

THE STATE OF MAHARASHTRA & ANR.

A

v.

BHAGWAN & ORS.

(Civil Appeal Nos. 7682-7684 of 2021)

JANUARY 10, 2022

B

[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

Pension: Claim for pensionary benefits by employees of autonomous body (WALMI) – WALMI is an independent autonomous body and a society registered under the Societies Registration Act – The administration and management of the WALMI is through its Governing Council – WALMI has its own Rules, namely, WALMI Establishment Rules, 1980, governing the service conditions and the benefits available to its employees – The Rules, 1980 provide for the benefits of travelling allowance, daily allowance, medical reimbursement, house rent allowance etc. however, do not provide for pension – The Governing Council of WALMI also adopted the Maharashtra Civil Services Rules except the Pension Rules – Thus, WALMI is an independent autonomous entity governed by their own Rules and Regulations and the administration and management of WALMI is being run through/by its Governing Council – Even the State is not the Disciplinary Authority of the employees of WALMI – The Government by G.R. dated 08.11.2005 specifically took a policy decision that the employees of aided institutes, boards, corporations, are not entitled for grant of pensionary benefits and the Maharashtra Civil Services (Pension) Rules, 1982 shall not be made applicable to such institutions – Even the proposal made by the then Director of WALMI to extend the pensionary benefits to the employees of WALMI was rejected by the State Government – Neither G.R. dated 08.11.2005 nor the decision of the State Government refusing to extend the pensionary benefits to the employees of WALMI was challenged – Therefore, as such a conscious policy decision was taken not to adopt the Pension Rules for the WALMI employees applicable to the State Government employees – In the said facts and circumstances, High Court was not justified in directing the State to extend the pensionary benefits to the employees of WALMI.

Pension: Claim for pensionary benefits by employees of autonomous body – The employees of the autonomous bodies cannot

C

D

E

F

G

H

- A *claim, as a matter of right, the same service benefits on par with the Government employees – Merely because such autonomous bodies might have adopted the Government Service Rules and/or in the Governing Council, there may be a representative of the Government and/or merely because such institution is funded by the State/Central Government, the employees of such autonomous bodies cannot, as a matter of right, claim parity with the State/Central Government employees – This is more particularly, when the employees of such autonomous bodies are governed by their own Service Rules and service conditions – Pension.*
- B *Administrative law: Policy decision – Scope of interference by courts – Held: Court should refrain from interfering with the policy decision, which might have a cascading effect and have financial implications – Whether to grant certain benefits to the employees or not should be left to the expert body and the undertakings and the Court cannot interfere lightly – Granting of certain benefits may result in a cascading effect having adverse financial consequences.*
- C *Autonomous body – The observations made by the High Court that as the salary and allowances payable to the employees of WALMI are being paid out of the Consolidated Fund of the State and/or that the WALMI is getting grant from the Government, there is no justification to treat the employees of WALMI differently than that of the State Government – Further, observations made by the High Court that the amount available with WALMI and deposited with E.P.F. towards the employee's contribution itself is sufficient to meet the financial liability of the pensionary benefits to the employees and, therefore, there is no justification and/or reasonable basis for the State Government to refuse to extend the benefit of pension to the retired employees of WALMI – Held: These are all irrelevant considerations, so far as extending the pensionary benefits to employees of WALMI is concerned – WALMI has to run its administration from its own financial resources – WALMI has no financial powers of imposing any tax like a State and/or the Central Government and WALMI has to depend upon the grants to be made by the State Government – Further, merely because WALMI has a fund with itself, it cannot be a ground to extend the pensionary benefits – Grant of pensionary benefits is not a one-time payment – It is a recurring monthly expenditure and there is a continuous*

liability in future towards the pensionary benefits – Therefore, merely because at one point of time, WALMI might have certain funds does not mean that for all times to come, it can bear such burden of paying pension to all its employees – In any case, it is ultimately for the State Government and WALMI to take their own policy decision whether to extend the pensionary benefits to its employees or not – The interference by the Judiciary in such a policy decision having financial implications and/or having a cascading effect is not at all warranted and justified.

A

B

C

D

E

F

G

H

Allowing the appeals, the Court

HELD: 1. As per the settled proposition of law, the Court should refrain from interfering with the policy decision, which might have a cascading effect and having financial implications. Whether to grant certain benefits to the employees or not should be left to the expert body and undertakings and the Court cannot interfere lightly. Granting of certain benefits may result in a cascading effect having adverse financial consequences.

[Para 10.4][145-G]

Secretary, Finance Department and others v. West Bengal Registration Service Association and others, 1993 Supp (1) SCC 153 : [1992] 1 SCR 897; State of Bihar and others v. Bihar Secondary Teachers Struggle Committee, Munger and others, (2019) 18 SCC 301 : [2019] SCR 738 – referred to.

2. In the present case, WALMI being an autonomous body, registered under the Societies Registration Act, the employees of WALMI are governed by their own Service Rules and conditions, which specifically do not provide for any pensionary benefits; the Governing Council of WALMI has adopted the Maharashtra Civil Services Rules except the Pension Rules. Therefore, as such a conscious policy decision has been taken not to adopt the Pension Rules applicable to the State Government employees; that the State Government has taken such a policy decision in the year 2005 not to extend the pensionary benefits to the employees of the aided institutes, boards, corporations etc.; and the proposal of the then Director of WALMI to extend

- A the pensionary benefits to the employees of WALMI has been specifically turned down by the State Government. Considering the aforesaid facts and circumstances, the High Court is not justified in directing the State to extend the pensionary benefits to the employees of WALMI, which is an independent autonomous entity. [Para 10.5][145-H; 146-A-C]
- B 3. The observations made by the High court that as the salary and allowances payable to the employees of WALMI are being paid out of the Consolidated Fund of the State and/or that the WALMI is getting grant from the Government are all irrelevant considerations, so far as extending the pensionary benefits to its employees is concerned. WALMI has to run its administration from its own financial resources. WALMI has no financial powers of imposing any tax like a State and/or the Central Government and WALMI has to depend upon the grants to be made by the State Government. [Para 10.6][146-D-E]
- C 4. So far as the observations made by the High Court that the amount available with WALMI and deposited with E.P.F. towards the employee's contribution itself is sufficient to meet the financial liability of the pensionary benefits to the employees and, therefore, there is no justification and/or reasonable basis for the State Government to refuse to extend the benefit of pension to the retired employees of WALMI is concerned, merely because WALMI has a fund with itself, it cannot be a ground to extend the pensionary benefits. Grant of pensionary benefits is not a one-time payment. Grant of pensionary benefits is a recurring monthly expenditure and there is a continuous liability in future towards the pensionary benefits. Therefore, merely because at one point of time, WALMI might have certain funds does not mean that for all times to come, it can bear such burden of paying pension to all its employees. [Para 10.7][146-E-H]

G *Punjab State Cooperative Milk Producers Federation Limited and Anr. v. Balbir Kumar Walia and Ors. (2021) 8 SCC 784; T.M. Sampath and Ors. v. Secretary, Ministry of Water Resources and Ors., (2015) 5 SCC 333 : [2015] 1 SCR 748 – relied on.*

H

State of Kerala and Anr. v. Naveena Prabhu and Ors.
(2009) 3 SCC 649 : [2009] 2 SCR 958; Purshottam Lal and Ors. v. Union of India and Anr. (1973) 1 SCC 651; Haryana State Minor Irrigation Tubewells Corporation and Ors. v. G.S. Uppal and Ors. (2008) 7 SCC 375 : [2008] 6 SCR 662 – referred to.

A

B

Case Law Reference

[2009] 2 SCR 958	referred to	Para 4.5	
[1992] 1 SCR 897	referred to	Para 5.3	
[2019] SCR 738	referred to	Para 5.3	C
(1973) 1 SCC 651	referred to	Para 5.3	
[2008] 6 SCR 662	referred to	Para 5.3	
[2015] 1 SCR 748	relied on	Para 10.2	
(2021) 8 SCC 784	relied on	Para 10.3	D

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 7682-7684 of 2021.

From the Judgment and Order dated 20.07.2018 of the High Court of Judicature at Bombay, Bench at Aurangabad in Writ Petition No.748 of 2014 and Order dated 05.09.2019 in Review Application (C) Nos.148 and 191 of 2019 in Writ Petition No.748 of 2014.

E

With

Civil Appeal Nos. 7685-7687 and 7688-7690 of 2021.

Tushar Mehta, SG, Sachin Patil, Rahul Chitnis, Aaditya A. Pande, F
Geo Joseph, Ms. Shwetal Shepal, Advs. for the Appellants.

J. N. Singh, Saurabh Mishra, Ms. Sadhana Singh, Yashodeep Deshmukh, Advs. for the Respondents.

The Judgment of the Court was delivered by

G

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the High Court of Judicature at Bombay dated 20.07.2018 passed in Writ Petition No.748 of 2014 and other

H

- A connected writ petitions by which the High Court has allowed the said writ petitions and has directed the State Government to extend the pensionary benefits to the employees of Water and Land Management Institute, the State of Maharashtra and another have preferred the present appeals. The State preferred review applications which came to be dismissed.
- B 2. That Water and Land Management Institute (hereinafter referred to as "WALMI") is a society registered under the Societies Registration Act, 1860, which has its own Memorandum of Association. WALMI is being administered by its Governing Council. WALMI is an autonomous institution governed by its own Rules and Regulations.
- C WALMI came into existence in the year 1980 under the World Bank Project of the Irrigation Department. The funds and properties of the Society and their entire management vests in the Governing Council. The main objects for which the Society has been formed are as under:-
- D
 - (a) With a view to promoting advancement of science and acquisition of scientific knowledge to provide instructions and training in all branches of science both theoretical and applied and in particular in Water Management and Land Development for Irrigation and agriculture.
- E
 - (b) To establish an institution for imparting instructions and training and conducting research in Water Management and Land Development for irrigation and agriculture.
 - (c) To prescribe courses for instruction and training in Water Management and Land Development for irrigation and agriculture and hold examinations and grant certificates, diplomas etc.
- F
 - (d) To seek affiliation of the said institute with Universities and other appropriate academic bodies both in India and abroad and to obtain recognition of the said courses conducted at the said institute and for the said examinations conducted by the Institute and diplomas, certificates, etc., granted by the Institute.
 - (e) To provide consultancy service to the Government Local Bodies and other organisations in water management and land development for irrigation and agriculture.
- H

- (f) To undertake research and conduct experiments in various aspects of water management and land development arid to collaborate with other similar organisations for research and development. A
 - (g) To send within the country and abroad for specialised training in Water Management and Land Development for irrigation and agriculture person including members of staff of the said Institute and bear and pay the costs of such training. B
 - (h) To start, conduct, print, publish and exhibit any magazines, periodicals, newspapers, books, pamphlets or posters that may be considered desirable for the promotion of the objects of the Society. C
 - (i) To invest and deal with the funds of the Society.
 - (j) To make rules and bye-laws for the conduct of the affairs of the society and Institute and from time to time add, to amend, vary or rescind them. D
 - (k) Make donations to such persons or institutions whether of cash or any other assets, as may be, that are directly or indirectly conducive to any of the Society's objects, or otherwise expedient and in particular, to remunerate any person or corporations introducing, or assisting the Society. E
 - (l) establish and support or aid the establishment of, and support associations, institutions, societies, funds, trusts and conveniences for the benefit of the employees of ex-employees or persons having connections of such person and in particular friendly or other benefit of societies and to grant pension, allowances, gratuities, either by way of annual payments, or by way of lump sum and to make payments towards insurance to form and contribute to provident and benefit funds to or for such persons. F
 - (m) Generally to do and execute all such other acts, matters and things as are incidental or conducive to or necessary for attainment of the above objects or any of them.” G
- 2.1 The Governing Council in its meeting held on 11.08.1980 framed the WALMI Establishment Rules, 1980, which provided the service H

- A conditions including certain allowances to be paid to its employees. It was provided in the said Rules that the Service Rules made by the Government of Maharashtra for its employees (as may be amended/ modified from time to time) shall apply to the employees of the Institute unless they are repugnant to the Rules made or may be made by the Institute. It is specifically provided that Government Rules for Pension, Provident Fund and Gratuity shall not, however, apply. The Governing Council in its 41st meeting held on 31.01.1995 reiterated that the Governing Council has made the Establishment / Service Rules of the Government of Maharashtra applicable to WALMI except the Rules for Pension, Provident Fund and Gratuity. It was also mentioned that the Contributory Provident Fund Rules framed by WALMI have been made applicable. Grant of pensionary benefits to the employees of the Grant-in-aid Institutes/Corporation etc. came to be discussed in the meeting of the Cabinet Ministers held on 30.01.1997. After due deliberation, the Cabinet approved the proposal to the effect that no pensionary benefits should be granted to the employees working in the Institute receiving Grant-in-aid, Corporations etc.

- 2.2 But thereafter, the Governing Council of WALMI in its 44th meeting held on 13.08.1997 resolved to send proposal to the Government to grant pensionary benefits to the employees of WALMI. The then Director General of WALMI issued a communication dated 12.10.2000 to the Secretary, Irrigation Department and gave his opinion in affirmative for grant of pensionary benefits to the employees of WALMI. But the Government of Maharashtra through its Finance Department issued a resolution dated 31.10.2005 and introduced a new Contributory Pension Scheme for the Government servants who are recruited on or after 01.11.2005 in the State Government service. On 08.11.2005, the State Government through its Finance Department issued another resolution and resolved that the employees serving in Grant-in-aid Institutes, Mandals, Corporations etc. are not entitled for grant of pensionary benefits and the Pension Rules shall not be made applicable to them.

- 2.3 Again, the Director General of WALMI issued a communication dated 06.02.2008 to the Secretary, Irrigation Department and prayed for grant of pensionary benefits to the employees of WALMI. By communication dated 12.07.2012, the Finance Department of the State Government again reiterated that the employees of WALMI are not entitled for pensionary benefits and the Contributory Provident Fund shall not be applicable to them.

2.4 Hence some of the employees of WALMI filed a Writ Petition No.1507 of 2012 before the High Court of Judicature at Bombay, Aurangabad Bench. The High Court directed the State to take a decision on the proposal dated 06.02.2008 within a period of six months. Vide communication dated 05.03.2013, the State Government informed that the request for grant of pensionary benefits to the employees of WALMI has been rejected.

A

2.5 Feeling aggrieved and dissatisfied with the communication dated 05.03.2013, rejecting the proposal/request for grant of pensionary benefits to the employees of WALMI, the employees/ex-employees of WALMI preferred the present writ petitions before the High Court and prayed to direct the State Government to grant pensionary benefits, which are available to the State Government employees, also to the employees of WALMI.

B

2.6 That by the impugned common judgment and order, the High Court has allowed the writ petitions and has quashed and set aside the communication dated 05.03.2013 of the State Government refusing to extend the pensionary benefits to the employees of WALMI and consequently has directed to extend pensionary benefits to the employees of WALMI, with arrears w.e.f. 06.05.2013. While allowing the writ petitions, the High Court has observed that the amount available with WALMI and deposited with E.P.F. towards the employee's contribution itself is sufficient to meet the financial liability of the pensionary benefits to employees and that there does not appear to be any reasonable basis for the State Government to refuse to extend the benefit of pension to the retired employees of WALMI. The High Court has also further observed that as the WALMI institute essentially performs educational and research activities and receives 100% grant from the State Government, that the service conditions of employees are regulated by Maharashtra Civil Services Rules and that the employees have been from time to time extended the benefits of wage, pay scale revision on par with the Government employees. That the employees are being paid out of the Consolidated Fund of the State Government and hence there is no justification to treat the employees of the WALMI differently than that of the State Government employees. Observing so, the High Court has observed and held that the denial of pensionary benefits to the employees of WALMI would be discriminatory and violative of the principle of equality guaranteed under Article 14 of the Constitution of India.

C

D

E

F

G

H

- A 2.7 Feeling aggrieved and dissatisfied with the impugned common judgment and order passed by the High Court directing the State to extend the pensionary benefits to the employees of the WALMI, the State of Maharashtra through the Secretary, Irrigation Department and Finance Department have preferred the present appeals.
- B 3. Shri Tushar Mehta, learned Solicitor General assisted by Shri Sachin Patil has appeared on behalf of the appellants and Shri J.N. Singh, learned counsel has appeared on behalf of the respondents - original writ petitioners.
- C 4. Shri Tushar Mehta, learned Solicitor General appearing on behalf of the State of Maharashtra has vehemently submitted that in the facts and circumstances of the case, the High Court has committed a grave error in quashing and setting aside the conscious decision taken by the State Government not to extend the pensionary benefits to the employees of WALMI. It is submitted that the High Court has failed to appreciate that the WALMI is an autonomous body and a Society registered under the provisions of the Societies Registration Act, 1860 and is an independent entity governed by its own Rules and Regulations. It was therefore submitted that the employees of WALMI cannot be put to par with the State Government employees.
- E 4.1 It was further submitted that under the Service Rules applicable to the employees of WALMI, as such, there is no provision for pension/pensionary benefits. It was submitted that under the Rules and as per the decision taken by the Governing Council, only Gratuity Rules applicable to the State Government employees are made applicable.
- F 4.2 It was further submitted by Shri Mehta, learned Solicitor General appearing on behalf of the State that as such when a conscious decision had been taken by the State Government after due deliberations, it can be said to be a policy decision and it was decided that the Pension Rules applicable to the State Government employees shall not be made applicable to the employees of WALMI and therefore they are not entitled
- G to the pensionary benefits, the High Court ought not to have interfered with such a policy decision in exercise of powers under Article 226 of the Constitution of India.
- H 4.3 It is further submitted by Shri Mehta, learned Solicitor General that WALMI is an independent autonomous body, a Society registered under the Societies Registration Act and the administration and

management vest with its Governing Council. It was submitted that the employees of WALMI are governed by its own Service Rules, which specifically prohibits the pensionary benefits to its employees and only Gratuity Rules are made applicable and, therefore, the employees of the WALMI cannot be put at par with the Government employees.

A

4.4 It is submitted that even otherwise, whether to grant and/or extend the pensionary benefits to the employees of the WALMI, which is an autonomous body, is a policy decision, which was not required to be interfered with by the High Court in exercise of powers under Article 226 of the Constitution of India. It is submitted that to interfere with such a policy decision would not be permissible while exercising powers under Article 226 of the Constitution of India. Heavy reliance was placed upon a decision of this Court in the case of **T.M. Sampath and Ors. Vs. Secretary, Ministry of Water Resources and Ors., (2015) 5 SCC 333**. It was submitted that the above was a case with respect to the employees of National Water Development Agency (NWDA), which was also established as a Society and which was an autonomous body. The employees of the NWDA claimed pensionary benefits on par with the Central Government employees claiming parity between them. This Court observed and held that the principle of parity shall be inapplicable to employees of NWDA since NWDA cannot be treated as an instrumentality of the State under Article 12 of the Constitution of India merely on the basis that its funds are granted by the Central Government. It was submitted that a claim for equality can be made when there is discrimination by the State between two similarly situated persons. It was further observed that discrimination cannot be invoked in cases where discrimination sought to be shown is between acts of two different authorities functioning as State under Article 12 of the Constitution.

B

C

D

E

F

4.5 Relying upon the decision of this Court in the case of **State of Kerala and Anr. Vs. Naveena Prabhu and Ors., (2009) 3 SCC 649**, it was submitted by Shri Mehta, learned Solicitor General that in financial matters Court would abstain from issuing directions having financial implications. It was submitted that the Court would not generally interfere with a Government's policy decision.

G

4.6 It was further urged that in the present case, the High Court has not at all considered the financial implications on extending the pensionary benefits to the employees of WALMI. It is submitted that the High Court has not at all considered and appreciated the additional

H

- A financial burden, which will be recurring, if the pensionary benefits are extended to the employees of the WALMI.

- 4.7 It was submitted by Shri Tushar Mehta, learned Solicitor General of India that as held by this Court in a catena of decisions, whether to grant a particular service benefit like pension etc. should be left to the employer as it will have a financial implication. Reliance was placed on the decisions of this Court in the cases of **Secretary, Finance Department and others Vs. West Bengal Registration Service Association and others, 1993 Supp (1) SCC 153; State of Bihar and others Vs. Bihar Secondary Teachers Struggle Committee, Munger and others, (2019) 18 SCC 301; and Punjab State Cooperative Milk Producers Federation Limited and another Vs. Balbir Kumar Walia and others, (2021) 8 SCC 784.**

- 4.8 Thus, making the above submissions and relying upon the above decisions, it was prayed to allow the present appeal.
- D 5. Learned counsel appearing on behalf of the respondents – original writ petitioners while opposing the present appeals vehemently submitted that in the facts and circumstances of the case, the High Courts, after having been satisfied that there was no valid justification not to extend the pensionary benefits to the employees of WALMI has rightly directed the State to extend the pensionary benefits to the employees of WALMI.

- 5.1 It was submitted that WALMI, right from its inception is being paid funds from the Irrigation Department and WALMI receives Grant-in-aid from the Government. It was submitted that the object and purpose of WALMI is to impart training/education. Further that even the staff was allocated by the Irrigation Department of the State. It was further submitted that even the posts, which are allotted to WALMI are included in the 45,297 posts available and sanctioned for the Irrigation Department. That the posts meant for WALMI are posts on establishment of Water Resources Department of Government of Maharashtra and, thus, WALMI can be said to be a part of establishment of Water Resources Department for all purposes and, therefore, the employees of the WALMI cannot be treated differently and cannot be extended a differential treatment in the matter of payment of pensionary benefits. It was urged that the High Court has rightly observed that denial of pensionary benefits to the employees of WALMI is clearly discriminatory and violative of Article 14 of the Constitution of India.

5.2 It was further submitted that the High Court has rightly observed that as the WALMI has sufficient funds to meet the financial burden of pensionary benefits, therefore, there is no justification to deny the pensionary benefits to the employees of WALMI, more particularly, when WALMI is a Grant-in-aid Institute and is fully funded by the State Government. It was contended that apart from the fact that WALMI receives 100% grant from the State Government, the Service Conditions of its employees are regulated by the Maharashtra Civil Services Rules and even the employees of WALMI have been from time to time extended the benefits of wage, pay-scale revision, on par with the State Government employees including the fixation of time bound pay scale and even the employees are being paid out of the Consolidated Fund of the State Government and, therefore, there is no justification at all to extend the differential treatment by the State Government to the employees of WALMI by denying pensionary benefits to the employees of WALMI.

5.3 Making the above submissions and relying upon the decisions of this Court in the cases of **Purshottam Lal and Ors. Vs. Union of India and Anr., (1973) 1 SCC 651** and **Haryana State Minor Irrigation Tubewells Corporation and Ors. Vs. G.S. Uppal and Ors., (2008) 7 SCC 375**, it was prayed to dismiss the present appeals.

6. We have thus heard the learned counsel for the respective parties at length.

7. The short question, which is posed for consideration of this Court is “whether the employees of the WALMI are entitled to the pensionary benefits on par with the State Government employees?”

8. By the impugned common judgment and order, the High Court has directed the State to extend the retirement benefits to the employees of WALMI mainly on the following grounds:-

- (i) that the primary functions of WALMI are educational, the purpose of establishing the Institute is to impart training to engineers and farmers of Maharashtra State and to provide expert advice to the Water Resources Department, Government of Maharashtra relating irrigation management;
- (ii) that the Institute receives 100% grant from the Government since 1993;
- (iii) that the posts created on the establishment are computed amongst the sanctioned posts of the Water Resources

A

B

C

D

E

F

G

H

- A Department; the control in respect of the management and the governance rest with high-ranking officers, i.e., Secretaries of the Government Department;
 - B (iv) the Regulations applicable to the Government employees relating to disciplinary matters as well as withdrawal of allowances like medical allowance, leave travel allowance, regulations relating to grant of leave so also regulations relating to disciplinary matters are uniform as in case of Government employees;
 - C (v) the Maharashtra Civil Services Rules are applicable to the Government employees;
 - D (vi) that the employees of WALMI have been extended the benefit of time bound promotional scale as in case of Government employees;
 - E (vii) that the employees of WALMI have also received the benefit of wage, pay scale revision made applicable to the Government employees;
 - F (viii) that for all practicable purposes, the employees of WALMI are treated on par with the Government employees; the salary and allowances payable to the employees of WALMI are being paid out of the Consolidated Fund of the State; and
 - G (ix) the amount available with WALMI and deposited with E.P.F. towards the employee's contribution itself is sufficient to meet the financial liability of the pensionary benefits to employees.
- 8.1 On the aforesaid grounds, the High Court has ultimately observed and held that there does not appear to be any reasonable basis for the State to refuse to extend the benefit of pension to the retired employees of WALMI.
- G 9. Having heard the learned counsel appearing for the respective parties, we are of the opinion that none of the aforesaid grounds justify extension of the pensionary benefits to the employees of WALMI.
- H 9.1 WALMI is an independent autonomous body and a Society registered under the Societies Registration Act, 1860. The administration and management of the WALMI is through its Governing Council. That

WALMI has its own Rules, namely, WALMI Establishment Rules, 1980, governing the service conditions and the benefits available to the employees of WALMI. The WALMI Establishment Rules, 1980 provide for the benefits of travelling allowance, daily allowance, medical reimbursement, house rent allowance etc. but however, do not provide for pension, provident fund. Thereafter the Governing Council of WALMI has adopted the Maharashtra Civil Services Rules except Pension Rules. Thus, from the above, it can be seen that WALMI is an independent autonomous entity governed by their own Rules and Regulations and the administration and management of WALMI is being run through/by its Governing Council. Even the State is not the Disciplinary Authority of the employees of WALMI. That in the G.R. dated 17.03.2006, it is stated that in WALMI 170 posts are created on temporary establishment. However, it may be true that posts created in the WALMI are included in the total sanctioned number of posts in the Water Resources Department. However, in the said G.R. it is specifically observed that WALMI is an autonomous institution of the Government and 214 posts are sanctioned on fixed temporary establishment and 168 posts on converted temporary establishment. It further provides that as the posts are person-wise on the converted temporary establishment, the posts shall be abolished automatically, if the person retires or resigns or becomes vacant in any other way. It further provides that WALMI is an autonomous institution, the staff of it cannot be transferred anywhere.

A

B

C

D

E

F

G

9.2 It is required to be noted that as such the Government vide G.R. dated 08.11.2005 specifically took a policy decision that the employees of aided institutes, boards, corporations, who are not governed by Maharashtra Civil Services (Pension) Rules, 1982, shall not be made applicable to such institutions. Even the proposal made by the then Director of WALMI to extend the pensionary benefits to the employees of WALMI came to be rejected by the State Government. Neither the G.R. dated 08.11.2005 nor the decision of the State Government refusing to extend the pensionary benefits to the employees of WALMI are challenged.

10. In view of the above factual scenario, the question posed is:

“whether the employees of WALMI, which is an independent autonomous entity registered under the Societies Registration Act, are entitled to the pensionary benefits on par with the State Government employees?”

H

- A 10.1 While answering the aforesaid question, few decisions of this Court on the inference of the Courts in the policy decision having financial implications and whether the employees of the board/societies, who are autonomous bodies can claim parity in the pay-scale and/or other benefits which may be available to the Government employees, are required to be considered.
- B 10.2 In the case of **T.M. Sampath and Ors. Vs. Secretary, Ministry of Water Resources and Ors. (supra)**, the employees of National Water Development Agency (NWDA), an autonomous body under the aegis and control of Ministry of Water Resources claimed the pensionary benefits on par with the Central Government employees.
- C Refusing to allow such pensionary benefits to the employees of NWDA on par with the Central Government employees, in paragraphs 16 and 17, it was observed and held as under:-
- D “**16.** On the issue of parity between the employees of NWDA and Central Government employees, even if it is assumed that the 1982 Rules did not exist or were not applicable on the date of the OM i.e. 1-5-1987, the relevant date of parity, the principle of parity cannot be applicable to the employees of NWDA. NWDA cannot be treated as an instrumentality of the State under Article 12 of the Constitution merely on the basis that its funds are granted by the Central Government. In *Zee Telefilms Ltd. v. Union of India* [(2005) 4 SCC 649], it was held by this Court that the autonomous bodies having some nexus with the Government by itself would not bring them within the sweep of the expression “State” and each case must be determined on its own merits. Thus, the plea of the employees of NWDA to be treated on a par with their counterparts in the Central Government under sub-rule (6)(iv) of Rule 209 of the General Financial Rules, merely on the basis of funding is not applicable.
- E **17.** Even if it is presumed that NWDA is “State” under Article 12 of the Constitution, the appellants have failed to prove that they are on a par with their counterparts, with whom they claim parity. As held by this Court in *UT, Chandigarh v. Krishan Bhandari* [(1996) 11 SCC 348], the claim to equality can be claimed when there is discrimination by the State between two persons who are similarly situated. The said discrimination cannot be invoked in cases where discrimination sought to be shown is

between acts of two different authorities functioning as State under Article 12. Thus, the employees of NWDA cannot be said to be “Central Government employees” as stated in the OM for its applicability.”

A

As per the law laid down by this Court in a catena of decisions, the employees of the autonomous bodies cannot claim, as a matter of right, the same service benefits on par with the Government employees. Merely because such autonomous bodies might have adopted the Government Service Rules and/or in the Governing Council there may be a representative of the Government and/or merely because such institution is funded by the State/Central Government, employees of such autonomous bodies cannot, as a matter of right, claim parity with the State/Central Government employees. This is more particularly, when the employees of such autonomous bodies are governed by their own Service Rules and service conditions. The State Government and the Autonomous Board/Body cannot be put on par.

B

C

10.3 In the case of **Punjab State Cooperative Milk Producers Federation Limited and Anr. Vs. Balbir Kumar Walia and Ors., (2021) 8 SCC 784**, in paragraph 32, it is observed as under:-

D

“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.”

E

F

10.4 As per the settled proposition of law, the Court should refrain from interfering with the policy decision, which might have a cascading effect and having financial implications. Whether to grant certain benefits to the employees or not should be left to the expert body and undertakings and the Court cannot interfere lightly. Granting of certain benefits may result in a cascading effect having adverse financial consequences.

G

10.5 In the present case, WALMI being an autonomous body, registered under the Societies Registration Act, the employees of WALMI

H

- A are governed by their own Service Rules and conditions, which specifically do not provide for any pensionary benefits; the Governing Council of WALMI has adopted the Maharashtra Civil Services Rules except the Pension Rules. Therefore, as such a conscious policy decision has been taken not to adopt the Pension Rules applicable to the State Government employees; that the State Government has taken such a policy decision in the year 2005 not to extend the pensionary benefits to the employees of the aided institutes, boards, corporations etc.; and the proposal of the then Director of WALMI to extend the pensionary benefits to the employees of WALMI has been specifically turned down by the State Government. Considering the aforesaid facts and circumstances, the
- B
- C High Court is not justified in directing the State to extend the pensionary benefits to the employees of WALMI, which is an independent autonomous entity.

- 10.6 The observations made by the High court that as the salary and allowances payable to the employees of WALMI are being paid out of the Consolidated Fund of the State and/or that the WALMI is getting grant from the Government are all irrelevant considerations, so far as extending the pensionary benefits to its employees is concerned. WALMI has to run its administration from its own financial resources. WALMI has no financial powers of imposing any tax like a State and/or the Central Government and WALMI has to depend upon the grants to be made by the State Government.

- 10.7 Now, so far as the observations made by the High Court that the amount available with WALMI and deposited with E.P.F. towards the employee's contribution itself is sufficient to meet the financial liability of the pensionary benefits to the employees and, therefore, there is no justification and/or reasonable basis for the State Government to refuse to extend the benefit of pension to the retired employees of WALMI is concerned, it is to be noted that merely because WALMI has a fund with itself, it cannot be a ground to extend the pensionary benefits. Grant of pensionary benefits is not a one-time payment. Grant of pensionary benefits is a recurring monthly expenditure and there is a continuous liability in future towards the pensionary benefits. Therefore, merely because at one point of time, WALMI might have certain funds does not mean that for all times to come, it can bear such burden of paying pension to all its employees. In any case, it is ultimately for the State Government and the Society (WALMI) to take their own policy decision whether to

H

extend the pensionary benefits to its employees or not. The interference by the Judiciary in such a policy decision having financial implications and/or having a cascading effect is not at all warranted and justified.

A

11. In view of the above discussion and for the reasons stated, the impugned common judgment and order passed by the High Court directing the State to extend the pensionary benefits to the employees of WALMI is unsustainable, both in law and on facts. Accordingly, the impugned common judgment and order passed by the High Court deserves to be quashed and set aside and is accordingly quashed and set aside. It is held that the employees of WALMI, which is an independent autonomous body registered under the Societies Act are not entitled to the pensionary benefits.

B

C

All these appeals are accordingly allowed. However, in the facts and circumstances of the case, there shall be no order as to costs. Pending application(s), if any, also stands disposed of.

Devika Gujral

Appeals allowed.