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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P(C) No. 237/2010

8th April, 2013

IDPL VRS & RETIRED EMPLOYEES WELFARE FEDERATION GURGAON,
THROUGH ITS SECRETARY, Y.R.SURI & ORS. Petitioners.

Through: Mr. S.K.Singh, Advocate for Ms.
Seema Kashyap, Advocate.

VERSUS

THE SECRETARY, GOVERNMENT OF INDIA & ORS. Respondents

Through: Mr. Sumeet Pushkarna, CGSC with Mr.
Gaurav Sharma, Advocate for R-1 & 2.

Mr. R.S.Mathur, Advocate for R-3.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. This writ petition is filed by 57 employees, viz petitioner nos. 2 to 58, of the respondent no.3-company-M/s Indian Drugs and Pharmaceuticals Ltd., a Public Sector Undertaking (PSU). The relief claimed in this writ petition is that petitioners have retired on their attaining the age of superannuation before September, 2002(though there is no such date/month/year in the writ petition and this month and year is taken as per the statement made by the counsel for the petitioner before me), and during the period of their services, a circular dated

24.10.1997 was issued by the Department of Public Enterprises (DPE), Government of India extending the benefits of 5th Pay Commission to all employees of PSUs, but this directive was not implemented on account of financial constraints and hence now they be paid the monetary benefits of 5th Pay Commission by the respondent no.3-company. It is further pleaded that the respondent no.3-company has thereafter taken out a circular dated 4.2.2009 implementing the 1997 pay scale and the 5th Pay Commission report , and therefore, the petitioners should be granted the benefit of pay revision as per the 5th Pay Commission although they have been superannuated.

2. On behalf of the respondent no.3, two contentions have been advanced. The first contention is that the circular of 2009 has specifically been made applicable prospectively and no arrears have been granted in terms of this circular to any of the persons prior to 1.1.2009. It is accordingly also argued that in case an employee retires prior to 1.1.2009, he is not eligible for benefit of the pay revision. The second argument is predicated on the basis of the judgment of the Supreme Court in the case of *Officers and Supervisors of IDPL vs. Chairman and MD, IDPL & Ors., 2003 (6) SCC 490* wherein the Supreme Court has held that once the PSU is a sick PSU which cannot generate any funds, there is no automatic entitlement of employees of such PSUs to a higher pay-scale.

3. The relevant paragraph of the counter-affidavit of respondent no.3 mentioning the aspect of prospective application of the circular and that no arrears have been paid to any of the employees as per the 2009 circular is para 9 which reads as under:-

“9. In reply to the contents of paragraph 10, it is submitted that the pay scales of existing IDPD employees have been revised to 1997(IDA/1996(CDA) pay scales with effect from 01.01.2009 in respect of those employees who were on the rolls of the Company as on 01.01.2009 with the approval of Board of Directors and the Ministry of Chemicals and Fertilizers New Delhi vide letter No.5(8)/2008 PI-IV dated 03.02.2009. A copy of the letter dated 03.02.2009 is annexed here to and marked as **Annexure-R2**. It is further submitted that vide para 3 of the corporate Office circular No. IDP/2(279)/estt/09 dated 04.02.2009 (Annexure P2, page at pg.14 of the WP.) that the pay of employees in IDA/CDA pay scales will be notionally fixed with effect from 01.01.1997/01.01.1996 and that no arrears of salary for the period prior to 01.01.2009 is payable. It is further submitted that, since the revised pay scales of 1997(IDA)/1996(CDA) have been implemented by the management w.e.f. 01.01.2009 by generation of funds out of internal resources, no arrears of salary have been paid to the existing employees for the period prior to 01/01/2009. Therefore, ex-employees, who retired prior to 01/01/2009 are not eligible for revision of their salary. Moreover, the retirement benefits of an employee are calculated on the last actual salary drawn and not on notional salary, the ex-employees are not eligible to re calculation of gratuity and leave encashment. In this regard attention is also drawn to para 19 of the DPE OM No. 2(32)/97 DPE (WC) GL XXXV dated 8.12.2000. A copy of the same is annexed hereto and marked as **Annexure-R3**.”

4. The following are the observations of the Supreme Court in the case of *I.D.P.L (supra)* which are relied upon:-

“ 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 in 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 Another Vs. Union of India and Others (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 question of revision of wages of workmen in Express Newspaper (P) Ltd. and another Vs. Union of India and others AIR 1958 SC 578. This Court laid down the following principles for fixation of rates of wages:-

"(1) that in 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 organisation 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 not be such as to drive the employer out of business."

The same question was again examined in *Hindustan Times Ltd., New Delhi Vs. 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 wave. 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 employer also plays a crucial part in it; as also its capacity to expand business or earn more profits. The contention of Mr. Sanghi, if accepted, that granting higher remuneration and emoluments and revision of pay to workers in other governmental undertakings and, therefore, the petitioners are also entitled for the grant of pay revision may, in our opinion, only lead to undesirable results. Enough material was placed on 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 BIFR and the revival package which was formulated and later approved by the BIFR for implementation could not also be given effect to and that the modifications recommended by the Government of India to the BIFR in the existing revival package was ordered to be examined by an operating agency and, in fact, IDBI was appointed as an operating agency under Section 17(3) of SICA. It is also not in dispute that the production activities had to be stopped in the major two units of the company at Rishikesh and Hyderabad w.e.f. October, 1996 and the losses and liabilities are increasing every month and that the payment of three installments of interim relief could not also be made due to the threat of industrial unrest and the wage revision in respect of other employees is also due w.e.f. 1992 which has also not been sanctioned by the Government of India.

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 unit is functioning. It is also observed in the 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 stated 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.”

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 wage 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 negative

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 indicate that the employees appointed on or after January 1,1999 will be governed by such pay scales and allowances as may be decided by the Government in the 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 VRS it is not open to them to contend that they are entitled for pay revision.”

(underlining added)

5. The only issue which is very strongly urged on behalf of the petitioners in this support is that petitioners did not take benefit of pay revision at the relevant time because of the financial difficulty of the company and now they cannot be discriminated against when certain persons have been granted the benefits albeit w.e.f. 1.1.2009.

6. In my opinion, the writ petition would have to be dismissed in view of the two contentions urged on behalf of respondent no.3. Firstly, it is the prerogative of an organization depending upon its financial capacity to decide when it wants to raise its pay-scale, and with respect to which employees. Courts

ordinarily do not interfere unless there is a gross perversity or arbitrariness in the decision taken by the appropriate authority. In the present case, in my opinion, not only I do not find any arbitrariness or perversity inasmuch as the respondent no.3-company is admittedly a sick PSU under BIFR, the Supreme Court in the judgment of *I.D.P.L's case (supra)* has categorically laid down the ratio that the capacity of a company for wage revision has very much to be considered before there is a direction to increase the pay-scale. The Supreme Court with respect to the present respondent no.3-company itself has said that on account of lack of economical viability increase in pay-scale cannot be granted. Although of course, the Supreme Court in the aforesaid case of *I.D.P.L(supra)* was dealing with the cases of persons who had taken voluntary retirement however, the ratio of the Supreme Court applies not only with respect to employees who took voluntary retirement, but generally with respect to the respondent no.3-company whose economic viability is admittedly in doldrums. In another case of *I.D.P.L* itself i.e *Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd. (2007) 1 SCC 408* the Supreme Court has held that the Courts have no power to direct revision of pay scales and which is the sole prerogative of the management of the company.

7. In view of the above, there is no merit in the writ petition, which is accordingly dismissed, leaving the parties to bear their own costs.

APRIL 08, 2013
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VALMIKI J. MEHTA, J.