

(2012) 01 P&H CK 0295

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3986 of 1999 (O and M)

Ramesh Kumar Musafir and others

APPELLANT

Vs

The State of Haryana and another

RESPONDENT

Date of Decision : 03-01-2012

Acts Referred:

Punjab Khadi And Village Industries Board Act, 1955 — Section 20(i), 33A, 35

Citation : (2012) 167 PLR 232

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Balram K. Gupta, with Mr. Sreesh Gupta, for the Appellant; S.S. Goripuria, Addl. A.G., Haryana and Mr. V.K. Agnihotri, for the Respondent

Judgement

K. Kannan, J.—The petitioners, who are retired employees of the Haryana Khadi and Village Industries Board, have a grievance that the pension scheme, which was notified in the year 1995 allowed for application of the scheme only to persons, who were retired on or after 08.02.1995 and the petitioners having been retired prior to that date but after 01.06.1992, have been denied the benefit of the pension scheme. The basis of the petitioners' grievance is that the issue of grant of pension to employees of Khadi Board had been under active consideration from the year 1984 itself and the Board had passed a resolution in the year 1990 and sent it to the Government for notification in the manner required u/s 35 of the Regulations. However, though the pension scheme was approved originally as a matter of policy by the Government to be effective from 01.06.1992 it was not given effect to by proper notification at that time till after a later notification issued on 08.02.1995. The Board had itself made a recommendation to the Director of Industries for introduction of the pension scheme from 01.06.1992 as originally contemplated but this was rejected by the impugned order on 01.12.1998 by a cryptic observation that it was "considered and declined". The petitioners' grievance is that after the proposals were sent by the Board and after the Government had accepted the proposals for introduction of the pension scheme from the year 1992, they had a legitimate expectation

that the scheme would be extended to them but in spite of a decision taken by the Board that the pension scheme could involve no financial implication to the State, still the Government has not approved the decision of the Board for no valid reasons. Since the decision of the Government was cryptic, this Court has on an earlier occasion called upon the State to give reasons as to why the decision was taken in the manner that it did and this is sought to be explained through an additional affidavit filed by Sh. H.R. Gandhi, Under Secretary to Government Haryana, Industries Department. It has been brought through the additional affidavit that employees, who were retired in the intervening period from 01.06.1992 to 08.02.1995 had already been paid the CPF amount and the Government did not find any logic to allow pensionary benefits to such employees.

2. In my view, the explanation through the additional affidavit does not really answer the situation of why they were declining a recommendation from the Board. The Board itself had at one time through Annexure P-4 dated 14.11.1990 informed that there would be no additional burden of expenditures on the Government as they could be met out of the matching contributions given by the State Government towards Contributory Provident Fund, if the pension was introduced. It must, however, be seen that in a subsequent communication in the year 1998, the Board was making a reference to an additional burden of Rs. 1,55,000/- on Government upto 30.06.1997, if the pension was given to the retired employees from 01.06.1992. It is possible that the liability would be more than double now, if the pension scheme were to be introduced from 01.06.1992.

3. At least, one aspect can be noticed that when the Government was declining the Board's recommendation, it was not on account of any financial stringency that was brought to bear upon its decisions. On the other hand, the consideration was that the retired employees of the year 1992 had taken the benefit of the CPF and there was no logic for extending pension. Similar issues arising from the Municipal Committees have been considered by this Court and Hon'ble the Supreme Court while directing the introduction of the pension scheme for persons, who had retired after receiving CPF amounts. The balance has been stuck by directing the retired employees to refund the amounts recovered with interest. The counsel for the petitioners states that all the retired employees would be prepared to refund the CPF amounts received by them with interest @ 12% per annum. The fact that CPF amounts have been paid by itself could not have been a ground for declining the recommendation of the Board.

4. The Punjab Khadi and Village Industries Act, 1955 that established the Board, allows for control of the Government over the Board u/s 33-A of the said Act. The control that the Section contemplates is in a situation where the Board was not functioning properly or abusing its power or guilty of corruption or mismanagement. The scheme that has been framed subsequently was through a regulation called the Haryana Khadi and Village Industries Board Employees Pension, Provident Fund and Gratuity Regulations. Section 35 of the said

Regulations require sanction of the Government before approving of the Scheme. The Board could not have, therefore, secured the approval for introduction of the pension scheme without obtaining sanction from the Government. I have already extracted the degree of control with the Government could have under the principal enactment of the year 1955. It must be noticed that the Act, 1955 that establishes the Khadi and Village Industries Board, constitutes a fund through Section 20(i) of the Act, 1955, which provides that the Board would have its own fund and all receipts of the Board shall be credited to and all payments would be made therefrom. It has a power to obtain grants, loans, subventions and bonuses etc. from the Government or any local body. There is surely a degree of autonomy that the Board enjoys and the State itself shall limit its functioning to ensure that there is no mismanagement of the Board. If the Board of Directors had recommended a scheme for its application for a particular date, it should normally be given effect to by the State unless there were compelling reasons, which would given inference that the Board was taking a wrong decision or it amounted to mismanagement. The very purpose of constituting a Board would be lost, if it should be treated as a Department of the Government.

5. The impugned decision is quashed and the matter is sent to the State for a fresh consideration in the light of the recommendation of the Board providing that the petitioners are prepared, as they have undertaken before this Court, to refund the CPF amount with interest @ 12% per annum before claiming the relief of pension. The decision shall be taken in the light of the extent of the autonomy that the Board has, the degree of control that the Government could have, so long as there was no financial impropriety involved and having further regard to the financial implications that the matter must result in the present situation, if the scheme were to be given effect to from 01.06.1992 and the benefit that it can secure to itself by obtaining refund of the amounts paid to the retirees. The decision shall be taken within a period of 8 weeks from the date of receipt of copy of the order. The writ petition is disposed of with the above directions.