2021 INSC 326

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7427 OF 2011

PUNJAB STATE CO-OPERATIVE MILK
PRODUCERS FEDERATION LTD. & ANR. .....APPELLANT(S)

VERSUS

BALBIR KUMAR WALIA & ORS. .....RESPONDENT(S)

W I T H

CIVIL APPEAL NO. 7429 OF 2011

CIVIL APPEAL NO. 7430 OF 2011

CIVIL APPEAL NO. 7431 OF 2011

CIVIL APPEAL NO. 7432 OF 2011

CIVIL APPEAL NO. 7433 OF 2011

CIVIL APPEAL NO. 7434 OF 2011

A N D

CIVIL APPEAL NO. 7435 OF 2011

J U D G M E N T

HEMANT GUPTA, J.

CIVIL APPEAL NO. 7427 OF 2011, CIVIL APPEAL NO. 7429 OF 2011, CIVIL APPEAL NO. 7430 OF 2011, CIVIL APPEAL NO. 7431 OF 2011, CIVIL APPEAL NO. 7433 OF 2011 AND CIVIL

APPEAL NO. 7435 OF 2011

1. The present appeals are directed against an order passed by the Division Bench of the High Court of Punjab & Haryana at Chandigarh on 19.3.2009 whereby the writ petitions filed by the respondents[1] herein were allowed holding that the Punjab State Co-operative Milk Producers Federation Ltd.[2] is a State within the meaning of Article 12 of the Constitution of India and that the employees are therefore entitled to pay scale equivalent to their counterparts in the State of Punjab from 1.1.1986, though the revised pay scale was allowed by the Federation w.e.f. 1.1.1994.

2. The milk producers in the State launched the setting up of Cooperative Societies at village level which are known as Primary Milk Producers Cooperative Societies. Such Primary Milk Producers Cooperative Societies are in turn members of The District Cooperative Milk Producers Union. These District Level Unions are ultimately the members of the Federation. The employees have claimed pay scale as revised by the Punjab Government Anomaly Committee w.e.f. 1.1.1986.

3. Before the High Court, an objection was raised by the Federation that since it is not a State within the meaning of Article 12 of the Constitution, therefore, the writ petitions were

1 Hereinafter referred to as the 'employees'
2 For short, the 'Federation'

not maintainable. However, before this Court, Mr. Patwalia, learned senior counsel appearing for the Federation has submitted that the question whether the Federation is a State or not is not being raised in the present appeals. The main grievance of the Federation is regarding grant of revised pay scale w.e.f. 1.1.1986 though the Federation was suffering with acute financial stringency in those days and had therefore granted revised pay scales from 1.1.1994.

4. It is pointed out that The Registrar (Cooperative Societies) accorded approval for implementation of the report of the Third Pay Commission on 2.6.1989. The Federation granted revised pay scale and allowances w.e.f. 1.1.1986 as per the report of the Pay Commission. Thereafter, on 15.2.1990, the State Government revised pay scale of Veterinary Officers of the Animal Husbandry Department, Punjab Government from Rs.850-1700 to Rs.2200-4000 and that after eight years of service, the pay scale of Veterinary Officers would be Rs.3000-4500 and after eighteen years of service, it would be Rs.3700-5300 with effect from 1.1.1986 on the basis of report of an Anomaly Committee constituted to consider the grievances of the employees of the State. It is the said pay scale which was claimed by the filing of writ petitions before the High Court.

5. It was argued that the Federation was facing acute financial crisis inasmuch as the State had granted a loan of Rs.8 *(sic 12)* crores on 9.5.1990 which the Federation could not repay and, therefore, the said amount was converted into the share capital of the State Government with the Federation. In addition thereto, keeping in view the financial stringency, the National Dairy Development Board gave a loan of Rs. 4 crores on 2.5.1990 to the Federation. After the loan was granted by the National Dairy Development Board, there was a change in the management which led to restructuring of the Federation.

6. The service conditions of the employees of the Federation are governed by the Punjab State Co-operative Milk Producers Federation Services (Common Cadre) Rules, 1980[3]. The Common Cadre Rules were resolved to be amended on 10.8.1990 by the Board of Directors of the Federation. The same were approved by the Registrar (Co-operative Societies) on 30.10.1990. It is thereafter that the Federation issued a notice under Section 9-A of the Industrial Disputes Act, 1947 on 12.11.1990 (Annexure P-12) to all the employees on the ground of financial stringency showing its intention to effect the changes specified in the annexure annexed with the said notice.

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3 Hereinafter referred to as the 'Common Cadre Rules'

7. The employees of the Federation raised protest; therefore, a committee was constituted on 6.12.1994 to examine the following issues:

> "(i) Whether the upward revision should be adopted for the employees of Milkfed and Milk Unions?
>
> (ii) Whether the revision is to be given with effect from 1.1.1986 or any subsequent date by giving the benefit of notional fixation?
>
> (iii) Whether the upward should confine only to the categories covered in the report of Government Anomaly Committee or categories enjoying identical scales (unimproved) need to be covered (a) repercussion if revision is confined to the categories covered in the Government report (b) impact, if any, of pending writ petitions, resolutions of BOD of M.U., Ludhiana and BOD of Milkfed?
>
> (iv) Whether there is any necessity of changing the qualification/improving designations of certain categories being placed in higher scales?
>
> (v) Any other point/issue identical to or connected with the above?"

8. The Committee, *inter alia*, made the following recommendations:

> "4. The Committee finds that in case the revision of pay scales is taken up w.e.f. 1.1.1986, the amount of arrears upto 31.12.1993 works out to Rs.1.5 crore approx., i.e. about 60 lacs in case of those categories for which the scales have been improved and about Rs.90 lac in case of identical categories. Taking into consideration the financial health of the Milkfed and more particularly majority of Milk Unions, Committee strongly feels that payment of arrears will further

shatter the financial health of the Milkfed and Milk Unions and it will not be possible to pay such a huge amount in the shape of arrears. Committee feels that the employees concerned also understand this position and will most probably be agreeable to the grant of improved pay scales w.e.f. any subsequent date. The 2nd alternative of granting benefit from 1.1.1994 with notional fixation of BP w.e.f. 1.1.1986 has also been examined. In this case, more than 750 employees will be financially benefited and the financial burden will be Rs.2.0 lac pm. This is also considered to be a huge liability, especially when the recommendations of the IVth Pay Commission are expected and the liability on its implementation is also likely to be heavy. Further, the Committee has been told that the liability of the arrears n account of Prop. set up from 1.1.1986 to 31.8.1992 are still outstanding. The Committee after considering the above as well as various other aspects, recommends that the improved pay scales may be implemented w.e.f. 1.1.1994 without giving the benefit of even notional pay fixation w.e.f. 1.1.1986. Adoption of the Punjab Government pattern of Pay Scales has been felt necessary with a view to make parity in the scales for future revisions etc. This would save the organisation from a huge liability of the payment of arrears and will also give scope to the employee for placement in better pay scale and getting benefit which might accrue as a result next revision of pay scale likely to be made w.e.f. 1.1.1994 on Punjab Government pattern."

9. The report of the Committee was considered and the grant of revised pay scale w.e.f. 1.1.1994 was approved by the Board of Directors of the Federation. The minutes of the meeting of the Board of Directors of Federation held on 30.8.1996 read as under:

> "After discussion, it is unanimously resolved that in view of the recommendations of the Departmental

> Committee, constituted by the Milkfed on 6.12.1994, contained in the report enclosed at Annexure-3, approval is granted to the implementation of the revised pay scales and Master Pay Scale to the concerned employees of the Milkfed and the Milk Unions in accordance with the report of the Anomaly Committee constituted under the Third Pay Commission by the Punjab Government, with effect from 1.1.1994. Its approval may also be obtained from the Registrar, Cooperative Societies, Punjab."

10. The decision of the Board was approved by the Registrar (Cooperative Societies) on 29.4.1997. Thus, subsequently, revised scales with effect from 1.1.1994 were granted to the employees.

11. Mr. Patwalia referred to the communication of the Punjab Government dated 1.3.1990 that grant of allowances or concessions should not automatically be made applicable to the employees of Public Sector Undertakings/Cooperative Institutions, without examining the liabilities involved, the available resources of the Undertakings and the extent of concessions already being availed by their employees. The State Government communicated as under:

> "It has accordingly been decided that instructions, regarding grant of any allowance/perks/concessions etc. by whatever name called, issued by State Government from time to time for its employees should not automatically be made applicable to the employees of Public Sector Undertakings/Cooperative Institutions. Before making such instructions applicable to your employees/officers, these should thoroughly be exam-

> ined by B.O.D. with reference to the liabilities involved, capacity of the Undertakings to bear the additional financial burden, availability of the resources and the extent/nature of the similar allowances/concessions already being availed of and the views of Department of Finance (B.P.E.) should also invariably be obtained through the Administrative Department."

12. The State Government reiterated on 9.7.1993 that whenever instructions for revision of allowances/pay scale are issued by the Punjab Government for its employees, they are adopted by Public Sector Undertakings and are applied to its employees without examining the liability involved and the capacity to pay, which results in loss and Public Sector Undertakings add the same to their costs. It was suggested that these practices may be discontinued as the State Government would not be supporting the PSUs financially in such cases. It was communicated as under:

> "It has been noticed that whenever any instructions regarding revision of allowances/pay are issued by the Punjab Government for its employees these are adopted by Public Sector Undertakings and applicable to its employees without examining the liability involved and the Public Sector Undertakings capacity to pay with the result that the loss incurring Public Sector Undertakings keep adding to their costs. This practice may be discontinued. The establishment cost of per unit of product or service in Public Sector Undertakings has increased very much. Therefore, no further additives should be encouraged and Governments revision is not justifiable pretext to consider similar increase in the Public Sector Undertakings should see their financial condition, rising cost in relation to productivity and the fact that Governments is

not going to support the Public Sector Undertakings financially."

13. The High Court allowed the writ petitions filed by the employees holding that the financial stringency was no longer an excuse to not revise the pay scales and thus held that the date of implementation to grant revised pay scales as 1.1.1994 was absolutely unfair. The Federation is in appeal herein against such order. This Court had stayed the recovery pending further orders on 6.11.2009.

14. Mr. Patwalia, learned counsel for the Federation, submitted that the High Court erred in law in holding that the date of implementation to grant revised pay scales as 1.1.1994 was absolutely unfair and that financial stringency was not an excuse for refusing to revise the pay scales from 1.1.1986. It was contended that the judgments[4] referred to by the High Court have no applicability to the facts of the present case. Mr. Patwalia also relied upon judgments of this Court reported as ***A.K. Bindal & Anr.*** v. ***Union of India & Ors.***[5] and ***State of Punjab & Ors.*** v. ***Amar Nath Goyal & Ors.***[6] wherein the

4 M.M.R. Khan & Ors. v. Union of India & Ors., 1990 (Supp.) SCC 191; Haryana State Minor Irrigation Tubewells Corporation & Ors. v. G.S. Uppal & Ors., (2008) 7 SCC 375; High Court Employees Welfare Assn., Calcutta & Ors. v. State of W.B. & Ors., (2004) 1 SCC 334; Supreme Court Employees Welfare Association v. Union of India & Anr., (1989) 4 SCC 187 and Purshottam Lal & Ors. v. Union of India & Anr., (1973) 1 SCC 651

5 (2003) 5 SCC 163

6 (2005) 6 SCC 754

Court had upheld financial stringency as a ground to deny higher pay scales etc.

15. Mr. Govind Goel, appearing for the respondents in Civil Appeal No. 7433 of 2011 argued that the writ petition before the High Court was filed on behalf of one Head Draftsman, two Draftsman, two Junior Draftsman and two Surveyors. It was contended that such seven employees of the Federation have not been provided the benefit of recommendations of the Committee as was granted to the other employees of the Federation w.e.f. 1.1.1994. Thus, it was argued that the decision to not grant the revised pay scale on the basis of the report of the Committee of the Federation w.e.f. 1.1.1994 was wholly arbitrary and discriminatory. It was contended that out of the 1573 employees of the Federation, these seven employees alone have been discriminated. It was also argued that the High Court has restricted the arrears consequent to its directions to grant arrears of the revised pay scale for a period of 3 years and 2 months from the date preceding the date of filing of respective writ petitions. While contesting the ground of financial stringency preferred by the Federation, it was stated that though there were losses for some years, the information disclosed under the Right to Information Act on 22.7.2011 shows that the Federation has been in profit since

1996-1997. Hence, such ground of financial stringency is not tenable.

16. Mr. Goel relied upon a Constitution Bench judgment of this Court reported as ***Purshottam Lal***, referred to by the High Court as well, to contend that revision of pay scale recommended by the Pay Commission after acceptance by the Government could not be denied to a category of employees as it would be an act of discrimination.

17. Mr. Patwalia controverted the arguments raised by Mr. Goel and pointed out that the writ petitioners are the employees of the Federation who have no work of the post to which they were appointed. Instead of abolishing the post to which the writ petitioners were appointed, the Committee had nevertheless dealt with the grant of revised pay scales to them in the following manner:

Sr. No.	Name of the Categories	Unrevised Pay scale before 1.1.86	Already RPS w.r.f. 1.1.86	Pay scale now revised by Govt.	Remarks	Recommendations of the Committee for improvement from 1.1.94
xxx						
15	Head Draftsman	700-1200	1640-2925	2200-3500		There is only one Head Draftsman, for whom the deptt. has no work has been put on alternate job in a Milk Union. There is also no likelihood of new civil works to be undertaken.

						So the pay scale of 1800-3200 is recommended for this post. No financial burden.
16	Draftsman	570-1080	1500-2640	1800-3200	Jr. Draftsman shall be eligible for promotion as draftsman in the scale of Rs.1800-3200 after a minimum period of 12 years.	There are 3 draftsmen. The civil works have almost been completed and there is no likelihood of new civil works to be undertaken. Two of them have been put on alternate jobs, as they are surplus. So the committee feels that the existing pay scale of Rs.1500-2640 is sufficient for them. So no improvement is recommended.
17.	Tracers	400-600	950-1800	1200-2100	To be designated as Jr. draftsman and qualification to be raised to matric with two years ITI certificate of draftsman.	There are 4 tracers. None of them is deployed on his job, but have been put on alternate jobs, which are clerical, to provide this work. There is no likelihood of civil work for them in future. So no improvement is recommended.
18	Surveyor	400-600	950-1800	1200-2100		There are two Surveyors, who have been put on alternate jobs. So no improvement is recommended for this category too.

18. It was thus argued that the Committee had taken a conscious decision not to grant pay scale as revised by the Government.

Instead of granting enhanced pay scale at par with what was approved by the State Government, a higher pay than the recommendations of the Pay Commission was granted. The Federation thus exercised this option instead of abolishing the post. Therefore, the decision of the Committee does not warrant any interference in exercise of the power of judicial review.

19. We have heard learned counsel for the parties and find that the judgment and order of the High Court cannot be sustained. In our country, there are broadly three sets of employers such as employers in the organized sector like the Industrial workers; secondly, Public Sector Undertakings including Boards and Corporations and all other establishments, which meet the test of a State within the meaning of Article 12 of the Constitution; and thirdly, Central or State Government employees.

20. One of the early judgments of this Court is ***Crown Aluminium Works*** v. ***Workmen***[7], wherein the question examined was as to whether in view of financial conditions, the wages of workmen can be reduced. This Court held that it would not be right to hold that there is a rigid and inexorable convention that the wage structure once fixed by Industrial Tribunals can never be changed to the prejudice of workmen.

7 AIR 1958 SC 30

This Court thus held as under:

> "11. ... In dealing with a claim for such revision, the Tribunal may have to consider, as in the present case whether the employer's financial difficulties could not be adequately met by retrenchment in personnel already effected by the employer and sanctioned by the Tribunal. The Tribunal may also enquire whether the financial difficulties facing the employer are likely to be of a short duration or are going to face the employer for a fairly long time. It is not necessary, and would indeed be very difficult, to state exhaustively all considerations which may be relevant in a given case. It would, however, be enough to observe that, after considering all the relevant facts, if the Tribunal is satisfied that a case for reduction in the wage structure has been established then it would be open to the Tribunal to accede to the request of the employer to make appropriate reduction in the wage structure, subject to such conditions as to time or otherwise that the tribunal may deem fit or expedient to impose. ..."

21. In respect of Industrial workers, this Court, while dealing with wage structure in a judgment reported as ***Standard Vacuum Refining Co. of India*** v. ***Workmen & Anr.***[8], held that it is usual to divide wages into three broad categories: the basic minimum wage which is the bare subsistence wage, above it is the fair wage, and beyond the fair wage is the living wage. The said three categories of wages are described as the poverty level, the subsistence level and the comfort or the decency level. This Court accepted the Report by the Commission of Enquiry on "Emoluments and Conditions of Service of Central Government Employees, 1957-1959"

8 AIR 1961 SC 895

wherein the five norms which should guide all wage fixing authorities including Minimum Wage Committees, Wage Boards, adjudicators, etc. were stated by the Court *inter alia* as under:

> "9. It is well known that the problem of wage structure with which industrial adjudication is concerned in a modern democratic State involves on the ultimate analysis to some extent ethical and social considerations. ……. As the social conscience of the general community becomes more alive and active, as the welfare policy of the State takes a more dynamic form, as the national economy progresses from stage to stage, and as under the growing strength of the trade union movement collective bargaining enters the field, wage structure ceases to be a purely arithmetical problem. Considerations of the financial position of the employer and the state of national economy have their say, and the requirements of a workman living in a civilised and progressive society also come to be recognised.
>
> 19. ... With regard to the minimum wage fixation it was agreed that the minimum wage was need-based to ensure the minimum human needs of the industrial worker irrespective of any other considerations.
>
> (*i*) In calculating the minimum wage, the standard working class family should be taken to consist of 3 consumption units for one earner; the earnings of women, children and adolescents should be disregarded.
>
> (*ii*) Minimum food requirement should be calculated on the basis of a net intake of calories, as recommended by Dr Aykroyd for an average Indian adult of moderate activity.
>
> (*iii*) Clothing requirements should be estimated at a per capita consumption of 18 yards per annum which would give for the average workers' family of four, a

total of 72 yards.

(*iv*) In respect of housing, the rent corresponding to the minimum area provided for under Government's Industrial Housing Scheme should be taken into consideration in fixing the minimum wage.

(*v*) Fuel, lighting and other 'miscellaneous' items of expenditure should constitute 20% of the total minimum wage."

22. This Court in ***Hindustan Times Ltd., New Delhi*** v. ***Workmen***[9] held that numerous complex factors, some of which are economic and some spring from social philosophy give rise to conflicting considerations that have to be borne in mind and that such factors are not static in nature. The financial position of the employer, state of national economy, and the requirements of a workman living in a civilized and progressive society also are to be recognized. This Court held as under:

"5. The fixation of wage structure is among the most difficult tasks that industrial adjudication has to tackle. On the one hand not only the demands of social justice but also the claims of national economy require that attempts should be made to secure to workmen a fair share of the national income which they help to produce, on the other hand, care has to be taken that the attempt at a fair distribution does not tend to dry up the source of the national income itself On the one hand, better living conditions for workmen that can only be possible by giving them a "living wage" will tend to increase the nation's wealth and income on the other hand, unreasonable inroads on the profits of the

9 (1963) 1 LLJ 120

> capitalists might have a tendency to drive capital away from fruitful employment and even to affect prejudicially capital formation itself. The rise in prices that often results from the rise of the workmen's wages may in its turn affect other members of the community and may even affect prejudicially the living conditions of the workmen themselves. The effect of such a rise in price on the Country's international trade cannot also be always ignored. Thus numerous complex factors, some of which are economic and some spring from social philosophy give rise to conflicting considerations that have to be borne in mind. Nor does the process of valuation of the numerous factors remain static. ……
>
> 6. In trying to keep true to the two points of social philosophy and economic necessities which vie for consideration, industrial adjudication has set for itself certain standards in the matter of wage fixation. At the bottom of the ladder, there is the minimum basic wage which the employer of any industrial labour must pay in order to be allowed to continue an industry. Above this is the fair wage, which may roughly be said to approximate to the need based minimum, in the sense of a wage which is "adequate to cover the normal needs of the average employee regarded as a human being in a civilised society." Above the fair wage is the "living wage" a wage "which will maintain the workman in the highest state of industrial efficiency, which will enable him to provide his family with all the material things which are needed for their health and physical well-being, enough to enable him to qualify to discharge his duties as a citizen." (Cited with approval by Mr. Justice Gajendragadkar in Standard Vacuum Company's Case (1) from "The living Wage" by Philip Snowden).”

23. In ***Workmen*** v. ***Reptakos Brett. & Co. Ltd.***[10], this Court held that a worker's wage has the force of collective bargaining under the labour laws. Each category of the wage

10 (1992) 1 SCC 290

structure has to be tested at the anvil of social justice which is the live-fibre of our society today. The Court held as under:

> "12. The concept of 'minimum wage' is no longer the same as it was in 1936. Even 1957 is way behind. A worker's wage is no longer a contract between an employer and an employee. It has the force of collective bargaining under the labour laws. Each category of the wage structure has to be tested at the anvil of social justice which is the live-fibre of our society today. Keeping in view the socio-economic aspect of the wage structure, we are of the view that it is necessary to add the following additional component as a guide for fixing the minimum wage in the industry:
>
> > "(*vi*) children's education, medical requirement minimum recreation including festivals/ceremonies and provision for old age marriages etc. should further constitute 25 per cent of the total minimum wage."
>
> 13. The wage structure which approximately answers the above six components is nothing more than a minimum wage at subsistence level. The employees are entitled to the minimum wage at all times and under all circumstances. An employer who cannot pay the minimum wage has no right to engage labour and no justification to run the industry".

24. Now, in respect of the establishments which meet the parameters of being a State within the meaning of Article 12, this Court considered the question of financial stringency in ***A.K. Bindal***. This Court in the said case was examining the claim of revision of pay of the employees of a public sector enterprise. The employers placed reliance upon the Office Memoranda of the Government of India that the Government

would not provide any budgetary support for wage increase and the undertakings themselves would have to generate the resources to meet the additional expenditure which would be incurred on account of increase in the wages. It was thus held by this Court that the non-revision of pay scale would not amount to violation of fundamental rights guaranteed under Article 21 as it would be stretching too far and cannot be countenanced. It was held that even under industrial law, workmen should get a minimum wage or a fair wage but not that the wages must be revised and enhanced periodically. The Court held as under:

> "17. ...Being employees of the companies, it is the responsibility of the companies to pay them salary and if the company is sustaining losses continuously over a period and does not have the financial capacity to revise or enhance the pay scale, the petitioners cannot claim any legal right to ask for a direction to the Central Government to meet the additional expenditure which may be incurred on account of revision of pay scales. It appears that prior to issuance of the office memorandum dated 12-4-1993 the Government had been providing the necessary funds for the management of public sector enterprises which had been incurring losses. After the change in economic policy introduced in the early nineties, the Government took a decision that the public sector undertakings will have to generate their own resources to meet the additional expenditure incurred on account of increase in wages and that the Government will not provide any funds for the same. Such of the public sector enterprises (government companies) which had become sick and had been referred to BIFR, were obviously running on huge losses and did not have their own resources to meet the financial liability which

> would have been incurred by revision of pay scales. By the office memorandum dated 19-7-1995 the Government merely reiterated its earlier stand and issued a caution that till a decision was taken to revive the undertakings, no revision in pay scale should be allowed. We, therefore, do not find any infirmity, legal or constitutional in the two office memorandums which have been challenged in the writ petitions.
>
> 18. ...But to hold that mere non-revision of pay scale would also amount to a violation of the fundamental right guaranteed under Article 21 would be stretching it too far and cannot be countenanced. Even under the industrial law, the view is that the workmen should get a minimum wage or a fair wage but not that their wages must be revised and enhanced periodically. It is true that on account of inflation there has been a general price rise but by that fact alone it is not possible to draw an inference that the salary currently being paid to them is wholly inadequate to lead a life with human dignity. What should be the salary structure to lead a "life with human dignity" is a difficult exercise and cannot be measured in absolute terms...."

25. This Court also considered two earlier judgments[11] that the financial capacity of the employer cannot be held to be a germane consideration for determination of the wage structure of the employees, therefore, it must be confined to the facts of the aforesaid case. It was held that economic viability or the financial capacity of the employer is an important factor which cannot be ignored while fixing the wage structure, otherwise the unit itself may not be able to

11 South Malabar Gramin Bank v. Coordination Committee of South Malabar Gramin Bank Employees' Union., (2001) 4 SCC 101 and Associate Bank Officers' Association v. State Bank of India & Ors., (1998) 1 SCC 428

function and may have to close down which will inevitably have disastrous consequences for the employees themselves.

26. In ***South Malabar Gramin Bank***, one of the contentions raised was whether financial viability could be the sole criterion in deciding the wage structure of the Regional Rural Bank (RRB) employees. The Tribunal constituted to consider the wage structure *inter alia* held that The Regional Rural Banks Act places special emphasis on the development of rural economy by providing credit and other facilities to productive activities in the rural areas, particularly to small and marginal farmers, agricultural labourers, artisans and small entrepreneurs. The objects and reasons of the Act provide a highway for the social welfare and common good of the rural poor living in the priority sector. The RRBs have brought about socio-economic revolution in the hitherto unbanked underdeveloped priority sector by ameliorating the poverty conditions of the underprivileged, SCs/STs and other weaker sections of the society. That was the paramount objective of the Act. The Court held that the RRBs are in fulfilment of the hopes and aspirations aroused in the Preamble and the directive principles of the Constitution, and the performance of such institutions in furtherance of those principles shall not be judged from the curved angle of

viability or from the point of view of a private money lender or businessman or from mere profit and loss statements. This Court held as under:

> "12. …This conclusion of the Tribunal has become final, the award in question not having been assailed and on the other hand having been implemented. In the aforesaid premises, it is a futile attempt on the part of the employer as well as the Union of India to reagitate the dispute, which has already been resolved and has been given effect to. In our considered opinion, therefore, the aforesaid contention on behalf of the appellant cannot be sustained and it would no longer be open, either for the Bank or the Union of India to raise a contention that in determining the wage structure of the employees of the RRBs, the financial condition would be a relevant factor."

27. In a judgment reported as ***Officers & Supervisors of I.D.P.L.*** v. ***Chairman & M.D., I.D.P.L. & Ors.***[12], this Court held that the employees cannot legitimately claim that their pay-scales should necessarily be revised and enhanced when the organization in which they are working are making continuous losses and are deeply in the red. It was held as under:

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

12 (2003) 6 SCC 490

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

28. This Court in a judgment reported as ***S.C. Chandra & Ors.*** v. ***State of Jharkhand & Ors.***[13] was examining the question of equal pay for equal work where the claim of the appellants was to release and pay Dearness Allowance. Hon'ble Mr. Justice Markandey Katju in a separate but concurring judgment held that the "Fixation of pay scale is a delicate mechanism which requires various considerations including financial

13 (2007) 8 SCC 279

capacity, responsibility, educational qualification, mode of appointment, etc. …."

29. In ***Mineral Exploration Corporation Ltd.*** v. ***Arvind Kumar Dixit & Anr.***[14], this Court was dealing with an appeal against an order of the High Court, which did not interfere with the award of Industrial Tribunal who had extended the actual financial benefits to the respondents by holding that they cannot be denied benefit of 'Wage Revision' by notional fixation and re-computation of their retiral dues (severance package). This Court referred to ***A.K.Bindal*** and ***Officers & Supervisors of I.D.P.L.*** to accept the argument of the appellant that if the wage revision office order is interpreted to include all the employees who were superannuated/ voluntarily retired between 1.4.1997 to 1.4.2003, it would frustrate the measures taken, including the Voluntary Retirement Scheme, to improve the condition of Public Sector Undertaking. The Court thus upheld the cutoff date in view of the financial constraints faced by the appellant.

30. In the third category of cases, in respect of Central or State Government, the factor of financial constraints has been found to be relevant when the liberalized benefits were granted from a particular date. In ***Amar Nath Goyal***, the question examined was whether limiting of benefits only to the

14 (2015) 2 SCC 535

employees who retired or died on or after 1.4.1995 after calculating the financial implications was irrational or arbitrary, the Court held as under:

> "26. It is difficult to accede to the argument on behalf of the employees that a decision of the Central Government/State Governments to limit the benefits only to employees, who retire or die on or after 1-4-1995, after calculating the financial implications thereon, was either irrational or arbitrary. Financial and economic implications are very relevant and germane for any policy decision touching the administration of the Government, at the Centre or at the State level."

31. In ***State of Haryana*** v. ***Shri Des Raj Sangar & Anr.***[15], the post of the Panchayati Raj Election Officer was abolished in view of the extreme financial stringency. This Court held as under:

> "8. ..... It was also stated in another affidavit filed on behalf of the appellant State that the post of Panchayati Raj Election Officer and the seven posts of field Deputy Directors were abolished as an economy measure to meet financial stringency. We see no cogent ground to question the averments made in the above affidavits. The averments show that the decision to abolish the post of Panchayati Raj Election Officer was taken because of administrative reasons. The question as to whether greater economy could have been brought about by adopting some other course is not for the court to go into for the court cannot sit as a court of appeal in such matters. It may be that some of the functions which were being previously performed by the respondent are now being performed by Deputy Directors whose posts have not been abolished, this fact would not show that the decision to abolish the post held by the respondent was not taken in good

15 (1976) 2 SCC 844

> faith. After the posts of Deputy Directors had been created and had been in existence along with the post of Panchayati Raj Election Officer for a number of months, the Government, it would appear, decided to abolish some of the posts to meet the financial stringency. In taking the decision as to which post to abolish and which not to abolish, the Government, it seems, took into account the relative usefulness of each post and decided to abolish the seven posts of field Deputy Directors and the one post of Panchayati Raj Election Officer. This was a matter well within the administrative discretion of the Government and as the decision in this respect appears to have been taken in good faith, the same cannot be quashed by the court. The fact that the post to be abolished is held by a person who is confirmed in that post and the post which is not abolished is held by a person who is not permanent would not affect the legality of the decision to abolish the former post as long as the decision to abolish the post is taken in good faith. We would, therefore, hold that the High Court was in error in quashing the order of the Government whereby the post of Panchayati Raj Election Officer had been abolished."

32. The Central or State Government is empowered to levy taxes to meet out the expenses of the state. It is always a conscious decision of the government as to how much taxes have to be levied so as to not cause excessive burden on the citizens. But the Boards and Corporations have to depend on either their own resources or seek grant from the Central/ State Government, as the case may be, for their expenditures. Therefore, the grant of benefits of higher pay scale to the Central/State Government employees stand on different footing than grant of pay scale by an instrumentality of the

State.

33. The judgment in ***Purshottam Lal*** is a case where reference was made to the Pay Commission to consider the pay revision of all Central Government employees paid out of the Consolidated Fund of India. The recommendation of the Pay Commission was accepted but the benefit of revised pay scale was not given to the employees of the Forest Research Institute and College, Dehradun. An argument was raised that the report of the Pay Commission did not deal with the case of the petitioners. The said argument was negated for the reason that once the Government has accepted the recommendation of the Pay Commission, which included all Central Government employees, the benefit of revised pay scale cannot be denied to the petitioners. This Court has held as under:

> "15. Mr Dhebar contends that it was for the Government to accept the recommendations of the Pay Commission and while doing so to determine which categories of employees should be taken to have been included in the terms of reference. We are unable to appreciate this point. Either the Government has made reference in respect of all government employees or it has not. But if it has made a reference in respect of all government employees and it accepts the recommendations it is bound to implement the recommendations in respect of all government employees. If it does not implement the report regarding some employees only it commits a breach of Articles 14 and 16 of the Constitution. This is what the Government has done as far as these petitioners are

concerned."

34. We find that the judgment in ***Purshottam Lal*** is altogether on different facts. The said judgment is in the context where the report was in respect of all Central Government employees but the benefit of the report was not granted to the petitioners for the reason that there was no specific reference in the Pay Commission report. In the case of the writ petitioners herein represented by Mr. Govind Goel, the Committee has considered that there was no work for the writ petitioners. Still further, instead of abolishing the post, the Federation granted revised pay scale which was better than the pay scale recommended by the Pay Commission but less than the pay scale granted by the State Government in pursuance of the recommendations of the Anomaly Committee. Thus, it cannot be said to be a discriminatory or arbitrary decision more so in exercise of power of judicial review. There exist good reasons not to grant higher pay scale for the reason that there is no work of the post to which they were appointed but were given alternate assignments.

35. The judgment in ***M.M.R. Khan*** is in respect of workers in the canteen in different railway establishments. It was held that the Government has complete control over the canteens and

the workers employed therein are holders of civil posts within the meaning of Article 311 of the Constitution. The issue was not of financial stringency on the part of the Union to make the payment of wages to railway employees.

36. In a judgment reported as ***The Employees of Tannery and Footwear Corporation of India Ltd. & Anr.*** v. ***Union of India & Ors.***[16], the employees were claiming parity in pay and allowances with that of the Central Government employees. This Court held that pay scales of the employees in the unionised cadre falling in four categories in the respondent corporation should be revised in a way that the same are at par with the pay scales of such employees employed with the Cotton Corporation of India.

37. In ***G.S. Uppal***, the Sub-Divisional Officer (SDO), Sub-Divisional Engineer (SDE) and Assistant Engineer (AE) on deputation from the Irrigation Department were granted revised pay scale but the SDO, SDE and AE appointed in the appellant corporation were denied the same benefit. An argument was raised that the appellant was running in losses and thus cannot meet the financial burden on account of revision of pay scales. The Court while rejecting such argument held as under:

16 1991 Supp. (2) SCC 565

> "33. The plea of the appellants that the Corporation is running under losses and it cannot meet the financial burden on account of revision of scales of pay has been rejected by the High Court and, in our view, rightly so. Whatever may be the factual position, there appears to be no basis for the action of the appellants in denying the claim of revision of pay scales to the respondents. If the Government feels that the Corporation is running into losses, measures of economy, avoidance of frequent writing off of dues, reduction of posts or repatriating deputationists may provide the possible solution to the problem. Be that as it may, such a contention may not be available to the appellants in the light of the principle enunciated by this Court in *M.M.R. Khan* v. *Union of India* [1990 Supp SCC 191 : 1990 SCC (L&S) 632 : (1991) 16 ATC 541] and *Indian Overseas Bank* v. *Staff Canteen Workers' Union* [(2000) 4 SCC 245 : 2000 SCC (L&S) 471] . However, so long as the posts do exist and are manned, there appears to be no justification for granting the respondents a scale of pay lower than that sanctioned for those employees who are brought on deputation. In fact, the sequence of events discussed above clearly shows that the employees of the Corporation have been treated on a par with those in Government at the time of revision of scales of pay on every occasion."

38. The judgment in ***Union of India & Anr.*** v. ***S.B. Vohra & Ors.***[17] is distinguished from the present matter as the issue was regarding pay scale of the employees of the High Court on recommendation of the Chief Justice. It was observed that financial implications vis-à-vis effect of grant of a particular scale of pay may not always be a sufficient reason and differences should be mutually discussed and tried to be solved. It is, however, again not a case of financial stringency

17 (2004) 2 SCC 150

alone but also the power of the Chief Justice to grant revised pay scales to the employees of the High Court.

39. ***General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P.*** v. ***Satrughan Nishad & Ors.***[18] is a judgment which deals with the scope of Article 12 in respect of Cooperative Sugar Mills. Mr. Patwalia has not raised any argument about the Federation being not a State. Therefore, the said judgment is not relevant to be examined in the present appeals.

40. In ***K.T. Veerappa & Ors.*** v. ***State of Karnataka & Ors.***[19], the Court upheld the principle that fixation of pay and parity in duties is the function of the executive and financial capacity of the Government is also a relevant factor to be considered, though on facts, it was held that the employees of the University were entitled to revision of pay at par with the employees of the State. It was held as under:

> "13. He next contended that fixation of pay and parity in duties is the function of the executive and financial capacity of the Government and the priority given to different types of posts under the prevailing policies of the Government are also relevant factors. In support of this contention, he has placed reliance on *State of Haryana* v. *Haryana Civil Secretariat Personal Staff Assn.* [(2002) 6 SCC 72 : 2002 SCC (L&S) 822] and *Union of India* v. *S.B. Vohra* [(2004) 2 SCC 150 :

18 (2003) 8 SCC 639
19 (2006) 9 SCC 406

> 2004 SCC (L&S) 363] . There is no dispute nor can there be any to the principle as settled in *State of Haryana* v. *Haryana Civil Secretariat Personal Staff Assn.* [(2002) 6 SCC 72 : 2002 SCC (L&S) 822] *that fixation of pay and determination of parity in duties is the function of the executive and the scope of judicial review of administrative decision in this regard is very limited.* However, it is also equally well settled that the courts should interfere with administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors."
>
> *(Emphasis supplied)*

41. In the present case, it is contended that the Federation is a statutory Co-operative Society which is having its Common Cadre Rules. Any amendment in the Common Cadre Rules is to be approved by the Registrar (Co-operative Societies). The State Government communicated on 1.3.1990 and 9.7.1993 that the pay scale as applicable to the Punjab Government employees is not to be adopted by the Public Sector Undertakings without taking into consideration the financial health of the other statutory Boards and Corporations. The Federation has thus taken a conscious and concerted decision to not follow the report of the Anomaly Committee of the State Government to grant revised pay scale from 1.1.1986 in view of precarious financial condition. Moreover, financial assistance had to be availed by the Federation from the State

Government as well as from the National Dairy Development Board.

42. A Committee was constituted to examine the grievance of the employees for grant of revised pay scale. The Committee also recommended that pay scale be given w.e.f. 1.1.1994 on account of financial stringency being faced by the Federation. The Board of Directors approved the recommendation of the Committee, which was accepted by the Registrar (Co-operative Societies). Therefore, the decision of not to grant revised pay scale from 1.1.1986 was taken keeping in view the financial condition of the Federation. The question now is whether such a decision could have been interfered with in a writ petition in exercise of power of judicial review.

43. The power of judicial review over the administrative decisions of the State was examined by a judgment of this Court in ***Tata Cellular*** v. ***Union of India***[20]. Though, that is a case of grant of contract, but the principles of law are very well applicable to the exercise of power of judicial review by the High Court in the administrative decisions of the State within the meaning of Article 12 of the Constitution. The Court held as under:

> "77. The duty of the court is to confine itself to the question of legality. Its concern should be:

20 (1994) 6 SCC 651

1. Whether a decision-making authority exceeded its powers?

2. Committed an error of law,

3. committed a breach of the rules of natural justice,

4. reached a decision which no reasonable tribunal would have reached or,

5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(*i*) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(*ii*) Irrationality, namely, Wednesbury unreasonableness.

(*iii*) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R.* v. *Secretary of State for the Home Department, ex Brind* [(1991) 1 AC 696] , Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, “consider whether something has gone wrong of a nature and degree which requires its intervention”.

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94. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of *the invitation to tender* cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.

Based on these principles we will examine the facts of this case since they commend to us as the correct principles."

44. In ***Balco Employees' Union (Regd.)*** v. ***Union of India &***

Ors.[21], the Court was examining the policy of disinvestment of public sector undertakings. It was held that wisdom and advisability of economic policies of Government are not amenable to judicial review unless it can be demonstrated that such policy is contrary to any statutory provision or the Constitution. It is not for the Court to consider relative merits of different economic policies and consider whether a wiser or better one could be evolved. The Court held as under:

> "92. In a democracy, it is the prerogative of each elected Government to follow its own policy. Often a change in Government may result in the shift in focus or change in economic policies. Any such change may result in adversely affecting some vested interests. Unless any illegality is committed in the execution of the policy or the same is contrary to law or mala fide, a decision bringing about change cannot *per se* be interfered with by the court.
>
> 93. Wisdom and advisability of economic policies are ordinarily not amenable to judicial review unless it can be demonstrated that the policy is contrary to any statutory provision or the Constitution. In other words, it is not for the courts to consider relative merits of different economic policies and consider whether a wiser or better one can be evolved. For testing the correctness of a policy, the appropriate forum is Parliament and not the courts. Here the policy was tested and the motion defeated in the Lok Sabha on 1-3-2001.
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> xx xx xx
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> 98. In the case of a policy decision on economic matters, the courts should be very circumspect in conducting any enquiry or investigation and must be

21 (2002) 2 SCC 333

most reluctant to impugn the judgment of the experts who may have arrived at a conclusion unless the court is satisfied that there is illegality in the decision itself."

45. This Court in a judgment reported as ***Jagdish Mandal*** v. ***State of Orissa & Ors.***[22] examined the scope of judicial review in the matter of award of a contract. The Court held as under:

> "22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in

22 (2007) 14 SCC 517

> tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:
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> (*i*) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;
>
> OR
>
> Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";
>
> (*ii*) Whether public interest is affected.
>
> If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."

46. In a recent judgment reported as ***West Bengal Central School Service Commission & Ors.*** v. ***Abdul Halim & Ors.***[23], this Court was examining the candidature of a candidate for appointment in pursuance of advertisement advertised by West Bengal Central School Service Commission. One of the essential qualifications was Bengali as a subject either at the Secondary level or at the Higher Secondary level or at the graduation or postgraduation level. The candidature of selected candidate was not interfered with by the Division

23 (2019) 18 SCC 39

Bench of the High Court although such candidate was not possessing Bengali as a language. The Court held as under:

> "27. It is well settled that the High Court in exercise of jurisdiction under Article 226 of the Constitution of India does not sit in appeal over an administrative decision. The Court might only examine the decision-making process to ascertain whether there was such infirmity in the decision-making process, which vitiates the decision and calls for intervention under Article 226 of the Constitution of India.
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> 28. In any case, the High Court exercises its extraordinary jurisdiction under Article 226 of the Constitution of India to enforce a fundamental right or some other legal right or the performance of some legal duty. To pass orders in a writ petition, the High Court would necessarily have to address to itself the question of whether there has been breach of any fundamental or legal right of the petitioner, or whether there has been lapse in performance by the respondents of a legal duty.
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> 29. The High Court in exercise of its power to issue writs, directions or orders to any person or authority to correct quasi-judicial or even administrative decisions for enforcement of a fundamental or legal right is obliged to prevent abuse of power and neglect of duty by public authorities.
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> 30. In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held by this Court in *Satyanarayan Laxminarayan Hegde* v. *Millikarjun Bhavanappa Tirumale* [*Satyanarayan Laxminarayan*

Hegde v. *Millikarjun Bhavanappa Tirumale*, AIR 1960 SC 137]. If the provision of a statutory rule is reasonably capable of two or more constructions and one construction has been adopted, the decision would not be open to interference by the writ court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision founded on reasons which are clearly wrong in law, which can be corrected by the writ court by issuance of writ of certiorari.

31. The sweep of power under Article 226 may be wide enough to quash unreasonable orders. If a decision is so arbitrary and capricious that no reasonable person could have ever arrived at it, the same is liable to be struck down by a writ court. If the decision cannot rationally be supported by the materials on record, the same may be regarded as perverse.

32. However, the power of the Court to examine the reasonableness of an order of the authorities does not enable the Court to look into the sufficiency of the grounds in support of a decision to examine the merits of the decision, sitting as if in appeal over the decision. The test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken, which has led to manifest injustice. The writ court does not interfere, because a decision is not perfect.

33. In entertaining and allowing the writ petition, the High Court has lost sight of the limits of its extraordinary power of judicial review and has in fact sat in appeal over the decision of Respondent 2."

47. Later, a three-Judge Bench in a judgment reported as ***Municipal Council, Neemuch*** v. ***Mahadeo Real Estate & Ors.***[24] followed the aforesaid judgment and held as under:

24 (2019) 10 SCC 738

> "16. It could thus be seen that an interference by the High Court would be warranted only when the decision impugned is vitiated by an apparent error of law i.e. when the error is apparent on the face of the record and is self-evident. The High Court would be empowered to exercise the powers when it finds that the decision impugned is so arbitrary and capricious that no reasonable person would have ever arrived at. It has been reiterated that the test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken. Not only this but such a decision must have led to manifest injustice."

48. In another recent judgment reported as ***Harshit Agarwal & Ors.*** v. ***Union of India & Ors.***[25], this Court held that judicial review of administrative action is permissible on grounds of illegality, irrationality and procedural impropriety. An administrative decision is considered as flawed if it is illegal, and a decision is illegal if it pursues an objective other than that for which the power to make the decision was conferred. The discretion exercised by the decision maker is subject to judicial scrutiny if a purpose other than the specified purpose is pursued. The Court observed that:

> "10. Judicial review of administrative action is permissible on grounds of illegality, irrationality and procedural impropriety. An administrative decision is flawed if it is illegal. A decision is illegal if it pursues an objective other than that for which the power to make the decision was conferred [*De Smith's Judicial Review*, (6th Edn., p. 225)] . There is no unfettered discretion in public law [*Food Corpn. of India* v. *Kamdhenu Cattle Feed Industries*, (1993) 1 SCC 71] . Discretion conferred

25 (2021) 2 SCC 710

> on an authority has to be necessarily exercised only for the purpose provided in a statute. The discretion exercised by the decision maker is subject to judicial scrutiny if a purpose other than a specified purpose is pursued. If the authority pursues unauthorised purposes, its decision is rendered illegal. If irrelevant considerations are taken into account for reaching the decision or relevant considerations have been ignored, the decision stands vitiated as the decision maker has misdirected himself in law. It is useful to refer to *R.* v. *Vestry of St. Pancras* [*R.* v. *Vestry of St. Pancras*, (1890) LR 24 QBD 371 (CA)] in which it was held: (QBD pp. 375-76)
>
> "… If people who have to exercise a public duty by exercising their discretion take into account matters which the courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion."

49. Thus, we find that the decision that the Federation was in financial difficulties is based upon relevant material before the Federation. The process to arrive at such decision can be said to be flawed only on the permissible grounds of illegality, irrationality and procedural impropriety. We find that neither the decision-making process, nor the decision itself suffers from any such vice.

50. Learned counsel for the writ petitioners have referred to the information received under the Right to Information Act to show that the Federation was in profit in the year 1996-1997. We do not find that such information is relevant to determine the financial condition for the period from 1.1.1986 to

1.1.1994. The Federation has categorically stated that because of the remedial steps taken by the Federation, there was turn around only after 1994. Still further, we find that the profits in the balance sheet are not meant to be appropriated towards wages of the employees alone. Though the profits had to be shared by the members of the Co-operative Society, but the employees of the Federation are not its members. The income generated by the Federation is not to be expanded only on payment of salary but is also required for upgradation of technology, renovation and expansion of plants etc. Therefore, entire profit is not to be appropriated towards the wages of the employees alone. The Federation was established as a step towards white revolution. The objective of the Federation was not to give employment but to increase milk production in the State. The employees are facilitators of the employer to achieve such objective and thus demanding enhanced wages without considering the objective and financial condition of the employer would not be ideal. The employer and the employees have to work together to achieve the objective of the organisation i.e. white revolution rather frittering away the gains made by the joint efforts of the management and employees by giving increased wages to the employees irrespective of its capacity to bear such

expenses.

51. The submission that there will not be financial burden on the federation in view of the fact that the High Court has ordered payment of arrears for a period of 3 years and 2 months before the date of filing of writ petitions is again not tenable. The High Court has granted revised pay scales with effect from 01.01.1986 instead of revised pay scales granted to the employees of the federation with effect from 01.01.1994. Therefore, restricting it for a period of 3 years and 2 months will not be helpful in respect of the financial condition of the Federation as during the relevant time the federation was suffering from huge losses.

52. In view of the above, we find that the order of the High Court is unjustified and in excess of the power of judicial review conferred on the High Court. Consequently, the appeals are allowed. The orders passed by the High Court are hereby set aside and the writ petitions are dismissed.

CIVIL APPEAL NO. 7432 OF 2011

53. The present appeal is also directed against an order passed by the Division Bench of the High Court of Punjab & Haryana at Chandigarh on 19.3.2009 wherein it was held that the employees are entitled to pay scale equivalent to their

counterparts in the State of Punjab from 1.1.1986, though the revised pay scale was allowed by the Federation w.e.f. 1.1.1994. The argument raised is that the contention of the employees claiming equal pay for equal work has not been examined by the High Court.

54. The employees have not filed any appeal against the impugned judgment of the High Court. We find that the employees cannot raise any grievance in an appeal preferred by the Federation to claim equal pay for equal work. The employees are not aggrieved against the judgment of the High Court. Therefore, the employees cannot raise an argument which was not raised before the High Court.

55. But still, we have examined the argument raised. It was argued that the claim of the employees is not of revised pay scale from 1.1.1986 but that the categorization of Milk Procurement Assistants as Grade-I & II is unconstitutional and they would be entitled to the same pay as is being paid to Milk Procurement Assistants Grade-I on the principle of equal pay for equal work.

56. The said contention of the employees is controverted by the Federation, *inter alia*, on the ground that the Milk Procurement Assistants are not the employees of the Apex Society i.e. Punjab State Co-operative Milk Producers Federation but they

are employees of the District Co-operative Milk Producers Union which is a separate entity. The staffing pattern for District Co-operative Milk Producers Union, as approved by the Registrar (Co-operative Societies), shows that different educational qualifications and experience is prescribed for appointment to Milk Procurement Assistants Grade-I & II. It has also been pointed out that there is qualitative difference in the responsibilities of the two sets of employees. Milk Procurement Assistants Grade-II are allotted 10 to 12 villages at the village-level Milk Producers Co-operative Society for supervising their work with regard to milk collection, testing, record keeping, payment to producers of milk, transportation of milk and to attend the other problems of the societies whereas the duty of the Milk Procurement Assistants Grade-I is to supervise the work of Milk Procurement Assistant Grade-II. One Milk Procurement Assistant Grade I officer supervises the work of six to seven Milk Procurement Assistants Grade II.

57. As per the staffing pattern, the educational qualifications for Milk Procurement Assistants Grade-I are Bachelor's Degree with minimum three years' experience of Organisation of Milk Producers Co-operative Societies affiliated with Milk Producers Co-operative Unit whereas for Milk Procurement Assistant Grade II, the qualification is Graduation preferable in

Agriculture with one year experience of working as Secretary in a Co-operative Milk Supply Society. The pay scale prescribed for the Milk Procurement Assistants Grade-I is Rs.700-1200 whereas the pay scale prescribed for the Milk Procurement Assistants Grade-II is Rs.480-880. It is sought to be contended that, in fact, Milk Procurement Assistants Grade-I is a promotional avenue for Milk Procurement Assistants Grade-II.

58. As stated, the educational qualifications and the responsibilities of the two posts are quite different. Therefore, the principle of equal pay for equal work would not be applicable to them inasmuch as Grade I is a higher post having higher duties and responsibilities than Grade II.

59. We do not find any merit in the argument claiming equal pay for the alleged equal work. Consequently, the appeal is allowed. The orders passed by the High Court are hereby set aside.

CIVIL APPEAL NO. 7434 OF 2011

60. The present appeal is also directed against an order passed by the Division Bench of the High Court of Punjab & Haryana at Chandigarh on 19.3.2009 wherein it was held that the employees are entitled to pay scale equivalent to their counterparts in the State of Punjab from 1.1.1986, though

revised pay scale was allowed by the Federation w.e.f. 1.1.1994. It was contended that the argument of the employees claiming equal pay for equal work was not examined by the High Court.

61. The respondent Nos. 1 to 4 are Milk Procurement Assistants Grade-I in the pay scale of Rs.700-1200 whereas respondent No. 5 is Animal Husbandry Assistant in the same pay scale of Rs.700-1200 w.e.f. 1.8.1980. Such employees are claiming parity in the matter of pay with the Area Officers including Deputy Manager (Procurement) and Dairy Extension Officer in the pay scale of Rs.850-1700. The employees have pleaded that w.e.f. 2.2.1987, the designation of Milk Procurement Assistants Grade-I has been changed to Milk Procurement Supervisor and now the workload has increased inasmuch as fifty societies are to be supervised as against eight societies which were supervised, without any increase in the pay scale. It was argued that the duties and functions of the employees and the other Area Officers including Deputy Manager (Procurement) and Dairy Extension Officer are the same as such posts are interchangeable.

62. In the written statement filed before the High Court, the stand of the Federation was that the employees have since long been permanently transferred to the Milk Union, Ludhiana. It

was pointed out that the employees and the Deputy Manager (Procurement)/Dairy Extension Officer do not constitute one class as the posts are not similar on the points of qualifications and duties to be performed by the incumbents. The classification on the basis of qualifications, educational or by experience, for the fixation of pay is permissible under the Constitution. The qualifications of Milk Procurement Assistant Grade-I or Animal Husbandry Assistant is Graduation/Matriculation with live-stock Diploma course whereas the essential qualifications for the post of Dairy Extension Officer and for the post of Deputy Manager (Procurement) is B.Sc. Dairy Husbandry/Dairy Technology with two to three years' experience.

63. We have heard learned counsel for the parties. Firstly, the order passed by the High Court has not been challenged in appeal by the employees. Secondly, the classification of different pay scales is permissible based upon educational qualifications, experience and nature of duties. In view of the said facts, we do not find that the employees are entitled to the pay scale as claimed in the writ petition.

64. We do not find any merit in the argument claiming equal pay for the alleged equal work. Consequently, the appeal is

allowed. The orders passed by the High Court are hereby set aside.

.....J.
(SANJAY KISHAN KAUL)

.....J.
(HEMANT GUPTA)

NEW DELHI;
JULY 9, 2021.