(2014) 03 P&H CK 0081

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. Nos. 18825 of 2007 (O&M) and 10243, 10289, 12876 of 2009 (O&M)

K.K. Sharma APPELLANT

Vs

Haryana Financial Corporation RESPONDENT

Date of Decision : 14-03-2014

Acts Referred:
Constitution of India, 1950 — Article 12, 14, 16
State Financial Corporations Act, 1951 — Section 10, 15, 17, 23, 25

Citation : (2014) 3 SCT 163

Hon'ble Judges : M.M. Singh Bedi, J

Bench : Single Bench

Advocate : Rajiv Atma Ram, Sr. Advocate, Arjuna Partap Atma Ram, Rajinder Singh Mann, Sandeep Kumar Sharma, Y.S. Turka and Yashwinder Paul Singh, Advocate for the Appellant; Ashok Aggarwal, Sr. Advocate, Alok Jain, Advocate and R.D. Sharma, DAG, Advocate for the Respondent

Final Decision : Allowed

Judgement

M.M. Singh Bedi, J.—This order will dispose of the above noted four civil writ petitions, common question of law being involved therein. Facts are taken from C.W.P.-18825-2007 titled K.K. Sharma and others v. Haryana Financial Corporation and others. The decision of Haryana Financial Corporation (for short the Corporation) vide Annexure P. 12, dated 25.11.2004, scrapping the pension scheme floated by the Corporation has been challenged by the petitioners already drawing pension being the retired employees of the above said Corporation. The decision arrived at by the Board of Directors of respondent Corporation vide Annexure P. 12 reads as follows:-

The Board considered the proposal and after detailed discussions took the following decisions:-

(a) Considering the advice of the Senior Legal Adviser as also the relevant provisions in this regard the pension scheme as floated by the Corporation becomes incompetent and therefore the same be scrapped for the time being.

(b) The requisite approval of State Government, for want of which the scheme remains incompetent should be attempted to be obtained at the earliest and after getting that approval/decision of the Govt., process to adopt the pension scheme should be started de novo.

(c) As a consequence from all such employees who have, though opted for the said incompetent pension scheme, yet who have not retired from the service of the Corporation, the adoption of the pension scheme be withdrawn immediately. As a consequence, they shall fall back into the contributory provident fund scheme and for the continuance of the same benefit of matching contribution as per Provident Fund Regulations towards their provident fund as employer share is to be made along with interest from respective due dates out of the Pension Fund.

(d) Such of the employees who are already availing the benefit of pension scheme after retirement or due to any other reason, the pension scheme should provisionally be continued in their case. However, even they should be given an option to shift to the contributory provident fund scheme. In such cases where this option is exercised, the amount should be appropriately reworked for passing on the balance benefit if any. However, in such cases, where as a consequences of the shifting, the retired employee has as a balance to make some payment to the Corporation, the same shall be waived.

(e) The Board further observed that with the scrapping of the Pension Scheme all the existing employees shall be appropriately covered under the Contributory Provident Fund Scheme of the Corporation and resolved that provident fund accumulation of all the employees and employer''s share along with interest be transferred to the Regional Provident Fund Commissioner.

(f) The Board further authorised the Managing Director to take all action required to give effect to this decision.

2. Petitioners also challenge letters Annexure P. 13 dated 17.12.2004, Annexure P. 15 dated 5.12.2007, Annexure P. 18 dated 10.2.2009 and Annexure P. 20 dated 31.3.2009. Vide order dated 17.12.2004 Annexure P. 13, petitioner No. 1 (has been) required to give his option whether he would prefer to continue with the pension scheme or contributory scheme of the Corporation within 45 days. Vide Annexure P. 15, petitioner No. 1 was communicated the decision of the scrapping of the pension scheme. Annexure P. 18 is the decision of the Government on consideration of the proposal of the Corporation suggesting that it was incumbent upon the Corporation to seek prior approval of the State Government in terms of Section 48 of the State Financial Corporation Act, 1951 (for short "the Act") before implementing the decision and giving it the shape of a regulation. The Board of Directors had implemented the decision without taking prior approval of the State Government, which was in violation of the provisions contained in Section 48 of the Act, as such, the State Government was not in a

position to support the proposal of the Corporation to grant the requisite approval of the State. Vide order Annexure P. 20, the Board of Directors of the Corporation in its 316th meeting held on 31.3.2009 had taken a decision for discontinuation of the pension scheme which was kept in abeyance in the year 2007.

3. Briefly stated, the facts of the case as pleaded in the petition, are that respondent No. 1 is the Corporation in terms of the Act, and is an authority within the meaning of Article 12 of the Constitution of India. The petitioners are former employees of the said Corporation, having retired from service on different dates as indicated in Annexure P. 1. Prior to the year 1992, the respondent-Corporation did not have any pension scheme and the employees were governed by the Contributory Provident Fund Scheme. All the petitioners were members of said Scheme. Vide order dated 26.6.1992, Annexure P. 2, the State of Haryana took a decision that Boards and Corporations wholly owned by the State Government may introduce a pension scheme as per the Pension Rules of the Haryana Government and the instructions issued from time to time in lieu of, Contributory Provident Fund Scheme w.e.f., 1.6.1992. As per Annexure P. 2, the Financial Commissioner, Finance and Secretary to the Government, Haryana, Finance Department, had communicated to the Managing Directors of all the Boards/Corporations that pursuant to the approach of the Boards and Corporations of State government for introduction of Pension Scheme in lieu of the Contributory Provident Fund Scheme in their organizations, it had been decided by the State Government that the Boards and Corporations in Haryana may introduce Pension Scheme as per Pension Rules of Haryana Government and instructions issued from time to time in lieu of Contributory Provident Fund Scheme w.e.f. 1.6.1992. It was also communicated through the said letter that Boards and Corporations would allow the existing employees to exercise an option within three months whether they would like to receive pension in lieu of Contributory Provident Fund Scheme and no employee would be allowed to change his option. In case of employees opting for pension, the employer share along with interest thereon in the Contributory Provident Fund accumulations shall stand transferred to the concerned Board/Corporations to be constituted into Pension Fund exclusively for payment of pensionary benefits. The decision of the Government that said fund shall be invested in such securities/manner as may be directed by the Government in the Finance Department, was also communicated. It was also decided that if any advance, refundable or nonrefundable, had been taken by such employees out of employer''s contribution to the Contributory Provident Fund, the same shall be paid back by them to the Board/Corporation along with interest in lump sum or in such installments as may be determined by the Board/Corporation. The employees share with interest thereon in the Contributory Provident Fund shall be converted into the General Provident Fund, to be created, maintained and administered by the respective Boards/Corporations subject to such government instructions as were issued from time to time. The entire financial liability on account of

introduction of Pension Scheme in lieu of Contributory Provident Fund was required to be met and paid by the respective Boards/Corporations from their own funds. All the Boards and Corporations were thereafter advised to obtain necessary approval from the Board of Directors/Administrators etc. and to complete other necessary requirements/formalities of law/rules for proper implementation of the scheme. Pursuant to the decision dated 26.6.1992, Annexure P. 2, the respondent-Corporation constituted a six member Pension Committee to go into the details about the adoption of pension scheme. The said Committee considered the matter and recommended the minutes dated 28.10.1992, Annexure P. 3. The said Committee arrived at a conclusion that the Corporation will not be a loser in any way by adoption of the Pension Scheme since the funds will be scattered in monthly payments to the retired employees.

4. The minutes of Pension Committee meeting held on 28.10.1992 read as follows:-

The Pension Committee was formulated in order to go into the details about the adoption of the pension scheme from the point of view of employees and employer and after going into the details of the pension scheme prevalent in the State Government for its employees and also adopted by the Haryana State Industrial Development Corporation Ltd., recently the following decisions were taken:-

(a) That the Corporation may go in for the adoption of the pension scheme as is prevalent in the State Govt., for employees of the Corporation.

(b) The scheme shall come into force with effect from 1.6.1992.

(c) This scheme may be made compulsory for the employees who will join service on or after 1.6.1992.

(d) The existing employees may be given three month''s time after the scheme has been approved by the Board of Directors of the Corporation, to give their options for the pension scheme and the option so given shall be final and irrevocable.

(e) In case of those employees who opt for the pension scheme the portion representing the employer''s contribution along with interest accrued thereon shall be credited to the Pension Fund. In addition the Corporation shall make monthly contribution @ 10% of the emoluments or at such rate as may be decided from time to time of all the employees who opt for the Pension Scheme and/or covered by it.

(f) The fund shall be held and administered by the competent authority i.e., Managing Director of the Corporation.

(g) The accounts of the fund shall be maintained in the office of the Haryana Financial Corporation at its Head office.

(h) The amount lying in the pension fund shall be used by the Corporation as is being done in the case of provident fund.

(i) On coming into force, the pension scheme, the contributory provident fund shall be converted into General Provident Fund and the subscription so far made to the contributory provident fund by the employees, who opt for the scheme, along with interest accrued thereon shall be credited to general provident fund in the respective account of the employees.

(j) General provisions relating to grant of pension by the State Government to its employees as per provisions of the Punjab Civil Service Rules Volume II, shall apply mutatis and mutandis to the employees of Haryana Financial Corporation.

(k) The Committee also approved the enclosed "Pension Scheme" for the employees of the Corporation

2. The above decisions were taken by the Committee keeping in view the facts that the Corporation will not be a looser in any way for the adoption of the pension scheme since the out go of funds will be scattered in monthly payments to the retiree employees. The Committee even decided that the employees, who opt for the pension scheme and to whom the payments are made at the time of retirement, they can keep their money with the Corporation and the latter will offer handsome rate of interest.

5. After above decision of the pension Committee, the matter was taken up by the Board of Directors of Haryana Financial Corporation vide agenda item No. 200.22 in its 200th Meeting on 19.11.1992 and a sub Committee of senior officers comprising of Managing Director, Haryana State Industrial Development Corporation, representative of the Reserve Bank of India, representative of the IDBI and representative of the Small Industries Development Bank of India. The sub Committee recommended the adoption of pension scheme which was discussed in the meeting held by the Managing Director of the Haryana Financial Corporation and Haryana State Industrial Development Corporation, and a clarification was sought. While the process of adoption of pension scheme was under consideration by the Corporation the matter was raised in the Assembly, questioning the non-implementation of the scheme of Corporation. The State asked the Corporation vide its letter dated 1.3.1993 Annexure P. 4/A, requiring the clarification as to why the pension had not been introduced as required by the instructions dated 26.6.1992. The matters was, thereafter, put up vide agenda No. 216.20 before the Board of Directors in its 216th meeting held on 5.9.1994 wherein the said agenda and resolution of the Board of Directors was approved vide Annexure P. 5. A perusal of Annexure P. 5, reflects that the letter of the Government dated 26.6.1992 directing the Boards and Corporations (wholly owned by the State Govt.) to introduce pension as per pension rules of Haryana Government; the resolution of the Board dated 19.11.1992 and the advice of the Haryana Bureau of Public Enterprises for introducing pension scheme in the Boards and Corporations in Haryana permitting the Corporation to introduce the scheme in terms of State Government regulation dated 26.6.1992

and in terms of the Board resolution dated 19.11.1992; the decision of sub Committee dated 11.8.1994 and other relevant financial aspects were taken into consideration in the said Board meeting vide agenda item No. 216.20.

The above said decision of the Board of Directors Annexure P. 5, was communicated along with proforma for getting option of the employees vide letter dated 28.9.1994 Annexure P. 6 circulating Haryana Financial Corporation Employees Pension Rules to seek option for pension to all the Heads of Divisions/ Branch Managers of Haryana Financial Corporation.

6. The claim of the petitioners is that they had submitted their option accepting the pension scheme in lieu of Contributory Provident Fund Scheme. Reflecting the said option, Annexure P. 7 is the copy of the letter pertaining to option of one of the petitioners. Vide Annexure P. 8, the Commissioner and Secretary, Industrial Department and the Director of Industries, Haryana were informed that the Board of Directors of the Corporation in its meeting held on 5.9.1994 had approved the introduction of pension scheme on the pattern of State Government as contained in CSR Volume. II as applicable to Haryana Government employees. The Board had authorized the Managing Director, to take further action required to give effect to the scheme as required u/s 48 of the Act. It was requested vide said communication that approval of the State Government to the scheme might be communicated to the Corporation at an early date. It was clarified that the benefit of the scheme would start accruing to the employees with immediate effect, pending approval. The petitioners started getting their pension w.e.f., date of their retirement in terms of the scheme after September 1994. While the petitioners were getting the benefit of pension from the above said scheme, a reference seems to have been made by the respondent-Corporation to the State Government on 13.8.2003 and in terms of said reference the Director of Industries, Haryana, vide its letter dated 27.5.2004, Annexure P. 9, sought a clarification as to who would shoulder the liability for the expenses of giving pension. In response to the above said communication the respondent-Corporation vide letter dated 17.12.2004 Annexure P. 10, intimated the Director of Industries that liability of amount/expenses to be incurred on giving pension to the employees of the Corporation will be borne by the Corporation. Simultaneously, a request was made to get the approval of the State Government for the pension scheme floated by the Corporation to its employees. The petitioners have appended agenda item No. 293.12 of the Board of Directors, Annexure P-11, a perusal of which reveals that the pension scheme was implemented w.e.f. 5.9.1994 and that a separate pension account fund had been opened in the Punjab National Bank wherein a sum of ''430 lacs stood accumulated. The said agenda item indicates that the legal opinion in the matter had been sought and legal advisor had opined that prior approval of the State Government as required u/s 48 of the Act had not been taken, as such, the action of the Corporation was null and void. It was advised that the employees who are yet to retire may not be brought under the pension scheme but the existing employees under the scheme who are about 53 in number be permitted

to continue to get pension but meanwhile sanction would be obtained from the State Government and the pension scheme would be adopted with retrospective effect. The matter was taken in 293rd meeting of the Board of Directors held on 25.11.2004. The Board of Directors considering the advice of the senior legal advisor, passed a resolution Annexure P. 12, which has been reproduced hereinabove which is the decision of the Board of Directors holding the pension scheme redundant and thus scrapping the same which is the bone of contention and has been questioned by the petitioners in the present writ petition.

7. The case of the petitioners is that in terms of the decision of the Board of Directors of the Corporation the employees who were already availing the benefit of pension scheme after retirement would be provisionally permitted to continue but they should be given an option to shift to the Contributory Provident Fund Scheme. In such cases, where said option was exercised, the amount should be re-worked for passing on the balance benefit, if any. In view of the said decision, the petitioners continue to be paid the pension. After the decision of the Board of Directors, Annexure P. 12, dated 25.11.2004, the petitioners were served letters requiring them to clear within 15 days as to whether they would prefer to continue with pension scheme or would like to switch over to the Contributory Provident Fund Scheme. The petitioners opted for pension scheme and wrote letters to the Corporation and one of such letters written by petitioner No. 1 dated 27.12.2004 has been appended with the petition as Annexure P. 14. The petitioners subsequently received letter dated 5.12.2007 Annexure P. 15, intimating that although they would pursue the State Government for approval of the pension scheme, yet its implementation without prior approval of the State Government was improper, null and void and it has been decided to stop payment of family pension to the retiree/families w.e.f., 1.11.2007. It was communicated vide Annexure P. 15, that the scheme would be kept in abeyance for the time being till the decision from the State Government was received and till then no pension would be released to the retirees.

8. Pursuant to the order, Annexure P. 15, the petitioners filed the present writ petition. Vide order dated 14.12.2007, the operation of the aforesaid order Annexure P. 15 was stayed by this Court as such, the petitioners continued to be paid the pension. The interim order dated 14.12.2007 was challenged by the Corporation by filling an SLP before Hon''ble the Apex Court. The writ petition filed by the petitioners was admitted on 27.7.2009. While admitting the writ petition, it was ordered that the operation of the subsequent decision dated 31.3.2009 Annexure P. 20 of the Government would remain stayed. The respondent-Corporation filed LPA which was dismissed. Against the dismissal of LPA, the respondent-Corporation filed an SLP before Hon''ble the Apex Court. Vide interim order dated 20.11.2009, payment of pension to the petitioners was stayed by Hon''ble the Apex Court. Thereafter, on 23.7.2010, the SLP was disposed of with a direction that this Court should decide all the writ petitions at an early date. Further in terms of directions granted by Hon''ble the Apex Court stopping payment of pension to the petitioners, was permitted to continue.

9. The petitioners have challenged the orders Annexure P. 12 dated 25.11.2004, Annexure P. 13 dated 7.12.2004, Annexure P. 15 dated 5.12.2007, Annexure P. 18 dated 10.2.2009 and Annexure P. 20 dated 30.3.2009 on the ground that the approval of the State Government having already been accorded vide Annexure P. 2 which is in the shape of a direction of the State Government to the respondent-Corporation for adopting the pension scheme, as such, the pension scheme will be deemed to be approved by the State Government. The petitioners had not been given any notice or opportunity of hearing before withdrawing the benefit of pension scheme. The State Government has got the power to frame policy for its Corporation and that policy decision is incorporated in its (decision), Annexure P. 2, dated 26.6.1992, in pursuance of which policy decision of the State Government allowing pension had been introduced by the respondent-Corporation, as such, no further approval was required. Another ground for challenge is that after decision having been taken by floating pension scheme and the petitioners having started getting benefits w.e.f. 5.9.1994 or the date of their retirement, whichever came later and on account of having regularly drawn their pension till 31.10.2013, it was not permissible under law to withdraw the same after 15 years and that too with retrospective effect. The review having caused prejudice to the petitioners, is not sustainable in law. The petitioners claim that it is the duty of the State to look after the senior citizens of the country and the decision to discontinue the pension scheme to the petitioners is violative of the policy of welfare State. The petitioners have given few facts and figures to indicate that as per the annual reports, the Corporation had been earning profits. The petitioners claim that the ground of financial non-viability of the Corporation cannot be made a ground to deprive the petitioners of a beneficial scheme. The petitioners plead that the accounts of the Corporation are being laid before the State Assembly annually but no objection had ever been raised by the State regarding the implementation of the pension scheme. A reference has been made to the Haryana Financial Corporation (Staff Regulation) Rules 1967. As per regulation 4 of above rules, Board had the power to change regulations without any reference to the State Government as such, the Board of Directors is entitled to amend and alter provident fund regulations without prior approval of the State Government. Reliance has also been placed on regulation 66(2) of above Rules to contend that decision of the Board of Directors does not require any approval of the State Government. The grounds on the basis of which the impugned action has been taken i.e., Haryana Financial Corporation being not "a wholly state owned Corporation;" approval u/s 48 of the said Haryana Financial Corporation, Act, 1951, being mandatory and that the Corporation being not financially viable, are not sound and reasonable grounds to withdraw the benefit of the pension scheme in favour of the petitioners. In the alternative, the petitioners have challenged the action of the respondents being unreasonable on the ground that the petitioners have been deprived of even the benefit of Contributory Provident Fund Scheme while withdrawing the beneficial pension scheme in favour of the petitioners.

10. Separate written statements have been filed by the Haryana Financial Corporation and the State Government. As per written statement filed by respondent No. 1, it is a Financial Corporation of the Haryana State constituted u/s 3 of the State Financial Corporation Act, 1951. The formulation of pension scheme being not a question of policy, the condition to seek approval/ concurrence u/s 48 of the State Financial Corporation Act, 1951, cannot be waived off. Mere passing of the resolution by the Board of Directors without seeking prior approval of the State Government/IDBI, floating of pension scheme is not a legal act as such, the decision of the Board approving pension scheme is nullity in the eyes of law and will not confer any legal right on the petitioners. The letter, Annexure P. 2, dated 26.6.1992 was general in nature and was not specifically addressed to respondent No. 1. The Board of Directors had approved the introduction of the pension scheme for the employees of the Corporation on the pattern of State Government on 5.9.1994 and the scheme was circulated to all the employees on 28.9.1994. Before the introduction of pension scheme the employees of the Corporation were governed by Contributory Provident Fund Scheme as per Provident Fund Regulation of the Corporation. The Corporation thought it proper to introduce the pension scheme keeping in view the welfare of the employees. All the employees had been given option to choose either of the two schemes. There were thus, two schemes in the Corporation i.e. one Contributory Provident Fund Scheme in which equivalent contribution of the provident fund deducted from the employees salary was contributed by the Corporation and the second was pension scheme "wherein the Corporation''s contribution towards provident fund was retained as pension fund". Haryana Financial Corporation Employees Provident Fund Regulations were created u/s 48(2)(c) of the Act. As such it governed the Contributory Provident Fund Scheme which was made applicable to the Corporation. As per Section 5 of the Provident Fund Regulations, every permanent employee of the Corporation is bound to subscribe to the fund. The Corporation in the year 1994 planned to float pension scheme as such, the Board of Directors of the Corporation exercising powers u/s 48 of the Act, formulated a pension scheme for its employees. It has been clarified that after adopting pension scheme, the respondent-Corporation sent a request dated 20.10.1994 to the State Government and IDBI for grant of approval as per the provisions of the State Financial Corporation, Act 1951. Although the IDBI had given its consent subject to approval of the State Government, the approval of the State Government was never received by the Corporation. The matter was examined by the Corporation and it was found that the pension scheme implemented by the Corporation without prior approval of the State Government was null and void and same could not have been implemented, without approval of the State Government. In view of said circumstances, the Corporation had decided to withdraw the pension scheme as such, the Board of Directors in their meeting dated 20.11.2007 had decided to stop the payment of pension to the retirees families w.e.f. 1.11.2007 as the scheme implemented was improper, null and void and without approval of the State Government. It is the decision dated 31.3.2009 of the Board of Directors

whereby the Board of Directors had decided to discontinue the pension scheme for all purposes as mandatory approval u/s 48 of the Act had not been accorded by the State Government. It has been claimed to be a case not warranting any interference by this Court in writ jurisdiction as the letters sent by the State were directory in nature and that the Haryana Financial Corporation cannot financially sustain the burden, as proved from the facts and figures.

11. The State Government has taken up a stand that the State Government had not supported the proposal of pension scheme of the Corporation as such, Corporation is not in a position to further release the pension. It has been claimed that letter Annexure P. 2 is not applicable in the case of Haryana State Industrial Development Corporation, as it is not wholly owned by the State. No enforceable right would be vested in the petitioners as Annexure P. 2 stipulates obtaining of approval and completion of other formalities of law. As Annexure P. 2 having not been issued with the prior approval of the State Government, no vested right would accrue from the letter Annexure P. 2 or the letters dated 26.2.2009 and 10.3.2009.

12. Mr. Rajiv Atma Ram, Senior Advocate appearing for the petitioners has argued that the decision of the Haryana Financial Corporation taken by a resolution of the Board of Directors to switch over from Contributory Provident Fund to Pension Scheme for its employees in Board meeting 216, agenda Item No. 216.20 dated June 25, 1992, introducing the pension scheme in lieu of Contributory Provident Fund to the employees of the Corporation, after having been implemented, did not require any approval of the Government as the grant of pension, decision regarding fixation of grades, matters relating to emoluments, gratuity etc do not fall within the policy matters as per provisions of Section 39 of the Act and the provisions of Section 23 of the Act do not curtail the authority of the Corporation to fix the pay or pension of the employees. Approval of the State Government is not necessary with regard to the introduction and implementation of the pension scheme, therefore, withdrawal of the benefit granted to the petitioners by re-introducing the Contributory Provident Fund Scheme qua the petitioners with retrospective effect vide resolutions annexure P-12 dated November 25, 2004, annexure P-13 dated December 17, 2004, annexure P-15 dated December 5, 2007, annexure P-18 dated February 10, 2009 and annexure P-20 dated March 31, 2009 are illegal and a writ in the nature of Mandamus is required to be issued to the respondent State to continue with the pension Scheme w.e.f. the date of its implementation vide annexure P-5 dated September 5, 1994. He has, in support of his contentions placed reliance on the following judgments:-

i) R.F.C. Officers Association Vs. R.F.C. and Others, In the said judgment the order of the stoppage of the ex-gratia payment to the employees of the Corporation was challenged. A Division Bench of Rajasthan High Court observed that fixation of grades, creation of posts and matters related to emoluments and gratuity etc. cannot said to be policy matters u/s 39 of the Act. It was held that if a wider interpretation is given to the word "policy" as used in Section 39 of the Act, the Corporation will become part of the State Government and cannot work as autonomous body. It was clarified that matters relating to advancement of loan, their recoveries and in other allied matters, the State Government would have right to give directions u/s 39 of the Act. Any directions by the State Government regarding ex-gratia payment were held to be not within the competence of the Government.

ii) H.P. Financial Corporation Employees v. State of H.P., C.W.P. No. 791 of 1991, decided by Division Bench of Himachal High Court on December 11, 1992. In the said case the employees of Himachal Financial Corporation had been receiving ex-gratia amount of 20% and D.A. benefits. Whether State Government could issue directions pertaining to said payments to the employees of the Corporation, was required to be determined in the writ petition. The Court held that State had no authority to decide ex-gratia amount of the employees as it was not a policy matter u/s 39 of the Act. Policy matter was held confined to "functioning" of the Corporation.

iii) Dr. Y.B. Yalwar Vs. State of Karnataka and Others, The petitioner was an employee of a Corporation under Karnataka State Financial Act. The petitioner, in the said case, had been denied special pay and house rent. Referring to the provisions of Sections 23 and 48 of the Act, it was held that the said provisions did not in any way curb the authority of the Corporation to fix pay and enter into contract with the employee regarding payment of salary.

iv) PSIDC Karamchari Union v. State of Punjab, 2004 (8) SLR 509. In the said case certain financial benefits like HRA etc. given to the petitioners employed with Punjab State Industrial Development Corporation were withdrawn on the ground that the Government had issued directives in that context. It was held that the Government could issue directions to the State Government which are binding only on the broad policy matters. The service conditions of the employees were held not to be falling within the policy matter of the Corporation. The order of withdrawal of reimbursement of financial benefits by the State of Punjab was held to be bad in law.

v) K.F.C. Officers Association v. Karnataka Financial Corporation C.W.P. No. 3007 of 2006, decided on April 13, 2007. In the said case certain interim financial reliefs were given to the employees of KFC which were not approved by the Government. The action of the State was challenged. It was held that State does not have the sanction of law to interfere with the routine, day to day functions of the Corporation. In context to provisions of Section 39 of the Act, it was held that power of the State Government extends only to give instructions to Financial Corporations on questions of policy in relation to essential and primary functions of the Corporation. The revision of the pay scale was not within the purview of the policy decisions, requiring prior sanction of the Government. The Kerala High Court observed that "even if revision of the pay scale may come within the purview of policy decision, that by itself will not make prior sanction of the

Government mandatory. The obligation to be guided by the instructions given by the State Government on questions of policy arises only in matters relating to the discharge of the primary or essential functions of the Kerala Financial Corporation."

vi) Deva Singh v. State of Haryana C.W.P. No. 5993 of 1990, decided by Punjab and Haryana High Court on November 26, 2010: In the said case, Board of Directors of Haryana Financial Corporation had taken a decision regarding grant of pay scales to its Legal Assistants at par with ADAs and DAs of Haryana. The said decision was not approved by the Government. It was held that in context to provisions of Sections 29, 32 and 39 of the Act the State Government can issue instructions to the Corporation only in matters relating to discharge of functions of the Corporation but the scope of said section is limited only to the financial business of the Corporation. The State Government has got no legal authority for interference in the matters of pay scales of the employees of the Corporation.

vii) Sukhlal Soni v. HFC (C.W.P. No. 18519 of 2010 decided by Punjab and Haryana High Court on August 30, 2011): The decision of Board of Directors of the Corporation revising the pay scales of the employees by a resolution dated January 1, 2006 was interfered by the State Government by changing the date of implementation w.e.f. August 23, 2009 and the State opted to refuse to grant the approval on the grounds of financial constraints, referring to the scope of Section 39 of the Act. It was held that the Corporation requires the approval of the State only in policy matters and that the revision of pay scales of the employees was not a policy decision requiring the approval of State Government.

viii) The Punjab Financial Corporation Employees Welfare Association and Another Vs. Punjab Financial Corporation and Others, In the said case, decision of Board of Directors and directives of the State reducing the HRF from 25% to 15% was challenged. The controversy regarding HRA was held to be not a policy matter u/s 39(1) of the Act.

ix) Kuldip Singh and others v. State of Punjab, C.W.P. No. 21799 of 2010, a judgment of Punjab and Haryana High Court dated August 31, 2013:- In the said case, the retired and serving employees of a Bank were recommended the introduction of a pension scheme and bringing the State aided institutions under the said scheme. Bank approved the said scheme and it was implemented w.e.f. April 1, 1989. The Bank found the scheme unviable in the year 2010 on account of financial constraints. A decision was taken by the Bank to reduce the pension of the employees and withdraw other benefits adopting the principle of estoppel, legitimate expectation and financial stringency of the Bank. The reasons for discontinuation were not accepted and it was held that the petitioners would be entitled to regular pay scales including revised rates of DA.

13. Referring to annexure P-2 dated June 26, 1992, Mr. Atma Ram has argued that the State Government had made itself clear, vide provisions 3 of said annexure, that entire financial liability on account of introduction of pension

scheme in lieu of Contributory Provident Fund would be met and paid by respective Boards/Corporations from their own funds. In view of the said direction, there was no question of re-course to the State funding. He has referred to annexure P-9 dated May 27, 2004 to contend that it has been got specifically clarified from the Corporation as to who would bear the liability of the amount/expenses for payment of pension to the employees of Haryana Financial Corporation before taking any decision. The Corporation vide letter dated December 17, 2004 annexure P-10 communicated that entire financial liability would be incurred by the Corporation itself. Mr. Atma Ram further argued that the Corporation had been a profit making Corporation throughout and as per the annual reports, it had never suffered any loss. It was urged that despite the pension scheme having been withdrawn, the pension amount was being paid to the petitioners the retired officials of the Corporation. Since the Corporation has been making profit, the observations of the State Government that Corporation has not established its financial viability to sustain the pension scheme is erroneous. In order to contradict the said observation, the copies of the speech of the Chairman annexure P-21, has been referred, to establish that the Haryana Financial Corporation is a profit making Corporation financially viable to sustain pension scheme. In order to establish that the Corporation is a financially sound viable corporate identity, it was also argued that in a meeting on agenda item No. 216 of the Board of Directors, the Commissioner, Industries Department and Member of Finance, Department of the State were present and the matter regarding financial viability of the Corporation was in the notice and knowledge of the State Officers. Referring to the financial reports, taken from annexure P-21, it was argued that the Corporation on March 31, 2006 had shown "earned profits" as Rs. 11.93 crores and on March 31, 2007 as Rs. 6.37 crores and on March 31, 2008 it was Rs. 15.62 crores. Referring to Section 48(3) of the Act, it was urged that all regulations made under this Section would have effect from such earlier or later date as may be specified in the regulations. Thus Section 48 of the Act itself contemplates making of regulations with retrospective effect and as such the approval granted by the State Government would relate back to the date w.e.f. the date from which the pension had been granted i.e. September 5, 1994. The approval of the State Government required by the statutory Corporation will be deemed to have been granted in the facts of the present case, on combined perusal of annexures P-2 to P-5.

14. On the other hand, Mr. Ashok Aggarwal, Senior Advocate, learned counsel for Haryana Financial Corporation has vehemently contended that Haryana Financial Corporation is an establishment u/s 3 of the Act, and is a body corporate and is not wholly owned Public Sector Undertaking and is required to seek necessary approval to complete all the formalities required under the law for proper implementation of the pension scheme. Since no regulation has been framed u/s 48(2)(k) of the Act, no enforceable right has accrued to the petitioners to seek the benefit of the pension scheme which has not even come into existence in accordance with provisions of law. Mr. Ashok Aggarwal has drawn the attention of

the Court to various statutory provisions of the Act to contend that the Haryana Financial Corporation, for short ''HFC'', is established under the notification of the State Government and performs all the functions with the sanction of the Government. Referring to Section 45 of the Act, it has been stated that HFC cannot even be placed in liquidation except with the order of the State Government in such manner as it may direct. He submitted that it is not just a mere approval by the State authorities but a strict sanction which is required for governing the financial Corporation. Section 4 of the Act pertaining to the share capital of shareholders provides that the authorized capital of the Financial Corporation shall be such sum as may be fixed by the State Government. Referring to Sections 9, 10 and 17 of the Act, it was emphasized that State authorities govern the HFC. Section 23 of the Act deals with appointment of officers and regulations of conditions of appointment of service and remuneration payable to the employees and officers. Section 39(1) of the Act provides that the Board shall be guided by the instructions on the question of policy as may be given to it by the State Government in consultation with and after obtaining the advise of the IDBI Bank. u/s 39(2) of the Act, the decision of the State Government is final when there is a dispute whether a particular question is of policy or not. Section 48 of the Act was referred, to contend that the Board may after consultation with the IDBI Bank and with previous sanction of the State Government make regulations not inconsistent with the provisions of the Act and the Rules made thereunder to provide for all matters for which provision is necessary and expectation for the purpose of giving effect to the provisions of the State Financial Corporation Act. It was argued that u/s 48(a)(k) of the Act, the regulations made u/s 48 of the Act may provide for the establishment and maintenance of provident fund or other beneficial funds for employees of the Financial Corporation. He vehemently urged that any illegality committed by financial corporation cannot be enforced under the garb of principle of estoppel as there is no estoppel against law. Any bond between Financial Corporation and its employees will not be binding unless and until it is legally crystallized with the prior sanction of the Government. It was urged that letter annexure P-2 referred to by counsel for the petitioner is not a policy decision in terms of Section 39 of the Act but it is a decision u/s 48 of the Act. Reliance was placed on Forum of Forum of Retired Officers/Employees of Gujarat State Financial Corporation Vs. State of Gujarat,

In the said case Court faced with similar situation held that implementation of the pension scheme in a State Corporation would depend upon the validity of the resolution. In the said case, the retired employees of Gujarat Financial Corporation prayed for retrospective implementation of Pension Scheme as per the resolution of the Corporation passed by it, claiming that no approval of the State Government was required for implementation of the said Scheme. They had challenged the resolution passed by revoking the earlier resolutions, claiming that the State has got no authority to interfere in the financial decisions of the Corporation and that financial restraints could not be a valid ground for denying pension benefits. Petition for implementation of the Pension Scheme was dismissed. He also referred to the judgment in Dr. Y.B. Yalwar Vs. State of Karnataka and Others, holding that State Government cannot interfere with the discretion of the Corporation regarding the payment of salary to its employees and urged that it is not applicable to the facts of present case. It was urged by the counsel for respondent that the ratio of the judgments cited by the counsel for the petitioners are distinguishable. So far as the letter annexure P-2 referred to by counsel for the petitioners is concerned, it was argued that letter annexure P-2 is general in nature and addressed to all Public Sector Undertakings and through letter annexure P-2 no specific instructions had been given to the HFC. Letter annexure P-2 covered wholly owned Public Sector Undertakings and the Authorities of Corporation, in turn were required to seek necessary approvals and complete all the statutory formalities. The Contributory Provident Fund Scheme was created u/s 48(2)(k) of the Act and the pension regulations were also required to be framed u/s 48(2)(k) of the Act with the necessary approval of the State. Absence of the prior approval will not give a right to the petitioners to enforce their rights under the illegally launched Pension Scheme. The matter was examined by the Board of Directors under the advice of legal officer and it was found that the Pension Scheme lacked prior approval of the State Government, and therefore, it was scrapped. It was emphasized that the Board of directors of Corporation introduced Pension Scheme for the employees of the Corporation on the pattern of State on September 5, 1994. The Scheme was circulated to all employees on September 28, 1994. The employees of the Corporation were governed by Contributory Provident Fund Scheme as it was dealt with by Provident Fund Regulations of the Corporation, before introduction of the Pension Scheme. The Corporation gave option to its employees to choose either of the two Schemes. It was clarified that the pension scheme floated in 1994 exercising the powers u/s 48(2)(k) of the Act was formulated but after adopting the scheme, the Corporation sent a request dated October 20, 1994 to the State Government and IDBI Bank for grant of approval as per provisions of the Act. Although the Bank had given consent but it was subject to the approval of the State Government which was never received by the Corporation. Matter was examined by the Corporation and it was found that the pension scheme implemented by the Corporation was without prior approval of the State Government and was thus null and void and could not be implemented without the prior approval of the State Government. In these circumstances, the Corporation decided to scrap the Pension Scheme and Board of Directors of the Corporation in the meeting dated November 20, 2007 decided to stop the payment of pension to the retirees/families w.e.f. November 1, 2007 as the Scheme implemented was improper, null and void and without prior approval of the State Government. The decision was communicated to all the retirees through individual communications on December 5, 2007. It was emphasized that the petitioners have challenged the decision of the Board of Directors dated November 20, 2007 vide which the Board of Directors had decided to keep the Pension Scheme in abeyance to await the decision of the State Government but ultimately it was decided not to pay pension to the petitioners. It was only during the pendency of the writ petitions that the respondent Corporation has received communication dated February 10, 2009, annexure P-18, that the State Government is not in a position to support the proposal of HFC observing that HFC is not wholly owned Public Sector Undertaking of the State Government as share holding pattern is 78.21 % of the Government and that the Corporation is not in a position to financially sustain the scheme and Financial Corporation should have sought prior approval of the State Government in terms of Section 48 of the Act. Mr. Aggarwal, referring to Agenda Item No. 316.29, annexure R-2 has submitted that the Pension Scheme was kept in abeyance vide Board of Directors decision dated November 20, 2007 and the said agenda was placed before the Board of Directors taking into consideration the letter dated February 10, 2009 of the State Government. The Board had finally decided vide annexure R-3 that the Pension Scheme should be discontinued but no recovery should be made from the pensioners who have been paid excess amount to the tune of Rs. 3.46 crores in total by way of pension/family pension than the CPF foregone by them. The amount recoverable from them should be written off. He argued that recovery of Rs. 3.46 crores has been waived off. It was urged that mere presence of nominee Director of Government in the meeting does not mean that the Regulation made will be considered to be with the implied approval of the Government.

15. Learned counsel for the State, Mr. R.D. Sharma, has argued that the State Financial Corporation under the State Financial Corporation Act is a different entity and is distinguishable from an entity of the Company constituted under the Companies Act. The Chairman and Managing Director of the Corporation are appointed under Sections 15 and 17 of the Act. The Corporation appoints its officers u/s 23 of the Act but determines by Regulation their condition of appointment and service. Functions of the Corporation are described u/s 25, 25A, 25B read with Section 7(4) of the Act. As the previous sanction of the State Government u/s 48 of the Act is not a mere approval or formality, no Pension Regulations could be implemented. It was urged that scope of Section 39 of the Act is quite different and distinct from Section 48 of the Act. The Punjab Financial Corporation Employees Provident Fund Regulations as applicable to HFC were framed in the exercise of powers u/s 48(2)(k) of the Act while framing Pension Regulations. The Provident Fund Regulations had to be first repealed as these were already in operation and that any Pension Regulations made applicable without the consultation of Small Industries Bank and previous sanction of the State Government u/s 48 of the Act will not confer an enforceable right on the petitioners. The CPF Regulations could not have been substituted by Pension Regulations without exercise of powers u/s 48(2)(k) of the Act. In order to clarify its stand pertaining to annexure P-2 dated June 26, 1992, it was argued that it is applicable to those Boards and Corporations which are wholly owned by the State Governments whereas HFC is not wholly owned Public Sector undertaking and it was necessary to obtain approval from the Government. Mr. Sharma, has argued

that the financial liability due to implementation of the Pension Scheme pursuant to annexure P-2 is to be borne exclusively by the Corporation and the State will not be responsible in any manner.

16. I have heard learned counsel for the petitioners, counsel for the respondents, carefully appreciated the arguments raised by counsel for the parties and considered the pleadings and the judgments cited. The basic question which is required to be determined in the present writ petitions is whether respondent No. 1 Corporation, in view of the provisions of Sections 9, 23 and 39 of the Act had been competent to grant pension to the petitioners, the retired employees, by adopting pension Scheme as was prevalent in the State Government for its employees and whether said decision amounts to framing of Regulations. If so, whether the provisions of Section 48 of the Act are attracted and could be said to be directory in view of provisions of Sections 9, 23 and 39 of the Act. The other point which is required to be considered and determined would be whether once the petitioners having been granted benefit of Pension Scheme in the year 1994, the same could be abruptly withdrawn in the year 2007 on the ground that the decision to implement the Pension Scheme was void as Government approval was still awaited. Whether the financial constraints could be a good reason to deny pension to the petitioners? This Court is called upon to also determine that in case the pension is not held payable to the petitioners whether they would be entitled to the refund of the Contributory Provident Fund alongwith the employees'' contribution and interest thereupon. The question of legitimate expectation of the old employees and the applicability of the principle of promissory estoppel to the rescue of the petitioners would also required to be considered simultaneously.

17. The employees of the Corporation prior to September 28, 1994 were governed by Contributory Provident Fund as per Provident Fund Regulations of the Corporation in which equivalent contribution to the Provident Fund deducted from the employees salary is contributed by the Corporation but the employees were given option to choose either of the two Schemes with the incorporation of the Pension Scheme wherein the Corporation''s contribution towards provident fund were retained as pension fund. As per the Provident Fund Regulations every permanent employee of the Corporation is bound to subscribe to the fund. In order to appreciate the financial implication of the liability of the Corporation to release the CPF foregone at the time of the retirement to be paid to the petitioners at the rate of 12% to 13% per annum till 2013 and the liability of the Corporation to pay the pension during the life time of the petitioners, the tentative figure, taking into consideration the date of retirement of the petitioners, comes to somewhat following extent:-

18. It is not out of place to observe here that few persons who had retired on attaining the age of superannuation and were petitioners have expired during the pendency of the writ petition. All the schemes whether it is Pension Scheme or it is Contributory Provident Fund Scheme are welfare legislations for the benefit of

the employees acknowledging their life long contribution towards State service or service rendered to a State Authority. The Act was made to provide for the establishment of State Financial Corporations to create institutional framework for financing medium and small scale industries. To enable the State Financial Corporations to equip themselves to the emerging environment, it was considered necessary to enlarge their shareholder base, provide them with greater functional autonomy and operational flexibility. It was proposed to make comprehensive amendments to the State Financial Corporations Act, 1951. Vide Act No. 39 of 2000, a number of amendments were incorporated. The main features of the 2000 amendments vide Act No. 39 are reproduced hereunder for ready reference highlighting the important features:-

a) the share capital held by Industrial Development Bank of India in the State Financial Corporations is proposed to be transferred to Small Industries Bank of India;

b) the definition of the term "industrial concern" is proposed to be enlarged in order to enable the State Financial Corporations to finance additional or new activities;

c) capital restructuring of the State Financial Corporations is proposed with a view to increase the authorized share capital, enlarge shareholder base, permit issue of share capital upto forth fine per cent to the public and also allow the Financial Corporations to reduce or convert the existing share capital;

d) restrictions on issue or sale of bonds, debentures and borrowing money by the State Financial Corporations are being removed;

e) restructuring of the Board of Directors and Executive Committee is proposed in order to enable the State Financial Corporations to exercise greater functional autonomy and operational flexibility;

f) the ceiling on the amount of assistance which may be granted by the State Financial Corporations to an Industrial concern is proposed to be increased;

g) autonomy to the State Financial Corporations with regard to investment of funds is proposed to be given;

h) the general body of shareholders of the State Financial Corporations is proposed to be vested with more powers; and

i) the State Governments shall be empowered to issue guidelines on question of policy to the State Financial Corporations so long as they hold not less than fifty one per cent of the issued equity share capital. In other cases, the State Governments may advise the Financial Corporations on the matters of policy.

19. The objectives of the Amendment Act No. 39 of 2000 is basically to give autonomy to the State Financial Corporations simultaneously providing that State Government shall be empowered to issue guidelines on the question of policy to the State Financial Corporations so long as they hold not less than 51% of the

issued equity share capital. The two apparent objectives are that more power, authority and autonomy has been bestowed upon the Board of Directors and Executive Committee of the Financial Corporations and the percentage of the share holding pattern of the State has been reduced to the extent of 51% to decrease the supervision and interference of the State. Section 9 of the Act refers to the Management of the affairs of the business of the financial corporation in the Board of Directors. Section 9 of the Act reads as follows:-

Section 9: Managements (1) The general superintendence, direction and management of affairs and business of the Financial Corporation shall vest in a Board of Directors which may exercise all powers and do all such acts and things, as may be exercised or done by the Financial Corporation and are not by this Act expressly directed or required to be done by the Financial Corporation in general meeting.

(2) The Board may direct that any power exercisable by it under this Act shall also be exercisable in such cases and subject to such conditions, if any, as may be specified by it, by the chairman, managing director or the whole-time director.

20. Section 23 of the Act enables a financial corporation to appoint its officers and employees for the efficient performance and formulate regulations governing the conditions of appointment of service of the officers and employees. Section 23 of the Act reads as follows:

Section 23. Officers and other employees of the Financial Corporation. The Financial Corporation may appoint such officers, advisers and employees as it considers necessary for the efficient performance of its functions, and determine, by regulations, their conditions of appointment and service and the remuneration payable to them.

21. It is pertinent to observe that vide Act No. 39 of 2000, the proviso which earlier existed i.e. provided that the State Government may in consultation with and after obtaining the advice of the Development Bank, specify the class or categories of posts in respect of which appointments may be made by the Board on such remuneration and other conditions of service as the Board may determine, and no regulation made under this Act shall apply to such posts in respect of matters so determined by the Board., has been deleted. The objective of deletion of the above said proviso was apparently meant to remove the control of the State Government in interference in the remuneration and conditions of service in respect of any class or categories of posts in respect of which appointments may be made on remuneration and conditions of service as determined by the Board. After amendment of 2000 vide Act No. 39, the Financial Corporation itself was competent to formulate the regulations and conditions of the appointment of service and remuneration payable to any class and category of officers and employees.

22. Section 39 of the Act provides that the Board would be guided by the instructions on the questions of policy, as may be given to it by the State

Government in the matters of discharge of the functions by the Financial Corporations. Section 39 of the Act reads as follows:-

Section 39: Power to give instructions to Financial Corporation on questions of policy. (1) In the discharge of its functions, the Board shall be guided by such instructions on questions of policy as may be given to it by the State Government [in consultation with [and after obtaining the advice of,] the [Small Industries Bank].

(2) If any dispute arises between the State Government and the Board as to whether a question is or is not a question of policy, the decision of the State Government shall be final.

[(2A) Nothing contained in sub-section (1) and subsection (2) shall apply in a case where a State Government holds less than fifty-one per cent, of the equity shares in the Financial Corporation.

(2B) Notwithstanding the equity share holding of a Financial Corporation by a State Government, the State Government may advise the Financial Corporations on the matters of policy.]

(3) If the Board fails to carry out the instructions on the question of policy laid down by the State Government [under sub-section (1) of this section or the instructions given to the Board under sub-section (4) of section 37A], the State Government shall have the power to supersede the Board and appoint a new Board in its place to function until a properly constituted Board is set up, and the decision of the State Government as to the grounds for superseding the Board shall not be questioned in any Court.

23. It is pertinent to observe that after the year 2000 by Act No. 39, it has been provided that even in the matters of policy, the authority of interference by the State Government was reduced. By incorporating Section 2(A) and 2(B) vide Act No. 39 of 2000, the scope of interference by State in the policy matter of Financial Corporation is diminished. There is no concept of wholly owned Public Sector Undertaking of the State Government with incorporation of Section 2A in Section 39, but the superintendence and the authority to give instructions has been specifically limited in cases where the State Government holds equity shares in the Financial Corporation more than 51%. Section 2B diminishes and reduces the power of State to give instructions in matters of policy to mere power to advise. After the year 2000 the amendment is meant to recognize the autonomy of the Financial Corporations with least interference by the State Government even in the policy matters. Section 48 of the Act talks about power of the Board to make regulations. For the purpose of the present case Section 48(1) and Section 48(2)(k) of the Act is reproduced as under:-

Section 48(1) Power of Board to make regulations (1) The Board may, after consultation with the (small Industries Bank) and with the previous sanction of the State Government, make regulations not inconsistent with this Act and the rules made thereunder to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.

Section 48(2) In particular, and without prejudice to the generality of the foregoing powers, such regulations may provide for

(k) the establishment and maintenance of provident or other benefit funds for employees of the Financial Corporation.

A perusal of the above said provisions and the relevant amendment incorporated in the State Financial Corporation Act do not seem to curtail the authority of the Corporation to determine by Regulations the conditions of the appointment and service and the remuneration payable to the officers and employees of the Corporation. The proviso appended to Section 23 of the Act prior to the amendment vide Act No. 39 of 2000 gave authority to the State Government to select categories of posts for exempting the applicability of any regulation to them but the requirement of consultation with State Government or advice of the Development Bank in respect of the appointments by the Board and framing of regulations in context to remunerations and conditions of services stands withdrawn with amendment of year 2000. The above said provisions as these existed prior to year 2000 came up for consideration before Rajasthan High Court in R.F.C. Officers Association Vs. R.F.C. and Others, and before Karnataka High Court in Dr. Y.B. Yalwar''s case (supra) The relevant extract from the judgment of Dr. Y.B. Yalwar''s case (supra) is reproduced as under:-

Section 39 of the R.F.C. Act, 1951 (Sic State Financial Corporations Act, 1951) further provides that the Board shall be guided by such instructions on questions of policy as may be given to it by the State Government. The word or phrase (policy) does not include the fixation of emoluments. The State Government has a limited power only in the matters pertaining the running of the business. To decide the fixation of the grades, creation of the posts and the matter relating to emoluments, pension, gratuity etc. cannot be said to be policy matters. If a wider interpretation given to the word ''policy'' as used in Section 39 the Corporation will become the part of the State Government and cannot work as autonomous body. We can understand that the matters relating to the advancement of loan and their recoveries and other allied matters the State Government will have a right to give the directions u/s 39. The conditions of the service of the employees cannot be considered as a matter of policy. Therefore, we are of the view, that the directions given by the State Government, regarding ex gratia payment are not within the jurisdiction of Government.

To similar effect are the judgments of H.P. Financial Corporation Employees'' case (supra), PSIDCS case (supra), KFC Officers Association''s case (supra), Deva Singh''s case (supra); Sukhlal Soni''s case (supra); Punjab Financial Corporation Employees Welfare Association''s case (supra) and Kuldip Singh''s case (supra).

24. Mr. Ashok Aggarwal, learned counsel for HFC has contended that the judgment in Deva Singh''s case (supra) pertain to the grant of revision of pay

scales of Legal Assistants of the Corporation related to the provisions of Section 23 of the Act., therefore, the ratio of said judgment is not prejudicial to the Corporation. Similarly it was argued that the ratio of the other judgments are also not applicable to the facts of the present case as in the present case applicability of implementation of Pension Scheme which is policy matter, would attract provisions of Section 48(2)(k) of the Act. It was vehemently urged that where any authority is given any power to do an act and a certain procedure is prescribed for doing the same, the act must be done by following the said procedure or not done at all. It was urged that the statute requires that previous sanction of the State Government is required before making a Regulation pertaining to the implementation of the Pension Scheme by substituting the Contributory Provident Fund Scheme. In support of his contentions, he placed reliance on Ramchandra Keshav Adke (Dead) by Lrs. and Others Vs. Govind Joti Chavare and Others, , Chandra Kishore Jha Vs. Mahavir Prasad and Others, , Union Public Service Commission Vs. S. Papaiah and others, and The State of Maharashtra and Another Vs. The Jalgaon Municipal Council and Others, Counsel for the respondents has placed strong reliance on the judgment of Forum of Retired Officers and Employees of Gujarat case (supra). He argued that in the said case vide a resolution of 1994, the Corporation had brought into existence a Pension Scheme which had come into effect by the decision of the Board of Directors but it was withdrawn on the ground of financial constraints by subsequent resolution dated October 23, 2002. The withdrawal of Pension Scheme was challenged. The Gujarat High Court in context to provisions of Sections 23 and 48 of the Act held that prior approval of the Government for enforcement of the disputed Pension Scheme was necessary which had not been obtained as such the petition for implementation of the Pension Scheme was dismissed. It was held as follows:-

35. Thus, on the twin ground of the Pension Scheme not having been introduced through framing of the Regulations and the existing Contributory Provident Fund Scheme could not have been modified otherwise than having recourse to the powers u/s 48 of the said Act, I find that the condition of seeking prior approval/ concurrence of the State Government was a valid condition. Thus, on the ground of non-fulfillment of the necessary conditions envisaged under the Resolution dated 27.1.1994, and also on the ground that no pension scheme could have been formulated without framing proper Regulations in exercise of powers u/s 48 of the said Act, nor could the existing Contributory Provident Fund Scheme been modified or amended in absence of any Regulations, I find that by merely passing the Resolution on 27.1.1994, no Pension Scheme was brought into existence.

36. To conclude, I am of the opinion that petitioners are not entitled to receive the benefits of the Pension Scheme as if the same was brought into existence by Resolution dated 27.1.1994. The said Resolution having been subsequently withdrawn without the Pension Scheme ever having been brought into existence, the employees of the Corporation have not established existence of any legal

rights to be covered under any Pension Scheme.

37. In view of the above conclusion, the question of retrospective operation of the withdrawal of the Resolution dated 27.1.1994 by subsequent Resolution dated 23rd October, 2002 and its legal effect is not necessary to be debated and decided any further.

The above said ratio indicates that the question regarding retrospective operation of withdrawal of the resolution by subsequent resolution was left open.

25. I have considered the judgment of Gujarat High Court wherein Section 48 of the Act has been held to be mandatory for formation of Pension Scheme which has been held to be a policy decision. It is pertinent to observe here that the petitioners in the present writ petitions retired from 1995 to 2004 on different dates mentioned hereinabove. On the date of their retirement, the pension scheme had been incorporated vide resolution No. 216 dated Septembers 5, 1994. On September 28, 1994, the options had been called. The petitioners had submitted their options to be governed by the Pension Scheme. Vide letter dated August 13, 2003, a reference was made to the State and State had vide letter dated September 27, 2004 sought a clarification as to who would take the liability for the expense of Pension Scheme. Vide annexure P-10, the Executive Director informed the Director of Industries that the liability of amount/expense be incorporated on giving pension to the employees of the Corporation will be borne by the Corporation. A request was made by letter dated December 17, 2004 (annexure P-10) that the approval of the State Government for Pension Scheme floated by the Corporation be obtained. A perusal of the annexures appended with the petition established that vide annexure P-2, dated June 26, 1992 the Financial Commissioner had informed the Corporation that Government had decided that all Boards and Corporations (wholly owned) may introduce Pension Scheme as per Rules w.e.f. June 1, 1992 and that three months'' time to be given to all the employees to change their option. Vide annexure P-3, the Pension Committee meeting was held on October 28, 1992 and a decision was taken that the Corporation will adopt the Pension Scheme w.e.f. June 1, 1992. Vide annexure P-4, agenda of meeting No. 200, it was decided that the funds collected shall be invested in securities in a manner as directed by the Government in Finance Department and the Pension Committee decided on October 28, 1992 to implement the Pension Scheme. Vide annexure P-4, dated March 1, 1993, the Financial Commissioner had asked all the Corporations whether the Pension Scheme had been implemented or not. Vide meeting dated September 5, 1994, the Board had adopted the scheme and a letter which is annexure P-7 written by Managing Director dated October 3, 1994. It was informed that the petitioners had opted for Pension Scheme. The benefit of the Pension Scheme was given immediately pending approval vide annexure P-8 dated October 20, 1994. Vide annexure P-4, dated May 27, 2004, the Director of Industries of Haryana wrote to MD of the HFC seeking clarification as to who shall bear the liability which was answered by annexure P-10 dated December

17, 2004 that liability of the scheme shall be borne by the Corporation. Annexure P-11 is agenda item No. 293.12 dated November 17, 2004 wherein the Managing Director of the Corporation had noted that the Pension Scheme was introduced w.e.f. Septembers, 1994 on the pattern of State Government after the approval of IDBI but subject to approval of the State Government, but the approval of the State Government had not been received. Out of total strength of 313 employees, only 4 persons had not exercised their option for pension and were covered under CPF Scheme and remaining 309 employees were covered under the Pension Scheme. Some employees had requested for change of their option from Pension Scheme to CPF Scheme as such legal opinion in the matter was sought from Senior Legal Assistant. As per the legal opinion, the prior approval of the State Government as required u/s 48 of the Act had not been taken as such the scheme implemented by the Corporation without prior approval of the Government was null and void and the same could not have been implemented. It was suggested that all employees who were seeking reversion of their option from Pension to CPF might be brought under CPF and the CPF in respect of those members be deducted and credited in their account. As per the legal opinion it was suggested that the Pension Scheme for the employees who were retired and were not getting pension/family pension was concerned, the possibility of taking sanction from the State Government and the Pension Scheme be adopted and implemented with retrospective date, so that the employees who had already opted for Pension Scheme and were getting the same may not suffer. It was observed that only 49 retirees who are getting pension/family pension were alive. Vide annexure P-18, during the pendency of the writ petition, the Financial Commissioner and Principal Secretary to the Government of Haryana, Industries and Commerce Department, vide letter dated February 10, 2009 informed the Director of Industries that the State Government has not supported the proposal of HFC as HFC is not a wholly owned Public Sector Undertaking of State Government as can be made out from the shareholding pattern of HFC at different points of time more specifically at the time when Board of Directors passed the said resolution and the Government share holding was only 78.21 %. It was observed that the Finance Department circular had made it clear that it was applicable only to the wholly owned Public Sector Undertakings of the State. Another reason given by the State was that the HFC is not in a position to financially sustain the scheme and that the HFC has not sought prior approval of State Government in terms of Section 48 of the Act before implementing the decision and giving it the shape of Regulation. The Board of Directors of HFC complied with the direction of the State and has taken a decision that Pension Scheme which was kept in abeyance in the year 2007 should be discontinued and that no recovery should be made from the pensioners who have paid excess amount to the tune of Rs. 3.46 crores in total by way of pension/family pension than the CPF foregone by them. The amount recoverable from them should be written off.

26. A perusal of the above said proceedings indicate that few number of persons

who have retired after the implementation of the Pension Scheme would be deprived of the pension which was released to them every month. Even if it is presumed that the Board of Directors of Financial Corporation has got a right to make Regulation incorporating Pension Scheme and also has got a legal right to change the Regulation, even then the right of a person who has adopted Pension Scheme bona fide and has got the pension for a long duration, his rights cannot be effected on the ground that the benefit of Pension Scheme had been given in the year 1994 without the prior sanction of the State and the action was null and void. Recently a similar question came up before the Apex Court in the case of State of Rajasthan Vs. A.N. Mathur and Others, In the said case, in the year 2000, option was given to the employees of Rajasthan Agriculture University, an autonomous body, for adopting Pension Scheme or to continue with the CPF Scheme. The State of Rajasthan on which the University was financially dependant was not informed of the resolutions. The financial burden increased substantially as many employees opted for Pension Scheme. The State of Rajasthan in the year 2011 disapproved the resolutions and subsequently withdrew the Pension Scheme. In a writ petition filed before the Rajasthan High Court the disapproval of the resolution was quashed and the University was directed to continue with the Pension Scheme. In the said case as per Section 39 of the Rajasthan Agriculture University Act, 2000, the Board of Management of the University had not obtained the necessary assent of the Chancellor i.e. the Governor of the State before effecting the change in the Scheme with regard to the payment of retiral benefits to its employees, the Supreme Court held that the introduction of the Pension Scheme was in complete violation of the mandatory requirement of Chancellor''s prior approval and that Pension Scheme could not be accepted. It was also held that had the University been having complete autonomy and not dependent upon the State of Rajasthan in its financial matters, possibly Section 39 of the Act would not have been incorporated in the Act in the form in which it existed. It is important to note that though the Hon''ble Supreme Court had set aside the judgment of Division Bench of Rajasthan High Court by virtue of which High Court had set aside the order of withdrawal of Pension Scheme but even then the retired employees who had received pension prior to the passing of the resolutions and opted for the Pension Scheme were given protection, holding that such employees would not be effected by the judgment. The relevant part of the judgment is reproduced as under:-

36. In the aforestated circumstances, we quash and set aside the impugned judgment delivered by the Division Bench of the Rajasthan High Court, which has confirmed the judgment delivered by the learned single Judge. The order dated 3rd June, 2011 passed by the appellant-State shall operate and the employees shall be given retiral benefits as per the Contributory Provident Fund Scheme which was in force prior to 7th December, 2000. So far as the retired employees are concerned, they must have been paid pension in pursuance of the judgment delivered by the Division Bench of the High Court. As all the appeals have been

allowed, some financial adjustments will have to be made and possibly there would be some recovery from some of the employees. We clarify that upon overall adjustment of the entire amount, if any employee has to return any amount to the University, as a special case, no demand shall be raised by the University in view of the fact that the employees must have retired long back and they must have adjusted their financial affairs upon knowing the fact that they had a regular income of pension. We also clarify that if prior to passing the resolution dated 7th December, 2000 by the Board of Management of the University, if there was any scheme about payment of pension to its employees and if some of the employees had opted for the said scheme, payment of pension to such employees would not be affected by virtue of this judgment.

In case the above said judgment of Apex Court is followed, the employees who retired after 1994 and had opted for Pension Scheme and had been granted pension, would not be affected and would continue to be governed by the Pension Scheme. This protection will be extended to approximately 53 persons who have retired unless and until they have voluntarily opted to be governed by the CPF Scheme. It is not out of place to observe here that the above said class of petitioners on the date of retirement have also foregone huge amount contributed by them towards Provident Fund which they were entitled to alongwith the contribution of the Corporation. The Corporation has saved that amount and is not bound to pay the interest at the rate of 12% to 13% having utilized the amount for long duration after 1994 till date.

27. I have considered the contentions of learned counsel for the respondents that on account of financial constraint it is not feasible for the Corporation to pay pension to the petitioners.

28. The claim of the petitioners is that Rs. 1.53 crores was given by the petitioners on change over from CPF Scheme to Pension Scheme and the same has arisen to Rs. 4.30 crores with cumulative interest. Reliance has also been placed on the speech of Chairman to the effect that HFC is making profits. The petitioners claimed that in the years 2006, 2007 and 2008, the Corporation has earned profits to the tune of Rs. 11.92 crores, Rs. 6.37 crores and Rs. 15.62 crores respectively, as per the annual reports.

29. I do not deem it appropriate to enter into the disputed question of fact regarding the financial soundness of the respondent Corporation but I am of the opinion that financial constraints cannot be taken as a ground to deny the benefit which is legitimately expected by the petitioners who have been granted the pension especially when they have foregone their benefits under CPF Scheme at the time of their retirement.

30. The petitioners who are old retired persons have got expectation which is a legitimate and reasonable expectation to be governed by the Pension Scheme made applicable w.e.f. 1994 qua them. Any order violating the reasonable and legitimate expectation will be termed as violative of Articles 14 and 16 of the

Constitution of India and arbitrary. In this context, reference can be made to Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, wherein it was held that all State actions have to conform to Article 14 of the Constitution of India of which non-arbitrariness is a significant facet. The relevant observations of the said judgment are as follows:-

The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant''s perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our legal system in this manner to this extent.

31. So far as the employees of the Corporation who have retired prior to 1994 or had come into service after 1994 or were in service in the year 2007 are concerned, they would not be entitled to the Pension Scheme and would be entitled to the benefits under CPF Scheme, however, the petitioners who have opted for pension scheme, are entitled to pension. The decision of the Board of Directors vide Annexure P-12 dated 25.11.2004 to the extent of scrapping off the Pension Scheme is held illegal. Annexure P-12 to the extent of accepting the already retired persons and drawing pension, from the decision of scrapping of Pension Scheme is held to be a valid and legal decision. The letter annexure P-13 dated December 17, 2004 and annexure P-15 dated December 5, 2007 issued to petitioner No. 1 and other similarly circumstanced persons, intimating the scrapping of Pension Scheme and denial of release of pension are hereby set aside declaring the same to be illegal and inoperative on the rights of the petitioners. Letter of the Financial Commissioner annexure P-18 dated February 10, 2009 and the resolution Annexure P-20 dated March 31, 2009 passed by the Board of Directors of Haryana Financial Corporation based on annexure P-18 rejecting the proposal of HFC for implementation of Pension Scheme in HFC are hereby set aside partly and it is held that the employees of the Haryana Financial Corporation who had retired prior to 1994 or had come into service after 1994 or were in service in the year 2007 would be entitled to be governed by CPF Scheme and are held not entitled to the Pension Scheme incorporated vide decision of Board of Directors dated September 5, 1994. But the petitioners and other similarly circumstanced officers and employees of the Corporation who retired after the year 1994 and had been granted benefit of Pension Scheme

implemented vide resolution of the Board dated September 5, 1994 would continue to be governed by the Pension Scheme irrespective of annexures P-13, P-15, P-18 and P-20. The respondent Corporation is directed to restore the pension Scheme qua the petitioners and the similarly circumstanced officials covered under this decision within a period of one month after the receipt of certified copy of the judgment and release the arrears of the pension due, withheld during the pendency of the petition, within one month.

With the above observations, the writ petitions are partly allowed.

