

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) No. 1542/2000 & CM 10723/2012 (Stay)
% **20th November, 2013**

CCI OFFICERS ASSOCIATION AND ANR. Petitioners
Through: None.

VERSUS

UOI & ORS. Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. No one appears for the petitioners. No one even appeared for the petitioners on 10.5.2013, 30.7.2013, 30.9.2013 and 1.10.2013. It may be noted that this writ petition was dismissed in default on 10.7.2007. Application for restoration was filed and which was also dismissed on 23.7.2007, however, subsequently the matter was restored in terms of the order dated 27.7.2007.

2. By the writ petition petitioners are seeking implementation of the office memorandum dated 25.6.1999 issued by the Government of India, Ministry of Industry, Department of Public Enterprises for revision of pay-

scales under IDA Pattern w.e.f 1.1.1997.

3. I may note that there is a typing mistake either in the writ petition or in the memorandum because the memorandum annexed as Annexure F which is stated to be dated 25.6.1999 actually is dated 29.6.1999.

4. Irrespective of the issue of date of the memorandum, the subject office memorandum which is relied upon for grant of increase of pay-scales contains the following important paragraphs 6 and 7 which read as under:-

“6. In respect of sick enterprises referred to the BIFR, revision of pay scales would be strictly in accordance with rehabilitation packages approved or to be approved by the BIFR and after providing for the additional expenditure on account of pay revision in these packages.

7. Presidential directives would be issued by all the administrative Ministries/Departments. Indicating these scales as a ceiling, as the actual payments would depend on the capacity to pay of the enterprises. The resources for meeting the increased obligation for salaries and wages must be internally generated and must come improved performance in terms of productivity and profitability and not from Government subvention. The Presidential directives would also cover guidelines relating to dearness allowance and ceilings on perquisites. A format of the Presidential directive is suggested in Annexure-IV.”

5. A reading of the aforesaid paras 6 and 7 clearly shows that there is no automatic entitlement of employees of companies to automatically get higher pay-scales, much less of those companies which are sick companies such as the respondent no.2. These issues have accordingly been held by the

Supreme Court not to be justiciable before courts because it is the employer which best decides what are the pay-scales of employees. The two judgments in this regard are *Indian Drugs & Pharmaceuticals Ltd. Vs. Workmen, Indian Drugs & Pharmaceuticals Ltd. (2007) 1 SCC 408* and *A.K.Bindal & Anr. Vs. Union of India & Ors. (2003) 5 SCC 163*.

6. The relevant paras in the case of *I.D.P.L (supra)* reads as under:-

“16. We are afraid that the Labour Court and the High Court have passed their orders on the basis of emotions and sympathies, but cases in court have to be decided on legal principles and not on the basis of emotions and sympathies.

18. In State of M.P. v. Yogesh Chandra Dubey this Court held that a post must be created and/or sanctioned before filling it up. If an employee is not appointed against a sanctioned post he is not entitled to any scale of pay. In our opinion, the ratio of the aforesaid decision squarely applies to the facts of the present case also.

37. Creation and abolition of posts and regularisation are purely executive functions vide P.U. Joshi v. Accountant General. Hence, the court cannot create a post where none exists. Also, we cannot issue any direction to absorb the respondents or continue them in service, or pay them salaries of regular employees, as these are purely executive functions. This Court cannot arrogate to itself the powers of the executive or legislature. There is broad separation of powers under the Constitution, and the judiciary, to, must know its limits.

40. The Courts must, therefore, exercise judicial restraint, and not encroach into the executive or legislative domain. Orders for creation of posts, appointment or these posts, regularisation, **fixing pay scales**, continuation in service, promotions, etc. are all executive or legislative functions, and it is highly improper for Judges to step into this sphere, except in a rare and exceptional cases. The relevant case-law and philosophy of judicial restraint has been laid down by the Madras High Court in great detail in Rama Muthuramalingam v. Dy. Supdt. Of Police and we fully agree with the views expressed therein.” (underlining added)

7. The relevant paras in the case of *A.K.Bindal (supra)* are paras 17 to 22 which read as under:-

“17. The legal position is that identity of the Government Company remains distinct from the government. The Government Company is not identified with the Union but has been placed under a special system of control and conferred certain privileges by virtue of the provisions contained in Sections 619 and 620 of the Companies Act. Merely because the entire share holding is owned by the Central Government will not make the incorporated company as Central Government. It is also equally well settled that the employees of the Government Company are not civil servants and so are not entitled to the protection afforded by Article 311 of the Constitution (Pyare Lal Sharma v. [Managing Director](#) (1990)ILLJ32SC). Since employees of Government Companies are not government servants they have absolutely no legal right to claim that government should pay their salary or that the additional expenditure incurred on account of revision of their pay scale 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 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. It appears that prior to issuance of the Office Memorandum dated 12.4.1993 the Government had been providing the necessary funds for the management of Public Sector Enterprises which had been incurring losses. After the change in economic policy introduced in early nineties, Government took a decision that the Public Sector Undertakings will have to generate their own resources to meet the additional expenditure incurred on account of increase in wages and that the government will not provide any funds for the same. Such of the Public Sector Enterprises (Government Companies) which had become sick and had been referred to BIFR, were obviously running on huge losses and did not have their own resources to meet the financial liability which would have been incurred by revision of pay scales. By the Office Memorandum dated 19.7.1995 the Government merely reiterated its earlier stand and issued a caution that till a decision was taken to revive the undertakings no revision in pay scale should be allowed. We, therefore do not find any infirmity legal or constitutional in the two Office Memorandums which have been challenged in the writ petitions.

18. We are unable to accept the contention of Shri Venkataramani that on account of non-revision of pay scales of the petitioners in the year 1992, there has been any violation of their fundamental rights guaranteed under Article 21 of the Constitution. Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. The scope and content of this Article has been expanded by judicial decisions. Right to life enshrined in this Article means something more than survival or animal existence. It would include the right to live with human dignity. Payment of very small subsistence allowance to an employee under suspension which would be wholly insufficient to sustain his living, was held to be violative of Article 21 of the Constitution in *State of Maharashtra v. Chandrabhan* (1983) ILLJ256SC . Similarly, unfair conditions of labour in *People's Union for civil Liberties v. Union of India*. It has been held to embrace within its field the right to livelihood by means which are not illegal, immoral or opposed to public policy in *Olga Tellis v. Bombay Municipal Corporation* AIR1986SC180 . But to hold that mere non-revision of pay scale would also amount to a violation of the fundamental right guaranteed under Article 21 would be stretching it too far and cannot be countenanced. Even under the Industrial law, the view is that the workmen should get a minimum wage or a fair wage but not that his wages must be revised and enhanced periodically. It is true that on account of inflation there has been a general price rise but by that fact alone it is not possible to draw an inference that the salary currently being paid to them is wholly inadequate

to lead a life with human dignity. What should be the salary structure to lead a "life with human dignity" is a difficult exercise and cannot be measured in absolute terms. It will depend upon nature of duty and responsibility of the post, the requisite qualification and experience, working condition and a host of other factors. The salary structure of similarly placed persons working in other Public Sector Undertakings may also be relevant. The petitioners have not placed any material on record to show that the salary which is currently being paid to them is so low that they are not able to maintain their living having regard to the post which they are holding. The observations made in paragraphs 276 and 277 in *Delhi Transport Corporation v. D.T.C. Mazdoor Congress* (supra), strongly relied upon by learned counsel for the petitioners, should not be read out of its context. In the said case the Court was called upon to consider the constitutional validity of Regulation 9 of Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952, which gave power to terminate the services of an employee after giving one month's notice or pay in lieu thereof. The termination of services of some of the employees on the ground that they were inefficient in their work by giving one month's notice was set aside by the High Court as in its opinion Regulation 9(b) gave absolute unbridled and arbitrary powers to the management to terminate the service of any permanent or temporary employee and, therefore, the same was violative of Article 14 of the Constitution. It was in this context that the aforesaid observations were made by one Hon'ble Judge in his separate opinion. The issue involved was not of revision of pay scale but that of termination of service which has an altogether different impact on an employee.

19. The contention 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, does not appeal to us. The question of revision of wages of workmen was examined by a Constitution Bench in *Express Newspapers Ltd. and Ors. v. Union of India* (1961)ILLJ339SC having regard to the provisions of Industrial Disputes Act and Minimum Wages Act and the following principles for fixation of rates of wages were laid down :

(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 circumstance 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 production considered in conjunction with the elasticity of demand for the product - no doubt against the ultimate back-ground that the burden of the increased rate should not be such as to drive the employer out business.

(Emphasis supplied)

20. The same question was again examined in Hindustan Times Ltd. v. [Their Workmen MANU/SC/0283/1962](#) : (1963)ILLJ108SC and the Court recorded (sic) clay stone in following words in para 7 of the Report :

"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 emphasised 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." (Emphasis supplied)

21. It may be noticed that in these cases the Court was considering the question of wage structure for workmen who belong to economically poor section of society and providing them even living wage was held to be a distant dream on account of economic considerations and also the capacity of the industry to pay.

22. In South Malabar Gramin Bank v. Coordination Committee of South Malabar Gramin Bank Employees' Union and South Malabar Gramin Bank Officers' Federation and Ors. (2001)ILLJ743SC , relied upon by the learned counsel for the petitioners, the Central Government had referred the dispute regarding the pay structure of the employees of the Bank to the Chairman of the National Industrial Tribunal headed by a former Chief Justice of High Court. The Tribunal after consideration of the material placed before

it held that the officers and employees of the Regional Rural Banks will be entitled to claim parity with the officers and other employees of the sponsor banks in the matter of pay scale, allowance and other benefits. The employees of nationalised commercial banks were getting their pay scales on the basis of 5th bipartite settlement and by implementation of the award of the National Industrial Tribunal, the employees of the Regional Rural Banks were also given the benefits of the same settlement. Subsequently, the pay structures of the employees of nationalised commercial banks were further revised by 6th and 7th bipartite settlements but the same was not done for the employees of the Regional Rural Banks who then filed writ petitions. It was contended on behalf of the Union of India and also the Banks that financial condition of the Regional Rural Banks was not such that they may give their employees the pay structure of the employees of the nationalised commercial banks. It was in these circumstances that this Court observed that the decision of the National Industrial Tribunal in the form of an award having been implemented by the Central Government, it would not be permissible for the employer bank or the Union of India to take such a plea in the proceedings before the Court. The other case namely All India Regional Rural Bank Officers Federation and Ors. v Government of India and ors. (2002)IILLJ527SC arose out of interlocutory applications and contempt petitions which were filed for implementation of the direction issued in the earlier case namely South Malabar Gramin Bank (supra). Any observation in these two cases to the effect that the financial capacity of the employer cannot be held to be a germane consideration for determination of the wage structure of the employees must, therefore, be confined to the facts of the aforesaid case and cannot be held to be of general application in all situations. In Associate Banks Officers' Association v. State Bank of India and Ors. (1998)1SCC428 it was observed that many ingredients go into the shaping of the wage structure of any organisation which may have been shaped by negotiated settlements with employees' unions or through industrial adjudication or with the help of expert committees. The economic capability of the employer also plays a crucial part in it; as also its capacity to expand business or earn more profits. It was also held that a simplistic approach, granting higher remuneration to workers in one organisation because another organisation had granted them, may lead to undesirable results and the application of the doctrine would be fraught with danger and may seriously affect the efficiency and at times, even the functioning of the organisation. therefore, it appears to be the consistent view of this Court 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 (sic) and may have to close down which will inevitably have disastrous consequences for the

employees themselves. The material on record clearly shows that both FCI and HFC had been suffering heavy losses for the last many years and the Government had been giving considerable amount for meeting the expenses of the organisation. In such a situation, the employees cannot legitimately claim that their pay scales should necessarily be revised and enhanced even though the organisations in which they are working are making continuous losses and are deeply in red.” (underlining added)

8. In view of the ratio of the judgments of the Supreme Court in the cases of *I.D.P.L (supra)* and *A.K.Bindal (supra)*, petitioners have no entitlement to claim higher salaries merely because of the office memorandum dated 25.6.1999/29.6.1999. In fact, the said memorandum itself contains paras 6 and 7 which go against the case as set up by the petitioners.

9. In view of the above, there is no merit in the petition as courts cannot fix the wage structure/salaries and which is best decided by the employer.

10. The writ petition is accordingly dismissed, leaving the parties to bear their own costs.

NOVEMBER 20, 2013
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VALMIKI J. MEHTA, J.