

201(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-20712-2006 (O&M)

Reserved on : 02.09.2023

Date of decision: 04.01.2024

Jaswinder Singh and others

...Petitioners

Vs.

The Registrar, Cooperative Societies,
Punjab and others

...Respondents

CWP No.14244-2013

Bhupinder Kumar and others

...Petitioners

V.s

State of Punjab and others

...Respondents

CORAM: HON’BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Harsh Chopra, Advocate,
Mr. Ashish Chopra, Advocate and
Ms. Harmanpreet Kaur, Advocate
for the petitioners.

Mr. T.P.S.Walia, AAG, Punjab.

Mr. Ashwani Prashar, Advocate
for respondent No.3 in both writ petitions.

Mr. R.K.Sharma, Advocate
for respondent Nos.4 and 5 in CWP-20712-2006.

DEEPAK MANCHANDA, J.

1. This judgment shall decide both the petitions involving a common question of facts and law. Hence, the facts from CWP No.20712 of 2006 are being considered for adjudicating the petitions mentioned above.

2. Through this petition, the petitioners have sought to quash the impugned letter dated 29.05.2006 (Annexure P-9), whereby the request for granting the benefit of two additional increments was rejected by respondent No.1, with the further prayer for extending the same to the petitioners.

3. Briefly, the facts of the case are that the petitioners Nos.1 to 3 were appointed as Junior Clerks on 28.05.1984, 29.05.1984 and 12.06.1984, respectively with respondent No.4, i.e. Ludhiana Central Co-operative Bank Ltd., Ludhiana, whereas petitioner No.4 joined as Junior Clerk on 28.05.1985 in Bathinda Central Cooperative Bank Ltd., Bathinda, who was later on transferred to respondent No.5, i.e Moga Central Co-operative Bank Ltd., Moga on 18.9.1986. The services of the petitioners were governed by the Punjab State Cooperative Financing Institutions Service Rules, 1958 as per which the prescribed qualification for appointment to the post of Clerk was Matriculation. Vide memo dated 17.09.1987, an amendment was carried out and in place of Matric, 'Graduation' was made an essential qualification for the post of Clerk. It is mentioned that since the number of Clerks were either graduates or more qualified, therefore, the Executive Committee of respondent No.3, i.e. the Punjab State Co-operative Bank, vide Resolution No.6 dated 10.02.1973 (Annexure P-3) resolved to grant two additional increments to graduate employees up to the level of Senior Accountants. However, the said benefit was not implemented uniformly and was granted only to those employees who either made a representation before the Registrar, Co-operative Societies or approached the competent court of law, which caused a lot of discrimination and unnecessary litigation. Feeling dissatisfied and

aggrieved, the Co-operative Bank Employees Federation also made a representation to maintain parity and in response to the said representation, the State Government vide its Memo dated 07.09.2005 (Annexure P-5) directed the Registrar, Co-operative Societies, Punjab-respondent No.1 to follow a uniform policy for grant of two additional increments to graduate employees, who joined on or before 02.05.1984 and make amendments in the rules, if necessary. In consequence of the aforesaid memo, respondent No.1-Registrar, Co-operative Societies, Punjab issued a letter dated 05.10.2005 (Annexure P-6) granting two additional increments to eligible graduate 57 employees of respondent No.4 - Ludhiana Central Co-operative Bank, w.e.f. 15.02.2001, who had been appointed as Clerk before 02.05.1984 and further authorized all the Central Co-operative Banks to extend said benefit to all similarly situated graduate employees, who were appointed before 02.05.1984.

4. In contrast, aggrieved against the decision of the Registrar, Co-operative Societies, Punjab- respondent No.1, petitioner No.1 submitted a representation dated 22.03.2006 (Annexure P-7) before the Financial Commissioner (Co-operation), Punjab and prayed for similar benefit of two additional increments to all the employees who were appointed up to 16.09.1987 instead of only up to 02.05.1984. The said representation was forwarded to respondent No.1 - Registrar, Co-operative Societies, Punjab for consideration. Even respondent No.3-Managing Director of the Punjab State Co-operative Bank vide his letter dated 11.05.2006 (Anneuxre P-8) recommended respondent No.1 for considering the request of petitioner No.1.

5. However, despite said recommendation the representation of

petitioner No.1 was rejected vide order dated 29.05.2006 (Annexure P-9) passed by respondent No.1. Hence this writ petition.

6. Learned counsel for the petitioners contends that the qualification for the post of Clerk was changed from 'Matriculation' to 'Graduation' on 17.09.1987, and the petitioners who were appointed on 28.05.1984, 29.05.1984, 12.06.1984 and 28.08.1985, even at the time of their appointment were much more qualified than other employees, as petitioner No.1 was MA (Geography), petitioners No.2 and 3 were MA (English) and petitioner No.4 was Graduate with the higher Diploma in Co-operation, but still have not been extended the benefit of additional increments. He further contends that the said act of the respondents violates Resolution No.6 dated 10.02.1973 (Annexure P-2) whereby it was resolved that the benefit of additional increments would be granted to graduate employees upto the level of Senior Accountants, which was not implemented uniformly and petitioners were discriminated amongst their class. Learned counsel for the petitioners has argued that vide letter dated 2.5.1984 (Annexure P-4), the similar benefit was extended to 21 (twenty one) employees who had made representations, where there was a rider that no such additional increment would be granted to any other employee in future. He further argued that to remove any discrimination once and for all, the State vide Memo dated 07.09.2005 (Annexure P-5) directed to follow a uniform policy in respect of Graduate employees who joined before 02.05.1984. Consequently vide letter dated 05.10.2005 (Annexure P-6), the said benefit was again extended w.e.f. 15.02.2001 to another set of 57 employees who were appointed before 02.05.1984. Learned counsel for the petitioners has submitted that the minimum qualification for the post of

Clerk was increased to Graduation from 17.09.1987 and not from 02.05.1984, hence, the choice of date for granting additional increments was arbitrary and had no rational nexus with the object sought to be achieved and even the recommendations of the respondent No.3 made vide its letter dated 11.05.2006 (Annexure P-8) were ignored by respondent No.1 wherein it was specifically stated that the benefit should have been granted to all Graduate employees, who were appointed before 17.09.1987. Learned counsel for the petitioners further submits that the impugned order is non-speaking where no reasons have been assigned while rejecting the prayer of petitioner No.1 and the given classification/cut-off date is violative of Article 14 of the Constitution which should have been from the date of change of qualification and not from 02.05.1984. Learned counsel for the petitioners to support his contentions relied upon the judgments passed by the Hon'ble Supreme Court in the case of *K.C. Bajaj and others vs. Union of India and others, (2014) 3 Supreme Court Cases 777* and by this Court in *Ravinder Singh Saini vs. State of Punjab, 1997(3) S.C.T. 609*, *Jagat Narain vs. State of Haryana, 1995(2) S.C.T. 636* and *Amrit Kumari Sood vs. State of Punjab and others, CWP No.18602 of 2014, decided on 20.2.2018.*

7. *Per contra*, learned counsel for respondent No.3 in its reply dated 13.03.2007 submits that the cut-off date 02.05.1984 was fixed after approval of two additional increments to only left out eligible employees who were in service but joined between the period from 18.10.1976 to 02.05.1984 and were graduate before 02.05.1984. Learned counsel has again submitted that the Employees Union representing the petitioners also unilaterally accepted the demand of grant of two increments to all those

employees who passed their graduation before 02.05.1984 and during proceedings before the Assistant Labour Commissioner-cum-Conciliation Officer, Chandigarh a statement to this was also made. Further while referring to the reply the learned counsel for respondent No.3 has argued that two additional increments to the graduate clerical cadre employees between the period 10.02.1973 to 18.10.1976 were released without the prior approval of respondent No. 1 which was mandatory as per the provisions of the Service Rules, 1958 and the cut-off date 18.10.1976 came into picture because when the respondent-Bank referred to the respondent No. 1 to accord approval to the decision taken by the Executive Committee, consequently increments were allowed to 25 graduate clerks, but respondent No.1 vide letter dated 18.10.1976 refused to agree with the proposal. Thereafter the matter was referred to respondent No.1 vide letters dated 22.08.1983 and 02.04.1984 and the case of 21 clerks who were earlier left out but had passed their graduation before 18.10.1976 were considered and accordingly approval was granted by respondent No. 1 with the condition that no such benefit would be allowed to any other employees in future. To support his contentions he relies upon the judgment of *The State of the Tripura & Ors. vs. Smt. Anjana Bhattachrjee & Ors., 2022 AIR (SC) 4019*. Learned Counsel for respondents No. 1 and 2 referred to their reply dated 18.04.2007 and endorsed the stand taken by respondent No. 3, whereas learned counsel for respondents No. 4 and 5 questioned the maintainability of the writ petition on the ground that they have not availed the alternative remedy of appeal and revision under Section 69 of the Punjab Co-operative Societies Act, 1961.

8. I have heard learned counsel for the parties at length and have

perused the material available on record.

9. A bare perusal of the pleadings as well as the material available on record would show that through this petition petitioners have challenged the impugned order dated 29.05.2006 (Annexure P-9) whereby the request of petitioner No.1 to extend the benefit of two additional increments to him, has been rejected by respondent No.1 and apart from the said impugned order, there is nothing on record to show that whether the similar prayer made by petitioner No. 2 to 4 has ever been rejected, hence in absence of any such order passed qua petitioner No. 2 to 4, this court can safely draw inference to the extent that prayer of petitioner No. 2 to 4 seeking the benefit of two additional increments is still pending consideration and has not been rejected as yet. Further, the perusal of impugned order reveals that the same is non-speaking, unreasoned and is not sustainable in the eyes of the law. It is settled law that quasi-judicial authority must record reasons in support of its conclusion and insistence on recording reasons is meant to serve the wider principle of justice. This court has already dealt with a similar issue in CWP No.13483 of 2023 dated 04.08.2023 titled **Ravinder Pal Singh and others versus the State of Punjab and others** and the relevant paragraph is reproduced below:

“11. In the light of the above, this Court does not hesitate in observing that impugned order has been failed on the test of reasonableness and respondent No.3 was duty bound to record justified reasons in support of its conclusion which could serve the wider principle of justice. Respondent No.3 being a quasi judicial authority was therefore, required to adjudicate the case after considering the facts of the case. Pleas raised by both the parties were required to record reasons for rejecting the plea of the petitioners and accepting the pleas of the other

parties for passing a reasoned order. The impugned order should have been self-explanatory and reasons given in the same should not have been rubber stamp reasons as has been done in the present case where the impugned order passed is scripted and non-speaking. The impugned order does not disclose any application of mind at the hands of respondent No.3 in terms of the reasons having been mentioned in the same, if the same would have been done, the same could have reflected into ensuring the observance of the rule of law which could have minimized the arbitrariness in the decision taken by the respondent No.3. Such exercise has not been undertaken by respondent No.3 in the facts of the present case. The impugned order could not hold the field and is failed on the test of reasonability being arbitrary, unjustified, cryptic and unreasoned.”

10. Considering the arguments raised by learned counsel for the petitioners, this Court is of the view that the benefit of advance increments has not been extended to the petitioners who are well qualified and meritorious to receive the same which has been denied because of the fortuitous circumstance of fixation of an arbitrary date i.e 02.05.1984. The petitioners who occupied their respective posts of clerk before 17.09.1987, the date on which the qualification for the post of clerk was changed from matriculation to graduate have been deprived of the benefit of advance increments as there is no explanation least plausible for fixing the date i.e. 02.05.1984 and making only those entitled to the increments who joined the post on or before 02.05.1984 which amounts to hostile discrimination against the petitioners and is violative of Article 14 of the Constitution of India. The said policy decision of the government was intended to give incentive to the government employees to

acquire higher qualifications, which ordinarily adds to their efficiency and whoever fulfills those conditions is entitled to get the advanced increments and the respondents cannot deviate from their own policy decision without any cogent reason for denying the same benefit to the petitioners as, any such deviation or violation of the policy decision amounts to violation of equality clause enshrined in the Constitution. In the present case, this court is concerned with the question as to whether despite recommendations in favour of similarly situated employees, discrimination can be made against petitioners. It is indisputable that such benefits form a class within the class where arbitrary criteria for extending benefits has been carved out and the classification has not been founded on any rational principle. The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the object sought to be achieved. If the respondents considered it necessary to fix a date i.e. 02.05.1984, this court does not find any rational principle behind it for granting the benefits only to those who were appointed before said date and simultaneously denying the same to those who were appointed after the said date. Even as per the stand taken in the written statements by the respondents the only reasoning which has come forth is that since the said benefit could not be granted to some employees who passed their graduation before 18.10.1976 including another set of 57 (fifty seven) graduate employees, who were earlier not considered were extended the benefit w.e.f. 15.02.2001 just to remove the anomaly and said entire exercise was done, where no other reason has been given or explained. Therefore this division which classified the petitioners along with similarly situated employees into two classes is not based on any rational principle

and if the rational principle is the one of dividing the petitioners to give something more to persons otherwise equally placed, it would be discriminatory who were in the same bracket.

11. Admittedly, the petitioners are qualified persons who are not only graduates rather are post-graduates and one of the criteria for extending the benefit to similarly situated employees is being a graduate before 02.05.1984 and this Court cannot lose its sight that the petitioners were appointed before 17.09.1987, the date when amendment was carried out and in place of matriculation, graduation was made an essential qualification. This court is in agreement with the submissions made by the learned counsel for the petitioners who has substance in his arguments by saying that the cut-off date prescribed by the respondents i.e. 02.05.1984 has no nexus with the object sought to be achieved as well as the petitioners have been discriminated amongst their class being the postgraduates and more qualified persons in comparison to the similarly situated employees who have been extended the benefit of 2 additional increments. The material available on record also reveals that under the garb of uniform policy without explaining the object for fixing the cut-off date firstly 21 employees benefited who had applied for the same and subsequently vide letter dated 05.10.2005 (Annexure P-6) another set of 57 employees was extended benefit on the ground of removing anomaly but petitioners were ignored, where no uniformity was maintained. The object of granting additional increments was made in recognition of additional qualifications whereas in the case of petitioners, the same was ignored.

12. Here it would be pertinent to mention that the similar controversy came up for hearing before the Hon'ble Apex Court in case

K.C. Bajaj & ors. Vs. Union of India & ors. (Civil Appeal Nos.10647-10648 of 2013 arising out of SLP (C) Nos.3367-68 of 2011 with connected matters), decided on November 27, 2013 and it was observed as

under:-

“10.4 It is not a case where cut-off date has been fixed. The Central Government is entitled for the purpose of determination of pension pursuant to the policy decision to fix a cut-off date. It is also true that such a cut-off date cannot be held to be arbitrary and irrational, as it was not picked out of a hat. However, in the instant case, we are not concerned with any cut-off date, but we are concerned with the question as to whether despite recommendations of the 5th CPC, a discrimination can be made. The very fact that the Central Government accepts that the emoluments would mean basic pay + N.P.A. in view of its definition as existing in the Rule 9 (21) (a)(i) of the Fundamental Rules, there cannot be any reason whatsoever as to why N.P.A. shall be considered to be a part of pay for post-01-01-1986 retirees and not for pre-01-01-1986 retirees.”

The Apex Court concluded as under:-

“32. This Court treated circular dated 11.9.2001 as clarificatory in nature and held that it neither amends nor modifies circular dated 7.6.1999. The most striking difference between O.M. dated 7.4.1998 issued by Department of Pension and Pensioners' Welfare, Ministry of Personnel (Public Grievances and Pension) and circular dated 7.6.1999 issued by the Defence Ministry is that the decision of the President conveyed vide O.M. dated 7.4.1998 was that NPA shall count as pay for all service benefits including retirement benefits but no such decision was contained in circular dated 7.6.1999. Therefore, the clarification issued by the Ministry of Defence vide circular dated 11.9.2001 cannot be equated with O.M. Dated 29.10.1999 which had the effect of modifying the

decision of the President but was issued without his approval. Unfortunately, the Tribunal and the Division Bench of the High Court overlooked this vital distinction between O.M. Dated 7.4.1998 issued by the Ministry of Personnel (Public Grievances and Pension), Department of Pension and Pensions' Welfare and Circular dated 7.6.1999 issued by the Ministry of Defence and mechanically applied the ratio of Col. B. J. Akkara's case for deciding the cases of the doctors, who served in Central Health Services, the Railways and other departments of the Government. Therefore, the impugned order is legally unsustainable.

33. In the result, the appeals are allowed, the impugned order of the High Court as also the one passed by the Tribunal are set aside and the applications filed by the appellants before the Tribunal are allowed in terms of the prayer made. The respondents shall re-calculate the pension payable to the appellants by adding the element of NPA. This exercise shall be undertaken and completed by the concerned authorities within a period of three months from today."

13. The respondents have also objected by saying that since the alternate remedy is available with the petitioners, the same should have been availed by them before coming to this court, the said argument is not acceptable on the ground that the instant writ petition was filed in the year 2006 which has been pending till date i.e. for more than 17 years and now to relegate the petitioners to the alternate remedy provided under Section 69 of the Punjab Co-operative Societies Act, at this point, would not be appropriate and would be a travesty of justice. Having considered the contentions in detail this court believes that the contentions of the petitioners are found to be correct. Learned counsel for the respondents has relied upon the judgment in the case of **Smt. Anjana Bhattachrjee (supra)**, wherein the financial crunch was considered as a valid ground to

fix a cut-off date for granting actual benefit or revision of pension/pay but in the facts of the present case, the said judgment is not applicable as there is no justifiable reason except by referring about the employees who were somehow left out and just to accommodate them the entire exercise was done. This court has also gone through the various judicial pronouncements cited by both parties and find that the case laws supplied by the petitioners are much more convincing, whereas on the other hand, the laws cited by respondents No. 1 to 5 do not apply to facts of the present case and same does not enhance much support in their favour.

14. Given the foregoing discussion, the writ petition I s allowed, impugned order dated 29.05.2006 (Annexure P-9) passed qua petitioner No.1, rejecting his claim for grant of two additional increments is hereby quashed being a non-speaking order. The respondents are directed to extend the benefit of two additional increments to the petitioners w.e.f. 15.02.2001, as has been granted to 57 graduate employees vide letter dated 05.10.2005 (Annexure P-6), which shall be calculated and released along with interest @ 6% per annum within 03 months from the date of receipt of the certified copy of this order. However, payment of arrears shall be restricted to 38 months, prior to the filing of the writ petition.

15. Pending application(s), if any, also stand disposed of.

(DEEPAK MANCHANDA)
JUDGE

January 04, 2024
Nisha Yadav

Whether speaking/reasoned:	Yes /No
Whether Reportable:	Yes/No