

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

%

Judgment Reserved on: August 27, 2012

Judgment Pronounced on: September 21, 2012

+

LPA 116/2012

MOOLCHAND KHARAITI RAM HOSPITAL
KARAMCHARI UNION

...Appellant

Represented by: Mr.Sanjay Parikh, Advocate
instructed by Ms.Mamta Saxena, Mr.Abinash K.Mishra,
Ms.Bushna Parveen, Advocates.

versus

MOOLCHAND KHARAITI RAM HOSPITAL &
AYURVEDIC RESEARCH INSTITUTE & ORS. ...Respondents

Represented by: Mr.Shanti Bhushan, Sr.Advocate &
Mr.Raj Birbal, Sr.Advocate instructed by Ms.Raavi
Birbal, Advocate for R-1.

+

LPA 210/2012

MOOLCHAND KHARATI RAM HOSPITAL &
AYURVEDIC RESEARCH INSTITUTE

...Appellant

Represented by: Mr.Shanti Bhushan, Sr.Advocate &
Mr.Raj Birbal, Sr.Advocate instructed by Ms.Raavi
Birbal, Advocate.

versus

MOOLCHAND KHARATI RAM HOSPITAL
KARAMCHARI UNION & ORS.

...Respondents

Represented by: Mr.Sanjay Parikh, Advocate
instructed by Ms.Mamta Saxena, Mr.Abinash K.Mishra,
Ms.Bushna Parveen, Advocates for R-1.
Mr.V.C.Jha, and Ms.Sonia Sharma, Advocates for R-3.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE MANMOHAN SINGH

PRADEEP NANDRAJOG, J.

1. The factual matrix leading to filing of the above captioned appeals is that on August 21, 1977 a settlement was entered into between the Management of Moolchand Khairati Ram Hospital & Ayurvedic Research Institute (hereinafter referred to as the 'Hospital') and Moolchand Khairati Ram Hospital Karamchari Union (hereinafter referred to as the 'Union') pertaining to the pay of class-III and class-IV employees of the hospital. The relevant terms of the settlement dated August 21, 1977 read as under:-

“Demands of the union were discussed.....

The question of revision of pay scales was also discussed. It was agreed that interim relief @ ₹35/- PM. should be allowed to each employee falling in the category of class IV & III effective from 01.08.77. It was also agreed that the government pay scales as prevailing on 01.10.78 will be introduced for all employees falling in the category of class III & IV from that date.

.....

Both sides have agreed that peaceful condition should prevail and all differences will be settled by mutual discussions and agreement.

As soon as the government pay scales are introduced for class III & IV employees with effect from 01/10/78. House rent & other facilities at present prevailing will be regulated as per govt. rules.

Any difference of opinion what constitutes as facility will be decided by mutual discussion.”

2. Disputes arose between the parties with regard to the implementation of the settlement dated August 21, 1977. The matter was placed before the Conciliation Officer, Delhi Administration. On May 17, 1979 a settlement was entered into between the parties during the conciliation proceedings. The relevant terms whereof read as under:-

“Both the parties have now agreed for settlement on following terms and conditions:-

1. It has been decided that since 1.10.1978 the Third and Fourth class employees of Shri Moolchand Khariti Ram Hospital (Research) shall be given the same salary which is given to the similar classes of the employees of the Central Government Hospitals which has been shown in the attached Annexure-A and which shall be binding on both the parties. It has been further agreed that the details of the salary given in the attached Annexure-A are true and correct and both the parties have accepted the same.

....

7. It has also been agreed that as and when the Central Government shall increase the pay scale of it's employees, the management of this hospital shall also give the same pay scale, in which the house rent and CCA shall also be included, to it's employees at the same rate. But the said pay scale shall be given to the employees of this hospital, 6 months after it is paid by the Central Government.

7B However, the dearness allowance shall be given at the same rate and date to the employees herein as and when the Central Government shall give the same to their employees.”

3. On January 31, 1994 a fresh settlement was entered into between the parties, the relevant terms whereof read as under:-

“7. Appointment Letters

It was agreed that appointment letters should be issued as per classification of the employees and the corresponding minimum scales of pay in Central Govt. Hospitals will be given for various posts of Class III & IV in this Hospital.

8. Revision of Pay Scales

It was agreed that the revision of pay scales including H.R.A. & C.C.A. etc; will be given effect from the same date the Govt. of India will revise the pay scales for its Govt. Hospitals as a result of recommendations of pay commission.

14. That in view of the settlement on the above mentioned terms and conditions the employees and the Union expressly agreed not to raise any demand involving any financial commitment by implication on the management of the Hospital during the period of this settlement. The employees and union undertake to maintain discipline, harmony and peace and they will work whole heartedly, diligently and efficiently in order to serve the patients to their best. The Union and the employees also undertake not to resort to any act of indiscipline or to act in contravention of terms and spirit of the settlement.

15. It is agreed that this settlement shall remain in force for a period of three years with effect from 01.01.1994. It shall remain binding on the parties till it is validly terminated in accordance with law.

16. This settlement will not adversely effect the terms and condition of service express or implied of employees and is without prejudice to the benefits that workman may be receiving or are entitled to from previous settlements.”

(Emphasis Supplied)

4. The Vth Central Pay Commission submitted its recommendations to the Central Government pertaining to pay-scales to be paid to the employees of the Central Government with effect from January 01, 1996. After

deliberating on the recommendation of the Vth Central Pay Commission, vide notification dated September 30, 1997 the Central Government adopted the recommendations with suitable modifications and implemented the same with effect from January 01, 1996.

5. On October 06, 1997 and October 10, 1997, the Union issued notices to the hospital, inter-alia, stating therein that in view of the settlement dated January 31, 1994 entered into between the Union and hospital the pay-scales and other allowances payable to the class-III & class-IV employees of the hospital be revised in the same manner as the pay-scales of similar employees working in the Central Government hospitals have been revised.

6. On October 14, 1997 the hospital issued a notice to all the employees of the hospital, the relevant portion whereof reads as under:-

**“SUBJECT:- TERMINATION OF SETTLEMENTS
DATED 03.07.1975, 21.08.1977, 06.11.1978, 17.05.1979,
10.10.1984, 26.04.1989 & 31.01.1994**

The period of above mentioned bipartite settlement have expired as mentioned in the respective settlements. These settlement are no longer binding on the parties. However, as an abundant caution we give notice to our intention to terminate all these settlement after expiry of 63 days from the date of this notice. These settlement shall not be binding on us after expiry of the period of prior notice given above. No further communication shall be necessary and the settlements mentioned above shall stand terminated after the expiry of above mentioned notice period. However present remuneration of the employees shall not be altered to their prejudice.”

(Emphasis Supplied)

7. On December 30, 1997 the hospital issued yet another notice to the Union reiterating therein that the previous settlements entered into between the parties stands terminated.

8. When the deadlock between the parties regarding the revision of pay-scales of class III and class-IV employees of the hospital could not be resolved, vide order dated May 28, 1998 the Government of NCT of Delhi referred the dispute to the Industrial Tribunal for adjudication. The terms of reference made to the Tribunal were as under:-

“Whether the workmen (all categories) are entitled to the benefit of the V Pay Commission’s recommendations and if so, what directions are necessary in this respect?”

9. The Union filed a statement of claim pleading that the settlement dated January 31, 1994, vide term No.15 thereof, was to last for three years and that the date January 01, 1996 fell within the said three period. It pleaded that as per the agreement, for a period of three years the wages of class-III and class-IV employees had to be same as paid by the Central Government to employees holding similar posts. It was thus pleaded that with effect from January 01, 1996 the workmen were entitled to be paid wages at par with similar employees working in hospitals under the Central Government.

10. In its written statement the hospital denied that the class-III and class-IV employees of the hospital are entitled to a revision of their pay-scales in terms of the recommendations of Vth Central Pay Commission for the reasons:- (i) the effect of clause 8 of the settlement dated January 31, 1994 entered into between the union and hospital was that whenever the pay-scales of the employees of the hospital would be revised the effect of said revision shall be given from the date of revision of the pay-scales of the employees of the Central Government hospitals and not that the pay-scales of the employees of the hospital would be revised in the same manner as the pay-scales of similar employees of the Central Government hospitals have been revised by virtue of the implementation of recommendations of Vth

Pay Commission; (ii) the settlement dated January 31, 1994 stood terminated on January 31, 1997 i.e. before the issuance of the notification dated September 30, 1997 issued by the Central Government implementing the recommendations of Vth Central Pay Commission as the term of the settlement dated January 31, 1994 was 3 years; (iii) the hospital does not have the financial capacity to revise the pay-scale of its employees as per the recommendations of Vth Central Pay Commission inasmuch as such revision of pay-scales would cause financial burden and lead to the closure of the hospital (iv) the Tribunal should determine the pay-scales of the employees of the hospital on the basis of principle of industry-cum-region and the financial capacity of the hospital.

11. During the pendency of the proceedings before the Industrial Tribunal, the hospital filed an application before the Tribunal to summon witnesses to give evidence to enable the Tribunal to determine the pay-scales of the employees of the hospital on industry-cum-region basis. On January 27, 2000 following order was passed by the Tribunal in said regard:-

“Present: Shri V. Sharma, ARW
Shri Sushil Sharma, ARM

27.1.2000

While hearing the arguments on the application of the management for summoning of other evidences from Hospital in Delhi to find out the benefits of Pay Commission have been extended to their employees, the ARW wants to make the statement, let it be recorded.

Statement of Sh. U. Sharma ARW

I confine my claim of ref. No.F.24(2117) 908 Lab AC ID No.86/98, on the basis of settlement of the workmen with the management dated 17.5.79 and 31.1.94 and letter of management issued to the workmen and other benefits

already granted by the management. I do not claim benefit of Vth Pay Commission on the basis of principle of industry cum-region.”

(Emphasis Supplied)

12. Surprisingly, in total ignorance of its mandate as per law and the fact that under Section 19 of the Industrial Disputes Act a settlement can be terminated, and that the settlement agreement had been terminated by the hospital, the Tribunal did not summon the witnesses which the Management had wanted to be summoned and did not allow any evidence to be led before it with reference to what pay-scales were implemented by other hospitals in Delhi.

13. Vide award dated January 14, 2003 the Tribunal answered the reference in the following terms:-

“28. So, as discussed above, the workmen has successfully established that Class III and Class IV employee of the management are entitled for revision of pay scales and having corresponding scale as per recommendation of 5th Pay Commission w.e.f. 1.1.96.

29. Consequently, it is held that Class III and Class IV employees of the management are entitled for revision of pay scales, awarded to them by virtue of 4th Pay Commission and are entitled for corresponding scales. However, the entitlement of workmen is subject to any payment advanced by way of interim relief and settlement of individual workmen, if any. Management is required to be directed accordingly.”

14. In reaching the above conclusion, it was held by the Tribunal that:- (i) the notice dated October 14, 1997 issued by the hospital terminating the settlement dated January 31, 1994 is of no consequence for the hospital could not have unilaterally terminated said settlement and that save and except the reason that the term of the settlement dated January 31, 1994 has

expired, the hospital has given no other reason in the notice dated October 14, 1997 for terminating the settlement dated January 31, 1994; (ii) vide notification dated September 30, 1997 the Central Government implemented the recommendations of Vth Central Pay Commission with effect from January 01, 1996 i.e. from a date when the settlement dated January 31, 1994 was operating thus class III and IV employees of the hospital became entitled to revision of their pay-scales as per the recommendations of Vth Central Pay Commission by virtue of clause 8 of the settlement dated January 31, 1994; (iii) the wording of notice dated October 14, 1997 issued by the hospital terminating the settlement dated January 31, 1994 itself implies that the said notice did not alter the remuneration available to the employees of the hospital before the issuance of the said notice; (iv) the plea of the hospital that it does not have the financial capacity to grant benefits of Vth Central Pay Commission to its employees cannot be accepted for the reasons that the hospital had not terminated the settlement dated January 31, 1994 on ground of its financial capacity and that the hospital had not shown that it intended not to grant benefits of Vth Central Pay Commission to its employees on account of its financial capacity at any time prior to raising of demand by the Union for grant of benefits of Vth Central Pay Commission; and (vi) the plea of the hospital that the pay-scales of its employees should be fixed on industry-cum-region basis cannot be accepted for the reason every settlement arrived between the hospital and union, particularly the settlement dated January 31, 1994, envisaged that class-III and IV employees of the hospital should be granted same pay-scales as granted to the similar employees of the Central Government hospitals.

15. Thereafter a dispute arose between the parties regarding the implementation of the award dated January 14, 2003 passed by the Tribunal,

which dispute was referred by the Government of NCT of Delhi to the Tribunal for adjudication. The terms of the reference were as under:-

“In terms of para 29 of award in I.D. No.2/99 dated 14.01.2003, whether Class-III and Class-IV employees of Sh. Mool Chand Kharati Lal Hospital are entitled to the benefits of IVth Pay Commission or Vth Pay Commission and if so from which date, what are the names of the workers (List) entitled for the benefits, and what directions are necessary in this regard?”

16. Vide order dated August 18, 2003 it has been held by the Tribunal that:- (i) a reading of the award dated January 14, 2003 in totality shows that the pay-scales of class-III and class-IV employees of the hospital are required to be revised in the same manner as the pay-scales of the similar employees of Central Government hospitals have been revised on January 01, 1996 by virtue of the implementation of recommendations of Vth Central Pay Commission; and (ii) no finding could be given regarding the names of the employees who stand benefitted by the award dated January 14, 2003.

17. Aggrieved by the award dated January 14, 2003 read with the order dated August 18, 2003 passed by the Tribunal the hospital filed a petition under Article 226 of the Constitution of India challenging the award and the order in question.

18. During the pendency of the writ petition, the hospital entered into individual settlements with 273 class-III and IV employees.

19. Vide judgment dated January 20, 2012, it has been held by the learned Single Judge that:- (i) clause 8 of the settlement dated January 31, 1994 when read in the light of the previous settlements dated August 21, 1977 and May 17, 1979 entered into between the parties implies that the pay-scales of class-III and class-IV employees of the hospital are to be revised in the same

manner as the pay-scales of similar employees of Central Government hospitals have been revised by virtue of the implementation of the recommendations of Vth Central Pay Commission, and from the same date when such revised pay-scales were granted by the Central Government; (ii) in view of the provisions of Section 19(2) of the Industrial Disputes Act that a settlement continues to be binding until expiry of 2 months from the date on which a notice of termination of settlement is given by one party to another, the interpretation afforded to Section 19(2) of the Industrial Disputes Act by the Supreme Court in the decision reported as (1981) 1 SCC 315 LIC v D.J. Bahadur that a settlement continues to be operative till such time it is replaced by a fresh settlement or award and as per the wording of notice dated October 14, 1997 issued by the hospital that the settlement dated January 31, 1994 would stand terminated after the expiry of 60 days from the date of said notice, the settlement dated January 31, 1994 did not cease to be operational on expiry of its term of 3 years and continued to be operational till it was replaced by another settlement or award which would include the period when on September 30, 1997 the Central Government implemented the recommendations of the Vth Central Pay Commission; meaning thereby that class-III and class-IV employees of the hospital became entitled to revision of their pay-scales as per the recommendations of Vth Central Pay Commission in terms of clause 8 of the settlement dated January 31, 1994 till such time the settlement dated January 31, 1994 was validly terminated by the hospital and stood replaced by a fresh settlement or award; (iii) once the settlement dated January 31, 1994 was validly terminated by the hospital it was incumbent upon the Tribunal to have determined the appropriate wage structure of class-III and class-IV employees of the hospital on the basis of principle of industry-cum-region

and financial capacity of the hospital but the Tribunal failed to do so; and (v) the Tribunal failed to appreciate that the earlier settlements entered between the parties may have been relevant for ascertaining the past pattern of wage structure of the class-III and class-IV employees of the hospital but that they do not constitute *res judicata* for determination of appropriate wage structure for the employees, for the future.

20. In view of the aforesaid, the learned Single Judge has concluded as under:-

“50. The position that emerges from the above decisions is that the scope of the proceedings before the Tribunal in the instant case was not limited to examining the question referred only in the light of the 1994 settlement. The Tribunal had to determine the appropriate wage structure by not only accounting for the past practice, including the 1994 settlement, but the industry-cum-region formula and the paying capacity of the Management as well. To this extent the impugned Award of the Tribunal is held to be erroneous in law. The remaining part of the Award is upheld.

51.....The question of appropriate wage structure to replace the 1994 settlement will be for the Tribunal to determine afresh in the light of evidence that the Management seeks to produce, after giving an opportunity to the workmen to produce any evidence to the contrary and in light of the law explained in the decisions of the Supreme Court. The impugned Award on this aspect has therefore to necessarily be set aside and the matter remanded to the Tribunal for fresh determination.

52. It is only those workmen who have not entered into a settlement with the Management after the termination of the 1994 settlement who will be governed by the Award to be passed afresh by the Tribunal.”

21. With respect to the arrangement regarding the payment of wages to class-III and IV employees of the hospital till a fresh award was passed by the Tribunal, the learned Single Judge held as under:-

“54. It requires to be reiterated that in terms of the law explained by the Supreme Court in **LIC v. DJ Bahadur**, the 1994 settlement continues to operate till replaced by a fresh settlement or Award. Further, as already held, the entitlement of the workmen to the revised pay scales in terms of the FPC recommendations had already accrued during the subsistence of the 1994 settlement. In this context it is important to note that the Tribunal in the impugned award granted to the workmen not the ‘benefits’ of the FPC recommendations but only the revised pay scales corresponding to the FPC pay scales. This was reiterated by the Tribunal in the order dated 18th August 2003. This part of the Award dated 14th January 2003 and the order dated 18th August 2003 has not been challenged by the workmen. Resultantly, the pay which the workmen were entitled to under the 1994 settlement at the time of its termination would be the revised pay scale in terms of the FPC recommendations. This however is to continue only till the 1994 settlement is replaced by the fresh settlement or Award.

55. Consequently it is directed that till such time the Tribunal determines, pursuant to the remand of the matter to it in terms of this order, the appropriate wage structure that should replace the 1994 settlement, the workmen (whether part of the Union i.e. Respondent No.1 or Respondent No.2) who have not entered into any settlement with the Management after the termination of the 1994 settlement will be paid the revised pay scales as per the FPC recommendations. As already clarified this will be limited to those workmen who remain in fray, i.e. who are still in service in the hospital in question as of today and who have not entered into any individual settlement with the Management after the termination of the 1994 settlement. The arrears constituting the difference in the monetary terms in the pay scales given to the

workmen and the revised pay scale as per the FPC recommendations with effect from 1st January 1996 shall be paid by the Management to the aforementioned workmen in four equal installments within a period of twelve weeks from today. In the event of failure by the Management to comply with this part of the order it will be open to the workmen concerned to seek appropriate remedies in accordance with law.”

22. Aggrieved by the judgment dated January 20, 2012 passed by the Single Judge insofar it has remanded the matter to the Tribunal for determination of the wage structure of class-III and class-IV employees of the hospital on the basis of the principle of industry-cum-region and the financial capacity of the hospital and has held that the class-III and IV employees of the hospital are entitled only to revision of their pay-scales as per the recommendations of the Vth Central Pay Commission and not the benefits of Vth Central Pay Commission the union had filed LPA No.116/2012.

23. On the other hand, aggrieved by the judgment dated January 20, 2012 passed by the Single Judge insofar it has directed the hospital to pay wages to class-III and class-IV employees of the hospital in terms of the revised pay-scales as per the recommendations of Vth Central Pay Commission with effect from January 01, 1996 till such time the matter is decided afresh by the tribunal, the hospital had filed LPA No.20/2012.

24. During the hearing of the above captioned appeals, learned counsel appearing for the union argued as under:-

A That the terms of reference to the Tribunal were: Whether the workmen of the hospital are entitled to the benefit of wages at par with the recommendations of the Vth Central Pay Commission. It has been held by the Supreme Court in the decisions reported as AIR 1959 SC 1191 Calcutta

Electric Supply Corporation Ltd v Workmen and (1977) 2 SCC 705 Cox & Kings Ltd v Their Workmen that the mandate of sub-section (4) of Section 10 the Industrial Disputes Act, 1947 is that the Tribunal should confine its adjudication to those points of dispute which are specified in the Order of Reference, or are incidental thereto. Such being the legal position, the Tribunal rightly did not adjudicate upon the issue of determination of wages of class-III and class-IV employees of the hospital on the basis of principle of industry-cum-region and financial capacity of the hospital as the same fell outside the scope of reference made to the Tribunal.

B That the learned Single Judge failed to note the order dated January 27, 2000 passed by the Tribunal, which order had a material bearing on the controversy involved in the present case. According to the learned counsel appearing for the union, a reading of the order dated January 27, 2000 passed by the Tribunal shows that the parties ‘consented’ before the Tribunal that the Tribunal need not adjudicate the issue of determination of wage structure of class-III and class-IV employees of the hospital on industry-cum-region basis. In face of the aforesaid consent of the parties, the learned Single Judge fell into an error in directing the Tribunal to adjudicate the issue of determination of wage structure of class-III and class-IV employees of the hospital on industry-cum-region basis.

C That in the instant case, the dispute which had arisen between the parties pertained to the revision of the pay-scales of class-III and class-IV employees of the hospital which was settled by virtue of the settlement dated January 31, 1994, which prescribed that the pay-scales of class-III and class-IV employees of the hospital shall be revised in the same manner as the pay-scales of similar employees of the Central Government hospitals have been revised by virtue of implementation of the recommendations of the Vth

Central Pay Commission. In the decision reported as AIR 1957 SC 38 Burn & Co., Calcutta v Their Employees it was held by the Supreme Court that an earlier dispute once settled between the management and employees cannot be reopened. In view of said legal position, it was urged that it was not permissible for the learned Single Judge to have reopened the dispute between the parties regarding revision of pay-scales of class-III and class-IV employees of the hospital by directing the Tribunal to determine the wages of said employees on the basis of principle of industry-cum-region and financial capacity of the hospital.

25. On the other hand, learned senior counsel appearing for the hospital advanced following 3 submissions:-

A That the interpretation put to clause 8 of the settlement dated January 31, 1994 by the Tribunal and the learned Single Judge is erroneous. While interpreting clause 8 of the settlement, dated January 31, 1994, both, the Tribunal and the learned Single Judge failed to note clause 14 thereof, which clause had a material bearing on the aspect of revision of pay-scales of class-III and IV employees of the hospital. According to learned senior counsel, clause 8 when read conjunctively with clause 14 which prescribes: *'in view of the settlement on the above mentioned terms and conditions the employees and the Union expressly agreed not to raise any demand involving any financial commitment by implication on the management of the Hospital during the period of this settlement'*, implies that the settlement between the parties was that the pay-scales of class-III and class-IV employees of the hospital, when revised by way of a settlement or award shall be given effect from the date when the pay-scales for similar employees of the central government hospitals were revised. In other words the submission was that clause-8 of the settlement dated January 31, 1998

pertained only to the date wherefrom the pays would be revised and not that the revised pay-scales would be automatically granted.

B That while directing the hospital to revise the pay-scales of its class-III and class-IV employees as per recommendations of the Vth Pay Commission, the Tribunal and the learned Single Judge failed to note that the recommendations of the Vth Pay Commission was by way of a comprehensive package, in that, while suggesting the revised pay-scales, it was simultaneously recommended that 30% reduction in work force be effected; increase in number of working days from 5 to 6; abolition of over time pay and reduction in number of paid holidays. According to the senior counsel, in any case, the Tribunal and the learned Single Judge could not have directed the hospital to pay wages as per scale of pay as per the Vth Pay Commission without giving effect to the other recommendations.

C That it has been settled by various pronouncements of the Supreme Court that the adjudication by an Industrial Tribunal is entirely different from the adjudication by a Civil Court. While the function of a civil court in a civil suit is to enforce the legal rights and obligations of the parties, and when the subject matter is a contract, as per the terms of the contract; the functions of an Industrial Tribunal in adjudicating an industrial dispute is not to enforce the rights and obligations of the parties as per contract but to arrive at a fair resolution of the dispute by even creating new rights and obligations. Notwithstanding the settled legal position, the Tribunal acted as if its jurisdiction was to enforce a contract between the parties. The Tribunal gravely erred in brushing aside the notice dated October 14, 1997 and the notice dated December 30, 1997, terminating the settlement; by holding that the hospital could not have unilaterally terminated the settlement.

26. As already noted hereinabove, a settlement dated August 21, 1977 was entered into between the parties which prescribed:- (i) the pay-scales of class-III and IV employees of the hospital shall be same as the pay-scales of similar employees of the Central Government hospitals with effect from October 01, 1978.

27. On May 17, 1979 a fresh settlement was entered into the parties which prescribed that: (i) as and when the pay-scales of class-III and class-IV employees of the Central Government are increased the hospital shall also increase the pay-scales (including CCA and HRA) of its class-III and IV employees on the same rate but said increase shall take effect 6 months after the date of increase of pay-scales of employees of Central Government hospitals; and (ii) the hospital shall give DA to its class-III and class-IV employees from the date the same is given to the employees of Central Government hospitals. Relevant would it be to note here that the settlement dated May 17, 1979 talks of both 'rate of revision of pay-scales' as also 'date of revision of pay-scales'.

28. Then comes the settlement dated January 31, 1994, which is the bone of contention between the parties.

29. Clause 7 of the settlement dated January 31, 1994 records: *'appointment letters should be issued as per classification of the employees and the corresponding **minimum scales of pay** in Central Govt. Hospitals will be given for various posts of Class III & IV in this Hospital'*. Clause 8 records: *'revision of pay scales including H.R.A. & C.C.A. etc; will be given effect from the same date the Govt. of India will revise the pay scales for its Govt. Hospitals as a result of recommendations of pay commission.'*

30. Unlike settlement dated May 17, 1979 which talks of both 'rate of revision of pay-scales' and 'date of revision of pay-scales', the settlement

dated January 31, 1994 only talks of '*date of revision of pay-scales*'. Had the settlement entered into between the parties on January 31, 1994 been that, the pay-scales of class-III and class-IV employees of the hospital be revised on the same rate as would be effected by the Central Government, the wordings of the said settlement would have been the same as that of the settlement dated May 17, 1979. It is obvious that the parties had chartered a different route.

31. We once again note clause 7 of the settlement dated January 31, 1994 which records: '*appointment letters should be issued as per classification of the employees and the corresponding **minimum scales of pay** in Central Govt. Hospitals will be given for various posts of Class III & IV in this Hospital*'. It needs to be emphasized that the expression used in clause 7 is '*minimum scales of pay*' and not '*pay-scales*'. Had the settlement entered into between the parties on August 31, 1994 been that the pay-scales of class-III and class-IV employees of the hospital will be revised at the same rate at which the Central Government would so revise, clause-7 ought to have been worded: '*Corresponding scales of pay in Central Government hospitals will be given for various posts of class-III and class-IV employees in the hospital.*' The use of the expression: '*minimum scales of pay*', in clause-7 clearly indicates that the agreement was not pertaining to: '*pay scales*'.

32. In view of the aforesaid, we find merit in the submission advanced by the learned senior counsel for the hospital that clause 8 of the settlement dated January 31, 1994 only pertained to '*date of revision of pay-scales*' and not '*rate of revision of pay-scales*'.

33. The matter can also be looked at from another angle.

34. Section 19 of the Industrial Disputes Act, 1947 reads as under:-

“19. Period of operation of settlements and awards.-

(1) A settlement shall come into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute.

(2) Such settlement shall be binding for such period as is agreed upon by the parties, and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute, and shall continue to be binding on the parties after the expiry of the period aforesaid, until the expiry of two months from the date on which a notice in writing of an intention to terminate the settlement is given by one of the parties to the other party or parties to the settlement.

(3) An award shall, subject to the provisions of this section, remain in operation for a period of one year from the date on which the award becomes enforceable under section 17A: Provided that the appropriate Government may reduce the said period and fix such period as it thinks fit: Provided further that the appropriate Government may, before the expiry of the said period, extend the period of operation by any period not exceeding one year at a time as it thinks fit so, however, that the total period of operation of any award does not exceed three years from the date on which it came into operation.

(4) Where the appropriate Government, whether of its own motion or on the application of any party bound by the award, considers that since the award was made, there has been a material change in the circumstances on which it was based, the appropriate Government may refer the award or a part of it 5[to a Labour Court, if the award was that of a Labour Court or to a Tribunal, if the award was that of a Tribunal or of a National Tribunal] for decision whether the period of operation should not, by reason of such change, be shortened and the decision of Labour

Court or the Tribunal, as the case may be on such reference shall be final.

(5) Nothing contained in sub- section (3) shall apply to any award which by its nature, terms or other circumstances does not impose, after it has been given effect to, any continuing obligation on the parties bound by the award.

(6) Notwithstanding the expiry of the period of operation under sub- section (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award.

(7) No notice given under sub- section (2) or sub- section (6) shall have effect, unless it is given by a party representing the majority of persons bound by the settlement or award, as the case may be.”

35. The concept of ‘*adjudication*’ of an industrial dispute by an Industrial Tribunal was first explained by the Federal Court in the decision reported as 1949 FCR 321 Western India Automobiles Association v Industrial Tribunal, Bombay & Ors in the following terms:-

“Adjudication does not in our opinion mean adjudication according to the strict law of master and servant. The award of the tribunal may contain provisions for settlement of a dispute which no court could order if it was bound by ordinary law, but the tribunal is not fettered in any way by these limitations. In Volume I of “Labour Disputes and Collective Bargaining” by Ludwig Teller, it is said at page 536 that industrial arbitration may involve the extension of an existing agreement or making of a new one, or in general creation of a new obligation or modification of old ones, while commercial arbitration generally concerns itself with interpretation of existing obligations and disputes relating to existing agreements. In

our opinion, it is a true statement about the functions of an industrial tribunal in labour disputes.”

36. In the decision reported as AIR 1950 SC 188 Bharat Bank Ltd, Delhi v The Employees of the Bharat Bank Ltd, Delhi the Supreme Court observed as under:-

“We would not examine the process by which an Industrial Tribunal comes to its decisions and I have no hesitation in holding that the process employed is not judicial process at all. In settling the disputes between the employers and the workmen, the function of the Tribunal is not confined to administration of justice in accordance with law. It can confer rights and privileges on either party which it considers reasonable and proper, though they may not be within the terms of any existing agreement. It has not merely to interpret or give effect to the contractual rights and obligations of the parties. It can create new rights and obligations between them which it considers essential for keeping industrial peace. An industrial dispute as has been said on many occasions is nothing but a trial of strength between the employers on the one hand and the workmen's organization on the other and the Industrial Tribunal has got to arrive at some equitable arrangement for averting strikes and lock-outs which impede production of goods and the industrial development of the country. The Tribunal is not bound by the rigid rules of law. The process it employs is rather an extended form of the process of collective bargaining and is more akin to administrative than to judicial function.”

(Emphasis Supplied)

37. In the decision reported as AIR 1961 SC 867 New Maneckchowk SPG & WVG Co Ltd v Textile Labour Association, Ahmedabad the Supreme Court summarized the law relating to industrial adjudication in the following terms:-

“There is no doubt therefore that it is open to an industrial court in an appropriate case to impose new obligations on the parties before it or modify contracts in the interests of industrial peace or give awards which may have the effect of extending existing agreement or making a new one”.

(Emphasis Supplied)

38. From the above decisions, the legal position which can be culled out is that, unlike the Civil Courts, the Industrial Tribunals are not required to interpret or give effect to the contractual rights and obligations of the parties and it is open to the Industrial Tribunal to impose new obligations or modify existing obligations of the parties in the interests of industrial peace.

39. Assuming that the settlement dated January 31, 1994 entitled class-III and class-IV employees of the hospital to be granted revised pay-scales as per the recommendations of the Vth Central Pay Commission, we find that the settlement dated January 31, 1994 makes no provisions for the measures which were recommended by the Vth Central Pay Commission to lessen the financial burden caused due to grant of higher pay-scales in the form of reducing the work force by 30%, increasing the number of working days from 5 to 6, abolishing overtime pay and reducing the number of holidays. Thus, even on said assumption, though as a matter of fact we have already found that the agreement was to the contrary, the pay-scales could not be implemented as it is.

40. It was the duty of the Tribunal to have, on the principle of industry-cum-region, determined the wages and for which it ought to have taken guidance from the decision reported as AIR 1972 SC 2332 M/s Unichem Laboratories Ltd v The Workmen wherein it was held:-

“From the decisions, referred above, it follows that two principal factors which must weigh while fixing or revising wage scales and grades are: (1) How the wages prevailing in the establishment in question compare with

those given to the workmen of similar grade and scale by similar establishments in the same industry or in their absence in similar establishments in other industries in the region; and (2) What wage scales the establishment in question can pay without undue strain on its financial resources. The same principles substantially apply when fixing or revising the dearness allowance.”

41. The submission of learned counsel for the Union that order dated January 27, 2000 evidences a consent of the Management to have the reference decided de-hors wage to be fixed on the principle of industry-cum-region, we have already noted that the Management had filed an application to summon witnesses to give evidence having a bearing on the pay-scales of employees in other hospitals. The order records that the authorized representative of the workmen stated that the Union does not claim benefit of wages on the principle of industry-cum-region. We wonder as to how this order can be read as a consent on the part of the Management. The other arguments raised by learned counsel for the Union stand answered by us.

42. Thus, LPA No.116/2012 is dismissed.

43. LPA No.210/2012 is allowed and the directions issued by the learned Single Judge with respect to the wages to be paid with effect from January 01, 1996 as per the pay-scale adopted by the Central Government is liable to be set aside, but we have to keep into account that the dispute pertaining to wages as of January 01, 1996 has lingered on even till today and with effect from January 01, 2006 the recommendations of the VIth Central Pay Commission have been implemented by the Central Government. Proceedings under Article 226 of the Constitution of India have an element of equity and the least which equity requires is that as of today, till the Industrial Tribunal re-adjudicates the matter, the workmen be paid wages

effective from the date of the impugned order by notionally putting them in the same scale of pay as was recommended by the Vth Central Pay Commission. We are conscious that this runs in the teeth of our reasoning above, but we are constrained to direct so keeping in view equities in favour of the workmen who have been litigating now for nearly 16 years. Thus, we dispose of LPA No.210/2012 setting aside the directions issued by the learned Single Judge with respect to wages to be paid to the members of the Union and direct that till the Tribunal re-determines the wages on the principle of industry-cum-region keeping in view the financial capacity of the hospital, wages shall be paid to the members of the Union as directed by us in the present paragraph. Needless to state, these directions will apply to those employees who have not entered into a settlement with the hospital.

44. The Tribunal is directed to revive the reference and decide the same as expeditiously as possible keeping in view the present decision and also the fact that the matter requires immediate attention inasmuch as the dispute relates back to the year 1996.

(PRADEEP NANDRAJOG)
JUDGE

(MANMOHAN SINGH)
JUDGE

SEPTEMBER 21, 2012
dk