 01.01.1994. The petitioners made various representations dated 06.06.1997, 10.11.1997, 28.07.1998, 01.09.1998 and 07.09.1998 for grant of improved/revised pay scale at par with the Superintendent (Admn) working in Milkfed and Accountants of Punjab Government and its undertakings like Housefed etc. However, the said claim of the petitioners has not been accepted. Hence, the present writ petition.

3. Short reply on behalf of respondents No.1 and 2 by way of affidavit of Monica Saini, Lady Assistant Registrar, Cooperative Societies, Punjab, Chandigarh, has been filed and short reply on behalf of respondents No.3 to 7 has been filed through Dr. Kamal Kumar Garg, IAS, Managing Director, Milkfed. In the short reply filed on behalf of respondents No.1 and 2, it has been stated that the present case is squarely covered against the petitioners in view of the judgment of the Hon'ble Supreme Court in ***Punjab State Co-Operative Milk Producers Federation Ltd. and another v. Balbir Kumar Walia and others, 2021(3) SCT 322***, wherein the Hon'ble Supreme upheld the grant of revised pay scale w.e.f. 01.01.1994. In the reply filed by Milkfed, it has *inter alia* been stated that, the writ petition against the Milkfed is not maintainable as it is not a State or authority within the meaning of Article 12 of the Constitution of India. On merits, it has been stated as under: -

> *"3. That in the instant writ petition the petitioners have sought for a writ in the nature of Mandamus directing the Answering Respondents to grant and give the petitioners the revised pay scale of Rs.2000-3500 w.e.f. 1.1.1986 at*

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par with Accountants of the Department of Local Government Punjab, Housefed and Superintendents (Admn.) Milkfed alongwith interest @18% per annum. The petitioners in the writ petition have averred that they have been absorbed in Milkfed from the Punjab Dairy Development Corporation (PDDC) and during their absorption their pay was protected and therefore, they are entitled to the pay scale which have been given to their counter parts i.e. employees of Department of Local Government (Government of Punjab), however, the said fact as dilated herein below is incorrect.

4. That in this regard, it is imperative to highlight and bring to the notice of this Hon'ble court that an order was passed by the Answering Respondent at the time such employees were absorbed from Punjab Dairy Development Corporation (PDDC). It is submitted that on 29.11.1983 an order was passed laying down the condition of absorption. It is submitted that as per the absorption conditions only the basic pay being drawn by such employees given to them by Punjab Dairy Development Corporation (PDDC) was admissible. However, it was categorically stated that thereinafter the pay shall be fixed according to Milkfed Rules/Instructions. It was categorically indicated that their services shall be governed by the Rules/Instructions of Milkfed as the case may be from time to time. The relevant extract of the conditions of the order dated 29.11.1983 is being reproduced herein below:

> *"1. The employees shall be allowed to draw the basic pay which they are presently getting in the pay scale of PDDC plus allowances as admissible thereon according to the Milkfed Rules/ Instructions.*

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2024.10.03 18:01
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2024:PHHC:131760

2. Their services shall be governed by the Rules/Instructions of Milked as may be in force from time to time.

3. In case an employee is on probation, he will be treated on probation in Milkfed also and for the purpose of probation period, the date of his joining in PDDC will be taken into account. The probation period as per policy of Milkfed will be one year in the first instance which can be extended further.

4. The absorption will be without prejudice to the departmental enquiry/ disciplinary proceedings, if any, going on against any employee. In such a case, the Milk federation shall have the right to take further action on the departmental enquiry/disciplinary proceedings going on against the concerned employee and he will be liable to be punished by the competent authority in Milkfed.

5. Their inter-se seniority among them in the PDDC will not be disturbed after their absorption in Milkfed.

They shall continue to work at their present places of postings."

A perusal of the Annexure appended alongwith the order would also give the list of persons who were absorbed at the time and would indicate that most of the names of the petitioners find mentioned in the said list indicating that they accepted the terms and conditions before their absorption. Therefore, the averments in the writ petition that they will be entitled for pay scales being given to employee of Punjab Government is incorrect and contrary to the conditions of absorption. A copy of the order dated 29.11.1983 is appended as Annexure R-1/1.

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2024:PHHC:131760

5. That thereinafter, another order dated 18.4.1984 was passed wherein the accountants who were working in Punjab Dairy Development Corporation (PDDC) in the pay scale of Rs.600-1120 and were absorbed as Accountant Grade II in the Respondent Federation were granted the pay scale of Rs.700-1200 as Accountants. A copy of the order dated 18.4.1984 is appended as Annexure R-1/2.

That thereinafter once the 3rd Punjab Pay Commission Report was submitted and accordingly "The Punjab Civil Services (Revised Pay) (Third Amendment) Rules, 1990" were notified. It is submitted that Third Punjab Pay Commission Report revised the scale of Accountants from Rs.700-1200 to Rs.1640-2925 w.e.f. 1.1.1986. It is submitted that the revised pay scale of Rs.1640-2925 was granted to the petitioner w.ef. 1.1.1986. However, in the year 1990 vide notification dated 15.6.1990 (P-5) the pay scales were further re-revised w.e.f. 1.1.1986 and the pay scale of post of Accountants was revised to Rs.1800-3200 w.e.f. 1.1.1986. However, the said increase in the scales w.e.f. 1.1.1986 was considered by the Respondents and a committee was set up on 6.12.1994 in order to see the feasibility of granting of the said upward revision to the employees of Milkfed and Milk Union as also whether the revisions are to be given w.e.f. 1.1.1986 or any subsequent date. The Committee vide its comprehensive report dated 2.3.1995 decided to grant the scale of Rs.1800-3200 to its employee i.e. Accountants w.e.f. 1.1.1994 at par with the Punjab Government. A further perusal of report of the committee would indicate at that time also certain Accountants had already approached this Hon'ble Court for grant of pay scales and despite observing that such writs are pending the

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2024.10.03 18:01
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2024:PHHC:131760

committee decided to grant the benefit w.e.f. 1.1.1994. The relevant extract of the observation of the committee recorded in its minutes is reproduced herein below:

> *"The terms of reference under (i) and (ii) get fully covered in the above recommendations. Point iii) also stands partially covered. Regarding impact of pending writ petitions of Accountants and Dy. Manager (AH), efforts may be made to persuade them to withdraw the writs. If they do not withdraw, then either the petitioners may be excluded from the benefit of revision or benefit may be extended to them from 1.1.1994 and court can be informed that Management have extended the benefit of revision from 1.1.1994 like other categories. However, the committee recommends the latter course of action."*

The said report was then placed before the Board of Directors and the Registrar Cooperative Societies Punjab and accordingly approval was granted to the said report on 29.4.1997. Copies of the committee report alongwith the order dated 28.5.1997 are appended as Annexure R-1/3 & Annexure R-1/4 respectively.

6. That the said report of the committee as well as other issues regarding the dates of grant of revisions were challenged before this Hon'ble Court in certain writ petitions and then ultimately, assailed before the Hon'ble Supreme Court of India in Civil Appeal No.7427 of 2011 titled as Punjab State Co-Operative Milk Producers Federation Ltd. And another Versus Balbir Kumar Walia and others. The said Civil Appeals have been ultimately decided by the Hon'ble Supreme Court vide judgment dated 9.7.2021 wherein the recommendations of the committee were upheld and the grant of revised pay scale w.e.f. 1.1.1994 have been upheld. The Hon'ble Supreme

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2024.10.03 18:01
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2024:PHHC:131760

Court has also decided on the issue of equal pay equal work and has categorically held that since the education qualification and responsibility of certain posts can be different it is not possible to equate the same. Therefore, once the committee report and the grant of pay scale w.e.f. 1.1.1994 has been upheld the present writ petition deserves to be dismissed.

While deciding the same bunch of appeal the Hon'ble Supreme Court in Civil Appeal No.7432 of 2011 has also held that the pay scale equivalent to the counter parts in the State of Punjab cannot be granted. A copy of the judgment passed in Civil Appeal No.7427 of 2011 dated 9.7.2021 is appended as Annexure R-1/5.

7. That furthermore, at this stage it is imperative to bring to the notice of this Hon'ble Court and highlight therein that the reliance placed by the petitioners on Annexures P-6 and P-7 is completely misplaced and cannot be equated since a perusal of the annexure P/6 dated 15.11.1990 would reveal pertaining to the Department of Local Government that their Accountants Grade A were granted the revised scale and as per Annexure P-7 in Housefed Senior Accountants were granted the pay scale of Rs.2000-3500. It is submitted that both the said posts are firstly different and the working of the posts of the petitioners is completely different. In the Department of Local Government, the existing Accountants Grade A were already in receipt of certain special pay and higher times scale and under those circumstances the re-revision was done. However, the cases of the petitioners are completely different and cannot be equated. Furthermore, the Respondents have granted revised pay scale to the petitioner of Rs.1800-3200 at par

RAVINDER SINGH
2024.10.03 18:01
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2024:PHHC:131760

with the Government of Punjab w.e.f. 1.1.1994. Therefore, the reliance by the Petitioners on Annexures P-6 & P-7 is completely misplaced.

8. That at this stage it is furthermore submitted that the petitioners in the writ petition have claimed parity with Superintendent Administration and in this regard, it is submitted that the nature and duties of the post of Accountants vis-a-viz Superintendents (Admn.) are completely different and therefore, no parity can be granted and infact a perusal of the judgment passed by the Hon'ble Supreme Court in Civil Appeal No.7427 of 2011 titled as Punjab State Co-Operative Milk Producers Federation Ltd. And another Versus Balbir Kumar Walia and others would also reveal that in case of the pay parity between two posts the Apex court has held once the responsibility of two posts are different equality of pay cannot be maintained."

4. Learned counsel for the petitioners has submitted that since there was complete parity with regard to the pay scales of the Accountants working in the Milkfed/Milk Unions and Superintendent (Admn) of the Milkfed and the Accountants working in the Punjab Government and its instrumentalities like Housefed, the petitioners cannot be discriminated and they are entitled for the pay scale of Rs.2000-3500 w.e.f. 01.01.1986 instead of Rs.1800-3200 which has been granted w.e.f. 01.01.1994.

5. *Per contra*, learned State counsel and learned counsel appearing for the Milkfed have submitted that there was no conscious decision taken by the Milkfed to grant the same pay scale which has been granted to the post of Superintendent (Admn) Milkfed and

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2024.10.03 18:01
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2024:PHHC:131760

Accountants working in the Punjab Government or its instrumentalities like Housefed etc. If, incidentally these posts were in the same pay scale prior to 01.01.1986, the petitioners cannot claim parity with the said posts as neither any material has been placed on record by the petitioners with regard to their method of recruitment, qualifications and duties & responsibilities performed by them. Therefore, in the absence of the same, the petitioners cannot claim the same pay scale. He further submitted that the issue has already been settled by the Hon'ble Supreme Court in ***Balbir Kumar Walia's*** case (supra) and, therefore, present writ petition is liable to be dismissed.

6. I have heard learned counsel for the parties and perused the record with their able-assistance.

7. The facts are not in dispute that the petitioners were initially employees of the Punjab Dairy Development Corporation prior to the year 1983 and vide order dated 29.11.1983, the Milkfed absorbed the employees of PDDC by giving specific conditions of absorption, including grant of pay scale in accordance with Milfed Rules/instructions. The absorption of the employees in the Milkfed was on the following conditions: -

> *"1. The employees shall be allowed to draw the basic pay which they are presently getting in the pay scale of PDDC plus allowances as admissible thereon according to the Milkfed Rules/Instructions.*
>
> *2. Their services shall be governed by the Rules/Instructions of Milkfed as may be in force from time to time.*

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3.	*x*	*x*	*x*	*x*
4.	*x*	*x*	*x*	*x*
5.	*x*	*x*	*x*	*x*

8. The order dated 29.11.1983 regarding absorption of the petitioners and other Accountants in the Milkfed was modified vide order dated 18.04.1984, to the following extent: -

> *"Their absorption in Milkfed would be as Accountants in the pay scale of Rs.700-1200 instead of Accountants Grade-II in the pay scale of Rs.600-1120. Further, if any, employee is drawing pay less than the minimum of the pay scale against which he is absorbed he will be allowed the pay at the minimum of the pay scale of the post."*

9. In pursuance to the recommendations of the Third Pay Commission, 'Punjab Civil Services (Revised Pay) (Third Amendment) Rules, 1990' was notified and the pay scale of Accountants was revised from Rs.700-1200 to 1640-2925 w.e.f. 01.01.1986 and consequently, the petitioners were also granted the said pay scale w.e.f. 01.01.1986. Thereafter, vide notification dated 15.06.1990, pay scales of Accountants were further revised by the State Government to Rs.1800-3200 w.e.f. 01.01.1986. The Milkfed formulated a Committee on 06.12.1994 to look into the grant of pay scales and upward revision to the employees of Milkfed and Milk Unions as also to determine whether the revision is to be granted w.e.f. 01.01.1986 or any subsequent date. The Committee vide its report dated 02.03.1995, after examining the issues referred to it, gave a comprehensive report which was approved by the Board of Directors of Milkfed in its meeting held on 24.09.1996 and the Registrar, Cooperative Societies, Punjab, also

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2024.10.03 18:01
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2024:PHHC:131768

accorded approval vide its letter dated 29.04.1997. The Committee granted the pay scale to the petitioners and other Accountants at the rate of Rs.1800-3200 w.e.f. 01.01.1994, keeping in view the financial health of the Milkfed and consequently, the order dated 28.05.1997 was issued granting pay scale of Rs.1800-3200 to the petitioners and other categories of employees w.e.f. 01.01.1994. The relevant portion from the letter dated 28.05.1997 and annexures attached with the said letter is as under: -

> *"Sub: - Grant of improved pay scales to certain categories of employees of Milkfed and Milk Unions including employees of those categories enjoying identical pay scales.*
>
> *Memo:*
>
> *I am to address you on the subject noted above and to state that Milkfed constituted a Committee of Senior Officers to examine the grant of improved pay scales to certain categories of employees of Milkfed and Milk Unions (including employees of those categories enjoying identical pay scales) and also to revise the master pay scale vide this office letter No.PSF/Admn./EA-1/4206-66, dated 6.12.94 giving specific terms of references to the committee. The committee after examining the issues referred to it, gave a comprehensive report on 2.3.1995. The report was approved as such by the BOD of Milkfed in its meeting held on 24.9.1996 and Registrar, Cooperative Societies, Punjab also accorded approval vide their letter No.MS-2/10-DEV./RCS/1374 dated 29.4.1997. Accordingly, it has now been decided to grant improved pay scales to certain categories of employees of Milkfed and Milk Unions w.e.f. 1.1.1994 as per details given in the attached Annexure 'A'."*

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2024.10.03 18:01
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ANNEXURE 'A'

S.NO.	NAME OF CATEGORIES	UNREVISED PAY SCALE BEFORE 1.1.1986	ALREADY REVISED PAY SCALE W.E.F. 1.1.1986	PAY SCALE NOW IMPROVED BY MILKFED W.E.F. 1.1.1994	REMARKS
1 TO 5	XX	XX	XX	XX	XX
6.	ACCOUNTANT SR. ASTT. SECURITY OFFICERS MILK PROC. SUP. ASSTT. MANAGERS – FODDER SP. ED.SUP./DAIRY ASSTT. MANAGER HCC/AHA	700-1200	1640-2925	1800-3200	
7-8	XX	XX	XX	XX	XX
9.	SUPT. ADMN.	700-1200	1640-2925	2000-3500	
10-15	XX	XX	XX	XX	XX
METHOD OF DETERMINING THE NUMBER OF SELECTION GRADE SEIOR SCALE AND BASIC ENTERY SCALE OF POSTS OF CLERKS					
XX XX XX					

Sd/-
Managing Director,
Milkfed, Punjab."

10. The present writ petition was admitted on 23.07.1999. However, the said committee report dated 02.03.1995 was challenged before this Court in a bunch of writ petitions, which was allowed by a Division Bench of this Court vide judgment dated 19.03.2009 and it was directed that the employees of the Milkfed are entitled to the pay scale equivalent to their counterparts in the State of Punjab w.e.f. 01.01.1986. The said judgment was challenged by the Milkfed before the Hon'ble Supreme Court in Civil Appeal No.7427 of 2011 titled as 'Punjab State Co-operative Milk Producers Federation Limited and another v. Balbir Kumar Walia and others' and the same was allowed vide judgment dated 09.07.2021 by setting aside the judgment of the

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2024.10.03 18:01
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Division Bench of this Court dated 19.03.2009 and it was held that the Committee has rightly granted the pay scale w.e.f. 01.01.1994 and the High Court was unjustified in exercising the powers of judicial review by passing the judgment dated 19.03.2009. The relevant portion from the said judgment is as under: -

> *"The present appeals are directed against an order passed by the Division Bench of the High Court of Punjab & Haryana at Chandigarh on 19.3.2009 whereby the writ petitions filed by the respondents herein were allowed holding that the Punjab State Co-operative Milk Producers Federation Ltd. is a State within the meaning of Article 12 of the Constitution of India and that the employees are therefore entitled to pay scale equivalent to their counterparts in the State of Punjab from 1.1.1986, though the revised pay scale was allowed by the Federation w.e.f. 1.1.1994.*
>
> *x x x x*
>
> *7. The employees of the Federation raised protest; therefore, a committee was constituted on 6.12.1994 to examine the following issues:*
>
> > *"(i) Whether the upward revision should be adopted for the employees of Milkfed and Milk Unions?*
> >
> > *(ii) Whether the revision is to be given with effect from 1.1.1986 or any subsequent date by giving the benefit of notional fixation?*
> >
> > *(iii) Whether the upward should confine only to the categories covered in the report of Government Anomaly Committee or categories enjoying identical scales (unimproved) need to be covered (a) repercussion if revision is confined to the categories covered in the Government report (b) impact, if any,*

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2024.10.03 18:01
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2024:PHHC:131760

of pending writ petitions, resolutions of BOD of M.U., Ludhiana and BOD of Milkfed?

(iv) Whether there is any necessity of changing the qualification/improving designations of certain categories being placed in higher scales?

(v) Any other point/issue identical to or connected with the above?"

8. The Committee, inter alia, made the following recommendations:

"4. The Committee finds that in case the revision of pay scales is taken up w.e.f. 1.1.1986, the amount of arrears upto 31.12.1993 works out to Rs.1.5 crore approx., i.e. about 60 lacs in case of those categories for which the scales have been improved and about Rs.90 lac in case of identical categories. Taking into consideration the financial health of the Milkfed and more particularly majority of Milk Unions, Committee strongly feels that payment of arrears will further shatter the financial health of the Milkfed and Milk Unions and it will not be possible to pay such a huge amount in the shape of arrears. Committee feels that the employees concerned also understand this position and will most probably be agreeable to the grant of improved pay scales w.e.f. any subsequent date. The 2nd alternative of granting benefit from 1.1.1994 with notional fixation of BP w.e.f. 1.1.1986 has also been examined. In this case, more than 750 employees will be financially benefited and the financial burden will be Rs.2.0 lac pm. This is also considered to be a huge liability, especially when the recommendations of the IVth Pay Commission are expected and the liability on its implementation

RAVINDER SINGH
2024.10.03 18:01
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2024:PHHC:131760

is also likely to be heavy. Further, the Committee has been told that the liability of the arrears on account of Prop. set up from 1.1.1986 to 31.8.1992 are still outstanding. The Committee after considering the above as well as various other aspects, recommends that the improved pay scales may be implemented w.e.f. 1.1.1994 without giving the benefit of even notional pay fixation w.e.f. 1.1.1986. Adoption of the Punjab Government pattern of Pay Scales has been felt necessary with a view to make parity in the scales for future revisions etc. This would save the organisation from a huge liability of the payment of arrears and will also give scope to the employee for placement in better pay scale and getting benefit which might accrue as a result next revision of pay scale likely to be made w.e.f. 1.1.1994 on Punjab Government pattern."

9. The report of the Committee was considered and the grant of revised pay scale w.e.f. 1.1.1994 was approved by the Board of Directors of the Federation. The minutes of the meeting of the Board of Directors of Federation held on 30.8.1996 read as under:

"After discussion, it is unanimously resolved that in view of the recommendations of the Departmental Committee, constituted by the Milkfed on 6.12.1994, contained in the report enclosed at Annexure-3, approval is granted to the implementation of the revised pay scales and Master Pay Scale to the concerned employees of the Milkfed and the Milk Unions in accordance with the report of the Anomaly Committee constituted under the Third Pay Commission by the Punjab Government, with effect from 1.1.1994. Its approval may also be

RAVINDER SINGH
2024.10.03 18:01
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obtained from the Registrar, Cooperative Societies, Punjab."

10. The decision of the Board was approved by the Registrar (Cooperative Societies) on 29.4.1997. Thus, subsequently, revised scales with effect from 1.1.1994 were granted to the employees.

x x x x

19. We have heard learned counsel for the parties and find that the judgment and order of the High Court cannot be sustained. In our country, there are broadly three sets of employers such as employers in the organized sector like the Industrial workers; secondly, Public Sector Undertakings including Boards and Corporations and all other establishments, which meet the test of a State within the meaning of Article 12 of the Constitution; and thirdly, Central or State Government employees.

20. One of the early judgments of this Court is ***Crown Aluminium Works v. Workmen AIR 1958 Supreme Court 30****, wherein the question examined was as to whether in view of financial conditions, the wages of workmen can be reduced. This Court held that it would not be right to hold that there is a rigid and inexorable convention that the wage structure once fixed by Industrial Tribunals can never be changed to the prejudice of workmen.*

This Court thus held as under:

> *"11. .. In dealing with a claim for such revision, the Tribunal may have to consider, as in the present case whether the employer's financial difficulties could not be adequately met by retrenchment in personnel already effected by the employer and sanctioned by the Tribunal. The Tribunal may also enquire whether the financial difficulties facing the*

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2024.10.03 18:01
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2024:PHHC:131760

> *employer are likely to be of a short duration or are going to face the employer for a fairly long time. It is not necessary, and would indeed be very difficult, to state exhaustively all considerations which may be relevant in a given case. It would, however, be enough to observe that, after considering all the relevant facts, if the Tribunal is satisfied that a case for reduction in the wage structure has been established then it would be open to the Tribunal to accede to the request of the employer to make appropriate reduction in the wage structure, subject to such conditions as to time or otherwise that the tribunal may deem fit or expedient to impose. .."*

21. In respect of Industrial workers, this Court, while dealing with wage structure in a judgment reported as ***Standard Vacuum Refining Co. of India v. Workmen & Anr. AIR 1961 Supreme Court 895****, held that it is usual to divide wages into three broad categories: the basic minimum wage which is the bare subsistence wage, above it is the fair wage, and beyond the fair wage is the living wage. The said three categories of wages are described as the poverty level, the subsistence level and the comfort or the decency level. This Court accepted the Report by the Commission of Enquiry on "Emoluments and Conditions of Service of Central Government Employees, 1957-1959" wherein the five norms which should guide all wage fixing authorities including Minimum Wage Committees, Wage Boards, adjudicators, etc. were stated by the Court inter alia as under:*

> *"9. It is well known that the problem of wage structure with which industrial adjudication is concerned in a modern democratic State involves on the ultimate analysis to some extent ethical and*

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2024.10.03 18:01
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2024:PHHC:131760

social considerations. ... As the social conscience of the general community becomes more alive and active, as the welfare policy of the State takes a more dynamic form, as the national economy progresses from stage to stage, and as under the growing strength of the trade union movement collective bargaining enters the field, wage structure ceases to be a purely arithmetical problem. Considerations of the financial position of the employer and the state of national economy have their say, and the requirements of a workman living in a civilised and progressive society also come to be recognised.

19. ... With regard to the minimum wage fixation it was agreed that the minimum wage was need-based to ensure the minimum human needs of the industrial worker irrespective of any other considerations.

(i) In calculating the minimum wage, the standard working class family should be taken to consist of 3 consumption units for one earner; the earnings of women, children and adolescents should be disregarded.

(ii) Minimum food requirement should be calculated on the basis of a net intake of calories, as recommended by Dr Aykroyd for an average Indian adult of moderate activity.

(iii) Clothing requirements should be estimated at a per capita consumption of 18 yards per annum which would give for the average workers' family of four, a total of 72 yards.

(iv) In respect of housing, the rent corresponding to the minimum area provided for under Government's

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2024.10.03 18:01
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2024:PHHC:131760

> *Industrial Housing Scheme should be taken into consideration in fixing the minimum wage.*
>
> *(v) Fuel, lighting and other `miscellaneous' items of expenditure should constitute 20% of the total minimum wage."*

22. This Court in ***Hindustan Times Ltd., New Delhi v. Workmen (1963) 1 LLJ 120*** *held that numerous complex factors, some of which are economic and some spring from social philosophy give rise to conflicting considerations that have to be borne in mind and that such factors are not static in nature. The financial position of the employer, state of national economy, and the requirements of a workman living in a civilized and progressive society also are to be recognized. This Court held as under:*

> *"5. The fixation of wage structure is among the most difficult tasks that industrial adjudication has to tackle. On the one hand not only the demands of social justice but also the claims of national economy require that attempts should be made to secure to workmen a fair share of the national income which they help to produce, on the other hand, care has to be taken that the attempt at a fair distribution does not tend to dry up the source of the national income itself On the one hand, better living conditions for workmen that can only be possible by giving them a "living wage" will tend to increase the nation's wealth and income on the other hand, unreasonable inroads on the profits of the capitalists might have a tendency to drive capital away from fruitful employment and even to affect prejudicially capital formation itself. The rise in prices that often results from the rise of the*

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2024.10.03 18:01
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2024:PHHC:131760

workmen's wages may in its turn affect other members of the community and may even affect prejudicially the living conditions of the workmen themselves. The effect of such a rise in price on the Country's international trade cannot also be always ignored. Thus numerous complex factors, some of which are economic and some spring from social philosophy give rise to conflicting considerations that have to be borne in mind. Nor does the process of valuation of the numerous factors remain static...

6. In trying to keep true to the two points of social philosophy and economic necessities which vie for consideration, industrial adjudication has set for itself certain standards in the matter of wage fixation. At the bottom of the ladder, there is the minimum basic wage which the employer of any industrial labour must pay in order to be allowed to continue an industry. Above this is the fair wage, which may roughly be said to approximate to the need based minimum, in the sense of a wage which is "adequate to cover the normal needs of the average employee regarded as a human being in a civilised society." Above the fair wage is the "living wage" a wage "which will maintain the workman in the highest state of industrial efficiency, which will enable him to provide his family with all the material things which are needed for their health and physical well-being, enough to enable him to qualify to discharge his duties as a citizen." (Cited with approval by Mr. Justice Gajendragadkar in Standard Vacuum Company's Case (1) from "The living Wage" by Philip Snowden)."

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2024.10.03 18:01
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*23. In **Workmen v. Reptakos Brett. & Co. Ltd. (1992) 1 SCC 290**, this Court held that a worker's wage has the force of collective bargaining under the labour laws. Each category of the wage structure has to be tested at the anvil of social justice which is the live-fibre of our society today. The Court held as under:*

> *"12. The concept of `minimum wage' is no longer the same as it was in 1936. Even 1957 is way behind. A worker's wage is no longer a contract between an employer and an employee. It has the force of collective bargaining under the labour laws. Each category of the wage structure has to be tested at the anvil of social justice which is the live-fibre of our society today. Keeping in view the socio-economic aspect of the wage structure, we are of the view that it is necessary to add the following additional component as a guide for fixing the minimum wage in the industry:*
>
> *"(vi) children's education, medical requirement minimum recreation including festivals/ceremonies and provision for old age marriages etc. should further constitute 25 per cent of the total minimum wage."*
>
> *13. The wage structure which approximately answers the above six components is nothing more than a minimum wage at subsistence level. The employees are entitled to the minimum wage at all times and under all circumstances. An employer who cannot pay the minimum wage has no right to engage labour and no justification to run the industry".*

24. Now, in respect of the establishments which meet the parameters of being a State within the meaning of Article

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2024.10.03 18:01
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2024:PHHC:131760

12, this Court considered the question of financial stringency in A.K. Bindal. This Court in the said case was examining the claim of revision of pay of the employees of a public sector enterprise. The employers placed reliance upon the Office Memoranda of the Government of India that the Government would not provide any budgetary support for wage increase and the undertakings themselves would have to generate the resources to meet the additional expenditure which would be incurred on account of increase in the wages. It was thus held by this Court that the non-revision of pay scale would not amount to violation of fundamental rights guaranteed under Article 21 as it would be stretching too far and cannot be countenanced. It was held that even under industrial law, workmen should get a minimum wage or a fair wage but not that the wages must be revised and enhanced periodically. The Court held as under:

> *"17. ..Being employees of the companies, it is the responsibility of the companies to pay them salary and if the company is sustaining losses continuously over a period and does not have the financial capacity to revise or enhance the pay scale, the petitioners cannot claim any legal right to ask for a direction to the Central Government to meet the additional expenditure which may be incurred on account of revision of pay scales. It appears that prior to issuance of the office memorandum dated 12-4-1993 the Government had been providing the necessary funds for the management of public sector enterprises which had been incurring losses. After the change in economic policy introduced in the early nineties, the Government took a decision that the public sector undertakings will have to generate*

RAVINDER SINGH
2024.10.03 18:01
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2024:PHHC:131760

their own resources to meet the additional expenditure incurred on account of increase in wages and that the Government will not provide any funds for the same. Such of the public sector enterprises (government companies) which had become sick and had been referred to BIFR, were obviously running on huge losses and did not have their own resources to meet the financial liability which would have been incurred by revision of pay scales. By the office memorandum dated 19-7-1995 the Government merely reiterated its earlier stand and issued a caution that till a decision was taken to revive the undertakings, no revision in pay scale should be allowed. We, therefore, do not find any infirmity, legal or constitutional in the two office memorandums which have been challenged in the writ petitions.

18. ..But to hold that mere non-revision of pay scale would also amount to a violation of the fundamental right guaranteed under Article 21 would be stretching it too far and cannot be countenanced. Even under the industrial law, the view is that the workmen should get a minimum wage or a fair wage but not that their wages must be revised and enhanced periodically. It is true that on account of inflation there has been a general price rise but by that fact alone it is not possible to draw an inference that the salary currently being paid to them is wholly inadequate to lead a life with human dignity. What should be the salary structure to lead a "life with human dignity" is a difficult exercise and cannot be measured in absolute terms..."

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2024.10.03 18:01
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*25. This Court also considered two earlier judgments that the financial capacity of the employer cannot be held to be a germane consideration for determination of the wage structure of the employees, therefore, it must be confined to the facts of the aforesaid case. It was held that economic viability or the financial capacity of the employer is an important factor which cannot be ignored while fixing the wage structure, otherwise the unit itself may not be able to function and may have to close down which will inevitably have disastrous consequences for the employees themselves. [**South Malabar Gramin Bank v. Coordination Committee of South Malabar Gramin Bank Employees' Union., (2001) 4 SCC 101 and Associate Bank Officers' Association v. State Bank of India & Ors., (1998) 1 SCC 428**]*

26. In South Malabar Gramin Bank, one of the contentions raised was whether financial viability could be the sole criterion in deciding the wage structure of the Regional Rural Bank (RRB) employees. The Tribunal constituted to consider the wage structure inter alia held that The Regional Rural Banks Act places special emphasis on the development of rural economy by providing credit and other facilities to productive activities in the rural areas, particularly to small and marginal farmers, agricultural labourers, artisans and small entrepreneurs. The objects and reasons of the Act provide a highway for the social welfare and common good of the rural poor living in the priority sector. The RRBs have brought about socio-economic revolution in the hitherto unbanked underdeveloped priority sector by ameliorating the poverty conditions of the underprivileged, SCs/STs and other weaker sections of the society. That was the paramount objective of the Act. The Court held that the

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2024.10.03 18:01
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2024:PHHC:131760

RRBs are in fulfilment of the hopes and aspirations aroused in the Preamble and the directive principles of the Constitution, and the performance of such institutions in furtherance of those principles shall not be judged from the curved angle of viability or from the point of view of a private money lender or businessman or from mere profit and loss statements. This Court held as under:

> *"12. ..This conclusion of the Tribunal has become final, the award in question not having been assailed and on the other hand having been implemented. In the aforesaid premises, it is a futile attempt on the part of the employer as well as the Union of India to reagitate the dispute, which has already been resolved and has been given effect to. In our considered opinion, therefore, the aforesaid contention on behalf of the appellant cannot be sustained and it would no longer be open, either for the Bank or the Union of India to raise a contention that in determining the wage structure of the employees of the RRBs, the financial condition would be a relevant factor."*

27. In a judgment reported as ***Officers & Supervisors of I.D.P.L. v. Chairman & M.D., I.D.P.L. & Ors. (2003) 6 SCC 490****, this Court held that the employees cannot legitimately claim that their payscales should necessarily be revised and enhanced when the organization in which they are working are making continuous losses and are deeply in the red. It was held as under:*

> *"11. In our view, the economic capability of the employer also plays a crucial part in it, as also its capacity to expand business or earn more profits. The contention of Mr. Sanghi, if accepted, that granting higher remuneration and emoluments and*

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2024.10.03 18:01
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2024:PHHC:131760

revision of pay to workers in other governmental undertakings and, therefore, the petitioners are also entitled for the grant of pay revision may, in our opinion, only lead to undesirable results. Enough material was placed on record before us by the respondents which clearly show that the first respondent had been suffering heave losses for the last many years. In such a situation the petitioners, in our opinion, cannot legitimately claim that their pay-scales should necessarily be revised and enhanced even though the organisation in which they are working are making continuous losses and are deeply in the red. As could be seen from the counter affidavit, the first respondent company which is engaged in the manufacture of medicines became sick industrial company for various reasons and was declared as such by the BIFR and the revival package which was formulated and later approved by the BIFR for implementation could not also be given effect to and that the modifications recommended by the Government of India to the BIFR in the existing revival package was ordered to be examined by an operating agency and, in fact, IDBI was appointed as an operating agency under Section 17(3) of SICA. It is also not in dispute that the production activities had to be stopped in the major two units of the company at Rishikesh and Hyderabad w.e.f. October, 1996 and the losses and liabilities are increasing every month and that the payment of three instalments of interim relief could not also be made due to the threat of industrial unrest and the wage revision in respect of other

RAVINDER SINGH
2024.10.03 18:01
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2024:PHHC:131760

employees is also due w.e.f. 1992 which has also not been sanctioned by the Government of India."

*28. This Court in a judgment reported as **S.C. Chandra & Ors. v. State of Jharkhand & Ors. (2007) 8 SCC 279** was examining the question of equal pay for equal work where the claim of the appellants was to release and pay Dearness Allowance. Hon'ble Mr. Justice Markandey Katju in a separate but concurring judgment held that the "Fixation of pay scale is a delicate mechanism which requires various considerations including financial capacity, responsibility, educational qualification, mode of appointment, etc. ..."*

*29. In **Mineral Exploration Corporation Ltd. v. Arvind Kumar Dixit & Anr. (2015) 2 SCC 535**, this Court was dealing with an appeal against an order of the High Court, which did not interfere with the award of Industrial Tribunal who had extended the actual financial benefits to the respondents by holding that they cannot be denied benefit of `Wage Revision' by notional fixation and recomputation of their retiral dues (severance package). This Court referred to A.K.Bindal and Officers & Supervisors of I.D.P.L. to accept the argument of the appellant that if the wage revision office order is interpreted to include all the employees who were superannuated/ voluntarily retired between 1.4.1997 to 1.4.2003, it would frustrate the measures taken, including the Voluntary Retirement Scheme, to improve the condition of Public Sector Undertaking. The Court thus upheld the cutoff date in view of the financial constraints faced by the appellant.*

30. In the third category of cases, in respect of Central or State Government, the factor of financial constraints has been found to be relevant when the liberalized benefits

RAVINDER SINGH
2024.10.03 18:01
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2024:PHHC:131760

were granted from a particular date. In Amar Nath Goyal, the question examined was whether limiting of benefits only to the employees who retired or died on or after 1.4.1995 after calculating the financial implications was irrational or arbitrary, the Court held as under:

> *"26. It is difficult to accede to the argument on behalf of the employees that a decision of the Central Government/State Governments to limit the benefits only to employees, who retire or die on or after 1-4- 1995, after calculating the financial implications thereon, was either irrational or arbitrary. Financial and economic implications are very relevant and germane for any policy decision touching the administration of the Government, at the Centre or at the State level."*

31. In ***State of Haryana v. Shri Des Raj Sangar & Anr. (1976) 2 SCC 844****, the post of the Panchayati Raj Election Officer was abolished in view of the extreme financial stringency. This Court held as under:*

> *"8. ... It was also stated in another affidavit filed on behalf of the appellant State that the post of Panchayati Raj Election Officer and the seven posts of field Deputy Directors were abolished as an economy measure to meet financial stringency. We see no cogent ground to question the averments made in the above affidavits. The averments show that the decision to abolish the post of Panchayati Raj Election Officer was taken because of administrative reasons. The question as to whether greater economy could have been brought about by adopting some other course is not for the court to go into for the court cannot sit as a court of appeal in such matters. It may be that some of the functions*

RAVINDER SINGH
2024.10.03 18:01
I attest to the accuracy and
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2024:PHHC:131760

which were being previously performed by the respondent are now being performed by Deputy Directors whose posts have not been abolished, this fact would not show that the decision to abolish the post held by the respondent was not taken in good faith. After the posts of Deputy Directors had been created and had been in existence along with the post of Panchayati Raj Election Officer for a number of months, the Government, it would appear, decided to abolish some of the posts to meet the financial stringency. In taking the decision as to which post to abolish and which not to abolish, the Government, it seems, took into account the relative usefulness of each post and decided to abolish the seven posts of field Deputy Directors and the one post of Panchayati Raj Election Officer. This was a matter well within the administrative discretion of the Government and as the decision in this respect appears to have been taken in good faith, the same cannot be quashed by the court. The fact that the post to be abolished is held by a person who is confirmed in that post and the post which is not abolished is held by a person who is not permanent would not affect the legality of the decision to abolish the former post as long as the decision to abolish the post is taken in good faith. We would, therefore, hold that the High Court was in error in quashing the order of the Government whereby the post of Panchayati Raj Election Officer had been abolished."

32. The Central or State Government is empowered to levy taxes to meet out the expenses of the state. It is always a conscious decision of the government as to how much

RAVINDER SINGH
2024.10.03 18:01
I attest to the accuracy and
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2024:PHHC:131760

taxes have to be levied so as to not cause excessive burden on the citizens. But the Boards and Corporations have to depend on either their own resources or seek grant from the Central/ State Government, as the case may be, for their expenditures. Therefore, the grant of benefits of higher pay scale to the Central/State Government employees stand on different footing than grant of pay scale by an instrumentality of the State.

x x x x

40. In ***K.T. Veerappa & Ors. v. State of Karnataka & Ors. (2006) 9 SCC 406****, the Court upheld the principle that fixation of pay and parity in duties is the function of the executive and financial capacity of the Government is also a relevant factor to be considered, though on facts, it was held that the employees of the University were entitled to revision of pay at par with the employees of the State. It was held as under:*

> *"13. He next contended that fixation of pay and parity in duties is the function of the executive and financial capacity of the Government and the priority given to different types of posts under the prevailing policies of the Government are also relevant factors. In support of this contention, he has placed reliance on* ***State of Haryana v. Haryana Civil Secretariat Personal Staff Assn. [(2002) 6 SCC 72 : 2002 SCC (L&S) 822] and Union of India v. S.B. Vohra [(2004) 2 SCC 150 : 2004 SCC (L&S) 363****] . There is no dispute nor can there be any to the principle as settled in* ***State of Haryana v. Haryana Civil Secretariat Personal Staff Assn. [(2002) 6 SCC 72 : 2002 SCC (L&S) 822****] that fixation of pay and determination of parity in duties is the function of the executive and the*

RAVINDER SINGH
2024.10.03 18:01
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2024:PHHC:131760

scope of judicial review of administrative decision in this regard is very limited. However, it is also equally well settled that the courts should interfere with administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors."

(Emphasis supplied)

41. In the present case, it is contended that the Federation is a statutory Co-operative Society which is having its Common Cadre Rules. Any amendment in the Common Cadre Rules is to be approved by the Registrar (Co-operative Societies). The State Government communicated on 1.3.1990 and 9.7.1993 that the pay scale as applicable to the Punjab Government employees is not to be adopted by the Public Sector Undertakings without taking into consideration the financial health of the other statutory Boards and Corporations. The Federation has thus taken a conscious and concerted decision to not follow the report of the Anomaly Committee of the State Government to grant revised pay scale from 1.1.1986 in view of precarious financial condition. Moreover, financial assistance had to be availed by the Federation from the State Government as well as from the National Dairy Development Board.

42. A Committee was constituted to examine the grievance of the employees for grant of revised pay scale. The Committee also recommended that pay scale be given w.e.f. 1.1.1994 on account of financial stringency being faced by the Federation. The Board of Directors approved the recommendation of the Committee, which was accepted by the Registrar (Cooperative Societies).

RAVINDER SINGH
2024.10.03 18:01
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2024:PHHC:131760

Therefore, the decision of not to grant revised pay scale from 1.1.1986 was taken keeping in view the financial condition of the Federation. The question now is whether such a decision could have been interfered with in a writ petition in exercise of power of judicial review.

43. The power of judicial review over the administrative decisions of the State was examined by a judgment of this Court in ***Tata Cellular v. Union of India (1994) 6 SCC 651****. Though, that is a case of grant of contract, but the principles of law are very well applicable to the exercise of power of judicial review by the High Court in the administrative decisions of the State within the meaning of Article 12 of the Constitution. The Court held as under:*

> *"77. The duty of the court is to confine itself to the question of legality. Its concern should be:*
>
> 1. *Whether a decision-making authority exceeded its powers?*
> 2. *Committed an error of law,*
> 3. *committed a breach of the rules of natural justice,*
> 4. *reached a decision which no reasonable tribunal would have reached or,*
> 5. *abused its powers.*
>
> *Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:*

RAVINDER SINGH
2024.10.03 18:01
I attest to the accuracy and
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2024:PHHC:131760

(i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii)Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

*The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in **R. v. Secretary of State for the Home Department, ex Brind [(1991) 1 AC 696]**, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention".*

xx xx xx

94. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a

RAVINDER SINGH
2024.10.03 18:01
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2024:PHHC:131760

necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

Based on these principles we will examine the facts of this case since they commend to us as the correct principles."

44. In ***Balco Employees' Union (Regd.) v. Union of India & Ors. (2002) 2 SCC 333****, the Court was examining the policy of disinvestment of public sector undertakings. It was held that wisdom and advisability of economic policies of Government are not amenable to judicial review unless it can be demonstrated that such policy is contrary to any statutory provision or the Constitution. It is not for the Court to consider relative merits of different economic policies and consider whether a wiser or better one could be evolved. The Court held as under:*

"92. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot per se be interfered with by the court.

93. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is

RAVINDER SINGH
2024.10.03 18:01
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2024:PHHC:131760

contrary to any statutory provision or the Constitution. In other words, it is not for the courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts. Here the policy was tested and the motion defeated in the Lok Sabha on 1- 3-2001.

xx xx xx

98. In the case of a policy decision on economic matters, the courts should be very circumspect in conducting any enquiry or investigation and must be most reluctant to impugn the judgment of the experts who may have arrived at a conclusion unless the court is satisfied that there is illegality in the decision itself."

45. This Court in a judgment reported as ***Jagdish Mandal v. State of Orissa & Ors. (2007) 14 SCC 517*** *examined the scope of judicial review in the matter of award of a contract. The Court held as under:*

"22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts

RAVINDER SINGH
2024.10.03 18:01
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2024:PHHC:131760

will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving

RAVINDER SINGH
2024.10.03 18:01
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2024:PHHC:131760

> *blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."*

46. In a recent judgment reported as ***West Bengal Central School Service Commission & Ors. v. Abdul Halim & Ors. (2019) 18 SCC 39****, this Court was examining the candidature of a candidate for appointment in pursuance of advertisement advertised by West Bengal Central School Service Commission. One of the essential qualifications was Bengali as a subject either at the Secondary level or at the Higher Secondary level or at the graduation or postgraduation level. The candidature of selected candidate was not interfered with by the Division Bench of the High Court although such candidate was not possessing Bengali as a language. The Court held as under:*

> *"27. It is well settled that the High Court in exercise of jurisdiction under Article 226 of the Constitution of India does not sit in appeal over an administrative decision. The Court might only examine the decision-making process to ascertain whether there was such infirmity in the decision-making process, which vitiates the decision and calls for intervention under Article 226 of the Constitution of India.*
>
> *28. In any case, the High Court exercises its extraordinary jurisdiction under Article 226 of the Constitution of India to enforce a fundamental right or some other legal right or the performance of some legal duty. To pass orders in a writ petition,*

RAVINDER SINGH
2024.10.03 18:01
I attest to the accuracy and
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2024:PHHC:131760

the High Court would necessarily have to address to itself the question of whether there has been breach of any fundamental or legal right of the petitioner, or whether there has been lapse in performance by the respondents of a legal duty.

29. The High Court in exercise of its power to issue writs, directions or orders to any person or authority to correct quasi-judicial or even administrative decisions for enforcement of a fundamental or legal right is obliged to prevent abuse of power and neglect of duty by public authorities.

30. In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held by this Court in ***Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale [Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale, AIR 1960 Supreme Court 137]****. If the provision of a statutory rule is reasonably capable of two or more constructions and one construction has been adopted, the decision would not be open to interference by the writ court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision*

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2024.10.03 18:01
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founded on reasons which are clearly wrong in law, which can be corrected by the writ court by issuance of writ of certiorari.

31. The sweep of power under Article 226 may be wide enough to quash unreasonable orders. If a decision is so arbitrary and capricious that no reasonable person could have ever arrived at it, the same is liable to be struck down by a writ court. If the decision cannot rationally be supported by the materials on record, the same may be regarded as perverse.

32. However, the power of the Court to examine the reasonableness of an order of the authorities does not enable the Court to look into the sufficiency of the grounds in support of a decision to examine the merits of the decision, sitting as if in appeal over the decision. The test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken, which has led to manifest injustice. The writ court does not interfere, because a decision is not perfect.

33. In entertaining and allowing the writ petition, the High Court has lost sight of the limits of its extraordinary power of judicial review and has in fact sat in appeal over the decision of Respondent 2."

47. Later, a three-Judge Bench in a judgment reported as ***Municipal Council, Neemuch v. Mahadeo Real Estate & Ors. (2019) 10 SCC 738*** *followed the aforesaid judgment and held as under:*

"16. It could thus be seen that an interference by the High Court would be warranted only when the

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decision impugned is vitiated by an apparent error of law i.e. when the error is apparent on the face of the record and is self-evident. The High Court would be empowered to exercise the powers when it finds that the decision impugned is so arbitrary and capricious that no reasonable person would have ever arrived at. It has been reiterated that the test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken. Not only this but such a decision must have led to manifest injustice."

*48. In another recent judgment reported as **Harshit Agarwal & Ors. v. Union of India & Ors. (2021) 2 SCC 710**, this Court held that judicial review of administrative action is permissible on grounds of illegality, irrationality and procedural impropriety. An administrative decision is considered as flawed if it is illegal, and a decision is illegal if it pursues an objective other than that for which the power to make the decision was conferred. The discretion exercised by the decision maker is subject to judicial scrutiny if a purpose other than the specified purpose is pursued. The Court observed that:*

*"10. Judicial review of administrative action is permissible on grounds of illegality, irrationality and procedural impropriety. An administrative decision is flawed if it is illegal. A decision is illegal if it pursues an objective other than that for which the power to make the decision was conferred [De Smith's Judicial Review, (6th Edn., p. 225)] . There is no unfettered discretion in public law [**Food Corpn. of India v. Kamdhenu Cattle Feed Industries, (1993) 1 SCC 71**]. Discretion conferred*

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on an authority has to be necessarily exercised only for the purpose provided in a statute. The discretion exercised by the decision maker is subject to judicial scrutiny if a purpose other than a specified purpose is pursued. If the authority pursues unauthorised purposes, its decision is rendered illegal. If irrelevant considerations are taken into account for reaching the decision or relevant considerations have been ignored, the decision stands vitiated as the decision maker has misdirected himself in law. It is useful to refer to ***R. v. Vestry of St. Pancras [R. v. Vestry of St. Pancras, (1890) LR 24 QBD 371 (CA)]*** *in which it was held: (QBD pp. 375-76)*

".. If people who have to exercise a public duty by exercising their discretion take into account matters which the courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion."

49. Thus, we find that the decision that the Federation was in financial difficulties is based upon relevant material before the Federation. The process to arrive at such decision can be said to be flawed only on the permissible grounds of illegality, irrationality and procedural impropriety. We find that neither the decision-making process, nor the decision itself suffers from any such vice.

50. Learned counsel for the writ petitioners have referred to the information received under the Right to Information Act to show that the Federation was in profit in the year 1996-1997. We do not find that such information is relevant to determine the financial condition for the period from 1.1.1986 to 1.1.1994. The Federation has categorically stated that because of the remedial steps

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2024.10.03 18:01
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2024:PHHC:131760

taken by the Federation, there was turn around only after 1994. Still further, we find that the profits in the balance sheet are not meant to be appropriated towards wages of the employees alone. Though the profits had to be shared by the members of the Co-operative Society, but the employees of the Federation are not its members. The income generated by the Federation is not to be expanded only on payment of salary but is also required for upgradation of technology, renovation and expansion of plants etc. Therefore, entire profit is not to be appropriated towards the wages of the employees alone. The Federation was established as a step towards white revolution. The objective of the Federation was not to give employment but to increase milk production in the State. The employees are facilitators of the employer to achieve such objective and thus demanding enhanced wages without considering the objective and financial condition of the employer would not be ideal. The employer and the employees have to work together to achieve the objective of the organisation i.e. white revolution rather frittering away the gains made by the joint efforts of the management and employees by giving increased wages to the employees irrespective of its capacity to bear such expenses.

51. The submission that there will not be financial burden on the federation in view of the fact that the High Court has ordered payment of arrears for a period of 3 years and 2 months before the date of filing of writ petitions is again not tenable. The High Court has granted revised pay scales with effect from 01.01.1986 instead of revised pay scales granted to the employees of the federation with effect from 01.01.1994. Therefore, restricting it for a period of 3 years and 2 months will not be helpful in

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2024.10.03 18:01
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2024:PHHC:131760

respect of the financial condition of the Federation as during the relevant time the federation was suffering from huge losses.

52. In view of the above, we find that the order of the High Court is unjustified and in excess of the power of judicial review conferred on the High Court. Consequently, the appeals are allowed. The orders passed by the High Court are hereby set aside and the writ petitions are dismissed.

CIVIL APPEAL NO. 7432 OF 2011

53. The present appeal is also directed against an order passed by the Division Bench of the High Court of Punjab & Haryana at Chandigarh on 19.3.2009 wherein it was held that the employees are entitled to pay scale equivalent to their counterparts in the State of Punjab from 1.1.1986, though the revised pay scale was allowed by the Federation w.e.f. 1.1.1994. The argument raised is that the contention of the employees claiming equal pay for equal work has not been examined by the High Court.

54. The employees have not filed any appeal against the impugned judgment of the High Court. We find that the employees cannot raise any grievance in an appeal preferred by the Federation to claim equal pay for equal work. The employees are not aggrieved against the judgment of the High Court. Therefore, the employees cannot raise an argument which was not raised before the High Court.

55. But still, we have examined the argument raised. It was argued that the claim of the employees is not of revised pay scale from 1.1.1986 but that the categorization of Milk Procurement Assistants as Grade-I & II is unconstitutional and they would be entitled to the same pay as is being paid to Milk Procurement Assistants Grade-I on the principle of equal pay for equal work.

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2024.10.03 18:01
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56. The said contention of the employees is controverted by the Federation, inter alia, on the ground that the Milk Procurement Assistants are not the employees of the Apex Society i.e. Punjab State Cooperative Milk Producers Federation but they are employees of the District Co-operative Milk Producers Union which is a separate entity. The staffing pattern for District Co-operative Milk Producers Union, as approved by the Registrar (Co-operative Societies), shows that different educational qualifications and experience is prescribed for appointment to Milk Procurement Assistants Grade-I & II. It has also been pointed out that there is qualitative difference in the responsibilities of the two sets of employees. Milk Procurement Assistants Grade-II are allotted 10 to 12 villages at the village-level Milk Producers Co-operative Society for supervising their work with regard to milk collection, testing, record keeping, payment to producers of milk, transportation of milk and to attend the other problems of the societies whereas the duty of the Milk Procurement Assistants Grade-I is to supervise the work of Milk Procurement Assistant Grade-II. One Milk Procurement Assistant Grade I officer supervises the work of six to seven Milk Procurement Assistants Grade II.

57. As per the staffing pattern, the educational qualifications for Milk Procurement Assistants Grade-I are Bachelor's Degree with minimum three years' experience of Organisation of Milk Producers Co-operative Societies affiliated with Milk Producers Co-operative Unit whereas for Milk Procurement Assistant Grade II, the qualification is Graduation preferable in Agriculture with one year experience of working as Secretary in a Co-operative Milk Supply Society. The pay

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scale prescribed for the Milk Procurement Assistants Grade-I is Rs.700-1200 whereas the pay scale prescribed for the Milk Procurement Assistants Grade-II is Rs.480-880. It is sought to be contended that, in fact, Milk Procurement Assistants Grade- I is a promotional avenue for Milk Procurement Assistants Grade-II.

58. As stated, the educational qualifications and the responsibilities of the two posts are quite different. Therefore, the principle of equal pay for equal work would not be applicable to them inasmuch as Grade I is a higher post having higher duties and responsibilities than Grade II.

59. We do not find any merit in the argument claiming equal pay for the alleged equal work. Consequently, the appeal is allowed. The orders passed by the High Court are hereby set aside.

CIVIL APPEAL NO. 7434 OF 2011

60. The present appeal is also directed against an order passed by the Division Bench of the High Court of Punjab & Haryana at Chandigarh on 19.3.2009 wherein it was held that the employees are entitled to pay scale equivalent to their counterparts in the State of Punjab from 1.1.1986, though revised pay scale was allowed by the Federation w.e.f. 1.1.1994. It was contended that the argument of the employees claiming equal pay for equal work was not examined by the High Court.

61. The respondent Nos. 1 to 4 are Milk Procurement Assistants Grade-I in the pay scale of Rs.700- 1200 whereas respondent No. 5 is Animal Husbandry Assistant in the same pay scale of Rs.700-1200 w.e.f. 1.8.1980. Such employees are claiming parity in the matter of pay with the Area Officers including Deputy Manager (Procurement) and Dairy Extension Officer in the pay

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2024.10.03 18:01
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scale of Rs.850- 1700. The employees have pleaded that w.e.f. 2.2.1987, the designation of Milk Procurement Assistants Grade-I has been changed to Milk Procurement Supervisor and now the workload has increased inasmuch as fifty societies are to be supervised as against eight societies which were supervised, without any increase in the pay scale. It was argued that the duties and functions of the employees and the other Area Officers including Deputy Manager (Procurement) and Dairy Extension Officer are the same as such posts are interchangeable.

62. In the written statement filed before the High Court, the stand of the Federation was that the employees have since long been permanently transferred to the Milk Union, Ludhiana. It was pointed out that the employees and the Deputy Manager (Procurement)/Dairy Extension Officer do not constitute one class as the posts are not similar on the points of qualifications and duties to be performed by the incumbents. The classification on the basis of qualifications, educational or by experience, for the fixation of pay is permissible under the Constitution. The qualifications of Milk Procurement Assistant Grade-I or Animal Husbandry Assistant is Graduation/Matriculation with livestock Diploma course whereas the essential qualifications for the post of Dairy Extension Officer and for the post of Deputy Manager (Procurement) is B.Sc. Dairy Husbandry/Dairy Technology with two to three years' experience.

63. We have heard learned counsel for the parties. Firstly, the order passed by the High Court has not been challenged in appeal by the employees. Secondly, the classification of different pay scales is permissible based upon educational qualifications, experience and nature of duties. In view of the said facts, we do not find that the

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2024.10.03 18:01
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employees are entitled to the pay scale as claimed in the writ petition.

64. We do not find any merit in the argument claiming equal pay for the alleged equal work. Consequently, the appeal is allowed. The orders passed by the High Court are hereby set aside."

11. The Hon'ble Supreme Court has answered all the questions which have been raised in the present writ petition and it was held that the Committee recommended the pay scales to be given w.e.f. 01.01.1994 on account of financial stringency being faced by the Milkfed and the Board of Directors approved the recommendations of the Committee which were also accepted by the Registrar, Cooperative Societies, Punjab. Therefore, the decision of not to grant revised pay scale w.e.f 01.01.1986 was taken keeping in view the financial conditions of the Milkfed and the said decision of the Committee could not have been interfered with in a writ jurisdiction in exercise of power of judicial review. It was further held that the decision of the Federation that it was in financial difficulties is based upon relevant material of the Federation and the process to arrive at such decision can be said to be flawed only on the permissible grounds of illegality, irrationality and procedural impropriety and it was held that neither the decision making process nor the decision itself suffers from any such vice and the High Court was unjustified and in exercise of the powers of judicial review in allowing the writ petition and granting the revised pay scale w.e.f. 01.01.1986. It was also held that the employees of the Milkfed are not entitled to the pay scales equivalent to their counterparts in the State of Punjab w.e.f. 01.01.1986, though the

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2024.10.03 18:01
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revised pay scale was allowed by the Federation w.e.f. 01.01.1994. It was further held that the educational qualifications and responsibilities of the two posts being quite different, principle of equal pay for equal work would not be applicable to them.

12. In the present case, petitioners, who are working as Accountants in the Milkfed/Milk Unions cannot claim parity with the post of Superintendent (Admn) as no material has been placed on record by the petitioners to show any parity between both the posts, such as method of recruitment, qualifications and duties & responsibilities performed by them and merely the fact that prior to 01.01.1986, they were in the same pay scale, is no ground to maintain the parity thereafter as well in the absence of any conscious decision being taken by the Milkfed with regard to equation of these posts.

13. Similar issue came up for hearing before the Hon'ble Supreme Court in ***The State of Tripura and others v. Smt. Anjana Bhattacharjeet and others, 2022(4) SCT 115***, wherein the Hon'ble High Court of Tripura vide its judgment dated 24.08.2022, has struck down Rule 3(3) of Tripura State Civil Services (Revised Pension) Rules, 2009 and directed to pay the arrears of pension (Revised pension) from the date of her retirement to 31.12.2008. After examining various judgments of the Hon'ble Supreme Court, it was held as under:-

> *"5.3 Whether the financial crunch/financial constraint due to additional financial burden can be a valid ground to fix a cut-off date for the purpose of granting the actual benefit of revision of pension/pay has been dealt with and/or*

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considered by this Court in the case of Amar Nath Goyal (supra). In the aforesaid decision, it is observed and held by this Court that financial constraint can be a valid ground for fixation of cut-off date for grant of benefit of increased quantum of death-cum-retirement gratuity. In paragraphs 26, 32 and 33 of the said judgment, it is observed and held as under:

> *"26. It is difficult to accede to the argument on behalf of the employees that a decision of the Central Government/State Governments to limit the benefits only to employees, who retire or die on or after 1-4-1995, after calculating the financial implications thereon, was either irrational or arbitrary. Financial and economic implications are very relevant and germane for any policy decision touching the administration of the Government, at the Centre or at the State level.*
>
> *xxxx xxxx xxxx xxxx*
>
> *32. The importance of considering financial implications, while providing benefits for employees, has been noted by this Court in numerous judgments including the following two cases. In **State of Rajasthan v. Amrit Lal Gandhi [(1997) 2 SCC 342 : 1997 SCC (L&S) 512 : AIR 1997 SC 782]** this Court went so as far as to note that:*
>
> > *"Financial impact of making the Regulations retrospective can be the sole consideration while fixing a cutoff date. In our opinion, it cannot be said that this cutoff date was fixed arbitrarily or without any reason. The High Court was clearly in error in allowing the writ petitions and substituting the date of 1-1-*

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1986 for 1-1-1990." [Ibid., at AIR p. 784, para 17 : SCC p. 348, para 17

(Emphasis supplied).]

33. More recently, in ***Veerasamy [(1999) 3 SCC 414 : 1999 SCC (L&S) 717]*** *this Court observed that, financial constraints could be a valid ground for introducing a cutoff date while implementing a pension scheme on a revised basis [Supra in 2 SCC at p. 421 (para 15).] . In that case, the pension scheme applied differently to persons who had retired from service before 171986, and those who were in employment on the said date. It was held that they could not be treated alike as they did not belong to one class and they formed separate classes."*

5.4 In the aforesaid decision this Court after considering the earlier decisions of this Court in the cases of ***State of Punjab v. Boota Singh; (2000) 3 SCC 733*** *and* ***State of Punjab v. J.L. Gupta; (2000) 3 SCC 736****, it is specifically observed and held that for the grant of additional benefit, which had financial implications, the prescription of a specific future date for conferment of additional benefit, could not be considered arbitrary.*

5.5 In the subsequent decision in Bihar Pensioners Samaj (supra), the decision in the case of Amar Nath Goyal (supra) is followed and it is observed and held that financial constraints could be a valid ground for introducing a cutoff date while introducing a pension scheme on revised basis. It is further observed and held by this Court in the aforesaid decision that fixing of a cutoff date for granting of benefits is well within the powers of the Government as long as the reasons therefor are not arbitrary and are based on some rational consideration.

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6. While applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that in the instant case before us, the cut off date has been fixed as 01.01.2009 on a very valid ground i.e., financial constraint. Therefore, the High Court manifestly erred in striking down the Rule 3(3) of the Pension Rules, 2009 being arbitrary and violative of Article 14 of the Constitution.

14. Applying the law laid down by the Hon'ble Supreme Court in the aforesaid decisions to the facts of the present case, the claim of the petitioners for grant of pay scale of Rs.2000-3500 w.e.f. 01.01.1986, cannot be accepted.

15. In view of the above, finding no merit in the present writ petition, same is dismissed with no order as to costs.

(NAMIT KUMAR)
JUDGE

01.10.2024
R.S.

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No

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