

*Before K. Kannan, J.*

**RAMESH KUMAR—Petitioner**

*versus*

**BHAKRA BEAS MANAGEMENT BOARD  
AND ANOTHER—Respondents**

**CWP No. 14980 of 2003**

March 23, 2012

*Constitution of India, 1950 - Art. 226 - Bhakra Beas Management Board - CFO in BBMB & SDO in PSEB - Whether parity as regards the salary could be given to two different posts in two different organisations - It is only a patent irrationality in scales that would require judicial intervention - Policy which was taken by BBMB that would apply PSEB scales must be extended to treating the CFO's post as SDO's post in BBMB - Post of SDO in PSEB with certain scales ought to have been applied for CFO - Promotional or selection grade for a SDO after 9/16 years of service from the date when the person held the post, the same ought to be applied to the CFO's post - Higher scales with reference to 9/16 years of service must be from the date when the person occupied that post and not from the date when the order came to be passed.*

*Held*, that there is no difficulty in understanding the principle that judicial intervention itself will be minimal when it does not have the technical expertise to gauge the actual job content in various posts and whether a parity as regards the salary could be given to two different posts in 2 different organizations. It is only a patent irrationality in scales that would require a judicial intervention. The attempt now is not for the Court to see where the component of work for CFO and SDO's posts were the same. Evidently they were not. The point, however, is if BBMB which was a successor to the Nangal Project had an antecedent example of how the CFO post had been redesignated as SDO and still later in the year 1981 when CFO was being given the scale not merely as a matter of pure accident but a deliberate policy to treat it at par with the post of SDO and made

a specific reference to such a post for applying the scales, then I would hold that the policy which was taken by BBMB that would apply the PSEB scales must be extended to treating the CFO's post as SDO's post in BBMB and look for a parity of scale for the same post with PSEB. Consequently, if there was a post of SDO in PSEB that provided with certain scales, the same ought to have been applied for CFO. It could not have made a selective backtracking of how it treated the CFO's post previously and retained the identity of CFO's post only to choose not to pay the PSEB scales. When the policy decision was taken to apply the PSEB scales, it was surely a method of bringing a homogeneity in approach to yet another large organization that had fairly an extensive job structure and pay scales in various posts in the public sector undertaking, as big or if not bigger than BBMB itself. It was surely meant to extend more beneficial terms of service for its employees that it look to the exemplar of PSEB scales.

(Para 4)

*Further held*, that as a logical extension to how I have held that the PSEB scales for SDO must be applied, if in PSEB, there was a promotional or selection grade for a SDO after 9/16 years of service from the date when the person held the post, the same ought to be applied to the CFO's post. The impugned order makes it effective only from the date when the order was passed. I must observe that the post of CFO itself was a solitary post and there was no promotional avenue. The provisions for promotional/devised promotional scales after a certain number of years themselves was to prevent stagnation and to improve the morale of the employees holding the post for long number of years without a possible improvement in career progression. It was only logical that such higher scales must be with reference to the number of years of service in that particular post and cannot be made to depend on the date of passing of such an order providing for the scales. The commencement of the higher scales with reference to 9/16 years of service must be from the date when the person occupied that post and not with reference to the date when the order came to be passed on 24.07.2003.

(Para 5)

Suram Singh Rana, Advocate, *for the petitioner.*

Ankit Goel, Advocate, *for the respondents.*

**K. KANNAN, J. (ORAL)**

(1) The petitioner, who is the Chief Fire Officer (for short, CFO) with Bhakra Beas Management Board (for short, BBMB), seeks for quashing of the order issued on 24.07.2003 (Annexure P-14), rejecting the petitioner's claim for the promotional/devised promotional scales after 9/16 years of service at par with the scales applicable to the post of Sub Divisional Officer (for short, SDO) in Punjab State Electricity Board (for short, PSEB) establishment. The parity was sought on the ground that BBMB took a decision to adopt PSEB pay scales on 26.06.1992 for the posts as available in PSEB. The petitioner claimed parity in treatment for the post of SDO with PSEB, but since there was no post of CFO with PSEB, BBMB opted to lay down its own scales for the post of CFO and also provided for the promotional/devised promotional scales after 9/16 years of service from the date when the order was issued on 24.07.2003 instead of promotional/devised promotional scales from the date when the petitioner began officiating as CFO.

(2) The petitioner's basis for claiming parity was that it has at all times being the experience that the CFO was put on the same scales as SDO. It was not merely a matter of chance, but it was a conscious decision which related to a period as on 20.09.1955 even before the constitution of the Board. The petitioner would rely on an instance of proceedings of the Directorate of Construction and Plant Design of Nangal Township that the office of Fire Officer was converted into that of the Sub Divisional Officer and a particular employee A.N. Ahluwalia, who was a Fire Officer, was redesignated as Sub Divisional Officer. Subsequently after the formation of the Board again when the CFO Shri T.N. Kaul was permanently absorbed with BBMB, the Board allowed for the revised scales of the post of SDO to the office of the CFO. The petitioner, therefore, would claim that when the decision was taken by the Board to apply the PSEB's scales, he was entitled to grant the scales attached to the SDO's post at PSEB and BBMB ought not to have applied a different yardstick for the only reason that there was no post of CFO in PSEB.

(3) The petitioner would claim that even the educational qualification for CFO was not less than the qualification of SDO. It is specifically refuted by the respondents by pointing out that the educational qualification for the

post of CFO is a degree of bachelor in Fire Engineering or its equivalent with 2 to 3 years' experience in that line, while the educational qualification for SDO was a bachelor's degree in Engineering. Even the nature of duties and responsibilities were not the same. The learned counsel appearing on behalf of the respondents would contend that a mere fact that there was a parity in scales at some point of time for CFO with SDO cannot be taken illogically to a situation where the actual post as CFO did not exist in PSEB and the policy decision to apply the PSEB scales ought to be restricted only to the actual posts which existed in PSEB corresponding to the posts in BBMB. The learned counsel would refer to the decision of the Hon'ble Supreme Court in *State of West Bengal and another versus West Bengal Minimum Wages Inspectors Association and others (1)*, that held, while examining a plea for 'equal pay for equal work' and a claim for parity in pay in the context of how the Court would intervene to affirm the said principle, as under:-

“22. The claim in the writ petition was not based on the ground that *subject post* and *reference category posts* carried similar or identical duties and responsibilities but on the contention that as the *subject post* holders and the holders of *reference category posts* who were enjoying equal pay at an earlier point of time, should be continued to be given equal pay even after pay revision. In other words, the parity claimed was not on the basis of equal pay for equal work, but on the basis of previous equal pay.

23. It is now well settled that parity cannot be claimed merely on the basis that earlier the *subject post* and the *reference category posts* were carrying the same scale of pay. In fact, one of the functions of the Pay Commission is to identify the posts which deserve a higher scale of pay than what was earlier being enjoyed with reference to their duties and responsibilities, and extend such higher scale of those categories of posts.

25. As noticed above, one post which is considered as having a lesser pay scale may be assigned a higher pay scale and another post which is considered to have a proper pay scale may merely be assigned the corresponding revised pay scale but not any higher pay

scale. Therefore, the benefit of higher pay scale can only be claimed by establishing that holders of the *subject post* and holders of *reference category posts*, discharge duties and functions identical with, or similar to, each other and that the continuation of disparity is irrational and unjust.”

The counsel would, therefore, contend that the benefit of scale to a *subject post* and the holder of *reference category posts* could be cited for parity of scales only if the duties and functions were identical with or similar to each other and if the continuation of disparity is irrational and unjust.

(4) There is no difficulty in understanding the principle that judicial intervention itself will be minimal when it does not have the technical expertise to gauge the actual job content in various posts and whether a parity as regards the salary could be given to two different posts in 2 different organizations. It is only a patent irrationality in scales that would require a judicial intervention. The attempt now is not for the Court to see where the component of work for CFO and SDO's posts were the same. Evidently they were not. The point, however, is if BBMB which was a successor to the Nangal Project had an antecedent example of how the CFO post had been redesignated as SDO and still later in the year 1981 when CFO was being given the scale not merely as a matter of pure accident but a deliberate policy to treat it at par with the post of SDO and made a specific reference to such a post for applying the scales, then I would hold that the policy which was taken by BBMB that would apply the PSEB scales must be extended to treating the CFO's post as SDO's post in BBMB and look for a parity of scale for the same post with PSEB. Consequently, if there was a post of SDO in PSEB that provided with certain scales, the same ought to have been applied for CFO. It could not have made a selective backtracking of how it treated the CFO's post previously and retained the identity of CFO's post only to choose not to pay the PSEB scales. When the policy decision was taken to apply the PSEB scales, it was surely a method of bringing a homogeneity in approach to yet another large organization that had fairly an extensive job structure and pay scales in various posts in the public sector undertaking, as big or if not bigger than BBMB itself. It was surely meant to extend more beneficial terms of service for its employees that it look to the exemplar of PSEB scales.

(5) As a logical extension to how I have held that the PSEB scales for SDO must be applied, if in PSEB, there was a promotional or selection grade for a SDO after 9/16 years of service from the date when the person held the post, the same ought to be applied to the CFO's post. The impugned order makes it effective only from the date when the order was passed. I must observe that the post of CFO itself was a solitary post and there was no promotional avenue. The provisions for promotional/devised promotional scales after a certain number of years themselves was to prevent stagnation and to improve the morale of the employees holding the post for long number of years without a possible improvement in career progression. It was only logical that such higher scales must be with reference to the number of years of service in that particular post and cannot be made to depend on the date of passing of such an order providing for the scales. The commencement of the higher scales with reference to 9/16 years of service must be from the date when the person occupied that post and not with reference to the date when the order came to be passed on 24.07.2003.

(6) The impugned notification is quashed and the writ petition is allowed with the above observations to provide for the consequent monetary benefits to be paid within a period of 12 weeks from the date of receipt of the copy of the order.

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