

## **Kuldip Singh and Others Vs State of Punjab and Others <BR> Gurnaib Singh Brar and Others Vs The Punjab State Cooperative Agricultural Development Bank Limited and Others**

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** Aug. 31, 2013

**Acts Referred:** Employees Provident Funds and Miscellaneous Provisions Act, 1952 &" Section 17

**Hon'ble Judges:** Mahesh Grover, J

**Bench:** Single Bench

**Advocate:** Pawan Kumar and Mr. Manjit S. Saroo in C.W.P. No. 21799 of 2010, Mr. Arvind Kumar Chauhan for Mr. Puneet Sharma in C.W.P. No. 10510 of 2010, Mr. Amit Sharma in C.W.P. Nos. 19915, 21115, 14088 of 2010, Mr. Kanwaljit Singh and Mr. Ajaivir Singh in C.W.P. No. 5262 of 2012, Mr. M.S. Sarao in C.W.P. Nos. 17682 of 2012 and 21897 of 2011, Mr. Gaurav Chopra, Mr. Vikas Chatrath and Ms. Meenu Bansal in All other Cases, for the Appellant; Nilesh Bhardwaj, D.A.G. Punjab, Ms. Jai Shree Thakur, Advocate Bank, Mr. Sajal Koser, Advocate for Mr. Amit Prashar, Advocate for Respondent No. 3 in C.W.P. Nos. 21799 of 2010 and 21115 of 2011, Mr. S.S. Saini, Advocate for Mr. B.B.S. Sobti, Advocate for Respondent No. 6 in C.W.P. No. 21799 of 2010 and 21897 of 2011, Mr. Mahesh Dheer, Advocate for Respondent No. 3 in C.W.P. No. 14088 of 2011, Mr. Sanjay Tangri, Advocate for the Respondent-Provident Fund Commissioner and Mr. Alok Mittal, Advocate for PADB, for the Respondent

### **Judgement**

Mahesh Grover, J.

This order will dispose of C.W.P. Nos. 21799, 14088 of 2010, 19915, 22246, 21897, 21115 of 2011 and 5262,

10510, 14083, 17682 of 2012. The facts have been extracted from CWP No. 21799 of 2010. All the petitioners in this petition and most of the

related petitions are retired employees of the Punjab State Cooperative Agricultural Development Bank (hereinafter to be referred as the "Bank").

In few of the petitions, the petitioners are serving employees of the Bank. The service conditions of all the employees are governed by rules known

as Punjab State Cooperative Agricultural Land Mortgage Banks Service (Common Cadre) Rules 1978. Prior to 1989 all the employees of the

Bank were covered under the Employees Provident Fund and Miscellaneous provisions Act, 1952 (hereinafter known as the Provident Fund Act).

The scheme was being duly adhered to and the necessary contributions regularly paid by both employees and the Employer Bank. The Punjab Pay

Commission made certain recommendations regarding the introduction of a pension scheme and bringing the State aided institutions under the said

pension rules. These recommendations were placed before the Administrator of the respondent-Bank who vide its resolution dated 22.06.1989

decided to implement the recommendations of the State Government and as a consequence thereof the pension scheme for the employees and

Officers in the common cadre was introduced w.e.f. 01.04.1989.

2. The Common Cadre Rules were amended and Rule 15(ii) was introduced authorizing the Board of Directors to formulate pension scheme with

the approval of the Registrar Cooperative Societies, Punjab. For the purpose of reference the amended Rule 15(2) is extracted herein below:-

15. (i) PROVIDENT FUND:-

The employee shall be entitled to the benefit of the General Provident Fund as provided in the employees Provident Fund Act, 1952 and scheme

framed thereunder

(ii) THE PENSION SCHEME FOR THE EMPLOYEES/OFFICERS IN THE COMMON CADRE RULES OF THE PUNJAB STATE

COOPERATIVE AGRICULTURAL DEVELOPMENT BANK W.E.F. 1.4.89.

1. Short title and commencement:-

(i) The rules shall be called, the Punjab State Cooperative Agricultural Development Banks Employees Pension. Family Pension and General

Provident Fund Rules.

(ii) These Rules shall come into force with effect from 1.4.89.

2. Application

(i) These rules shall apply to all the posts in the services specified in the Appendix "I" of the Common Cadre Rules, provided that in case of the

employees appointed by transfer from Government Departments, these rules shall only apply to the extent specified in their terms and conditions of

deputation agreed upon with the Government Department concerned.

Provided further that nothing in these rules shall affect the application of any other law, statutory rules, bye-laws and regulations for time being in

force.

Provided further that an employee who joins service on or after coming into force of these rules and such existing employees, who opt for these

rules, shall be covered by these rules. All category of employees shall have to exercise this option in Form-A to these rules within three months

from the date of notification of these rules.

(ii) The employees who do not opt for these rules shall be governed by the Employees Provident Fund Act and Rules.

3. Definition:-

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(o) Pay:- Pay means the pay as defined in Rule 2.44 of the Punjab Civil Services Rules Volume-I Part-I.

Note:- Unless the contrary appears from the context or subject to term "pay" defined in Rule 2.44 of the Punjab Civil Services, Volume-I, Part-I,

does not include ""Special Pay

3. Rule 2(i) further stipulated that they shall apply to all the posts in the services specified in Appendix "I" of the Common Cadre Rules.

4. Rule 3(o) defines Pay, Pay means the pay as defined in Rule 2.44 of the Punjab Civil Services Rules, Volume-I, Part-I. For the purpose of

reference 3(o) is also extracted herein above.

5. As a consequence of the introduction of implementation of the scheme the contributions made by the employees and the Bank were both

transferred to the pension fund so as to make it functionally viable. A trust was created vide trust deed dated 24.03.1993 for management and

effective implementation of the scheme.

6. It is not in dispute that all the employees of the Bank continued to derive the benefit of the pension scheme after they had opted for it till the year

2010. The Bank then found the scheme to be unviable on account of the financial constrains which possibly became more aggravated on account

of number of retirees being more than the employees who are working in the Bank.

7. Whether this is correct or not would be difficult to determine in these proceedings but this is the justification given by the respondent Bank in its

reply submitted to the petition.

8. The Bank then took a decision to reduce the pension of the employees and also sought to withdraw some other benefits such as medical

reimbursement, LTC and commutation of pension. This is reflected from the decision taken by the Bank which are extracted herein below for

ready reference:-

9. Proceedings Agenda No. 15 of meeting dated 29.05.2010 of Board of Directors, took place Timber Trail Resorts, Parwanoo, District Solan

(H.P.)

10. Another sequence of facts which should be germane to the controversy is that when the pension scheme was introduced, the respondent-Bank

made an application to the competent authority under the Provident Fund Act seeking its release from the pension schemes admissible under the

Act. The application by the Bank was submitted on 09.04.1990 with the following prayer:-

You are, therefore, again requested to:-

(i) Refund the past accumulation on under all three Schemes as per detail above immediately deposited by the Bank so that Pension Scheme may

be introduced immediately

(ii) Allow to keep funds pertaining to all three schemes detail above w.e.f. 1.4.1990 as per terms and conditions under the rules framed by the

management and approved by the Registrar, Cooperative Societies, Punjab, which is the competent authority for the same.

11. The relaxation was granted initially by the Regional Provident Fund Commissioner by virtue of an order Annexure P-6 dated 10.09.1990. This

was, however, an order passed during subsistence of the proceedings before the Provident Fund Commissioner who took a final decision to reject

the claim of the Bank on the ground that they had not submitted trust deed to the competent authority under the Provident Fund Act. This led to

the filing of Civil Writ Petition No. 4896 of 1993 by the Bank who questioned the order of Regional Provident Fund Commissioner. This Court

during the subsistence of the proceedings stayed the operation of the order impugned in the petition and finally disposed of the same by remitting

the matter back to the Provident Fund Commissioner to reconsider the whole issue. The operative part of the order of this Court dated

18.07.2007 is extracted herein below:-

In view of the facts mentioned above, this Court is of the considered opinion that impugned order dated 12.4.1993 passed by respondent No. 1

revoking the relaxation granted to the Petitioner Bank under Para 79 of the Act of 1952 is patently wrong and is liable to be quashed. Accordingly

the instant writ petition is allowed and the order dated 12.4.1993 passed by respondent No. 1 is set aside. The impugned notices Annexure P-17

and P-18, issued subsequently to the passing of order Annexure P-15 are also set aside. The matter is remitted back to respondent No. 1 with the

directions to provide an opportunity of hearing to the petitioner Bank and its employees with regard to the pros and cons of the pension scheme

being formulated by the petitioner Bank and after satisfying itself to pass an order afresh regarding recommendation of the exemption so sought by

the petitioner under Section 17 of the Act of 1952, if he thinks fit to do so. It is also made clear that due notices be given to the employees union

for taking their objections in this regard. Since the matter is very old one. It is expected that respondent No. 1 shall decide the matter

expeditiously.

12. Thereafter order dated 28.12.2012 was passed by Regional Provident Fund Commissioner and it would be relevant to extract the same here:-

In this reference, it is informed to you that the replies forwarded by you vide your letter No. SADB/PENSION/6117 Dated 10.9.2012 in

response to this office notice No. PN/1963/C-IV/793 dated 24.08.2012 were not found satisfactory. Therefore, the aforementioned application

cannot be considered & forwarded to appropriate authority for grant of exemption.

13. It does not require much imagination to understand that the order passed by the Regional Provident Fund Commissioner is well short of

expectations of a reasoned order. Authorities such as these are expected to show some application of mind which would be reflected in the

reasoning of an order passed revealing thoughtful inputs that have gone into the entire controversy raised before them. An executive authorities"

unreasoned and mindless orders often lead to acute hardship, unwanted and avoidable misery to citizens who suffer consequences due to his non-

application of mind. This is evident in the present case.

14. The petitioners who are the employees of the Bank after having served it were positively covered under the scheme which was being

admissible to them under the Provident Fund Act prior to 1989. It is the Bank which accepted the recommendations of the State Government and

solicited options from the employees as to whether they wanted to opt for a pension scheme which was made available after the amendment of the

relevant rules.

15. The employees reacted to the offer, opted for the same as any prudent person would, finding the scheme to be more beneficial than the one

which existed and, thus, once having made this scheme admissible to them the Bank has turned around to say that the scheme has now become

unviable and, hence, seek an abrupt burial to it either entirely or partially.

16. The Bank had consciously amended Rules in particular Rule 15(2) and by merely taking a decision in the meeting of Board of Directors it

could not circumvent the impact of the amended rule and thus create a situation which would have the effect of defeating the rule altogether.

Evidently the action of the Bank is unsustainable for more than one reason. Firstly the rules were got amended and as long as the said rules

continue to remain on the statute book, the Bank was obliged to adhere to it. Secondly the service conditions of the petitioners could not be

altered to their detriment. Thirdly pension is an important aspect of the service benefit and an employee puts in his service with a legitimate

expectation that his interest would be taken care of in evening of his life and thus this legitimate benefit emanating from legitimate expectation laid on

a foundation of statute cannot be taken away from an employee, more particularly when the benefit has been made available and it created a

vested right in the employees favour, and which right can not be divested from him without adhering to the principles of natural justice. Pension is

not a bounty but a right of an employee. Financial stringency as pleaded by the respondent-Bank in its reply would have no room for acceptance

of the plea of the Bank. The Hon<sup>ble</sup> Supreme Court in *Kapila Hingorani Vs. State of Bihar*, has held that financial stringency can be no ground

depriving the employee of the due benefit and has observed as under:-

64. Financial stringency may not be a ground for not issuing requisite directions when a question of violation of fundamental right arises. This Court

has been highlighting this aspect in the matters concerning fundamental rights and maintenance of ecology See *Rural Litigation and Entitlement*

*Kendra and Others Vs. State of Uttar Pradesh and Others*, , *Municipal Council, Ratlam Vs. Vardichan and Others*, and *Dr. B.L. Wadehra Vs.*

*Union of India and others*, . In *All India Imam Organization and others Vs. Union of India and others*, this Court held:

6...Much was argued on behalf of the Union and the Wakf Boards that their financial position was not such that they can meet the obligations of

paying the Imams as they are being paid in the State of Punjab. It was also urged that the number of mosques is so large that it would entail heavy

expenditure which the Boards of different States would not be able to bear We do not find any correlation between the two. Financial difficulties of

the institution cannot be above fundamental right of a citizen. If the Boards have been entrusted with the responsibility of supervising and

administering the Wakf then it is their duty to harness resources to pay those persons who perform the most important duty namely of leading

community prayer in a mosque the very purpose for which it is created.

[Emphasis supplied]

65. In *State of H.P. Vs. H.P. State Recognised and Aided Schools Managing Committees and Others*, , it was opined:

16. The constitutional mandate to the State, as upheld by this Court in *Unni Krishnan case*-to provide free education to the children up to the age

of fourteen-cannot be permitted to be circumvented on the ground of lack of economic capacity or financial incapacity.

17. The Court also wishes to comment on the resultant plight of the petitioners on account of the inter se proceedings between the Bank and

Regional Provident Fund Commissioner. The Bank never tried to plead financial stringency to wriggle out of the obligation to implement the

scheme. If its conduct before the Regional Provident Fund Commissioner is to be seen then right from the year 1990 they have been persisting with

the relaxation and release from the scheme under the Provident Fund Act implying that they wanted the pension scheme to prevail. Initially the

provident Fund Commissioner denied the relaxation on a flimsy ground that the trust deed was not made available. Even at that time the bank

pleaded that the same had been duly given to the authorities under the Provident Fund Act. Subsequently when the matter was remitted back by

this Court vide order dated 18.07.2007 passed in C.W.P. No. 4896 of 1993, the Provident Fund Commissioner passed a cryptic and non-

speaking order.

18. It is not a case of the respondent-Bank that they wanted to restore the earlier scheme in view of the difficulties being faced by them rather all

through out they persisted with their effort to get relaxation from the scheme under the Provident Fund Act. This indicates the dishonest stand of

the Bank.

19. The Provident Fund Commissioner on the other hand demonstrated a complete apathy to the entire controversy and has not helped in

remedying the situation. The resultant effect of the order of the Provident Fund Commissioner is that the employees neither got the benefit of the

scheme under the Act on account of its order nor did they get the full pension on account of the action of the respondent Bank.

20. Taking the aforesaid reasons cumulatively, there is little hesitation to hold that the action of Bank in reducing pension and other benefit such as

medical reimbursement, LTC and commutation of pension are unsustainable in the eyes of law. The writ petitions are, therefore, liable to be

accepted. Ordered accordingly.

21. Any order passed pursuant to the decision taken by the Bank in pursuance to the order dated 08.12.2011 (Exb. P-3) (as assailed in CWP

No. 5262 of 2012) is also quashed. The petitioners are held entitled to regular pension including revised rate of dearness allowance. This would

also include all the employees who have opted for the scheme and are in service. The respondent - Bank is directed to release all the arrears due

to the employees positively within a period of six months from the date of receipt of certified copy of this order. The arrears shall carry interest @

7% p.a. from the date it becomes admissible till the date of final payment. Needless to say all the benefits that accrue from the pension scheme

shall include medical reimbursement, LTC etc. as well.