



2024:DHC:1986



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
% **Pronounced on: 12<sup>th</sup> March, 2024**

+ **W.P.(C) 4142/2023**

**MANISH GUPTA**

..... Petitioner

Through: In person

versus

**UTI INFRASTRUCTURE TECHNOLOGY AND SERVICES**

**LTD. & ANR.**

..... Respondents

Through: Mr. Ripudaman Bhardwaj, CGSC  
with Mr. Rudra Paliwal, GP for  
UOI

**CORAM:**  
**HON'BLE MR. JUSTICE CHANDRA DHARI SINGH**

### **J U D G M E N T**

#### **CHANDRA DHARI SINGH, J.**

1. The present writ petition has been filed under Article 226 of the Constitution of India seeking following reliefs:

*“(i) Issue a writ of mandamus or certiorari or any other appropriate writ, order or direction to compliance of Reinforcement Mechanisms para of the 58th Board Meeting held on 28/06/2006 and Office Circular No. 21 of 2006-2007.*

*(ii) Issue a writ of mandamus or certiorari or any other appropriate writ, order or direction to the Respondent No. 1 to give all the consequential benefits as mentioned in Reinforcement Mechanisms para of the 58<sup>th</sup> Board Meeting*



*held on 28/06/2006 and Office Circular No. 21 of 2006-2007 with retrospective effect from their joining date with 18% interest with in a period of one month.*

*(iii) Costs of this Petition; and*

*(iv) During the pendency of this petition no adverse order be passed against the petitioner*

*(v) Pass such further orders and/or directions as this Hon'ble Court may deem fit, appropriate and proper in the facts and circumstances of the present case."*

### **FACTUAL MATRIX**

2. The petitioner joined his duty with the respondent no.1 w.e.f 12<sup>th</sup> September, 2013 at the post of Divisional Manager.
3. The respondent No. 1 is UTI Infrastructure Technology and Services Limited (hereinafter "UTIITSL"), promoted by the erstwhile Unit Trust of India and incorporated as a limited company on 19<sup>th</sup> May 1993, to serve the investors of UTI schemes. Consequent to enactment of the Unit Trust of India (Transfer of Undertaking and Repeal) Act 2002, the company is construed as a Government Company under section 2(45) of the Companies Act, 2013. It is a government-owned company and provides technology and outsourcing services to the financial and government sectors of India. The respondent No. 2 is Department of Investment and Public Asset Management (hereinafter "DIPAM"), Ministry of Finance, Govt. of India.
4. The petitioner had filed writ petition bearing no. W.P (C) 2030/2018 before the Coordinate Bench of this Court seeking quashing of office order no. /89/2016-2017 dated 7<sup>th</sup> October 2016, office order ref. no. UTI ITSL/DHRD/379/2017-18 dated 9<sup>th</sup> June 2017 as well as speaking order dated 16<sup>th</sup> January 2018.



5. During the pendency of the aforesaid writ petition, respondent No.1 relied upon certain guidelines and accordingly, vide order dated 12<sup>th</sup> July 2022, the Coordinate Bench directed the respondent No.1 to place on record the guidelines upon which it was relying.

6. Pursuant to which, the respondent no. 1, filed the Board Minutes of the 58<sup>th</sup> Board Meeting held on 28<sup>th</sup> June 2006 and office Circular No. 21/2006-2007.

7. Thereafter, the petitioner sent various representations dated 25<sup>th</sup> July 2022, 19<sup>th</sup> August 2022, 17<sup>th</sup> November 2022 and 23<sup>rd</sup> January 2023 to the respondent No. 1 with request to give all the financial benefits as mentioned in the approved Board Minutes of the 58<sup>th</sup> Board Meeting held on 28<sup>th</sup> June 2006 and office Circular No. 21/2006- 2007.

8. Aggrieved by the denial of financial benefits as mentioned in Reinforcement Mechanisms para of approved Board Minutes of the 58<sup>th</sup> Board Meeting and Office Circular No. 21/ 2006- 2007, the petitioner filed the instant writ petition.

### **SUBMISSIONS**

#### **(on behalf of the petitioner)**

9. Learned counsel for the petitioner submitted that the respondent No. 1 is habitual of not disclosing the Board Minutes and important Circulars /Orders / APARs in the public domain. It is further submitted that Circular No. 21/2006-2007 was uploaded by respondent No. 1 on their intranet website in June/July/August of the year 2022 instead of its actual published date as given in the circular.

10. It is submitted that the Coordinate Bench of this Court *vide* judgment dated 5<sup>th</sup> September 2022 in writ petition bearing no. WP(C)



2030/2018, held that the Court has not been shown any material by the respondents which may have established that the criteria for promotion was made known to the aspiring employees and officers prior to the initiation of the promotion process.

11. It is submitted that the act of the respondent No. 1 goes against the guidelines of Department of Personnel Training which clearly states that all the rules should be published before the date of their enforcement or they should be enforced from the date of their publication.

12. It is further submitted that the Industrial Employment (Standing Orders) Act, 1946 of the Ministry of Labour and Employment states that it is expedient to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them.

13. It is submitted that as per Reinforcement Mechanisms of the approved minutes of 58<sup>th</sup> Board Meeting held on 28<sup>th</sup> June 2006 stated as follows-

- a. If any candidate performs Outstanding on 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and repeated Outstanding performance from the 4<sup>th</sup> year, the candidate will receive a certificate of Appreciation from the CEO plus get 5%, 10%, 15%, and 20% respectively extra salary hike on the CTC will be given each year over the normal increment.
- b. If any candidate performs good on 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and repeated Good performance from 4<sup>th</sup> year, the candidate will get a normal increment, 3%, 5%, and 10% respectively extra salary hike on the CTC will be given each year over the normal increment.



- c. If any candidate performs Satisfactory on 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and repeated Satisfactory performance from 4<sup>th</sup> year, the candidate will get a normal increment.

14. It is submitted that the respondent No. 1, as a Government of India entity under the purview of the Ministry of Finance, has demonstrated a lack of fairness in its granting of financial benefits as well as in transparent disclosure of Board Minutes and Office Circulars/Office Orders. Such actions are in contravention of Articles 14 and 16 of the Constitution of India, as well as the fundamental principles of natural justice for its employees.

15. It is submitted that it has been held in a catena of judgments that the Board Minutes and all Office Circulars/Orders must be communicated to a public servant. It is a well-settled provision of law, that no rule or government action shall violate Article 14 or any other provision of the Constitution. It is further submitted that the un-responsiveness of respondent No. 1 has resulted in a blatant abuse of the process of the law and is grossly violative of the principles of natural justice.

16. In view of the aforesaid submissions, the learned counsel for the petitioner prayed that the instant writ petition may be allowed and the reliefs as sought may be granted by this Court.

**(on behalf of the respondents)**

17. Learned counsel for the respondents vehemently opposed the submissions made on behalf of the petitioner and submitted to the effect that the petitioner has wrongly sought enforcement of 58<sup>th</sup> Board Meeting held on 28<sup>th</sup> June 2006 and the Office Circular No. 21/2006-2007 since, the Board of the respondent No. 1 had contemplated certain measures



called 'Reinforcements Mechanism', however, these measures were neither finalized nor approved for implementation.

18. It is further submitted that in the financial year 2010-2011, the board of the respondent No. 1 in supersession of its earlier policy, formed a new policy to incentivize their employees by way of granting *ex-gratia* payments. Under the *ex-gratia* policy, eligible employees including the petitioner were given an *ex-gratia* benefit which was completely based on their performance. These payments were made to all the employees based on their appraisals. The terms and approval for *ex-gratia* payments are set by the Board based on the performance of the company on a year-to-year basis.

19. It is submitted that since the year 2011 - 2012, the respondent No. 1 has granted the following *ex-gratia* benefits over the years

- For Outstanding remarks in the Appraisal – 45 days gross salary
- For Good remarks in the Appraisal – 30 days gross salary
- For Satisfactory remarks in the Appraisal – 15 days gross salary
- For Unsatisfactory remarks in the Appraisal – NIL

20. It is further submitted that the aforesaid *ex-gratia* payment is over and above the annual increments which an employee may be entitled to in the course of his services. The decision to give *ex-gratia* benefits was decided by the Board of the respondent No. 1 on an annual basis, based on the overall performance of the respondent No. 1 as well as its employees.

21. It is submitted that post the year 2020, the respondent No. 1 has further modified its policies by introducing variable pay policy and thereafter, from the year 2022, the respondent No. 1 has shifted to



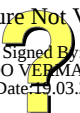
performance based incentive and that such benefits have been duly received by the petitioner.

22. It is contended that the petitioner was recruited as a Divisional Manager through direct recruitment and was posted at New Delhi as on 14<sup>th</sup> June 2012. During his probation, he was on an unauthorized absence from 29<sup>th</sup> July 2012 to 30<sup>th</sup> October 2012, and thereafter, he resumed office on 31<sup>st</sup> October 2012, and again was on an un-authorised absence w.e.f. 9<sup>th</sup> November 2012. Vide office order dated 9<sup>th</sup> November 2012, he was transferred to the corporate office at Navi Mumbai w.e.f. 20<sup>th</sup> November 2012.

23. It is further contended that whilst background verification of the petitioner, it was found that the he has submitted a forged experience certificate from his ex-employees. In consideration of the aforesaid fact, the petitioner was terminated vide order dated 14<sup>th</sup> December 2012. After various representations and requests made by the petitioner, he was reinstated on 12<sup>th</sup> September 2013 along-with a condition that his service period would be reckoned from 12<sup>th</sup> September 2013.

24. It is submitted that the petitioner has joined the respondent No. 1 in the year 2013 when the policy of the respondent No. 1 for bonus was to grant *ex-gratia* payments, hence, the petitioner does not have any locus standi to raise any grievances with respect to the implementation of a policy which was contemplated even before he joined the respondent No. 1.

25. It is submitted that the petitioner was posted at the DTC project site, Ghaziabad during which period his services were not satisfactory. As a result, he was posted at EPFO Noida for his convenience. Even then, his





services were not up to the mark. During the promotional exercise conducted in the year 2016 for promotion from the post of Divisional Manager to the Assistant Vice President, the petitioner was not successful. On 26<sup>th</sup> October 2016, the petitioner appealed to the Competent Authority, who after considering all the relevant information and records did not find any merit in his appeal. Accordingly, his appeal was dismissed on 9<sup>th</sup> June 2017. Thereafter, the petitioner has been in continuous litigation against the respondent No. 1. Clearly, it is only on account of promotion not being given, that the petitioner being a disgruntled employee is filing repeated proceedings against the respondent No. 1.

26. It is submitted that the instant writ petition is barred by delay and laches since the petitioner has filed the instant writ petition in the year 2023, seeking implementation of Board Minutes and Office Circular issued in the year 2006.

27. It is submitted that the petitioner is an employee of respondent No. 1 and is being paid all his entitlements as per his salaries and increments on an annual basis and thus, there is no vested right in law for grant of bonus and the same depends upon the administrative decision of the respondent No. 1.

28. It is submitted that in light of the facts of the instant petition, there is no case made out for exercising writ jurisdiction since the petitioner has already been granted benefits of *ex-gratia* payments and being an employee cannot now claim benefits of a policy contemplated in the year 2006, which was never implemented.



29. It is further submitted that the petitioner has received following ex-gratia payments :

| FY        | Ratings                                                 | Ratings        | Ex-Gratia released | Annual CTC |
|-----------|---------------------------------------------------------|----------------|--------------------|------------|
|           | 1st half of FY                                          | 2nd half of FY |                    |            |
| 2013-2014 | Satisfactory                                            | Good           | 43,163             | 8,48,672   |
| 2014-2015 | Good                                                    | Satisfactory   | 43,909             | 9,01,523   |
| 2015-2016 | Satisfactory                                            | Satisfactory   | 32,525             | 9,54,362   |
| 2016-2017 | Good                                                    | Good           | 68,800             | 10,07,201  |
| 2017-2018 | Good                                                    | Good           | 72,550             | 10,60,052  |
| 2018-2019 | Outstanding                                             | Good           | 90,688             | 10,60,052  |
| 2019-2020 | Ex-gratia not released for the said FY to all employees |                | 0                  | 12,71,420  |

30. It is further submitted that the respondent no.1 from the financial year 2020-2021 has shifted to a policy of variable pay policy and thereafter, for the year 2021-2022, the respondent No. 1 has shifted to incentive-based policy. It is submitted that for the financial year 2020-2021, the petitioner has received a benefit of Rs. 1,52,288/- and for the financial year 2021-2022, the petitioner has received a benefit of Rs. 1,76,850/-.

31. In view of the aforesaid submissions, the learned counsel for the respondents submits that the instant writ petition is without any merits and the same may be dismissed.

### **ANALYSIS AND FINDINGS**

32. The matter was heard at length with arguments advanced by the learned counsel on both sides. This Court has also perused the entire material on record and has duly considered the factual scenario of the matter, judicial pronouncements relied upon by the parties, and pleadings presented by the learned counsel of the parties.



33. It is the case of the petitioner that there is an arbitrary denial of financial benefits as mentioned in the Reinforcement Mechanisms of the year 2006. The petitioner contends that the approved Board Minutes and Office Circular were not disclosed in the public domain and were kept veiled and secreted from the petitioner. The Coordinate Bench of this Court while adjudicating upon writ petition bearing no. W.P (C) 2030/2018, has was not shown any material by the respondents that can establish that the criteria for promotion were made known to the aspiring employees and officers before initiating the promotion process and it came to the fore only once the orders came to be passed on the representations preferred by the petitioner.

34. In rival submissions, the respondents have contended that the Board Minutes and Office Circular of the year 2006 were never implemented by the respondent No. 1. Hence, the petitioner cannot seek implementation of the aforesaid Board Minutes and Office Circular. It is further contended that grant of financial benefits is a discretion vested with the respondent organization, therefore, the same cannot be claimed as a vested right by the petitioner.

35. At this juncture, this Court finds it pertinent to refer to the email dated 16<sup>th</sup> May 2023, wherein the respondent No. 1 replied to the email dated 23<sup>rd</sup> January 2023 of the petitioner seeking implementation of the Board minutes of the 58<sup>th</sup> Board Meeting held on 28<sup>th</sup> June 2006. The relevant extract of the email is reproduced herein below:

*“With reference to your email dtd 23.01.2023 on the subject matter, it is informed that the reinforcement mechanism introduced in the 58th Board Meeting of UTIITSL(Company) was never made Applicable to the employees of UTIITSL.*



*Also refer to the verbal communication wherein it was informed that circular was not made applicable to the employees of UTIITSL.*

*Further, it is informed that the Minutes of the Board Meetings are not uploaded on the intra net of the Company. In the present case, office Circular No. 21 of 2006-07 dtd 18.9.2006 had been uploaded on the Company's Intranet along with annexure's for information and download as and when it is required by any employee including you. The same is still available on the intra net of the Company; copy of which is enclosed herewith as Encl" A".*

*With reference to your request for salary hike as resolved in the 58th Board Meeting held on 28/06/2006 with the retrospective effect together with 18% interest thereon is concerned, we state that the said Resolution of the Board was never made applicable to the employees of the Company.*

*Also, your date of joining in the Company was on 14.06.2012. Therefore, you're not eligible to claim such benefit. Further, your services were terminated and thereafter you have been reinstated on 12.09.2013.*

*In view of the above facts and circumstances of the matter, the request is null and void .”*

36. Upon perusal of the aforesaid response of the respondent No. 1, it is crystal clear that the reinforcement mechanism introduced in the 58<sup>th</sup> Board Meeting of respondent No.1 was never implemented. Since, the aforesaid reinforcement mechanisms were never in force, hence, they were never uploaded on respondent No.1's intranet. It was further stated in the aforesaid email that since the petitioner joined services on 14<sup>th</sup> June 2012 and his services were terminated on ground of unauthorized leave pursuant to his representations, he was reinstated on 12<sup>th</sup> September 2013 he is ineligible for seeking the financial benefits as per reinforcement mechanism.



37. In view of the aforesaid discussions, the respondent no. 1 denied the request of the petitioner seeking implementation the reinforcement mechanism introduced in the 58<sup>th</sup> Board Meeting of respondent no.1 in the year 2006.

38. Before adverting on the merits of the case, this Court will elucidate the settled position of law pertaining to issuance of writ of mandamus as well as the judicial restraint which shall be exercised by the Court while adjudicating a writ petition since, the prayer which the petitioner is seeking in the instant petition is in the nature of issuance of writ of mandamus seeking implementation of the reinforcement mechanism introduced in the 58<sup>th</sup> Board Meeting of respondent no.1 in the year 2006.

39. Mandamus is one of the prerogative writs issued by the High Court or the Supreme Court in the manner of command to any authority that falls under the definition of “State” as per Article 12 of the Constitution of India for the purpose of fulfilling their constitutional/statutory/public duty. It is used as a last resort in cases where the Court is satisfied that without its intervention there will be denial to justice to the party invoking such writ.

40. The quintessential elements for issuing a writ of mandamus are *firstly*, the petitioner seeking relief by invoking such a writ has a legal right, *secondly*, the authority against whom the writ is sought to be enforced has a legal duty towards such petitioner and refused relief to petitioner, *thirdly*, such relief is claimed with a *bona fide* intention and *lastly*, the petitioner has no alternative remedy.

41. The Court has to be hypervigilant while issuing a writ of mandamus since the writ of mandamus is an extraordinary remedy to be



invoked only upon special occasions and in exceptional circumstances. It is invoked to supplement the deficiency in law, if any, and cannot be invoked as an appellate mechanism against the decision of any Court, Tribunal, or Authority which is exercising statutory power. The writ of mandamus is an invincible weapon in cases, where there is a failure of justice or exercise of power in an illegal way or arbitrary manner.

42. The principle governing mandamus has been further reiterated by Hon'ble Supreme Court in the judgment of ***Hero Motocorp Ltd. v. Union of India***, (2023) 1 SCC 386 as follows:

*“75. It can thus be seen that unless the appellants show any statutory duty cast upon the respondent Union of India to grant them 100% refund, a writ of mandamus as sought could not be issued. The position is reiterated by this Court in K.S. Jagannathan [Comptroller & Auditor General of India v. K.S. Jagannathan, (1986) 2 SCC 679 : 1986 SCC (L&S) 345] as under : (SCC pp. 692-93, para 20)*

*“20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in*



*the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the parties concerned, the court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion.”*

*76. It could thus be seen that this Court holds that a writ of mandamus can be issued where the Authority has failed to exercise the discretion vested in it or has exercised such a discretion mala fide or on an irrelevant consideration.*

*77. This position was again reiterated by this Court recently in Bharat Forge [Union of India v. Bharat Forge Ltd., (2022) 17 SCC 188 : 2022 SCC OnLine SC 1018] as follows : (SCC paras 18-19)*

*“18. Therefore, it is clear that a writ of mandamus or a direction, in the nature of a writ of mandamus, is not to be withheld, in the exercise of powers of Article 226 on any technicalities. This is subject only to the indispensable requirements being fulfilled. There must be a public duty. While the duty may, indeed, arise from a statute ordinarily, the duty can be imposed by common charter, common law, custom or even contract. The fact that a duty may have to be unravelled and the mist around it cleared before its shape is unfolded may not relieve the Court of its duty to cull out a public duty in a statute or otherwise, if in substance, it exists. Equally, Mandamus would lie if the Authority, which had a*



*discretion, fails to exercise it and prefers to act under dictation of another Authority.*

*19. A writ of mandamus or a direction in the nature thereof had been given a very wide scope in the conditions prevailing in this country and it is to be issued wherever there is a public duty and there is a failure to perform and the courts will not be bound by technicalities and its chief concern should be to reach justice to the wronged. We are not dilating on or diluting other requirements, which would ordinarily include the need for making a demand unless a demand is found to be futile in circumstances, which have already been catalogued in the earlier decisions of this Court.*

*(emphasis supplied)”*

43. At this stage, this Court also finds it germane to discuss that the financial benefits cannot be claimed as a right by the employees.

44. It is a settled principle of law that the financial benefits cannot be claimed as a right by the employees. The decision to pay financial benefits to the employees’ vest with the public authority/employer. The High Court under Article 226 of the Constitution of India, in its writ jurisdiction, cannot adjudicate upon the fact whether there should be revision of the pay. Such discretion vests with the employer, since the employer knows what is best for it. There is no straightjacket formula for paying financial benefits; however, the authority has to take into account the interest of the employees, financial condition of the public authority and the interest of the public at large considering that it is exercising its function as a public authority.



45. The Court in its writ jurisdiction does not sit as an appellate mechanism over the decisions of the public authority. Courts must restrain from intervening in such executive policy decisions of the public authority, therefore, there is a limited scope for interference by the High Courts. Under Article 226, the Courts may intervene in exceptional cases, where there is a gross violation of the rights of the parties such as two employees in the same category are not getting the same benefits hence, the party before the Court is seeking equal pay for equal work or a decision by the public authority is unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors.

46. The public authority being a “State” and discharging public functions has to take into account various interests and balance out the same. They have to also act in a way where they are able to sustain themselves too and hence, the Court may exercise limited judicial restraint in this regard as the public authorities act in the best interest of its stakeholders.

47. The above said principle was been elucidated by the Hon’ble Supreme Court in the judgment of ***Officers & Supervisors of I.D.P.L. v. Chairman & M.D., I.D.P.L., (2003) 6 SCC 490*** and it was held as follows:

*"11. In our view, the economic capability of the employer also plays a crucial part in it, as also its capacity to expand business or earn more profits. The contention of Mr Sanghi, if accepted, that granting higher remuneration and emoluments and revision of pay to workers in other governmental undertakings and, therefore, the petitioners are also entitled to the grant of pay revision may, in our*



*opinion, only lead to undesirable results. Enough material was placed on record before us by the respondents which clearly shows that the first respondent had been suffering heavy losses for the last many years. In such a situation the petitioners, in our opinion, cannot legitimately claim that their pay scales should necessarily be revised and enhanced even though the organization in which they are working are making continuous losses and are deeply in the red. As could be seen from the counter-affidavit, the first respondent company which is engaged in the manufacture of medicines became a sick industrial company for various reasons and was declared as such by the BIFR and the revival package which was formulated and later approved by the BIFR for implementation could not also be given effect to and that the modifications recommended by the Government of India to the BIFR in the existing revival package was ordered to be examined by an operating agency and, in fact, IDBI was appointed as an operating agency under Section 17(3) of SICA. It is also not in dispute that the production activities had to be stopped in the two major units of the company at Rishikesh and Hyderabad w.e.f. October 1996 and the losses and liabilities are increasing every month and that the payment of three instalments of interim relief could not also be made due to the threat of industrial unrest and the wage revision in respect of other employees is also due w.e.f. 1992 which has also not been sanctioned by the Government of India.*

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*17. In A.K. Bindal [(2003) 5 SCC 163 : 2003 SCC (L&S) 620] this Court specifically held that the economic viability or the financial capacity of the employer is an important factor which cannot be ignored while fixing the wage structure, otherwise the unit itself may not be able to function and may have to close down which will inevitably have disastrous consequences for the employees themselves. The Court also negated other contentions raised by the employees and referred to and relied upon the fact that the*



company was a sick unit. Facts of the present case are similar.

18. Further, directions issued in *Jute Corpn. of India Officers' Assn.* [(1990) 3 SCC 436 : 1991 SCC (L&S) 58] would have no bearing in the present case as the scheme under the SICA has failed to revive the Company. When the company cannot be revived because of large losses, there is no question of enhancing scales of pay and dearness allowances. Direction (ii) issued in that case indicates that the employees appointed on or after 1-1-1989 will be governed by such pay scales and allowances as may be decided by the Government in its discretion. If the company itself is dying, the Government has discretion not to grant enhanced pay scales or dearness allowances and for the same reason Direction (i) cannot be implemented."

48. The issue pertaining to grant of financial benefits is a discretion vested with the authority has been discussed in the judgment of ***Chandrashekar A.K. v. State of Kerala, (2009) 1 SCC 73*** as follows:

"14. The question as to whether the scale of pay would be revised or not is a matter of policy decision for the State. No legal right exists in a person to get a revised scale of pay implemented. It may be recommended by a body but W.P.(C) 7358/2020 & 68 other connected matters Page 31 of 52 ultimately it has to be accepted by the employer or by the State which has to bear the financial burden. This aspect of the matter has been considered by this Court in *HEC Voluntary Retd. Employees Welfare Society v. Heavy Engg. Corpn. Ltd.* [(2006) 3 SCC 708 : 2006 SCC (L&S) 602] stating: (SCC p. 716, para 19)

"19. It is not in dispute that the effect of such voluntary retirement scheme is cessation of jural relationship between the employer and the employee.



*Once an employee opts to retire voluntarily, in terms of the contract he cannot raise a claim for a higher salary unless by reason of a statute he becomes entitled thereto. He may also become entitled thereto even if a policy in that behalf is formulated by the Company.”” (See also LIC v. Retired LIC Officers Assn. [(2008) 3 SCC 321 : (2008) 1 SCC (L&S) 622])”*

49. Hence, it is a settled position of law that payment of financial benefits is not a legal right of the employees of the public authority. Instead, the same is a discretion in the hands of the public authorities, which is exercised by them after taking into consideration plethora of factors.

50. Now advertent to the merits of the case, this Court is of the view that upon perusal of the email dated 16<sup>th</sup> May 2023 as discussed above, the measures termed as the reinforcement measures though contemplated in the Board meeting of the respondent No.1, were at no point in time finalized and/or approved for implementation.

51. Thus, the contention as raised by the petitioner stating the Board Minutes and Office Circular were not disclosed in the public domain and were kept veiled from petitioner is true but since the same were never implemented hence, there is no violation of any legal rights of the petitioner as alleged.

52. The petitioner, being an employee of the respondent No. 1 is being paid all his entitlements as per his salaries and increments on an annual basis. Moreover, there is no vested right in law to grant bonus and the same is dependent on the decision of the respondent No. 1 which is taken



after taking into account the administrative exigencies.

53. This Court is of the view that the respondent No. 1 has fairly given the *ex-gratia* payment to the petitioner on an annual basis and the petitioner cannot be held to be entitled for such financial benefits which he is claiming.

54. In view of the aforesaid discussions, the petitioner is not entitled to seek implementation of the 58<sup>th</sup> Board Meeting held on 28<sup>th</sup> June 2006 and Office Circular No. 21 of 2006-2007 since the discretion to implement the same vests with the respondent No. 1. Moreover, seeking implementation of the same is not a right vested with the petitioner.

### **CONCLUSION**

55. The writ of mandamus cannot be issued in the present matter since for the issuance of such a writ, there should be an error apparent on the face of it or the said error must go to the root of the matter. However, no such circumstances are present in the instant petition.

56. This Court is of the considered view that the instant petition is an appeal in the garb of a writ petition. The petitioner is seeking a review of the email dated 16<sup>th</sup> May 2023, wherein the respondent No. 1 rejected the petitioner's request of seeking implementation of the Board minutes of the 58<sup>th</sup> Board Meeting held on 28<sup>th</sup> June 2006. Such denial by the respondent No. 1 does not invite the interference of this Court under its extraordinary writ jurisdiction and the petitioner has failed to make out his case in this regard.

57. The petitioner has not been able to put forth any propositions, thereby, implying any such special circumstances in the above said email of the respondent No. 1 and therefore, this Court is not inclined to



2024:DHC:1986



exercise its powers conferred under Article 226 of the Constitution of India.

58. In view of the discussion in the foregoing paragraphs, I do not find any merit in the instant petitions and the same is liable to be dismissed.

59. Accordingly, the instant petition stands dismissed along with pending applications, if any.

60. The judgment be uploaded on the website forthwith.

**(CHANDRA DHARI SINGH)**  
**JUDGE**

**MARCH 12, 2024**  
**sv/db/ryp**