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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Reserved on: 22.08.2024
Pronounced on: 19.10.2024

1. CWP No.19659 of 2017 (O&M)

PUDA Employees Welfare Society (Regd.)
.....Petitioner
Versus
State of Punjab and others
.....Respondents

2. CWP No.17385 of 2018 (O&M)

Manjit Singh Chahal and others
.....Petitioners
Versus
State of Punjab and others
.....Respondents

3. CWP No.10705 of 2019 (O&M)

B.R. Bawa and others
.....Petitioners
Versus
State of Punjab and others
.....Respondents

4. CWP No.17957 of 2020 (O&M)

Devinder Singh and others
.....Petitioners
Versus
State of Punjab and others
.....Respondents

5. CWP No.25094 of 2023 (O&M)

Rajiv Walia
.....Petitioner
Versus
State of Punjab and others
.....Respondents

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CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate
for the petitioner in CWP-19659-2017.

Mr. D.S. Patwalia, Senior Advocate
with Mr. Neeraj Chopra, Advocate
Ms. Rishu Bajaj, Advocate
for the petitioner in CWP-17385-2018.

Mr. R.D. Bawa, Advocate with
Mr. Samuel Gill, Advocate, Mr. Randhir Bawa and
Mr. Rishab Rana, Advocates for the petitioner(s)
in CWP-10705-2019.

Mr. Amrik Singh, Advocate
for the petitioner(s) in CWP-17957-2020.

Mr. A.K. Walia, Advocate
for the petitioner(s) in CWP-25094-2023.

Mr. Surya Kumar, A.A.G., Punjab.

Mr. Rupinder Singh Khosla, Senior Advocate with
Mr. Yogender Verma, Advocate
for the respondent-PUDA in CWP-19659-2017,
CWP-17385-2018 and CWP-17957-2020 (O&M).

Ms. Monica Chhibber Sharma, Advocate with
Mr. Adeep Sharma, Advocate for respondent No.3-PUDA
in CWP-10705-2019.

Ms. Anu Chatrath, Senior Advocate with
Mr. Nikhil Singh, Mr. Ratik Kapur and Mr. Nishant Maini,
Advocates for respondent-PUDA in CWP-25094-2023.

NAMIT KUMAR J. (Oral)

1. This judgment shall dispose of CWP No.19659 of 2017, CWP No.17385 of 2018, CWP No.10705 of 2019, CWP No.17957 of 2020 and CWP No.25094 of 2023, as common questions of law and facts are involved for adjudication. For the sake of convenience, facts

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are taken from CWP No.19659 of 2017 titled as “*PUDA Employees Welfare Society (Regd.) vs State of Punjab and others*”.

2. The petitioner has approached this Court by way of filing the instant petition under Article 226 of the Constitution of India, seeking a writ of Certiorari, quashing the letter dated 12.10.2016 (Annexure P-9), whereby the proposal to implement the pension scheme, as approved by the competent authority i.e. respondent No.3, has been rejected and further setting-aside the letter dated 11.11.2016 (Annexure P-10) vide which the decision of Finance Department has been conveyed by respondent No.1, to respondent No.3. Further a writ of mandamus has been sought for directing respondent No.3 to implement the pension scheme for the members of the petitioner – Society in view of Agenda Item No.4.11, which has been duly approved in the meeting held on 09.11.1996, by the competent authority.

3. Necessary facts, as have been pleaded in the present petition, are that the members of the petitioner – Society are employees of Punjab Urban Planning & Development Authority (in short ‘PUDA’), erstwhile known as Punjab Housing Development Board and are working on various Technical & Non-Technical posts as well as retired from various posts such as Superintending Engineer, Divisional Engineer, Sub-Divisional Engineer, Draftsman, Estate Officer, Legal Advisor, Superintendent, Assistant, Clerk, etc. In the year 1995, The Punjab Regional and Town Planning and Development Act, 1995 (hereinafter to be referred as ‘the PRTPD Act, 1995’), came into

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existence and in consonance with the provisions of Section 182 of the PRTPD Act, 1995, the service regulations were formulated, which govern the service conditions of the employees of PUDA, which is known as Punjab Urban Planning & Development Authority (Employees Service) Regulations, 1999 and as per Regulation No.23, PUDA is an independent authority and is not governed by the Rules and Regulations of the State Government. An Agenda Item No. 4.11 regarding pension scheme to the employees of PUDA was introduced for consideration and approval of respondent No.3 (Annexure P-2). In the said agenda, it was stated that the employees of Punjab Housing Development Board, who are transferred to PUDA, are not getting pension but other set of employees who are transferred from Directorate of Housing and Urban Development are getting the same, which is discriminatory. Thereafter, the said Agenda Item No.4.11 was approved by respondent No.3 on 09.11.1996 (Annexure P-3). Further, a scheme was placed before respondent No.3 vide Agenda Item No.9.08 on 16.10.1998 and in the proceedings of the meeting, the financial viability worked out by the office was noted and it was desired that a detailed case for adoption of pension scheme may be submitted to the Chairman as per decision of Agenda Item No.4.11 (Annexure P-4 Colly.) and respondent No.3 duly approved the pension scheme. The matter was further considered to decide as to from which date the pensionary benefits to PUDA employees are to be allowed and respondent No.3, vide office note dated 19.03.2002 (Annexure P-5), recommended that

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the pensionary benefits be extended to PUDA employees with prospective effect i.e. from 01.04.2002 and further submitted to the Chairman, who vide his office note dated 02.04.2002 (Annexure P-5), directed that pension scheme may be made applicable to the employees w.e.f. 01.07.1995 i.e. the date on which PUDA came into existence. However, even after obtaining approval from the Competent Authority, the matter was referred by the Chief Administrator to respondent No.2 i.e. State of Punjab, Department of Finance and respondent No.2 vide its letter dated 02.09.2002 (Annexure P-6), rejected the approval of implementing the pension scheme primarily on the ground that the Government cannot afford the same due to financial constraints. Thereafter, an office note dated 12.11.2002, was prepared in response to the objections raised by Finance Department (Annexure P-7). A detailed reply to the objections were given by the office of respondent No.3 and the matter was considered by Chairman, PUDA and vide office note dated 30.12.2002 (Annexure P-8), the Vice Chairman, PUDA-cum-Minister for Housing & Urban Development held that PUDA is a profit making organization and by way of implementing the pension scheme, there will be no burden on the Government and Finance Department and the pension scheme has been prepared on the basis of guidelines issued by Finance Department, which has already been approved by PUDA. The employees of PUDA, time and again represented before respondent No.3 personally as well as through various representations to implement the pension scheme which has been duly approved in the minutes of

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meeting held on 09.11.1996 (Annexure P-3). The petitioner – Society was given various verbal assurances that the pension scheme will be implemented at the earliest but to no avail. Yet again, the matter for implementation of pension scheme, has been rejected by respondent No.2 vide letter dated 12.10.2016 (Annexure P-9). Hence, this writ petition.

4. On issuance of notice of motion, written statement has been filed by Bhupinder Singh, Additional Chief Administrator (HQ), PUDA, PUDA Bhawan, Sector 62, SAS Nagar, Mohali, dated 11.12.2018 on behalf of respondent No.3, wherein it has been averred as under:-

“XXXX XXXX XXXX XXXX

13. That the aforementioned decision conveyed by the Finance Department was again examined in detail and matter was put up before the Minister of Housing and Urban Development Department-cum-Chairman, PUDA to take up the matter with the Finance Department to reconsider their decision and for implementation of proposed pension scheme in PUDA.

14. That however, the Government of Punjab, Department of Housing and Urban Development after obtaining the advice of the Principal Secretary, Finance Department, conveyed the following decision vide memo no. 16/50/2001-5H2/2216 dated 01.04.2003:-

"2. The matter cited in the subject has been considered at length at Government level. The matter was also referred to the Department of Finance and the advice of the Principal Secretary Finance has been obtained as per orders of the Chief Secretary. After taking into consideration all

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the facts, the State Government expresses its inability to agree to the proposal.

3. The above decision has been taken at the level of Hon'ble Chief Minister. Your office file is returned herewith"

A copy of letter dated 01.04.2003 is annexed herewith as Annexure R-3/3.

15. That the matter to implement pension scheme to the employees of PUDA was again placed before the Authority in its 42nd meeting held on 01.09.2010 vide Agenda Item no. 42.05, wherein the Authority in principle approved this agenda item and directed that the Executive Committee shall examine the financial aspects of the pension scheme and to put the same before the next meeting of the authority for final approval. A copy of the proceeding of the meeting of the Authority held on 01.09.2010 is annexed herewith as Annexure R-3/4.

16. That accordingly, after examining the financial aspects of the pension scheme, the matter was placed before the Executive Committee of PUDA in its 13th meeting held on 29.06.2016, wherein it was decided that the comments of Finance Department be obtained regarding the policy for grant of pension to the employees of PUDA. A copy of the proceeding of meeting of Executive Committee of PUDA held on 29.06.2016 is annexed herewith as Annexure R-3/5.

17. That in compliance of above said decision of the Executive Committee of PUDA, vide office letter no. 6261 dated 23.08.2016, the matter to grant pension to PUDA employees was again referred to the Department of Housing and Urban Development for obtaining comments of Finance Department. In response thereto, vide office memo no. 875353/1 dated 11.11.2016 (Annexure P-10) the

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Department of Housing and Urban Development conveyed that through Internal Departmental letter no. 488 dated 12.10.2016 (Annexure P-9) the Finance Department has expressed its inability to accede the proposal of Administrative Department.

18. That since the proposal to implement pension scheme for PUDA employees had been rejected twice by the Finance Department i.e. Respondent no. 2, the present writ petition deserves dismissal on this score only. Moreso, it is also pertinent to mention here that Contributory Provident Fund is being paid by the Authority to the employees of PUDA.”

5. Thereafter, short reply by way of affidavit of Sarvjit Singh, Principal Secretary to Government of Punjab, Department of Housing and Urban Development, Punjab Civil Secretariat-2, Chandigarh, dated 01.11.2021 on behalf of respondents No.1 and 2, has been filed, vide which the reply dated 11.12.2018, filed on behalf of respondent No.3 has been adopted by respondents No.1 and 2.

6. Thereafter, reply by way of affidavit of Kamal Kumar, Deputy Secretary to Government of Punjab, Department of Housing and Urban Development, Punjab Civil Secretariat-2, Sector-9, Chandigarh, dated 12.07.2022, on behalf of respondents No.1 and 2, has been filed taking similar objections, which have already been taken by respondent No.3, in his written statement dated 11.12.2018.

7. Thereafter, additional affidavit of Dr. Kamal Kumar Garg, Additional Secretary to Government of Punjab, Department of Housing and Urban Development, Punjab, Civil Secretariat-2, Sector-9,

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Chandigarh, dated 15.05.2023, on behalf of respondents No.1 and 2, has been filed, wherein it has been stated as under:-

“XXXX XXXX XXXX XXXX

2. That on 09.05.2023 this Hon'ble Court was pleased to direct the State Government to clear the picture and its stand, whether it could consider the claim raised by the petitioners in the bunch of writ petitions, wherein matters relates to the Pension Scheme in the above said cases in the light of the provisions referred under chapter IV of The Punjab Regional and Town Planning and Development Act, 1995 which illuminates the RELATIONS BETWEEN THE STATE GOVERNMENT, THE AUTHORITY AND THE LOCAL AUTHORITY ETC. and to clarify the situation under which State Government (Finance Department) has taken a stand to decline the claim raised by the petitioner.

3. That it is submitted the State Government is empowered to control the functioning of Authority as already mentioned by the Answering Respondent in reply filed before this Hon'ble Court.

4. That, section 40 under chapter IV of The Punjab Regional and Town Planning and Development Act, 1995, the State Government is empowered to control the functioning of the Authority, the said provision is reproduced hereunder:-

"40(1) The Authority shall carry out such directions as may be issued to it, from time to time, by the State Government for the efficient administration of this Act.

(2) The State Government may depute any officer to inspect or examine the office of the Authority, or its development works and to report

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thereon and the office so deputed may, for the purposes of such inspection or examination call for -

(a) any extract from any proceedings of the Authority or any Committee constituted under this Act, record, correspondence, plan or other documents;

(b) any return, estimates, statement of accounts or statistics;

(c) any report, and the Authority shall furnish the same."

5. That Section 180 of The Punjab Regional and Town Planning and Development Act, 1995 provides the powers of State Government for making rules for carrying out the purposes of this Act.

6. That with regard to the clarification regarding stand of the state to decline the relief claimed by the petitioner. It is submitted this matter was referred to the Department of Finance, Punjab by the Department of Housing and Urban Development, for it being a financial matter. Thereafter, the Department of Finance Department vide letter number 16/53/2002-4FE6/1512 dated 02.09.2002 (Annexure P-6) rejected the proposal with the following observations:-

"The Department of Finance observes that the PUDA is not a commercial profit making concern as it has mainly regulatory and promotional role to play. The Department of Finance is also to maintain uniformity of conditions of service and matter connected there with for PSUs/Boards/Apex Cooperative Institutions. If pension facility is given to PUDA, it is likely to start off a chain reaction and employees of other PSUs/Boards/Apex Cooperative Institutions are likely to ask for similar benefits, which the Government can ill afford at this juncture of financial constraints. In view of the position explained above, the proposal of the Administrative Department is rejected."

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8. Thereafter, affidavit of Apneet Riyait, Chief Administrator, Punjab Urban Planning & Development Authority (PUDA), PUDA Bhawan, Sector 62, S.A.S. Nagar, dated 22.05.2023 on behalf of respondent No.3, has been filed, in which it has been stated as under:-

“XXXX XXXX XXXX XXXX

3. That in pursuance to the direction of this Hon'ble Court a report has been sought regarding the liability of pension scheme of PUDA from the office of Additional Chief Administrator(F&A) PUDA vide letter no. 797 dated 19.05.2023. A copy of letter dated 19.05.2023 is attached herewith as Annexure R-3/6.

4. That as per the report of Additional Chief Administrator (Finance and Accounts), PUDA dated 19.05.2023 regarding the liability of pension scheme, if the same is made applicable from 01-07-1995 then the liability of old pension would be approx. 523 crores and apart from above the annual liability would be of Rs.48 crores. As per above calculation the liability of old pension till now would be approximately 600 crores. The calculation report made by the Additional Chief Administrator (F &A) PUDA is attached herewith as Annexure R-3/7.”

9. Thereafter, additional affidavit of Jasinder Singh, Deputy Secretary to Government of Punjab, Department of Finance, Punjab Civil Secretariat-1, Chandigarh, dated 20.10.2023, on behalf of respondent No.2 has been filed, in which it has been stated as under:-

“4. That, the as per the record made available by the Administrative Department – Department of Housing and Urban Development, there is no provision for pension for

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the employees of PUDA, rather they are entitled to Contributory Provident Fund. For the purpose of this Contributory Provident Fund 12% is contributed by the PUDA from the amount of Basic Pay + Dearness Allowance from the salary of the employees and corresponding 12% is the employee share.

5. That, as per Section 55 of The Punjab Regional and Town Planning and Development Act, 1995, the Authority shall constitute a Provident Fund for the benefit of its employees. Section 55 of the said Act, 1995 is reproduced as under:

"...55. The Authority shall constitute for the benefit of its whole time paid members and of its officers and other employees in such manner and subject to such conditions, as may be prescribed, such provident fund as it may deem fit..."

6. That, the State has already through its letter dated 02.09.2002 clarified that PUDA is a regulatory body to promote and secure better planning and development in the State and in order to maintain unanimity among all its independent bodies, there is no provision for grant of pension. Moreover with regard to the grant of any benefits to the employees of PSUs/Boards/Apex Cooperative Institutions a conscious decision of the State Government is imperative for all collectively and there cannot be any decision for a single entity in the State of Punjab. The letter No.16/53/2002-4FE6/1512 dated 02.09.2002 is reproduce here in under:

"The Department of Finance observes that the PUDA is not a commercial profit making concern as it has mainly regulatory and promotional role to play. The Department of Finance is also to maintain uniformity of conditions of service and matter connected there with for PSUs/Boards/Apex

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Cooperative Institutions. If pension facility is given to PUDA, it is likely to start off a chain reaction and employees of other PSUs/Boards/Apex Cooperative Institutions are likely to ask for similar benefits, which the Government can ill afford at this juncture of financial constraints. In view of the position explained above, the proposal of the Administrative Department is rejected.”

7. That, it is worthwhile to mention here that the issue regarding implementation of Pension Scheme for employees of PUDA was taken up in 42nd meeting Punjab Urban Planning and Development Authority which was held on 01.09.2010 under the chairmanship of the then Chief Minister Punjab-cum- Chairman, PUDA. In the meeting the proposal regarding implementation of Pension Scheme, was approved but with a rider that Executive Committee shall examine the financial aspects of pension scheme. Further it has been clearly mention in the decision that after examination from the financial aspect, the agenda shall be put up again before the competent authority for final approval. The minutes of Agenda Item No. 42.05 are reproduced as under:-

"The authority has in Principal approved this agenda item and directed that the Executive Committee shall examine the basic financial aspects of the pension scheme and to put the same before the next meeting of the authority for final approval."

8. That, as per the Allocation of Business (IInd Amendments) Rules, 1990 as per Rule 2 Clause (D) Sub Clause (4), it has been mentioned that the matter relating to formulation of broad policy guidelines relating to personnel policies including pay scales, various allowance and other financial matters of Public Sector Undertakings will be dealt by the Bureau of Public Enterprises Wing

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(Now presently the Directorate of Public Enterprises and Disinvestment). The same has been reiterated in another order dated 11.07.2002 passed by Department of Finance.

Thus, meaning thereby that the financial matter relating to all the Boards/Corporations/PSUs are within the purview of the Directorate of Public Enterprises and Disinvestment, Department of Finance.”

10. Learned Senior counsel for the petitioner has submitted that the pension scheme had been prepared, finalized and approved on 09.11.1996 (Annexure P-3) by the PUDA but the same has not been implemented despite the fact that the competent authority approved the implementation of pension scheme vide office note dated 02.04.2002 (Annexure P-5) from the date on which PUDA came into existence i.e. 01.07.1995. He has further submitted that the Executive Committee was assigned the limited work of examining the financial aspect, however, the matter was referred to respondent No.2 but respondent No.2 without any authority, rejected the approval of implementing the pension scheme primarily on the ground that the Government cannot afford the same due to financial constraints. He has further submitted that PUDA is a commercial profit making concern and its accounts are based on double entry commercial accounting procedure. PUDA is playing an important role in the urban development being a regulatory body yet it has also earned profit since its inception and as per the financial condition, PUDA is in a position to meet all the liabilities towards pensionary benefits of its employees and there will be a surplus fund to the tune of Rs.701.00 lacs lying with PUDA.

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11. Learned Senior counsel for the petitioner has further argued that respondent No.2 has no role to overrule the decision of the authority and no cogent and valid reasons have been given while rejecting the implementation of pension scheme. He has submitted that PUDA is an independent authority and a commercial organization. Therefore, the State Government has no right over the service regulations of the employees of the petitioner.

12. Learned Senior counsel for the petitioner has further submitted that every regular employee has to contribute towards compulsory deposit fund till his/her retirement and, therefore, there will be no burden on the government and moreover, the employees pension scheme is self-sustaining, as PUDA's share towards employees provident fund is to be converted into pension fund. He has further submitted that Public Sector Undertakings (PSUs) such as Improvement Trust, Punjab School Education Board, Punjab Mandi Board, Pepsu Roadways Transport Corporation, have already implemented pension scheme for its employees and it has not led to any chain reaction, by way of implementing the pension scheme there will be no burden on the Government and the Finance Department. The pension scheme has been prepared on the basis of guidelines issued by the Finance Department which has already been approved by PUDA Authority. He has further submitted that it is an admitted fact that Government of Punjab does not contribute to PUDA financially for the salaries and its other expenditure and since PUDA is generating the salary of employees of PUDA and

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other expenditures from its own resources, therefore, the government is not competent to interfere with the decision of PUDA, sanctioning pension to its employees who have come to PUDA by merger of the Punjab Housing Development Board.

13. Learned Senior counsel for the petitioner has further contended that some Boards/Corporations for payment of pension to their employees have not even obtained any consent from Finance Department, Punjab and still, they are paying pension to their employees despite the fact that most of them are in losses and on the other hand, the Finance Department, Punjab is also paying grants to these Boards/Corporations. Some Boards/Corporations have obtained consent from Finance Department, Punjab although these are getting Grant-in-Aid from Finance Department, Punjab, whereas PUDA has not received any grants from Finance Department, Punjab ever and rather it will use their own budget to sanction pension to its employees. He has submitted that as per the instructions dated 18.06.1963, issued by the Secretary to Govt. of Punjab, PWD, B&R/PH, sanction is accorded for adoption of departmental charges on the work carried out by Public Health Engineering Organization on behalf of other Govt. Departments, Central Govt. Works and Private Bodies (local bodies and other than local bodies) at 14% which included 1% pensionary charges and the said sanction is issued with the concurrence of Finance Department and is being applied by the Punjab Housing Development Board in respect to the works carried out by them and similarly, the same was later on

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adopted by Punjab Urban Planning and Development Authority. The total departmental charges are 14% which included the pensionary charges @ 1%.

14. Learned Senior counsel for the petitioners has further submitted that respondent No.3 was directed by this Court to file an affidavit with regard to liability of pension scheme and in response to which affidavit dated 22.05.2023 has been filed by the Chief Administrative, PUDA supported by a letter dated 19.05.2023 of the Chief Accounts Officer, PUDA, and as per the calculation dated 15.11.2021 made on the file of administrative branch, if pension is given from 01.07.1995, the liability of old pension is approximately Rs.523.00 Cr. and the approximate annual liability would be Rs.48.00 Cr. As such, as per above calculation, liability of old pension till the date of preparation of statement of account would be approximately Rs. 600.00 Cr. He has submitted that as per Section 153 of the PRTPD Act, 1995, the salary and other allowance which are disbursed to the employees, are released by the authority itself from the nucleus.

15. Learned Senior counsel appearing for the petitioner has relied upon the judgment in ***“Ram Pal and others vs Haryana Rural Development Fund Administration Board and others”***, CWP No.3969 of 2012, decided on 08.07.2016, wherein it has been held as under:-

“The question for consideration would be, “whether the Board was required to take approval from the Government and Haryana Bureau of Public Enterprises for implementing the Old Pension Scheme of 1992 to the

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employees after taking their option and passing of the resolution in its meeting held on 15.01.2003 (Annexure P-2).”

*A reference can now be made to a judgment passed in **Pawan Kumar and others Vs. Uttar Haryana Bijli Vitran Nigam Limited, 2014 (2) PLR 209**, wherein a Co-ordinate Bench of this Court had examined the competence of the Nigam to fix salaries/emoluments or remuneration of its employees. In that case, all the Managing Directors of Haryana Power Corporations had constituted a Coordination Committee to consider the proposal of pay revision of its employees. The Committee recommended that the pay scales of Finance, Audit & Accounts Officers should be at par with those in the Engineering. The post of Accounts Officer was higher than that of Assistant Engineer and this difference would continue. The recommendations of the Committee were put up before the Board of Directors, which had approved the recommendations and sent the case to the Government and Bureau of Public Enterprises. The Government sent the case back to the company to consider the financial position of the power companies. The company again sent the proposal, which was declined by the Government. The writ petition was allowed and it was held that the Board of Directors, as per Clause 43 of the Articles of Association, was competent to revise the pay scales of its employees. Even on earlier occasion, the pay scales had been enhanced by the Board of Directors without approval of the Haryana Bureau of Public Enterprises. Against the said judgment, Uttar Haryana Bijli Vitran Nigam Ltd. had filed LPA No.383 of 2014, which was dismissed by a*

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Division Bench of this Court vide order dated 18.02.2015.

While dismissing the LPA, it was observed as under:-

*“12. A learned Single Judge of this Court by a judgment dated 26.11.2010 passed in Civil Writ Petition No.5993 of 1990, **Deva Singh and others Vs. State of Haryana and others**, held that:-*

“24. It is held that the 3rd respondent is the sole authority to take a decision as to the revision of pay of its employees. In the guise of an instruction with respect to the policy decision, the 1st respondent cannot issue an instruction with respect to the pay scales of the employees or the revision of pay scales of the employees of 3rd respondent-Corporation. The instructions, issued by the 1st respondent in the above facts and circumstances of this case, would not bind the 3rd respondent Corporation. The 3rd respondent has virtually surrendered its powers with respect to the revision of pay scales of its employees to the State Government which has no say in the matter. As the State Government has no authority to interfere with the revision of pay scales of the employees of the 3rd respondent-Corporation, the impugned order passed by the 2nd respondent has no legal sanctity. Therefore, the impugned order passed by the 2nd respondent is liable to be quashed.”

We do not think it necessary for the purpose of this case to express an opinion regarding the correctness of the judgment. It was not contended before us that the State Government has the power under any statute or other principle of law to issue the directions to the Haryana Power General Corporation Ltd. (HGPCL). Nor was it their case that there was any separate agreement or understanding entitling the State Government to

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issue such directions to it. It is also important to note that neither the Board of Directors of HGPCL-appellant No.1 nor the Committee of the Managing Directors made their decision subject to the approval of the State Government on the basis that the State Government being only the share-holder ought to have a say in the matter.”

SLP filed against the aforesaid judgment was also dismissed on 14.08.2015.

In the present case, the respondents have not been able to dispute the conversion of EPF Scheme to that of Pension Scheme made by the Haryana Vidyut Parsaran Nigam vide Annexure P-12, Haryana Urban Development Authority vide Annexure P-13 and Haryana State Electricity Board vide Annexure P-14. All the aforesaid Boards/Corporations were earlier governed by the EPF Scheme and the employees who were appointed prior to 01.01.2006, were covered under Pension Scheme. Hence, in the case of present petitioners, the respondents now cannot take a stand that on account of introduction of EPF Scheme, the Old Pension Scheme could not be introduced.

In view of the above discussion, impugned orders dated 24.08.2009, 18.02.2010 and 07.10.2011 (Annexure P-6, P-8 & P-10) are set aside and a direction is given to respondent No.1 to implement its decision taken on 15.01.2003 (Annexure P-2) regarding implementation of Pension Scheme to its employees at par with the employees of other Nigams, Boards etc. i.e. HUDA/Electricity Board/HVPNL along with all consequential benefits. This exercise be completed within a period of six months.

Allowed accordingly.”

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16. Learned Senior counsel for the petitioners appearing in CWP No.17385 of 2018, has relied upon the judgment in ***“Punjab Urban Planning and Development Authority through its Additional Chief Administrator vs Swaran Singh Jawanda and others”***, 2024(2) RCR (Civil) 890. He has further relied upon the judgment in ***“The State of Punjab vs Amarjit Singh and others”***, LPA No.1400 of 2013 and other connected cases, decided on 16.10.2014, wherein it has been held as under:-

“The Corporation is a company limited by shares and is duly registered under the Companies Act, 1956. As per the Articles of Association of the Corporation, the Corporation operates through its Board of Directors, who are authorized to take independent decisions on all matters concerning the Corporation. Being a separate entity in law, the Corporation is entitled to take its own decisions. However, under Article 133 of the Articles of Association of the Corporation, the State Government has been given a power to issue directives to the Corporation for the reasons mentioned in the Article. Article 133 is reproduced below for ready reference:

“133. Notwithstanding anything contained in any of the Articles, the Government may, from time to time, issue such directives as they may consider necessary in matters of broad policy and in like manner may vary and annul any such directive.”

From the perusal of the above, it is clear that the State Government has been given a power to issue directives to the Corporation as the State Government may consider necessary but only in matters of broad policy.

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After having referred to the Article 133, as reproduced above, what needs to be considered by us is whether directions given by the State of Punjab to the Corporation to fill up posts in different cadres of the Corporation from the officers of the Irrigation Department, Government of Punjab can be termed as directives in matters of broad policy?

Matters of broad policy are matters when the State, after considering issues in detail and after correction of some data, issues directions keeping in view the objectives of the Corporation. According to us, the policy decisions are those which the Government may take keeping in mind public interest viz a viz the objectives for which the Corporation had been set-up. There are decisions on larger issues concerning the Corporation. In our opinion, the present directions cannot be considered to be directives in matters of broad policy. According to us, these directives amount to interference in the day to day working of the Corporation. The Corporation has its own cadre of its employees and has its own service rules providing for promotional channels for its employees. That being the position, there is no reason for the State of Punjab to interfere with the same. Records reveal that the directives issued by the State of Punjab are based on no reason or data. The Corporation is an independent and autonomous entity in law executing its objectives through a Board of Directors. Directions to fill up posts on deputation from the officers of the State of Punjab is virtually interference in the day to day working of the Corporation. These directions not being directives in the matter of broad policy cannot be sustained.

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Further, record reveals that when the directives by the State Government were received by the Corporation, the Corporation has implemented them without considering them at its own level. The Corporation has accorded its stamp of approval to the directives by the State Government without going into the merits of the same and without examining whether these directives were in the matter of broad policy or not. The Corporation being an independent entity in law was required to do the same. Thus, even the final orders passed by the Corporation implementing the directives of the State Government are liable to be set aside.

*Our views find support from the judgment rendered by a Division Bench of this Court in **PSIDC Karmchari Union and another v. State of Punjab and others; 2004(4) RSJ 744** wherein this Court held that directions by the State on service matters cannot be termed as directions in the matter of broad policy. It was held as under:*

“Therefore, a cumulative reading of the provisions of the Memorandum and Articles of Association and the service rules governing the service conditions of the employees of the PSIDC would show that the house rent allowance and travelling allowance and conveyance allowance are allowances which may be sanctioned by the Board from time to time. Therefore, the powers vest with the Board to fix these allowances from time to time. However, the directives given by the State Government regarding broad policy are to be kept in view by virtue of Article 135 of the Articles and memorandum of Association. The fact that these allowances are permissible by the Board from time to time would go to show that these are in the nature of concession. However, the question is not whether the petitioners are entitled to claim house rent allowance, medical allowance and conveyance

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reimbursement as a matter of right but whether there has been due consideration in the decision making process of these matters in terms of the impugned decision dated 24.5.2002 (Annexure P-17). Judicial review of an administrative order is concerned with the decision making process and it is to be seen whether decision taken by the Board of Directors of PSIDC on 24.5.2002 (Annexure P-17) satisfied the test of “reasonableness” which has three elements i.e. the Board of Directors of the Corporation must have taken into account all relevant factors which were necessary for the decision making process and at the same time left out from consideration all irrelevant factors and the decision is neither perverse nor irrational. “Perverse” would mean an improper or contradictory decision not supported by any evidence and “irrational” would be one which no sensible person properly advised on the facts would reasonably arrive at.

Keeping in view the above principles a reading of the impugned decision dated 24.2.2002 (Annexure P-17) shows that it is based solely on the Demi Official letter dated 10.5.2002 (Annexure P-11).

19. In the circumstances, in the light of the decision of the Hon'ble Supreme Court in the case of Rakesh Ranjan Verma (supra), Chittoor Zilla Vyavasayadarula Sangham (supra) and Gujarat Housing Board Engineers Association (supra), it is open to the State Government to give directions to the PSIDC but the directions of the State Government is on matters of broad policies. As to what is question of policy or whether the missive given is a question of broad policy or not is to be determined in the facts and circumstances of each directive or missive given. There can be various circulars and guidelines issued by the State Government on questions of policy. It is to be seen in the context of each as to whether the same is of mandatory character of directory in nature depending on whether the directive is one of broad

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policy or for general guidelines. In any case the directive issued would require consideration by the Board of Directors of the Corporation to determine its character and in the consideration process or decision making process the Board is required to take all necessary material into account which is relevant for the decision making process. At the same time exclude irrelevant material from the consideration process. Besides, the decision is neither to be perverse nor irrational.”

For the reasons stated above, the present appeals being bereft of any merit are hereby dismissed and the writ petition referred earlier is disposed of in terms of the present judgment. No Costs.”

17. The aforesaid judgment has been upheld by the Hon’ble Supreme Court of India on 09.02.2015 in ***“The State of Punjab vs Amarjit Singh and others”***, passed in ***SLP(C) No.3305 of 2015***.

18. Learned counsel for the petitioners (in CWP No.10705 of 2019) has relied upon the Division Bench judgment of this Court in ***“Babbar Bhan and another vs State of Haryana and others”*** and other connected cases, **2010(1) RCR (Civil) 311**, wherein it has been held as under:-

*“5. Similar observation have been made in the case of **Haji T.M. Hassan v. Kerala Financial Corporation, (1988)1 SCC 166** wherein it was held that "The public property owned by the State or by any instrumentality of the State should be generally sold by public auction or by inviting tenders. This Court has been insisting upon that rule, not only to get the highest price for the property but also to ensure fairness in the activities of the State and public authorities. They should undoubtedly act fairly. Their*

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actions should be legitimate. Their dealings should be aboveboard. Their transactions should be without aversion or affection. Nothing should be suggestive of discrimination. Nothing should be done by them which gives an impression of bias, favouritism or nepotism. Ordinarily these factors would be absent if the matter is brought to public auction or sale by tenders."

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"7. The principles of law propounded above by the Hon'ble Apex Court can be summed up as under :

- (a) The State ought to dispose of public property by way of public auction or by inviting tenders as an ordinary rule. But if the State chooses to act otherwise, it has to act fairly and reasonably and action of the State must exclude arbitrariness;*
- (b) In case the State opts to make an exception to the general rule of disposing the property through public auction or by inviting tenders, the procedure followed should be so transparent that it overrules an impression of bias, favouritism or nepotism;*
- (c) In all the cases, where the general rule (sale through public auction or by invitation of tenders) is not adhered to, it must be in consonance with the criterion, which satisfies the expectation that the same is fair and reasonable.*
- (d) The criteria should be pre-determined and published to rule out the allegation of any bias.*

XXXX XXXX XXXX XXXX

*33. The above example, when tested on the touchstone of the following observations made by Hon'ble Apex Court in **M/s. Kasturi Lal Lakshmi Reddy, etc. v. The State of J & K and another, 1980 AIR (SC) 1992**, leaves us to only*

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inference that the plots were allotted, as State largesse. The Hon'ble Supreme Court, in the above said judgment, observed as under :

*"15. The second limitation on the discretion of the Government in grant of largess is in regard to the persons to whom such largesse may be granted. It is now well settled as a result of the decision of this Court in **Ramana D. Shetty v. International Airport Authority of India**, (AIR 1979 Supreme Court 1628) (supra) that the Government is not free, like an ordinary individual, in selecting the recipients for its largesse and it cannot choose to deal with any person it pleases in its absolute and unfettered discretion. The law is now well established that the Government need not deal with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure. Where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with some standard or norm which is not arbitrary, irrational or irrelevant."*

*34. To emphasize, reliance can again be placed upon **Ramana Dayaram Shetty v. International Airport Authority of India and others**, 1979(3) SCC 489, the Hon'ble Apex Court emphasised that "State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory : it must not be guided by any extraneous or irrelevant considerations,*

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*because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law. The State cannot, therefore, act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory. This principle was recognised and applied by a Bench of this Court presided over by Ray, C.J., in **Erusian Equipment and Chemicals Ltd. v. State of West Bengal** where the learned Chief Justice pointed out that 'the State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination'."*

19. He has further relied upon the Division Bench judgment of this Court in “**Munish Manufacturing Corporation, Ludhiana vs State of Punjab and others**” and other connected case, 2004(2) RCR (Civil) 497, wherein it has been held as follows:-

*14. In **Ramana Dayaram Shetty v. The International Airport Authority of India and others**, AIR*

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1979 Supreme Court 1628, their Lordships of the Supreme Court considered the issue relating to applicability of the doctrine of equality in matters relating to award of contracts, grant of licences etc. and approved the following observations made by K.K. Mathew, J. (as his Lordship then was) in **V. Punnan Thomas v. State of Kerala, AIR 1969 Kerala 81** :

"The Government is not and should not be as free as an individual in selecting the recipients for its largess. Whatever its activity, the Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal."

Their Lordships then referred to the proposition laid down in **Erusian Equipment and Chemicals Ltd. v. State of West Bengal, AIR 1975 Supreme Court 266** and observed:

"It must, therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norm which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts quotas, licences etc., must be confined and structured by rational, relevant and non-discriminatory standard

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or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

In M/s Kasturi Lal Lakshmi Reddy v. The State of Jammu and Kashmir and others, AIR 1980 Supreme Court 1992, the Supreme Court reiterated the proposition of law laid down in Romana Dayaram Shetty v. The International Airport Authority of India and others (supra) in the following words :-

"Where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or granting other forms of largess, the Government cannot act arbitrarily at its sweet will. There are two limitations imposed by law which structure and control the discretion of the Government in this behalf. The first is in regard to the terms on which largess may be granted and the other, in regard to the persons who may be recipients of such largess. Unlike a private individual, the State cannot act as it pleases in the matter of giving largess and it cannot choose to deal with any person it pleases in its absolute and unfettered discretion.

Every activity of the Government has a public element in it and it must therefore, be informed with reason and guided by public interest. If the Government awards a contract or leases out or otherwise deals with its property or grants any other largess, it would be liable to be tested for its validity

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on the touchstone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid."

*The law laid down in the above noted judgments has been followed in large number of cases including the often cited judgment in **Kumari Shrilekha Vidyarthi etc. v. State of U.P. and others, 1991(1) SCT 575 (SC) : AIR 1991 Supreme Court 537.***

20. He has further relied upon the judgment passed by the Hon'ble Supreme Court in "**M/s. Style (Dress Land) vs Union Territory, Chandigarh**", 1999(4) RCR (Civil) 157, in support of his contention that the impugned orders are non-speaking, in which it has been held as follows:-

"10. Even the administrative orders and not quasi judicial are required to be made in a manner consonance with the rules of natural justice, when they affect the rights of the citizens to the property or the attributes of the property. While exercising the powers of judicial review the court can look into the reasons given by the Government in support of its action but cannot substitute its own reasons. The Court can strike down an executive order, if it finds the reasons assigned were irrelevant and extraneous. The courts are more concerned with the decision making process than the decision itself.

*11. This Court in **Kumari Shrilekha Vidyarthi & others v. State of U.P. & others, 1991(1) SCT 575 (SC) : 1991(1) SCC 212** held that every State action, in order to survive, must not be susceptible to the vice of arbitrariness which is the crux of Article 14 and basic to the rules of law, the system which governs us, arbitrariness being the*

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negation of the rule of law. Non-arbitrariness, being a necessary concomitant of the rule of law, it is imperative that all actions of every public functionary in whatever sphere must be guided by reason and not humour, whim, caprice or personal predilections of the persons entrusted with the task on behalf of the State and exercise of all powers must be for public good instead of being an abuse of the power. Action of renewability should be gauged not on the nature of function but public nature of the body exercising that function and such action shall be open to judicial review even if it pertains to contractual field. The State action which is not informed by reason cannot be protected as it would be easy for the citizens to question such an action being arbitrary.

21. He has further relied upon judgment of the Hon’ble Supreme Court in **“Union of India and others vs Hindustan Development Corporation and others”**, 1994 AIR (Supreme Court) 988, wherein in Para 9 of the said judgment, it has been observed as follows:-

“9. XXXX XXXX XXXX XXXX

*Now coming to the test of reasonableness which pervades the constitutional scheme, this Court in several cases particularly with reference to Articles 14, 19 and 21 has considered this concept of reasonableness and has held that the same finds its positive manifestation and expression in the lofty ideal of social and economic justice which inspires and animates the Directive Principles and that Article 14 strikes at arbitrariness in State action. (vide **Maneka Gandhi v. Union of India**, (1978) (2) SCR 621 and **E. P. Royappa v. State of Tamil Nadu**, (1974)2*

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SCR 348. *After referring to these decisions it was further held in Kasturi Lal Lakshmi Reddy's case (supra) as under :*

"Any action taken by the Government with a view to giving effect to any one or more of the Directive Principles would ordinarily, subject to any constitutional or legal inhibitions or other overriding considerations, qualify for being regarded as reasonable, while an action which is inconsistent with or runs counter to a Directive Principle would incur the reproach of being unreasonable. So also the concept of public interest must as far as possible receive its orientation from the Directive Principles. What according to the founding fathers constitutes the plainest requirement of public interest is set out in the Directive Principles and they embody par excellence the constitutional concept of public interest. If, therefore, any governmental action is calculated to implement or give effect to a Directive Principle, it would ordinarily, subject to any other overriding considerations, be informed with public interest. Where any governmental action fails to satisfy the test of reasonableness and public interest discussed above and is found to be wanting in the quality of reasonableness or lacking in the element of public interest, it would be liable to be struck down as invalid. It must follow as a necessary corollary from this proposition that the Government cannot act in a manner which would benefit a private party at the cost of the State; such an action would be both unreasonable and contrary to public interest. The Government, therefore, cannot, for example give a contract or sell or lease out its property for a consideration less than the highest that can be obtained for it, unless of course there are other considerations which render it reasonable and in public interest to do so. Such considerations may be that some Directive Principle is sought to be advanced or implemented or that the contract or the

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property is given not with a view to earning carrying out a welfare scheme for the benefit of a particular group or Section of people deserving it or that the person who has offered a higher consideration is not otherwise fit to be given the contract or the property. We have referred to these considerations only illustratively, for there may be an infinite variety of considerations which may have to be taken into account by the Government in formulating its policies and it is on a total evaluation of various considerations which have weighed with the Government in taking a particular action, that the Court would have to decide whether the action of the Government is reasonable and in public interest."

22. Lastly, he has relied upon the judgment passed by the Hon'ble Supreme Court in ***"Ramana Dayaram Shetty vs International Airport Authority of India and others"***, 1979 AIR (Supreme Court) 1628, in which it has been held as under:-

"10. Now there can be no doubt that what para (1) of the notice prescribed was a condition of eligibility which was required to be satisfied by every person submitting a tender. The condition of eligibility was that the person submitting a tender must be conducting or running a registered IIInd Class hotel or restaurant and he must have at least 5 years' experience as such and if he did not satisfy this condition of eligibility, his tender would not be eligible for consideration. This was the standard or norm of eligibility laid down by the 1st respondent and since the 4th respondents did not satisfy this standard or norm, it was not competent to the 1st respondent to entertain the tender of the 4th respondents. It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its

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*actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr. Justice Frankfurter in **Vitarelli v. Seaton (1959) 359 US 535 : 3 L Ed 2d 1012** where the learned Judge said :*

"An executive agency must be rigorously held to the standards by which it professes its action to be judged.....Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed.....This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."

*This Court accepted the rule as valid and applicable in India in **A.S. Ahluwalia v. State of Punjab (1975) 3 SCR 82** and in subsequent decision given in **Sukhdev v. Bhagatram, (1975) 3 SCR 619**, Mathew, J., quoted the above-referred observations of Mr. Justice Frankfurter with approval. It may be noted that this rule, though supportable also as emanating from Article 14, does not rest merely on that article. It has an independent existence apart from Article 14. It is a rule of administrative law which has been judicially evolved as a check against exercise of arbitrary power by the executive authority. If we turn to the judgment of Mr. Justice Frankfurter and examine it, **we find that** he has not sought to draw support for the rule from the equality clause of the United States Constitution but evolved it purely as a rule of administrative law. Even in England the recent trend in administrative law is in that direction as is evident from*

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what is stated at pages 540-41 in Prof. Wade's Administrative Law 4th Edition. There is no reason why we should hesitate to adopt this rule as a part of our continually expanding administrative law. Today with tremendous expansion of welfare and social service functions increasing control of material and economic resources and large scale assumption of industrial and commercial activities by the State the power of the executive Government to affect the lives of the people is steadily growing. The attainment of socio-economic justice being a conscious end of State policy there is a vast and inevitable increase in the frequency with which ordinary citizens come into relationship of direct encounter with State power-holders. This renders it necessary to structure and restrict the power of the executive Government so as to prevent its arbitrary application or exercise. Whatever be the concept of the rule of law, whether it be the meaning given by Dicey in his "The Law of the Constitution" or the definition given by Hayek in his "Road to Serfdom" and "Constitution of liberty" or the exposition set forth by Herry Jones in his "The Rule of Law and the Welfare State" there is, as pointed out by Mathew, J., in his article on "The Welfare State, Rule of Law and Natural Justice" in Democracy, Equality and Freedom "substantial agreement in juristic thought that the great purpose of the rule of law notion is the protection of the individual against arbitrary exercise of power, wherever it is found". It is indeed unthinkable that in a democracy governed by the rule of law the executive Government or any of its officers should possess arbitrary power over the interests of the individual. Every action of the executive Government must be informed with reason and should be free from

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arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. And to the application of this principle it makes no difference whether the exercise of the power involves affection of some right or denial of some privilege.

11. To-day the Government, in a welfare State is the regulator and dispenser of special services and provider of a large number of benefits, including jobs contracts, licences, quotas, mineral rights etc. The Government pours forth wealth, money, benefits, services, contracts, quotas and licences. The valuables dispensed by Government take many forms, but they all share one characteristic. They are steadily taking the place of traditional forms of wealth. These valuables which derive from relationships to Government are of many kinds. They comprise social security benefits, cash grants for political sufferers and the whole scheme of State and local welfare. Then again, thousands of people are employed in the State and the Central Government and local authorities. Licences are required before one can engage in many kinds of businesses or work. The power of giving licences means power to withhold them and this gives control to the Government or to the agents of Government on the lives of many people. Many individuals and many more businesses enjoy largess in the form of Government contracts. These contracts often resemble subsidies. It is virtually impossible to lose money on them and many enterprises are set up primarily to do business with Government. Government owns and controls hundreds of acres of public land valuable for mining, and other purposes. These resources are available for utilisation by private corporations and individuals by way of lease or licence.

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All these mean growth in the Government largess and with the increasing magnitude and range of governmental functions as we move closer to a welfare State, more and more of our wealth consists of these new forms. Some of these forms of wealth may be in the nature of legal rights but the large majority of them are in the nature of privileges. But on that account, can it be said that they do not enjoy any legal protection ? Can they be regarded as gratuity furnished by the State so that the State may withhold, grant or revoke it at its pleasure ? Is the position of the Government in this respect the same as that of a private giver? We do not think so. The law has not been slow to recognise the importance of this new kind of wealth and the need to protect individual interest in it and with that end in view, it has developed new forms of protection. Some interests in Government largess, formerly regarded as privileges, have been recognised as rights while others have been given legal protection not only by forging procedural safeguards but also by confining/structuring and checking Government discretion in the matter of grant of such largess. The discretion of the Government has been held to be not unlimited in that the Government cannot give or withhold largess in its arbitrary discretion or at its sweet will. It is insisted, as pointed out by Professor Reich in an especially stimulating article on "The New Property" in 73 Yale Law Journal 733, "that Government action be based on standards that are not arbitrary or unauthorised." The Government cannot be permitted to say that it will give jobs or enter into contracts or issue quotas or licences only in favour of those having grey hair or belonging to a particular political party or professing a particular religious faith. The Government is still the

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Government when it acts in the matter of granting largess and it cannot act arbitrarily. It does not stand in the same position as a private individual.

12. We agree with the observations of Mathew, J., in **V. Punnan Thomas v. State of Kerala AIR 1969 Kerala 81 (FB)** that : "The Government, is not and should not be as free as an individual in selecting the receipts for its largess. Whatever its activity the Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal". The same point was made by this Court in **Erusian Equipment and Chemicals Ltd. v. State of West Bengal (1975) 2 SCR 674** where the question was whether black-listing of a person without giving him an opportunity to be heard was bad ? Ray, C.J., speaking on behalf of himself and his colleagues on the Bench pointed out that black-listing of a person not only affects his reputation which is in Poundian terms an interest both of personality and substance, but also denies him equality in the matter of entering into contract with the Government and it cannot the before, be supported without fair hearing. It was argued for the Government that no person has a right to enter into contractual relationship with the Government and the Government, like any other private individual, has the absolute right to enter into contract with any one it pleases. But the Court, speaking through the learned Chief Justice, responded that the Government is not like a private individual who can pick and choose the person with whom it will deal, but the Government is still a Government when it enters into contract or when it is

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administering largess and it cannot, without adequate reason, exclude any person from dealing with it or take away largess arbitrarily. The learned Chief Justice said that when the Government is trading with the public, "the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions.....The activities of the Government have a public element and the before the re should be fairness and equality. The State need not enter into any contract with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure." This proposition would hold good in all cases of dealing by the Government with the public, where the interest sought to be protected is a privilege. It must the before, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norm which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts quotas, licences etc., must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory.

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20. Now, obviously where a corporation is an instrumentality or agency of Government, it would, in the exercise of its power or discretion, be subject to the same constitutional or public law limitations as Government. The rule inhibiting arbitrary action by Government which we have discussed above must apply equally where such corporation is dealing with the public, whether by way of giving jobs or entering into contracts or otherwise, and it cannot act arbitrarily and enter into relationship with any person it likes at its sweet will, but its action must be in conformity with some principle which meets the test of reason and relevance.

21. This rule also flows directly from the doctrine of equality embodied in Article 14. It is now well settled as a result of the decisions of this Court in **E. P. Royappa v. State of Tamil Nadu, (1974) 2 SCR 348** and **Maneka Gandhi v. Union of India, (1978) 1 SCC 248** that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory : it must not be guided by any extraneous or irrelevant consideration, because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by Article 14 and it must characterise every State action, whether it be under authority of law or in exercise of executive power without making of law. The State cannot, therefore act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action

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*must conform to some standard or norm which is rational and non-discriminatory. This principle was recognised and applied by a Bench of this Court presided over by Ray, C. J., in **Erusian Equipment and Chemicals Ltd. v. State of West Bengal** (supra) where the learned Chief Justice pointed out that 'the State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of black-listing -A citizen has a right to claim equal treatment to enter into a contract which may be proper, necessary and essential to his lawful calling - It is true that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to equal treatment with others who offer tender or quotations for the purchase of the goods.' It must, therefore follow as a necessary corollary from the principle of equality enshrined in Article 14 that though the State is entitled to refuse to enter into relationship with any one, yet if it does so, it cannot arbitrarily choose any person it likes for entering into such relationship and discriminate between persons similarly circumstanced, but it must act in*

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conformity with some standard or principle which meets the test of reasonableness and non-discrimination and any departure from such standard or principle would be invalid unless it can be supported or justified on some rational and non-discriminatory ground.

*22. It is interesting to find that this rule was recognised and applied by a Constitution Bench of this Court in a case of sale of kendu leaves by the Government of Orissa in **Rasbihari Panda v. State of Orissa, (1969) 3 SCR 374**. The trade of kendu leaves in the State of Orissa was regulated by the Orissa Kendu Leaves (Control of Trade) Act, 1961 and this Act created a monopoly in favour of the State so far as purchase of kendu leaves from growers and pluckers was concerned. Section 10 of the Act authorised the Government to sell or otherwise dispose of kendu leaves purchased in such manner as the Government might direct. The Government first evolved a scheme under which it offered to renew the licences of those traders who in its view had worked satisfactorily in the previous year and had regularly paid the amounts due from them. The scheme was challenged and realising that it might be struck down, the Government withdrew the scheme and instead, decided to invite tenders for advance purchases of kendu leaves but restricted the invitation to those individuals who had carried out contracts in the previous year without default and to the satisfaction of the Government. This method of sale of kendu leaves was also challenged by filing a writ petition on the ground inter alia that it was violative of Articles 14 and 19 (1) (g) and this challenge, though negated by the High Court, was upheld by this Court in appeal. The Court pointed out that the original scheme of offering to enter into contracts with the old licencees and*

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to renew their terms was open to grave objection, since it sought arbitrarily to exclude many persons interested in the trade and the new scheme under which the Government restricted the invitation to make offers to those traders who had carried out their contracts in the previous year without default and to the satisfaction of the Government was also objectionable, since the right to make tenders for the purchase of kendu leaves being restricted to a limited class of persons, it effectively shut out all other persons carrying on trade in kendu leaves and also the new entrants into that business and hence it was ex facie discriminatory and imposed unreasonable restrictions upon the right of persons other than the existing contractors to carry on business. Both the schemes evolved by the Government were thus held to be violative of Articles 14 and 19 (1) (g) because they 'gave rise to a monopoly in the trade in kendu leaves to certain traders and singled out other traders for discriminatory treatment'. The argument that existing contractors who had carried out their obligations in the previous year regularly and to the satisfaction of the Government formed a valid basis of classification bearing a just and reasonable relation to the object sought to be achieved by the sale, namely, effective execution of the monopoly in the public interest, was also negated and it was pointed out that : "exclusion of all persons interested in the trade, who were not in the previous year licencees, is ex facie arbitrary : it had no direct relation to the object of preventing exploitation of pluckers and growers of kendu leaves, nor had it any just or reasonable relation to the securing of the full benefit from the trade, to the State." The Court referred to the offer made by a well known manufacturer of bidis for purchase of the entire crop of

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kendu leaves for a sum of Rs. 3 crores which was turned down by the Government and expressed its surprise that no explanation was attempted to be given on behalf of the State as to why such an offer, from which the State stood to gain more than Rs. 1 crore, was rejected by the Government. It will be seen from this judgment that restricting the invitation to submit tenders to a limited class of persons was held to be violative of the equality clause, because the classification did not bear any just and reasonable relation to the object sought to be achieved, namely, selling of kendu leaves in the interest of the general public. The standard or norm laid down by the Government for entering into contracts of sale of kendu leaves with third parties was discriminatory and could not stand the scrutiny of Article 14 and hence the scheme was held to be invalid. The Court rejected the contention of the Government that by reason of Section 10 it was entitled to dispose of kendu leaves in such manner as it thought fit and there was no limitation upon its power to enter into contracts for sale of kendu leaves with such persons it liked. The Court held that the Government was, in the exercise of its power to enter into contracts for sale of kendu leaves, subject to the constitutional limitation of Article 14 and it could not act arbitrarily in selecting persons with whom to enter into contracts and discriminate against others similarly situate. The Court criticised the Government for not giving any explanation as to why an offer for a large amount was not accepted, the clearest implication being that the Government must act in the public interest; it cannot act arbitrarily and without reason and if it does so, its action would be liable to be invalidated. This decision wholly supports the view we are

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taking in regard to the applicability of the rule against arbitrariness in State action.”

23. Per contra, learned State counsel as well as learned counsels appearing for respondent – PUDA, have submitted that State Government is empowered to control the functioning of Authority as per Section 40 of the PRTPD Act, 1995.

24. They have further submitted that Section 180 of The PRTPD Act, 1995 empowers the State Government to make rules for carrying out the purposes of the Act. However, with regard to the stand taken by the State to decline the relief claimed by the petitioner, it is submitted that the case of the pension scheme, being a financial matter, was referred to the Department of Finance, Punjab by the Department of Housing and Urban Development. Thereafter, the Department of Finance vide letter No.16/53/2002-4FE6/1512 dated 02.09.2002 (Annexure P-6) rejected the proposal of pension scheme with the following observations:-

"The Department of Finance observes that the PUDA is not a commercial profit making concern as it has mainly regulatory and promotional role to play. The Department of Finance is also to maintain uniformity of conditions of service and matter connected there with for PSUs/Boards/Apex Cooperative Institutions. If pension facility is given to PUDA, it is likely to start off a chain reaction and employees of other PSUs/Boards/Apex Cooperative Institutions are likely to ask for similar benefits, which the Government can ill afford at this juncture of financial constraints.

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2. In view of the position explained above, the proposal of the Administrative Department is rejected.”

25. In support of his argument, learned State counsel has placed reliance upon the judgment passed by the Hon’ble Supreme Court in ***“The State of Uttar Pradesh and others vs Association of Retired Supreme Court and High Court Judges at Allahabad and others”***, 2024 AIR (SC) 475, to submit that the High Court cannot compel the State Government to mandatorily enact rules on a particular subject, by a writ of mandamus or otherwise notify the Rules or Policy as Policy making by the government envisages various steps and consideration of various factors, including local conditions, financial considerations and approval from various departments and the State Government is free to constructively consider the desirability of the Rules within its own decision-making apparatus.

26. He has further relied upon the judgment passed by the Hon’ble Supreme Court in ***“Vivek Krishna vs Union of India and others”***, in Writ Petition (Civil) No.1034 of 2021, decided on 18.04.2022, wherein it has been held as under:-

“14. Whether under Article 32 or Article 226 of the Constitution of India, the Court can give directions in order to prevent injustice. This Court and/or a High Court cannot direct the Legislature to enact a particular legislation or the Executive to frame rules. This Court, and/or the High Court, does not give any direction to the State to enforce an Act passed by the Legislature. Nor does the Court enforce instructions in a Departmental Manual

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not having statutory force, any non-statutory scheme or concession which does not give rise to any legal right in favour of the Petitioner, far less, any recommendation made by an authority such as the Election Commission. It is for the Union of India to take a decision on the recommendation of the Election Commission, in accordance with law. It is not for this Court to decide what should be the policy of the Government. Policy matters are never interfered with, unless patently arbitrary, unreasonable or violative of Article 14 of the Constitution.

*15. It is reiterated at the cost of repetition that Mandamus will not be issued to command Legislature to enact a law, which it is competent to enact. Reference may be made to the judgments of this Court in **Narinder Chand Hem Raj and Ors. v. Lt. Governor, Administrator, Union Territory, H.P. and Ors. reported in AIR 1971 SC 2399** and **State of Jammu & Kashmir v. A.R. Zakki & Others reported in AIR 1992 SC 1546**.*

*16. As held by the Bombay High Court in **Vidarbha (Rent Control) Bhadekaru Sangh Akola and Anr. v. State of Maharashtra and Anr. reported in AIR 1987 Bombay 10***, when the Legislature cannot be commanded to enact legislation, no Mandamus should be issued to the Government to the same effect, however desirable the legislation may be.

17. The Court cannot even issue a Mandamus to the Government for enforcement of a Cabinet decision. It is only when an administrative order confers rights or creates estoppel against the Government, that Mandamus can be issued to enforce the circular. Similarly a Mandamus may be issued to cancel an administrative order, which violates the rules of fairness.

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27. Learned counsels for respondent – PUDA have submitted that the proposal to implement the pension scheme for PUDA employees had already been rejected twice by the Finance Department as the pension scheme though approved by PUDA was to be implemented with the approval of Finance Department, which had already considered the proposal from all angles and rejected the same with logical ground and, therefore, the writ petition is liable to be dismissed.

28. In support of their arguments, they have relied upon the judgment passed by the Hon’ble Supreme Court in “*Rachna and others vs Union of India and another*”, 2021(2) SCT 26. They have further placed reliance upon the judgment in “*State of Orissa and another vs Orissa Khadi and Village Industries Board Karmachari Sangh and another*”, 2023 (4) Scale 332, to contend that when the State has established the Board to carry out its obligations in terms of Article 43 of the Constitution of India, it cannot follow as a corollary that the employees of this body corporate have to be treated as State Government employees in all respects as such a corollary proposition would practically amount to merging the Board with the State Government rather making it as one of the department of the Government.

29. I have heard learned counsel for the parties and perused the record.

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30. Before proceeding further, it would be appropriate to refer to Sections 2(d), 2(m), 28, 40, 49, 50, 53 to 55, 150, 151, 153, 180(2)(p) and 182 of the Punjab Regional and Town Planning and Development Act, 1995, to crystalize the issue, which are reproduced as follows:-

Section 2(d).

“Authority” means the Punjab Urban Planning and Development Authority constituted under Section 17 or a Special Urban Planning and Development Authority constituted under Section 29 or a New Town Planning and Development Authority constituted under Section 31;

Section 2(m).

“Competent Authority” shall mean any person or authority appointed by the State Government, by notification, to exercise and perform all or any of the powers and functions of the competent authority under this Act : Provided that in relation to an area falling within the jurisdiction of a Municipality or a Municipal Corporation the powers of the Competent Authority under Chapter XI of this Act, except the powers in respect of change of land use exercised under section 81, shall be exercised and performed by the Municipality or the Municipal Corporation in whose jurisdiction such an area falls ;

Section 28. Objects and functions of the Authority.--

28.(1) The objects of the Authority shall be to promote and secure better planning and development of any area of the State and for that purpose the Authority shall have the powers to acquire by way of purchase transfer, ex-change or gift or to hold, manage, plan, develop and mortgage or otherwise dispose of land or other property or to carry out itself or in collaboration with any other agency or through any other agency on its

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behalf, building, engineering, mining and other operations to execute works in connection with supply of water, disposal of sewerage, control of pollution and other services and amenities and generally to do anything with the prior approval or on direction of the State Government, for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing provisions, the Authority itself or in collaboration with any other agency or through any other agency on its behalf,-

(i) if so required by the State Government or the Board, take up the works in connection with the preparation and implementation of Regional Plans, Master Plans and New Township Plans and town improvement schemes ;

(ii) undertake the work relating to the amenities and services to be provided in the urban areas, urban estates, promotion of urban development as well as construction of houses ;

(iii) promote research, development of new techniques of planning, land development and house construction and manufacture of building material;

(iv) promote companies, association and other bodies for carrying out the purposes of the Act ; and

(v) perform any other function which are supplemental, incidental or consequential to any of the functions referred to in this sub-section or which may be prescribed.

Section 40. Control by Sate Government.--

40 (1) The Authority shall carry out such directions as may be issued to it, from time to time, by the State Government for the efficient administration of this Act.

(2) The State Government may depute any officer to inspect or examine the office of the Authority, or its development works and to report thereon and the officer so

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deputed may, for the purposes of such inspection or examination call for,-

- (a) any extract from any proceedings of the Authority or any Committee constituted under this Act, record, correspondence, plan or other documents;*
 - (b) any return, estimates, statement of accounts or statistics;*
 - (c) any report,*
- and the Authority shall furnish the same.*

Section 49. Fund of the Authority.--

49.(1) The Authority shall have and maintain its own fund to which shall be credited-

- (a) all moneys received by the Authority from the State Government and the Central Government by way of grants, loans, advances or otherwise ;*
- (b) all moneys received by the Authority from sources other than the State Government or the Central Government, by way of loans or debentures ;*
- (c) all fees received by the Authority under this Act ;*
- (d) all moneys received by the Authority from the disposal of lands, buildings and other properties, movable and immovable ;*
- (e) all moneys received by the authority by way of the rent and profits or in any other manner or from any other source; and*
- (f) all moneys received by the Authority in connection with the execution of any town development scheme.*

(2) The funds of the Authority shall be applied towards meeting-

- (a) the expenditure incurred in the administration, implementation and carrying out the provisions of this Act;*
- (b) the cost of acquisition of land for the purposes of this Act;*
- (c) the expenditure for development of land and construction of houses ; and*

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(d) the expenditure for such other purposes as the State Government may direct or permit.

(3) The Authority shall keep its fund in any Scheduled Bank or in any Apex Co-Operative Bank or a Central Co-Operative Bank.

(4) The Authority may invest any portion of its fund in such securities or in such other manner as it may determine from time to time.

(5) The income resulting from investments mentioned in sub-section (4) and proceeds of the sale of the same shall be credited to the fund of the Authority.

Section 50. Power of State Government to make grants, advances and loans to the Authority.--

50. The State Government may make such grants, advances and loans to the Authority, as the State Government may deem necessary, for the performance of its functions under this Act and all grants, loans and advances so made shall be on such terms and conditions as the State Government may determine.

Section 53. Accounts and Audit.--

53 (1) The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the balance sheet in such form and in such manner as may be prescribed.

(2) The Authority shall cause its accounts to be audited annually by the auditors duly qualified to act as auditors under sub-section (1) of section 226 of the Companies Act, 1956.

(3) As soon as the accounts of the Authority are audited, the Authority shall send a copy thereof together with the audit report thereon to the State Government and

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also cause the accounts to be published in the prescribed manner.

(4) Notwithstanding anything contained in this section, the State Government may order that there shall be concurrent or special audit of accounts of the Authority by such person or authority as it thinks fit.

(5) The State Government shall cause to be laid a copy of the audit report before the House of the State Legislature.

Section 54. Annual Report.--

54.(1) The Authority shall prepare every year a report of its activities during that year, and submit that report to the State Government, in such form and on or before such date as may be prescribed.

(2) The State Government shall, as soon as may be, cause the report submitted by the Authority under sub-section (1) to be laid before the House of the State Legislature.

Section 55. Provident Fund.--

55. The Authority shall constitute, for the benefit of its whole time paid members and of its officers and other employees in such manner and subject to such conditions, as may be prescribed, such provident fund as it may deem fit.

Section 150. Transfer of service of employees of the Punjab Housing Development Board.--

150.(1) Every whole time employee of the Punjab Housing Development Board (hereinafter referred to as the employee of the Board) shall, on and from the date of its abolition under sub-section(1) of section 148, become an employee of the Authority, and shall hold his office therein by the same tenure, at the same remuneration and upon the

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same terms and conditions and with the same rights and privileges, if any, other matters as he would have held the same on the said date, if this Act had not come into force and shall continue to do so unless and until his remuneration, terms and conditions are duly altered by the Authority with the previous approval of the State Government.

(2) Notwithstanding anything contained in sub-section(1), where any employee of the Punjab Housing Development Board, by notice in writing given to the Authority at any time before the expiry of three months next following the date of abolition of the said Board under section 148, has intimated his intention of not becoming an employee of the Authority, he shall cease to be an employee of the Authority and shall be entitled to get such gratuity, provident fund and other retirement benefits as are ordinarily admissible to him under the rules or authorisation of the Punjab Housing Development Board immediately before its abolition.

(3) If any question arises as to whether any person was a whole time employee of the Punjab Housing Development Board before the date referred to in sub-section (1) the question shall be referred to the State Government whose decision shall be final.

(4) Notwithstanding anything contained in the Industrial Disputes Act 1947 (Central Act XIV of 1947) or in any other law for the time being in force the transfer of the service of any employee of the Punjab Housing Development Board to the Authority shall not entitle any such employee to any compensation under that Act or other law and no such claim shall be entertained by a Court, Tribunal or any other authority.

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Section 151. Transfer of employees of Government to the Authority.--

151.(1) As soon as may be, after the date of abolition of the Punjab Housing Development Board under sub-section (1) of section 148 the State Government may, after consulting the Authority in the prescribed manner, direct by general order that such of the employees serving immediately before the said date in connection with the affairs of the State of Punjab in the Directorate of Housing and Urban Development (hereinafter referred to as the employees of the Directorate) whose assets were transferred to the Punjab Housing Development Board under section 3 of the Punjab Urban Estates (Development and Regulation) Act, 1964 (Punjab Act 22 of 1964) as are specified in such order stand allotted to and serve in connection with the affairs of the Authority with effect from such date as may be specified (hereinafter referred to as the notified date) in such order:

Provided that so far as may be possible,-

(1) no employee shall be transferred to the service of the Authority -

(a) unless such employee give his option in writing for such transfer ; and

(b) the Authority considers him suitable for such transfer to its service :

Provided further that the conditions of service of an employee of the Directorate of Housing and Urban Development, Punjab, transferred to the service of the Authority shall not be varied by the Authority to his disadvantage.

(2) Notwithstanding anything contained in sub-section (1), where an employee serving immediately before the date of abolition of the Punjab Housing Development Board under sub-section (1) of section 148, in connection

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with the affairs of the State of Punjab in the Directorate of Housing and Urban Development has not given his option for his transfer to the Authority under sub-section (1), if not absorbed in any service or on any post under the government of Punjab, shall be entitled to such gratuity, provident fund and other retirement benefits as are ordinarily admissible to him under the rules or authorisations of the State Government immediately before the date of abolition of the said Board.

Section 153. Leave Salary and pension contribution.--

153.(1) In the case of officers and employees transferred from service of the State Government to that of the Authority, the State Government shall credit the leave salary and pension contribution of such officers and employees to the Authority for each completed year of their service under the State Government on the notified date and they shall be entitled to the benefit of leave to their credit on that date.

(2) The pension contribution paid by the State Government to the Authority shall form the nucleus of the contributory provident fund to which they shall be admitted and they shall have no claim on the State Government in respect of leave and pension.

Section 180(2)(p). Power to make rules.--

180(2)(p) the manner and constitution of the pension and provident fund for whole-time paid members and officers and other employees of the Authority and the conditions subject to which such fund may be constituted under section 55 ;

Section 182. Power of the Authority to make regulations--

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182.(1) The Authority may make regulations, consistent with this Act, and the rules made thereunder, to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of this power, such regulations may provide for,-

(a) the summoning or holding of the meetings of the Authority, the time and place where such meetings are to be held and the conduct of business at such meetings under sub-section (1) of section 21 ;

(b) the functions to be assigned to the Chief Administrator by the Authority under section 22 ;

(c) the appointment of committees under section 23 ;

(d) the salaries, allowances and conditions of service of officers and other employees of the Authority under sub-section (2) of section 26 ;

(e) the powers and duties of the officers and other employees of the Authority under sub-section (3) of section 26 ;

(f) any other matter which has to be, or may be, determined by regulations.

In consonance with the provisions of Section 182 of the Act, the service regulations have been formulated, which govern the service conditions of the employees of PUDA the same are known as ‘Punjab Urban Planning & Development Authority (Employees Service) Regulations, 1999’. The relevant Regulation No.23 is reproduced hereunder:-

23. Pay and Allowance - *(1) Every employee shall be entitled to such scales of pay including special pay as may be sanctioned by the Authority from time to time but not less than PWD for technical categories and in Punjab Civil Secretariat in case of Ministerial and other categories.*

The scales of pay and special pay at present in force in respect of the posts and Services are given in Schedule I.

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(2) No employee while in service of the Authority shall accept without the permission of the Appointing Authority any other employment or pay or honorarium or fee from any other source.”

31. Admittedly, the pension scheme was introduced first time in 4th Meeting of PUDA held on 09.11.1996 vide Agenda Item No.4.11 which was approved in the meeting of the Authority held under the Chairmanship of the then Minister, Housing and Urban Development, Punjab cum Vice Chairman, PUDA and accordingly, the detailed pension scheme was placed before the Chairman, PUDA vide Agenda Item No.9.08 (Annexure P-4) in its 9th meeting held on 16.10.1998 wherein it was desired that a detailed case for adoption of pension scheme may be submitted to the Chairman as per the decision of Agenda Item No. 4.11. Thereafter, the matter was referred to the Department of Housing and Urban Development for issuance of Notification regarding Pension Scheme of PUDA employees under Section 180 (1)(p) of the Act, 1995 vide letter dated 16.10.2001. Subsequently, on 02.04.2002, the then Minister of Housing and Urban Development Department-cum-Vice Chairman, PUDA decided that *"The pension scheme may be made applicable w.e.f 01.07.1995, the date on which PUDA came into being."* Thereafter, the matter was referred by the Department of Housing and Urban Development to the Finance Department to consider the proposal to extend pension scheme to PUDA employees and the Finance Department vide letter dated 02.09.2002, rejected the proposal of pension scheme. Again after

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receiving the communication from Secretary, Department of Finance, regarding implementation of pension scheme, the Department of Housing and Urban Development vide letter dated 01.04.2003 conveyed as under:-

“2. The matter cited in the subject has been considered at length at Government level. The matter was also referred to the Department of Finance and the advice of the Principal Secretary Finance has been obtained as per orders of the Chief Secretary. After taking into consideration all the facts, the State Government expresses its inability to agree to the proposal.”

32. Thereafter again, the matter with regard to implementation of pension scheme for the employees of PUDA was placed before the PUDA authorities in its 42nd meeting held on 01.09.2010 and vide Agenda Item No.42.05, the PUDA principally approved the same and directed the Executive Committee of PUDA to examine the financial aspects of the pension scheme. Again the matter was examined by PUDA in its 13th meeting held on 29.06.2016, wherein it was decided that the comments of Finance Department be obtained regarding the policy framed by PUDA. However, the Department of Finance again rejected the proposal of PUDA and expressed its inability to acceded to the said proposal. The proposal to implement the pension scheme for PUDA employees had been rejected twice by the Finance Department.

33. It is apposite to mention here that the Punjab Urban Development Authority (PUDA) is governed by the provisions of the

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Punjab Regional and Town planning and Development Act, 1995. The Act also consists of provisions related to the relations between the State Government, the Authority and the Local Authorities. Under Chapter IV, Section 40 of The Punjab Regional and Town Planning and Development Act, 1995, the State Government is empowered to control the functioning of the Authority. The Authority has to carry out the directions issued by the State Government from time to time for efficient administration of said provisions of this Act. There is no provision for pension for the employees of PUDA, rather they are entitled to Contributory Provident Fund and for the said purpose, 12% is contributed by PUDA from the amount of Basic Pay + Dearness Allowance from the salary of employees and corresponding 12% is the employer's share.

34. The State has already through its letter dated 02.09.2002 clarified that PUDA is a regulatory body to promote and secure better planning and development in the State and in order to maintain unanimity among all its independent bodies, there is no provision for grant of pension. Moreover with regard to the grant of any benefits to the employees of PSUs/Boards/Apex Cooperative Institutions a conscious decision of the State Government is imperative for all collectively and there cannot be any decision for a single entity in the State of Punjab. The letter No.16/53/2002-4FE6/1512 dated 02.09.2002 is reproduced hereunder:

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"The Department of Finance observes that the PUDA is not a commercial profit making concern as it has mainly regulatory and promotional role to play. The Department of Finance is also to maintain uniformity of conditions of service and matter connected there with for PSUs/Boards/Apex Cooperative Institutions. If pension facility is given to PUDA, it is likely to start off a chain reaction and employees of other PSUs/Boards/Apex Cooperative Institutions are likely to ask for similar benefits, which the Government can ill afford at this juncture of financial constraints. In view of the position explained above, the proposal of the Administrative Department is rejected."

35. The matter relating to formulation of broad policy guidelines relating to personnel policies including pay scales, various allowance and other financial matters of Public Sector Undertakings will be dealt by the Bureau of Public Enterprises Wing (Now presently the Directorate of Public Enterprises and Disinvestment) as per the Allocation of Business (IInd Amendments) Rules, 1990. Meaning thereby that the financial matter relating to all the Boards/Corporations/PSUs fall within the purview of the Directorate of Public Enterprises and Disinvestment, Department of Finance. Accordingly, it is crystal clear that the service of employees of PUDA are governed under the provisions of the Punjab Regional and Town Planning and Development Act, 1995, and the same provides for Contributory Provident Fund, however, not for grant of pension.

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A conjoint reading of the provisions of the 1995 Act (ibid) and regulations, 1999 clearly show that the Government has persuasive control over the working, functioning and administration of the PUDA and no policy decision with regard to formulation of pension scheme can be taken without the prior approval of the State Government as manifested and, thus, the matter was sent to the Government who had denied to accord its approval to the pension scheme, being not viable to implement for PUDA employees and as per Section 55 of the Act, a Contributory Provident Fund constituted by the authority for the benefit of its employees is already in effect.

36. The Hon’ble Supreme Court in ***‘The State of Uttar Pradesh and others’ case (supra)***, while considering the powers of the High Court in issuing directions for framing of rules, has held as under:-

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30. The High Court, acting on the judicial side, could not compel the State Government to notify Rules proposed by the Chief Justice in the purported exercise of his administrative powers. Policy-making by the government envisages various steps and the consideration of various factors, including local conditions, financial considerations, and approval from various departments. The High Court cannot use its judicial powers to browbeat the State Government to notify the Rules proposed by the Chief Justice. As the Rules were promulgated by the Chief Justice without competence, at best, they amounted to inputs to the State Government. The State Government was free to constructively consider the desirability of the Rules within its own decision-making apparatus. Therefore, the

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High Court acted beyond its jurisdiction under Article 226 by frequently summoning officers to expedite the consideration of the Rules and issuing directions to notify the Rules by a fixed date, under the threat of criminal contempt.

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46. In a nutshell, the conclusions reached in this Judgement are as follows:

a. The High Court did not have the power to direct the State Government to notify Rules proposed by the Chief Justice pertaining to post-retiral benefits for former Judges of the High Court. The Chief Justice did not have the competence to frame the rules under Article 229 of the Constitution. Further, the High Court, acting on the judicial side, does not have the power to direct the Government to frame rules proposed by it on the administrative side.

b. The power of criminal contempt could not be invoked by the High Court against officials of the Government of Uttar Pradesh on the ground that the application for recall of the First Impugned Order was ‘contemptuous’. The actions of the officials do not meet the standard of both ‘criminal contempt’ and ‘civil contempt’.

c. The conduct of the High Court in frequently summoning government officials to exert pressure on the government, under the threat of contempt, is impermissible. Summoning officials repeatedly, instead of relying on the law officers representing the government or the submissions of the government on affidavit, runs contrary to the scheme envisaged by the Constitution.

d. The SOP on Personal Appearance of Government Officials in Court Proceedings framed by this Court in

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Para 45 of this Judgement must be followed by all courts across the country. All High Courts shall consider framing rules to regulate the appearance of Government officials in court, after taking into account the SOP which has been formulated above.”

37. Further, the Hon’ble Supreme Court in **Rachna’s case (supra)**, while considering the powers of the Courts in policy making, has observed as under:-

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*43. It is the settled principle of law that policy decisions are open for judicial review by this Court for a very limited purpose and this Court can interfere into the realm of public policy so framed if it is either absolutely capricious, totally arbitrary or not informed of reasons and has been considered by this Court in **Union of India and Others v. M. Selvakumar and Another 2017(3) SCC 504**. The relevant portion is as under:-*

"47. There is one more reason due to which we are unable to subscribe to the view taken by the Madras High Court and Delhi High Court. The horizontal reservation and relaxation for Physically Handicapped Category candidates for Civil Services Examination, is a matter of Governmental policy and the Government after considering the relevant materials has extended relaxation and concessions to the Physically Handicapped candidates belonging to the Reserved Category as well as General Category. It is not in the domain of the courts to embark upon an inquiry as to whether a particular public policy is wise and acceptable or whether better policy could be evolved. The Court can only

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interfere if the policy framed is absolutely capricious and non-informed by reasons, or totally arbitrary, offending the basic requirement of Article 14 of the Constitution."

(Emphasis supplied)

XXXX XXXX XXXX XXXX

45. Judicial review of a policy decision and to issue mandamus to frame policy in a particular manner are absolutely different. It is within the realm of the executive to take a policy decision based on the prevailing circumstances for better administration and in meeting out the exigencies but at the same time, it is not within the domain of the Courts to legislate. The Courts do interpret the laws and in such an interpretation, certain creative process is involved. The Courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. The Court is called upon to consider the validity of a policy decision only when a challenge is made that such policy decision infringes fundamental rights guaranteed by the Constitution or any other statutory right. Merely because as a matter of policy, if the 1st respondent has granted relaxation in the past for the reason that there was a change in the examination pattern/syllabus and in the given situation, had considered to be an impediment for the participant in the Civil Service Examination, no assistance can be claimed by the petitioners in seeking mandamus to the 1st respondent to come out with a policy granting relaxation to the participants who had availed a final and last attempt or have crossed the upper age by appearing in the Examination 2020 as a matter of right."

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38. To the same effect is the judgment of Hon'ble Supreme Court in ***Orissa Khadi's case (supra)***, wherein it has been held as under:-

“16.1. The observations in the impugned judgment and order dated 20.12.2012 as also the contentions urged on behalf of the respondents, seeking to put the employees of the Board at par with the employees of the State Government for all purposes, carry their own shortcomings. Even if Orissa Khadi and Village Industries Board has been established under an enactment of the State and for several relevant factors, it could be considered to be an instrumentality of the State, its distinct characteristic of being a Board established with particular aim and objective cannot be ignored altogether. The Board being a body corporate, incorporated by its name, has been established to carry out the purposes of the Act of 1955 and not beyond. In view of its independent corporate entity and existence, the provisions have been made in the Act of 1955 for making regulations by the Board consistent with the Act of 1955 and rules made thereunder with the previous sanction of the State Government, where the Regulations could provide, inter alia, for remuneration, allowances and other conditions of service of the staff of the Board (vide Section 36 of the Act). The Regulations of 1960 were framed accordingly. Therein, even while otherwise applying a substantial part of the Rules in the Orissa Service Code mutatis mutandis to the employees of the Board, Regulation 40 itself starts with a clause of exception, making that provision subject to the other provisions of the Regulations. Then, in Regulation 52 it has specifically been provided that the employees of the Board shall not be entitled to any pension except gratuity and CPF benefits; and further provisions have been made for the purpose of subscription/contribution to CPF. Thus, even when the State has established the Board to carry out its obligations in terms of Article 43 of the Constitution of India, it cannot follow as a corollary that the employees of this body corporate have to be treated as State Government employees in all respects. Such a corollary proposition

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would practically amount to merging of the Board with the State Government; rather making it as one of the Departments of the Government. This, in the face of existing statute, cannot be done. That being the position and when Regulations in question specifically make a distinct provision as regards retiral benefits, the same cannot be ignored by any stretch of arguments.

16.1.1. Putting it differently, even if development of khadi and cottage industry is a Directive Principle of State Policy, it does not follow as a corollary that if the State establishes a Board or any organisation to carry out the obligations under such Directive Principles, it cannot make separate arrangements as regards the service conditions of the employees of such a Board or organisation. Significantly, Regulation 40 of the Regulations of 1960 starts with an exception clause and while general conditions of service of the Board's employees have been provided in terms of the service conditions of the employees of the State Government, the provision is subject to the other provisions of the Regulations. Hence, the other provision, that is the one contained in Regulation 52, cannot be ignored.

16.2. In regard to the submissions made on behalf of the State that the aforesaid existing Regulation 52 had neither been challenged nor declared invalid, it has been suggested on behalf of the respondents that when the employees had regularly been raising the demand for pension by way of representations and had taken up litigation too, challenge to the contrary provisions is inherent in their demands/prayers. These submissions have only been noted to be rejected for more than one reason. First, that merely making a prayer contrary to the existing provision in the statute does not carry in itself a challenge to the provision. Secondly, for challenging a particular provision, specific case is required to be made out of either want of statutory powers or of violation of any constitutional mandate. Neither any such ground of challenge had been urged nor could be assumed. Thirdly, it is *ex facie* evident that all through the prayer had been for amendment of Regulation 52 and not of declaring the same in its existing frame as being invalid. A prayer for

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amendment of the Regulation cannot be equated with a prayer to declare the same as invalid. As noticed hereinbefore, the State Government's denial of the proposed alteration was essentially based on its disagreement to alter the service conditions with effect from 01.04.1976. Viewed from any angle, invocation of the principles forbidding hostile discrimination remains baseless and the contentions urged on that basis are required to be rejected.”

39. It is well settled law that the scope of judicial review in examining the policy matters is very limited. The Courts do not and cannot examine the correctness, suitability or appropriateness of a policy, nor are the Courts advisers to the executive on the matters of policy, which the executive is entitled to formulate. Judicial review of a policy decision and to issue mandamus to frame policy in a particular manner are absolutely different. It is within the realm of the executive to take a policy decision based on the prevailing circumstances for better administration and it is not within the domain of the Courts to legislate. The Courts do interpret the laws and in such an interpretation, certain creative process is involved. The Courts have the jurisdiction to declare the law as unconstitutional. That too, where it is called for. The Court is called upon to consider the validity of a policy decision only when a challenge is made that such policy decision infringes fundamental rights guaranteed by the Constitution or any other statutory right. Any proposal for implementation of pension policy is subject to the approval of the Government of Punjab, which was never granted by the

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Government in the present case in view of poor financial position of the Authority.

40. Similar issue has already been decided by this Court in CWP No.8501 of 2015 and other connected cases, titled as *“Punjab Water Supply and Sewerage Board’s Employees Union vs State of Punjab and others”*, wherein the employees of Punjab Water Supply and Sewerage Board were claiming similar relief and the same has been dismissed vide judgment dated 02.07.2024.

41. In view of what has been discussed hereinbefore and considering the above authoritative enunciation of law made by the Hon’ble Supreme Court, the present writ petitions are dismissed.

42. Pending application(s), if any, stand disposed of accordingly.

(NAMIT KUMAR)
JUDGE

19.10.2024
yakub

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