IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1406 OF 2013

Mr. H. P. Singh and Others .....Petitioners.

V/s

NTC Corporation Ltd. (Western Region)
and Others ..... Respondents.

Mr. Abhishek Jebaraj i/b Ms. Gayatri Singh for the Petitioners.
Ms. Meena Doshi for Respondent No.1.
Mr. D.R. Mehta for Respondent Nos. 3 and 4.

CORAM: V. M. KANADE &
REVATI MOHITE DERE, JJ.

Order reserved on : 15/01/2015
Order pronounced on : 03/02/2015

<u>P.C.:-</u> (Per V. M. Kanade, J.)

1. By this Petition which is filed under Article 226 of the Constitution of India, Petitioners are seeking the following reliefs:-

> "a) That this Honourable Court be pleased to issue a writ of certiorari and/or any other writ, order or direction in the nature of certiorari to quash and set aside office Circular No. NTC/PERS/5(13)/09 issued by Respondent No.2 on 30.04.2010 being Exhibit-F."

"b) That this Honourable Court be pleased to issue a writ of mandamus and/or any other writ, order or direction in the nature of mandamus directing the Respondents to implement the recommendations of the 6th Pay Commission, in accordance with Office Order No.10/6/2009-NTC dated 18th March, 2010, and with effect from 1.1.2006 for CDA Employees whose details are mentioned at Serial No.1 to 12 at EXHIBIT A and with effect from 1.1.2007 for IDA Employees whose details are mentioned at Serial No.13 to 27 at EXHIBIT A."

"c) That this Honourable Court be pleased to issue a writ of mandamus and/or any other writ, order or direction in the nature of mandamus directing the Respondents to make the payment of arrears, effective from 1.1.2006 for Employees at Serial No.1 to 12 and effective from 1.1.2007 for Employees at Serial No.13 to 27, at EXHIBIT A with interest from the date of implementation."

"d) That this Honourable Court be pleased to issue a writ of mandamus and/or any other writ, order or direction in the nature of mandamus directing the Respondents to make the payments of difference in gratuity, leave encashment, contributory provident fund, LTC benefits, transfer grand and transfer subsidy effective from 1.1.2006 for Employees at Serial No.1 to 12 and effective from 1.1.2007 for Employees at Serial No.13 to 27 at EXHIBIT A, along with interest from the date of implementation."

2. Petitioners in essence are seeking implementation of Office Memorandum No.10/6/2009/NTC which directs implementation of 6th Pay Revision to both, Central Dearness Allowance (CDA) grade employees and Industrial Dearness Allowance (IDA) grade employees.

3. Grievance of the Petitioners is that the Respondent – NTC, while implementing 6th Pay Commission Recommendations, has given discriminatory treatment to the Petitioners and has granted the said benefit to only certain employees of the NTC and denied its implementation to similarly placed employees. Petitioners herein retired as employees from NTC and were working at “Joint Venture” (JV Mills) at the time of their retirement. Some of the Petitioners are CDA employees who retired after 01/01/2006 and some of the Petitioners are IDA employees who retired after 01/01/2007.

4 Respondent No.2 issued Circular No. NTC/PERS/5(13)/09 in which it was stated that JV Mill employees were not included in the 6th Pay Revision on account of financial constraints. However, they were given chance to avail of the MVRS on or before 31/05/2010. Petitioners, however, did not opt for MVRS. It is the case of the Petitioners that nature of work done in JV Mills and

Non-JV Mills was exactly identical and was of a similar nature. It was further contended that transfers were made interchangeably between JV Mills and Non-JV Mills even after the eligibility period. It is further contended that NTC has been declared as cash rich.

5. The learned Counsel for the Petitioners contended that it is a clear case of discrimination under Articles 14 of the Constitution of India. He submitted that JV Mills does not form a separate pay-scale category as per NTC official categorization list. Secondly, it is submitted that there is a difference between profit making and nature of work as far as parity of pay principle is concerned and, therefore, the judgment of the Apex Court in *A.K. Bindal vs. Union of India*[1] will not apply to the facts of the present case. He then submitted that the NTC is in a position to pay as they have started earning profits. It is submitted that policy of the Respondent – NTC is arbitrary. Reliance has been placed on the judgment of the Apex Court in *Chairman-cum-Managing Director, National Textiles Corpn. Ltd and Others vs. N.T.C. (WBAB & O) Ltd. Employees Union*[2]

6. On the other hand, the learned Counsel appearing on behalf of Respondent – NTC submitted that the Petitioners belong to different class employees and therefore there was

1 AIR 2003 SC 2189
2 (2003) 11 SCC 31

no breach of Articles 14 and 21 of the Constitution of India. Secondly, it is submitted that the OMs dated 14/10/2008 and 26/11/2008 are merely guidelines for all CPSUs and each PSU has to independently decide the advisability of extension of revision in pay scales based upon the financial position of the concerned PSU. Thirdly, it is submitted that implementation of the Circular dated 18/03/2010 depended upon the financial position of each PSU and that if at all the benefit was to be granted it was to be with effect from 01/03/2010. Fourthly, it is submitted that payment of arrears was to be considered at later stage and subject to decision of Board of Directors of each PSU. Fifthly, it is contended that the Corporation is still under BIFR. Sixthly, it is contended that decision dated 30/03/2010 based on the Circular dated 18/03/2010 has not been challenged by the Petitioners. It is contended that the said decision was later on sought to be reviewed based on certain Circular of Ministry of Textiles dated 22/11/2013 by the Board of Directors and in the meeting held on 13/06/2014, issue of extension of pay revision to the excluded categories has been kept in abeyance at the moment. It is then contended that the decision of the Board of Directors of the Corporation should not be interfered with by this Court while exercising its jurisdiction under Article 226 of the Constitution of India. It is then submitted that the decision of Board of Directors dated 13/06/2014 is also not challenged in the present Petition.

7. After having heard both the learned Counsels at length, we are of the view that it will not be possible at this stage to give direction to the Respondents to grant the reliefs claimed by the Petitioners in this Petition for the following reasons.

8. Firstly, the Board in its Resolution dated 13/06/2014 has kept the issue of extension of pay revision to the excluded categories in abeyance. The Board of Directors, therefore, in principle has not rejected the Petitioners' contention that they are entitled for the pay revision.

9. Secondly, Petitioners are seeking implementation of the Office Memorandum No.10/6/2009/NTC. Perusal of the said Office Memorandum dated 18/03/2010 indicates that it is observed in Clause 2(iv) that payment of arrears on account of pay revision shall be subject to consideration and approval by the Board of Directors of the Company at a subsequent stage after the financial position of the Corporation is improved with the prior approval of the said Ministry. The Clause 2(iv) of the said Office Memorandum reads as under:-

> "2(iv) Payment of arrears on account of pay revision as above shall be subject to consideration and approval by the Board of Directors of the Company at a late date as

> and when the financial position of the corporation improves and with prior approval of this Ministry."

It is an admitted position that Ministry of Textiles has not given prior approval nor the approval has been granted by the Board of Directors and, therefore, direction cannot be given by this Court for implementation of the said Office Memorandum dated 18/03/2010. It is not in dispute that the Company is still under BIFR Scheme.

10. There is much substance in the submissions made by the learned Counsel appearing on behalf of Respondent – NTC. Firstly, Petitioners were paid the idle wages till the date of their retirement. The Corporation has spent huge amounts on payment of idle wages to the Petitioners and others. Secondly, the Corporation had offered them MVRS which was not accepted by the Petitioners as they chose to opt for idle wages which were paid by the Corporation. Thirdly, distinction was sought to be made by the Corporation in granting extension of pay revision to the profit making Companies which were non-Joint Venture Companies so that intensive could be given to those employees of the Companies who are earning more profits whereas pay extension has not been granted to the Joint Venture Companies which had closed down and the Board of

Directors has not taken a decision not to pay or give benefit of the pay revision but the said decision has been postponed and is kept in abeyance. In view of these facts, ratio of the judgment in *Chairman-cum-Managing Director, National Textiles Corpn. Ltd and Others vs. N.T.C. (WBAB & O) Ltd. Employees Union*[1] will not apply to the facts of the present case.

11. We are, therefore, not inclined to grant reliefs which are claimed by the Petitioners at this stage. However, it is open for the Petitioners to apply if the Respondents earn substantial profit. Secondly, we direct the NTC to consider the case of the Petitioners for grant of extension of benefit of pay revision as per the the decision of the Board of Directors taken in the meeting held on 13/06/2014. The said decision to be taken within six months. With this direction, Petition is disposed of.

(REVATI MOHITE DERE, J.) **(V.M. KANADE, J.)**

bdp/tav

1 (2003) 11 SCC 31