
(2009) 10 P&H CK 0010
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 15067 of 2007

Hari Parkash and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 26-10-2009

Acts Referred:

Punjab Panchayati Raj Act, 1994 — Section 2(ze)

Citation : (2010) 1 RCR(Civil) 114

Hon'ble Judges : M.M. Kumar, J; Jaswant Singh, J

Bench : Division Bench

Advocate : G.S. Bal and Mr. V.K. Shukla, for the Appellant; Piyush Kant Jain, AAG, Punjab, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Kumar, J.—This order shall dispose of a bunch of nine petitions because common questions of law and facts are involved. However, the facts are being referred from CWP No. 15067 of 2007.

2. In all these petitions the petitioners are employees of Zila Parishads" and Panchayat Samitis of Punjab. They were member of the Contributory Provident Fund Scheme (CPF) and on attaining the age of superannuation they accepted all the benefits arising from the CPF Scheme. Their service conditions are governed by the Punjab Panchayati Raj Act, 1994, which has repealed the Punjab Panchayat Samiti and Zila Parishads Act, 1961. There was no pension scheme and they were continuing as member of the CPF Scheme. They claimed by filing representations that benefit of pension be granted to them with effect from 01.01.1986. The Chairman, Zila Parishad, Rupnagar, recommended to the Government that pension be given to the employees of the Panchayat Samitis and Zila Parishads, vide letter dated 12.12.1994 (P6). On 11.05.1995, the Government appears to have taken a decision in principle to grant pension to such employees. Some writ petitions were filed thereafter which led to the filing of even contempt petition. Eventually, a pension scheme was implemented with

effect from 01.07.1999 which was fixed as the cut-off-date as well. The employees appointed on or after 01.07.1999 were held entitled to pension and the employees like the petitioners, who have retired earlier were to get benefit of CPF Scheme. Therefore, some objections were raised against the cut-off-date by the petitioners (P7 & P8). They asserted that in respect of municipal employees, the gazette notification was issued for implementation of pension scheme of 28.07.1994 and it was given retrospective effect from April 1990 (P9). Similar instance was taken from the pension scheme framed in respect of the employees of private aided schools. The objections did not weigh with the respondents. The scheme was eventually notified in the official gazette on 14.07.2000 (P12) with cut-off-date of 01.07.1999. The petitioners filed C.W.P.No.13572 of 2000. Similar writ petitions were also filed by employees of other Panchayat Samitis and Zila Parishads, including C.W.P.No. 15808 of 2000. The said writ petition was disposed of by a Division Bench of this Court on 01.10.2001 (P13). The writ petition was allowed and cut-off-date of 01.07.1999, fixed in Rule 3 of the Punjab Panchayat Samitis and Zila Parishads Employees Pension and Provident Fund Rules, 2000, was declared unconstitutional and a direction was issued to the Government to re-examine the issue of grant of pensionary benefits to the employees keeping in view the policy decision taken on 11.05.1995 and the fact that the rules framed for grant of pensionary benefits to the employees of the Punjab State Agricultural Marketing Board, Market Committees and the Municipalities were given retrospective effect. The operative part of the order passed by the Division Bench reads thus:-

Hence, the writ petition is allowed. The cut-off date fixed in the 2000 Rules for implementation of the pension scheme, i.e. 01.07.1999 is declared unconstitutional and struck down with a direction to the government to re-examine the issue of grant of pensionary benefits to the employees of Panchayat Samitis and Zila Parishads, keeping in view the policy decision taken by it vide Annexure P11 and the fact that the rules framed for grant of pensionary benefits to the employees of the Punjab State Agricultural Marketing Board, Committees and Municipalities were given retrospective effect from 01.04.1983 and 01.04.1990 respectively. This exercise shall be undertaken and completed within 4 months from the date of receipt of copy of this order.

3. However, while discussing various arguments raised, Hon''ble the Division Bench has also opined that financial burden on the State is a crucial consideration. Some of those observations in so far relevant to the issue herein read thus:

.....When the State decides to revise and liberalize existing pension scheme with a view to augmenting the social security cover granted to pensioners, it cannot ordinarily grant the benefit to a section of the pensioners and deny the same to others by drawing an artificial cut-off line which cannot be justified on rational grounds and is wholly unconnected with the object intended to be achieved. But when an employer introduces an entirely new scheme which has

no connection with the existing scheme, different considerations enter the decision making process. One such consideration may be the financial implications of the scheme and the extent of capacity of the employer to bear the burden. Keeping in view its capacity to absorb the financial burden that the scheme would throw, the employer would have to decide upon the extent of applicability of the scheme. It is also well settled that the choice of cut-off date must be rational and withstand the test of reasonable classification. If the choice of the date results in classification or division of members of a homogeneous group, it is open to the Court to call upon the respondents to show that the classification is based on an intelligible differential and on rational consideration which has nexus to the purpose and object of classification.

4. In pursuance to the aforementioned directions issued by the Division Bench, the Financial Commissioner and Secretary to Government of Punjab, Department of Rural Development and Panchayats, Punjab, decided the issue and rejected operation of the pension scheme with effect from 11.05.1995 by citing the ground of weak financial position of the State exchequer, vide order dated 10.05.2002 (P14). The pension liability in respect of the employees of these institutions who retired between 11.05.1995 to 01.07.1999 was worked out to be Rs. 18.35 crores and in return the institutional share of Contributory Provident Fund along with interest was worked out only Rs.1.75 crores. It was further observed that although broad policy decision to release the pension was taken on 11.05.1995 but action under the scheme to recover contribution of provident fund could begun after the notification of the rules for pension scheme. It has also been pointed out that if the pension scheme is implemented with retrospective effect from 11.05.1995 then the scheme itself would totally collapse and there would be resentment/litigation. The Financial Commissioner also referred to Section 2(ze) of the Punjab Panchayati Raj Act, 1994, by stating that Panchayat Samitis and Zila Parishads were local bodies and framing of any pension scheme to its employees is not the obligation of the State Government. Explaining the distinction between the Market Committee, pension contribution has been levied whereas in the case of Panchayati Raj institutions pension is to be given out of the pension fund by pooling only institution share. Accordingly, the Financial Commissioner expressed the inability of the Government by pointing the distinction between the Market Committees and Municipal Committees and further held that the decision of the Government would be without any prejudice to the SLP which was filed against the Division Bench judgment dated 01.10.2001. It is appropriate to mention that the view taken by the Division Bench was challenged before Hon"ble the Supreme Court in Civil Appeal No.6762 of 2002. Hon"ble the Supreme Court opined that the appeal was rendered infructuous as the respondent State of Punjab had implemented the judgment by passing order dated 10.05.2002 to which reference has already been made in the preceding para. The observation of their Lordships" of Hon"ble the Supreme Court while disposing of Civil Appeal No.6762 of 2002 reads thus:-

The State of Punjab has preferred this appeal by obtaining special leave of this

Court there against. By reason of an order dated 10.05.2002 the appellant purporting to have implemented the directions of the High Court, reaffirming the cut-off date. The same appears to have been the subject matter of challenge by the respondents in a writ petition before the High Court.

The said writ petition, however, was withdrawn as the writ petitioners viz. Gurcharan Singh and another, who are respondents in the civil appeal filed by the State, intended to raise all contentions only before this Court. The review application filed there against has also been dismissed, where against they have preferred SLP(C) No. 18059/2003.

In view of the fact that the State of Punjab has now acted in terms of the impugned judgment of the High Court which, as noticed hereinbefore, was the subject matter of the writ petition filed at the instance of the respondents herein, we are of the opinion that this appeal has become infructuous. Consequently, SLP (Civil) No. 18059/2003 has also become infructuous in the sense that the question raised by the petitioners therein challenging the correctness or otherwise of the said order dated 10.05.2002 should not be permitted to be raised before this Court for the first time. The said petitioners may, therefore, file appropriate application for revival of the earlier writ petition or file a fresh writ application, as they may be advised.

With the aforementioned observations, the appeal and the SLP are disposed of.

5. We have heard learned counsel for the parties at considerable length and find that the financial liability worked out for implementation of the pension scheme from a retrospective date i.e. with effect from 11.05.1995 would attract financial liability to the tune of Rs. 18.35 crores. Some dispute has been raised by the petitioners with regard to the extent of financial liability which would have arisen if the scheme was implemented retrospectively. Accordingly, on the direction issued by this Court an additional affidavit dated 27.11.2008 has been filed in connected CWP No. 19895 of 2003, showing that if the pension is released from 11.05.1995 then upto year 1999-2000, 452 employees who had retired, would become entitled to disbursement of pension, which has been worked out to be Rs.49,22,37,012/-. Calculations have been made in para 2 of the said affidavit, which reads thus:-

Liability Status Report as on 31.03.2008 (Tentative)

Pension liabilities of Zila Parishad and Panchayat Samiti Employees Retired from 01.05.1995 to 30.06.1999.

6. The amount of contribution of provident fund if was to be refunded by the petitioners and other retirees, which was to be set off and the total liability of the State comes to Rs.47,47,37,012/-. Similar position has been reflected in Annexure R4 attached with affidavit dated 27.11.2008. Another affidavit has further been filed which also assessed the liability to the tune of over Rs.35 crores.

7. The principle that weak financial condition of the State could constitute valid ground for fixing a cut-off-date is well settled. The matter is no longer res integra. In that regard reliance may be placed on a judgment of Hon''ble the Supreme Court rendered in the case of State of Punjab and Others Vs. Amar Nath Goyal and Others, . In para 26 it has been observed as under:-

26. It is difficult to accede to the argument on behalf of the employees that a decision of the Central Government/State Governments to limit the benefits only to employees, who retire or die on or after 01.04.1995, after calculating the financial implications thereon, was either irrational or arbitrary. Financial and economic implications are very relevant and germane for any policy decision touching the administration of the Government, at the Centre or at the State level.

(emphasis added)

8. The aforesaid matter had arisen in connection with the representation on quantum of gratuity and we find that the ratio of the aforesaid judgment would be equally applicable to a pension scheme. The Constitution Bench of Hon''ble the Supreme Court in the case of Krishena Kumar and Others Vs. Union of India and others, , has opined that those who were members of the Contributory Provident Fund Scheme constitute a distinct class than those who are retirees because the relationship of employer and employee in the case of CPF employees stand concluded on attaining superannuation when all benefits are paid to them whereas in the case of retirees the pension continues with some conditions. A CPF employee takes away all the dues in lumpsum which might have been used long time back. The value of the money received at that time may not be matching to the value prevailing at present time. To say that the CPF employee could pay back the Government contribution with interest and switch over to the pension scheme would also not be conducive. The observation made by Hon''ble the Supreme Court in the aforesaid judgment would also be attracted to the facts of the present case. The CPF employees are distinct than those who have retired after the enforcement of the pension scheme. Emphasising the aforesaid aspect, the Constitution Bench observed in para 32 as under:-

32.....The Railway Contributory Provident Fund is by definition a fund. Besides, the government''s obligation towards an employee under CPF Scheme to give the matching contribution begins as soon as his account is opened and ends with his retirement when his rights qua the government in respect of the Provident Fund is finally crystallized and thereafter no statutory obligation continues. Whether there still remained a moral obligation is a different matter. On the other hand under the Pension Scheme the Government''s obligation does not begin until the employee retires when only it begins and it continues till the death of the employee. Thus, on the retirement of an, employee government''s legal obligation under the Provident Fund account ends while under the Pension Scheme it begins. The rules governing the Provident Fund and its contribution are entirely different from the rules governing pension. It would not, therefore,

be reasonable to argue that what is applicable to the pension retirees must also equally be applicable to PF retirees. This being the legal position the rights of each individual PF retiree finally crystallised on his retirement whereafter no continuing obligation remained while, on the other hand, as regards pension retirees, the obligation continued till their death. The continuing obligation of the State in respect of pension retirees is adversely affected by fall in rupee value and rising prices which, considering the corpus already received by the PF retirees they would not be so adversely affected ipso facto.

9. The Constitution Bench also took notice of the huge expenditure which was involved for implementation of the pension scheme in respect of CPF Scheme retirees. In para 42 the expenditure has been noticed and the argument has been rejected in para 45 by referring to the principles of separation of power. The observations made in paras 42 and 45 reads as under:-

42. The next question debated is that of financial implications. It is submitted that given the fact that the budget for the year 1990-91 for disbursement of pension is Rs.900 crores (as per page 11 of the Budget of the Railway Revenue and Expenditure of the Central Government for 1990-91), the additional liability which would arise by giving relief to the petitioners would be insignificant in comparison. According to the petitioners as per their affidavit dated September 15, 1988, the additional liability would come to Rs.18 crores per annum and this figure would steadily decrease as the number of P.F. retirees diminishes every year due to the fact that this question arises only with respect to very old retirees, and a substantial number of them pass away every year.

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45. We are not inclined to accept either of these submissions. The PF retirees and pension retirees having not belonged to a class, there is no discrimination. In the matter of expenditure includible in the Annual Financial Statement, this Court has to be loath to pass any order or give any direction, because of the division of functions between the three co-equal organs of the Government under the Constitution.

10. According to the prevalent thinking, the financial impact assessment is absolutely necessary before passing of any legislation. The aforesaid principle has been laid down by Hon'ble the Supreme Court in the case of Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), . The system made by framers of the Rules should not ordinarily be interfered with because it is based on the views of experts. It may be true that in the instant case when the pension scheme was framed no estimates might have been contemplated but even after framing of scheme the estimates made cannot be irrelevant for the purposes of finding out whether it would be conducive and feasible to burden the public exchequer by making additions of crores of rupees.

11. As a sequel to the above discussion, we find no merit in these petitions. Accordingly, the same are dismissed.