

CASE NO.:
Writ Petition (civil) 122 of 1998

PETITIONER:
OFFICERS AND SUPERVISORS OF I.D.P.L.

RESPONDENT:
CHAIRMAN AND M.D. I.D.P.L. AND ORS.

DATE OF JUDGMENT: 24/07/2003

BENCH:
M.B. SHAH & DR. AR. LAKSHMANAN

JUDGMENT:
JUDGMENT

2003 Supp(1) SCR 720

The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. The petitioners are officers and supervisors employed in the Indian Drugs and Pharmaceuticals Ltd. (herein after referred to as "the IDPL"). They filed writ petition No. 678 of 1985 in this Court challenging the directions given by the Secretary, Ministry of Industry (the third respondent herein). This Court passed an order to comply with the orders passed by this Court. Thereupon the Government appointed Fifth Pay Commission in 1993 to consider revision of pay and allowances of the Central Government employees and pending final report, the Pay Commission granted three instalments of interim relief. According to the petitioners, the benefit was extended to the employees of all 69 Public Enterprises. The grievance of the petitioners was that they were not given any instalments of interim relief and as there was no response from the Chairman and Managing Director of the IDPL, they filed contempt petition No. 490 of 1996 for violation of directions given by this Court's order dated 03.05.1990. The contempt petition was dismissed as there was unprecedented financial crunch. On 24.10.1997, the Fifth Pay Commission recommended revisions of scales of pay and allowances of the Central Government employees and the third respondent herein directed 69 Public Enterprises to revise the pay-scales of the employees following C.D.A. pattern w.e.f. of 01.01.1996. As the first respondent did not take any action, the present writ petition No. 222 of 1998 was filed in this Court.

Mr. G.L. Sanghi, learned senior counsel, appearing for the petitioners placed strong reliance on a judgment of this Court dated 03.05.1990 in Jute Corporation of India Officers' Association v. Jute Corporation of India Ltd., and Anr., [1990] 3 SCC 436. He invited our attention to the terms of reference of the High Power Pay Committee and also its recommendations by its final report of 02.11.1998. Learned senior counsel has also invited our attention to the five directions given by this Court in the above judgment which read as follow :-

"(1) The scales of pay and dearness allowance as recommended in the Report will be extended to those employees who have been appointed with specific terms and conditions for grant of Central dearness allowance. This will be equally applicable to the employees who by rules laid down by the public sector enterprises are being paid Central dearness allowance.

(2) The employees appointed on or after January 1, 1989 will be governed by such pay scales and allowances as may be decided by the government in its discretion. Those appointed earlier with IDA pattern will continue to be governed in accordance with the terms and conditions of their appointment.

(3) The pay revision for those employees in respect of whom the

recommendations are hereby being directed to be implemented hereafter, will take place only as and when similar changes are effected for the Central Government employees. These employees will, however, continue to enjoy the option to switch over to the IDA pattern of the scales of pay etc. on a voluntary basis.

(4) The various recommendations made in the Report will be implemented with effect from the dates as follows. These dates are broadly in conformity with those specified in the Report :

Item

1. Revised pay scales and revised DA formula
To be implemented w.e f January 1, 1986(para 16.1)
 2. First instalment of interim relief
June 1, 1983 (para 16.3)
 3. Second instalment of interim relief
 4. CCA as per revised slabs (para 11.6 of Chapter 11 of the Report)
 5. House Rent Allowance Percentage rates as per BPE's OM No. 1(3)/83 BPE(WC) dated July 1, 1983, subject to overall ceiling of Rs. 1250, 1000, 680, 340 and 310 for Delhi/Bombay. A, B1 and B2, C and unclassified cities respectively.
 6. Medical facilities in terms of Para 11.21 of the Report
March 1, 1985 (para 16. 3)
January 1, 1989 (from January 1, 1986 to December 11, 1988 CCA will be paid at the existing rate at notional pay in the revised pay scales (Para I 1.7 of the Report)
Ceiling on payment of HRA without production of rent receipt to be revised from December 1, 1988 The existing HRA structure to be reviewed by BPE and revised norms and rates fixed from .a prospective date (Ref. Para 1115)
From a prospective date to be decided by the management of the PSEs
 7. Leave Travel Concession
 8. Other allowance and perquisites as per recommendations contained in Chapters 12 and 13 of the Report
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The quantum of benefits to be decided by the management of PSEs should be given effect to prospectively in terms of Para 111, 7 Para III to the Report (v) The arrears arising on account of pay, DA and other allowances etc. would be adjustable against and payments made from time to time."

However, the petitioners were not given any of these monetary benefits whereas the employees of other public sector undertakings received all instalments of interim relief. Finally, the petitioners issued a legal notice dated 05.08.1996 calling upon the management of the IDPL to release instalments of interim relief and dearness allowance as already stated. The petitioners did not receive any reply to the said notice, therefore, they filed Contempt Petition No. 490 of 1996 for violation of this Court's judgment dated 03.05.1990. When the contempt petition was listed on 29.11.1996, the respondents informed the Court that the IDPL was undergoing unprecedented financial crunch and, therefore, was unable to pay the employees the two instalments of interim relief which were due by that date. It was also submitted that another set of employees had earlier approached this Court and no relief was given. In view of the submissions made, this Court dismissed the contempt petition, which is marked as Annexure-P IV. Mr. Sanghi contended that the reasons given by the respondents for non-payment of interim relief are not at all sound and that the notifications issued by the Government of India require all the undertakings to comply with the directions given by this Court and implement the recommendations of the Pay Committee and therefore no exception has been made in favour of those undertakings which incur losses every year. According to the petitioners, the Fifth Pay Commission revised pay and allowances of the Central Government employees and that the Government decided to implement the recommendations of the Fifth Pay Commission w.e.f. 01.01.1996 and that the third respondent issued O.M.

dated 24.10.1997 to 69 public undertakings directing them to revise the pay-scales of employees following C.D.A. pattern w.e.f 01.01.1996. Mr. Sanghi also submitted that some undertakings like the National Textile Corporation, the Engineering Projects India Ltd. which have been incurring losses and which are before the Board for Industrial and Financial Reconstruction (hereinafter referred to as "the BIFR") have also adopted the revised scales of pay recommended by the Pay Commission. Concluding his arguments, learned senior counsel for the petitioner submitted that the directions contained in O.M. date 24.10.1997 issued by the third respondent are binding on the first respondent, IDPL, which is one of the 69 undertakings and that officers of all 69 undertakings following CDA pattern of pay-scales form a class and withholding of the benefit of revision of scales from a section of the class is discriminatory and violative of Articles 14 and 16 of the Constitution and that it is incumbent upon the respondents to ensure that IDPL carries out the directions issued by them. Arguing further the learned senior counsel submitted that the entire expenditure on salaries payable to the employees of the first respondent is borne by the Government and, therefore, financial constraints cannot be pleaded as a excuse for not paying the instalments of interim relief and not revising the par-scales. Placing reliance on the clause (iii) of the directions issued by this Court, which has been extracted above in the Jute Corporation of India Officers' Associations (supra), Mr. Sanghi submitted that since the Government had revised the scales of its employees, the respondent-IDPL is bound in revise the pay-scales of the petitioners also.

With the above contentions, the petitioner filed the above writ petition with the following prayers :-

- (a) direct the respondents to revise scales of pay of the petitioners w.e.f. 01.01.1996 and pay the arrears immediately :
- (b) direct the respondents to pay three instalments of interim relief w.e.f. the dates the payment become due.

Separate counter affidavits were filed by the IDPL - respondent no. 1 and respondent nos. 2, 3 and 4 respectively. The first respondent submitted that for various reasons the IDPL became a sick industrial company and was declared as such by the BIFR vide its order dated 12.08.1992 in BIFR case No, 503 of 1992 under Section 3(1)(O) of SICA and that after protracted negotiations with the promoters. State Governments, banks and the employees an agreed revival package was formulated and was later approved by the BIFR under Section 17(2) of SICA vide its orders dated 10.02.1994 for implementation in the company w.e.f. 01.04.1994 and that during the formulation of the agreed revival package all the employees including the petitioners gave a written undertaking sacrificing various facilities and also categorically agreed for the deferment of wage revision for a period of four years w.e.f. 01.04.1994. Ms. Anjana Gosain, learned counsel appearing for the IDPL, submitted that the payment of the interim relief which was declared during the pendency of the Fifth Pay Commission time to time was not released to the petitioners mainly because there was a threat of industrial unrest and it was to be adjusted in the future wage revision by the Fifth Pay Commission in view of the expressed undertakings by the petitioners that they will not claim any wage revision for a period of four years from the date of implementation of agreed revival package. She would further submit that a modified package for consideration and approval of the Ministry of Chemical and Fertilizer, Government of India and the BIFR was submitted and the Government of India vide its letter dated 17.01.1996 addressed to the Chairman of BIFR recommended that the modifications proposed by the IDPL in the existing revival package be examined by an operating agency. Consequently, the BIFR vide its order dated 23.01.1996 declared that the agreed revival package has failed and appointed IDBI as an operating agency under section 17(3) of SICA for suggesting measures for the revival of the respondent company. Learned counsel for the first, respondent also submitted that the Government of India could not provide sufficient budgetary support to the IDPL and consequently the production

activities had to be stopped in major two units of the company at Rishikesh and Hyderabad w.e.f. October, 1996 and that the respondent company has no means of generation of funds and the Government of India was continuing to give financial assistance for the payment of salaries only and the decision for the revival of the respondent company is still pending before the Government of India and the BIFR. It was also brought to our notice by the learned counsel for the first respondent that the petitioners who are officers and supervisors constitute only 5 per cent of the total strength of the employees of the respondent company and that the wage revision in respect of other employees has not been sanctioned by the Government of India so far.

Mr. P.P. Malhotra, learned senior counsel appearing for respondent Nos. 2, 3 and 4 after inviting our attention to the submissions made in the counter affidavit submitted that for various reasons the IDPL became a sick industrial company and was declared as such by the BIFR and that the first respondent company has no means of generation of funds and the Government of India is continuing to give financial assistance for the payment of salaries only and the decisions for the revival of the respondent company is still pending before the Government of India and BIFR. He would further submit that it does not stand to the reason that a company which is already dependant upon the Central Government for the wage bill even at the existing rate may further increase its liabilities by granting the revised pay-scales and that the public sector undertakings making losses cannot be put a par with the undertakings making profits in extending the pay benefits.

In the above background, the question, which arises for consideration, is whether the employees of public sector enterprises have any legal right to claim revision of wages that though the industrial undertakings or the companies in which they are working did not have the financial capacity to grant revision is pay-scale, yet the Government should give financial support to meet the additional expenditure incurred in that regard.

We have carefully gone through the pleadings, the Annexures filed by both sides and the orders passed by the BIFR and the judgments cited by the counsel appearing on either side. Learned counsel for the contesting respondent drew our attention to a recent judgment of this Court in A.K. Bindal and Anr. v. Union of India and Ors., [2003] 5 SCC 163 in support of her contention. We have perused the said judgment. In our opinion, since the employees of government companies are not government servants, they have absolutely no legal right to claim that the Government should pay their salary or that the additional expenditure incurred on account of revision of their pay-scales should be met by the Government, 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, in our view, 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. We are unable to countenance the submission made by Mr. Sanghi that economic viability of the industrial unit or the financial capacity of the employer cannot be taken into consideration in the matter of revision of pay-scales of the employees.

A Constitution Bench of this Court had examined the questions of revision of wages of workmen in Express Newspaper (Private) Ltd and Anr. v. Union of India and Ors.. AIR (1958) SC 578. This Court laid down the following principles for fixation of rates of wages :-

(1) that is the fixation of rates of wages which include within its compass the fixation of scales of wages also, the capacity of the industry to pay is one of the essential circumstances to be taken into consideration except in cases of bare subsistence or minimum wage where the employer is bound to pay the same irrespective of such capacity.

(2) that the capacity of the industry to pay is to be considered on an industry-cum-region basis after taking a fair cross section of the industry, and

(3) that the proper measure for gauging the capacity of the industry to pay should take into account the elasticity of demand for the product the possibility of tightening up the organization so that the industry could pay higher wages without difficulty and the possibility of increase in the efficiency of the lowest-paid workers resulting in increase in production considered in conjunction with the elasticity of demand for the product-no doubt against the ultimate background that the burden of the increased rate should be such as to drive the employer out of business."

The same questions was again examined in Hindustan Times Ltd New Delhi v. Their Workmen, AIR (1963) SC 1332 and this Court gave the following reasons.

7. While industrial adjudication will be happy to fix a wage structure which would give the workmen generally a living wage, economic considerations make that only dream for the future. That is why the Industrial Tribunals in this country generally confine their horizon to the target of fixing a fair wage. But there again, the economic factors have to be carefully considered. For these reasons, this Court has repeatedly emphasized the need of considering the problem on an industry-cum-region basis and of giving careful consideration to the ability of the industry to pay."

In our view, the economic capability of the employers 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 the 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 record before us by the respondents which clearly show that the first respondent had been suffering heavy 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 organization 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 BIFP. 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 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 instalment 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. 1999 which has also not been sanctioned by the Government of India.

In the instant case, it is also not in dispute that the units of the companies have already suspended their operations and as on. date no units is functioning. It is also observed in the order dated 23.01.1996 that the company's sales were of the order of Rs. 215 crore against the projected sales of Rs. 305.65 crore for the year ended 31.03.1995 and the company incurred a net loss of Rs. 69.80 crore against the projected profit of Rs. 0.08 crore. The major reasons for the poor performance of the company was staled to be constrained in working capital, power supply problems, reduction of custom tariff on import on bulk drugs, highly competitive

marketing in formulation and high wage bills besides withdrawal of price preference. The progress period ended on 30.09.1995 and as per the company's balance sheet were Rs. 77 crore against the envisaged sales of Rs. 177.47 crores for the period ended 30.09.1995 and the company incurred a net loss of Rs. 47 crores against the projected net profit of Rs. 7.69 crores. The accumulated loss stood at Rs. 577.10 crores against the projected accumulated loss of Rs. 499.30 crores as on 31.03.1995 and Rs. 624.10 crores against Rs. 478.66 crores as on 30.09.1995.

We have already reproduced the directions passed by this Court in Jute Corporation of India Officer's Association (supra). However, after the said judgment in which conditional directions were issued, as is apparent, the Central Government vide its O.M. dated 19.07.1995 decided as follows :-

"13. For SICK PSC registered with the BIFR pay revision and grant of other benefits will be allowed only if it is decided to revive the unit. The revival package should include the enhanced liability on this account. The benefit of pay revision etc. shall be extended to HSCO and financial liability thereof shall be met by SAIL."

In view of the said position and keeping in view the huge staff of approximately 6582, the parent ministry decided to introduce Voluntary Retirement Scheme (VRS) dated 20.09.2002 under which the VRS was open for three months with a clear-cut understanding to the employees that if one does not opt for VRS within three months the VRS will not be given in future and only retrenchment compensation will be applicable. At the time of hearing, it was submitted that all the petitioners have already opted for the said VRS before 31.03.2002 and they are likely to be relieved any day after receiving of the funds from the Ministry of Chemicals and Fertilizers. It has also been decided that all the employees would be relieved and subsequent decision would be taken by the parent Ministry.

The position of the employees is as follows :-

"31.12.2002

1. Total employees including plants Gurgaon, Rishikesh, Hyderabad, Muzafarpur, Chennai including CDA employees :

2. Opted for VRS by 31.12.2002

3. Relieved employees (Including CDA employees) upto 15.07.2003

Position of 1166 employees as on 15.07.2003 :-

- a. Corporate office
- b. Regional sales office (Marketing)
- c. Gurgaon Plant
- d. Hyderabad Plant
- e. Muzafarpur Plant
- f. IDPL, Chennai
- g. Rishikesh Plant

Total

6582 : All

: 1166

48 198

34 97

25 25 739

1166

Total

Under CDA Under IDA

1166

200 966"

We have already referred to the judgment of this Court in A.K. Bindal and Anr., (supra) in which this Court had decided that the employees under public sector enterprises cannot be treated as Central Government employees

and if the company does not have enough funds no way the revision can be given.

In A.K. Bindal (supra) this Court specifically held that the economic viability or the financial capacity of the employer is an important factor which cannot be ignored while fixing the wages structure otherwise the unit itself may not be able to function and may have to close down which will inevitably have disastrous consequences for the employees themselves. The Court also negated other contentions raised by the employees and referred to and relied upon the fact that the company was a sick unit. Facts in the present case are similar.

Further directions issued in Jute Corporation of India officers Association (supra) would have no bearing in the present case as the Scheme under the SICA has failed to revive the Company. When the Company cannot be revived because of large losses, there is no question of enhancing scales of pay and dearness allowances. Direction No. (ii) issued in that case indicates that the employees appointed on or after January 1, 1989 will be governed by such pay scales and allowances as may be decided by the Government in its discretion. If the company itself is dying, the government has discretion not to grant enhanced pay scales or dearness allowances and for the same reason Direction No. (i) cannot be implemented.

Since this Court has already decided the very issue in question and the petitioners have opted for the VRS nothing survives in this petition and the same is liable to be dismissed. The petitioners having applied for VKS it is not open to them to contend that they are entitled for pay revision

It is also pertinent to notice that one of the units of the company, namely, I DPL Kamgar Union, Rishikesh filed a special leave petition no 23361 of 1994 challenging the orders of the BIFR dated 10.02.1994 and of AAIFR dated 18.07.1994 and claimed the deferred facilities, the special leave petition was dismissed by this Court vide its judgment dated 07.01.1995

For the foregoing reasons, we see no merit in the writ petition. We, therefore, dismiss the same. However, there will be no order as to costs.