

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) No.4212/2001

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18th March, 2015

IISCO OFFICERS' ASSOCIATION

..... Petitioner

Through: None.

versus

STEEL AUTHORITY OF INDIA LTD. & 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. By this writ petition filed under Article 226 of the Constitution of India, the petitioner, which is an association of the employees of the respondent no.2/company/Indian Iron and Steel Co. Ltd. (IISCO), seeks the relief of same monetary emoluments which are being granted by the respondent no.1/Steel Authority of India Ltd. (SAIL) to its employees. The reliefs claimed by the petitioner for being granted at par monetary emoluments being granted to the employees of the respondent no.1 are on the basis that the respondent no.2/company is a subsidiary company of the respondent no.1 and hence there should be parity of pay-scales.

2. The counter-affidavit filed by the respondents no.3 and 4 shows that the respondent no. 2/company has been referred to BIFR as a sick company.

3. It is now settled law in view of the judgment of the Supreme Court in the case of *Officers & Supervisors of I.D.P.L. Vs. Chairman & M.D. I.D.P.L. and Ors., 2003 (6) SCC 490* that there is no legal right of employees of a sick government company to claim that they are entitled to particular higher monetary benefits and perks. The Supreme Court in this judgment has held that pay-scales have to be fixed by the competent authority and such decisions have to be taken in terms of the financial position of the company. The relevant paragraphs of the judgment in the case of *Officers & Supervisors of I.D.P.L. (supra)* read as under:-

“7. 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.

8. 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 v. Union of India: (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.

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11. 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.

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13. We have already reproduced the directions passed by this Court in *Jute Corpn. of India Officers' Assn. v. Jute Corpn. Of India Ltd.:* (1990) 3 SCC 436. However, after the said judgment in which conditional directions were issued, as is apparent, the Central Government vide its OM 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 IISCO and financial liability thereof shall be met by SAIL."

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17. 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 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.

18. 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 (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 (i) cannot be implemented." (underlining added).

4. In view of the above, petitioner cannot claim parity for monetary emoluments of employees of respondent no.2 with the monetary emoluments being paid to the employees of respondent no.1.

5. Dismissed.

MARCH 18, 2015
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VALMIKI J. MEHTA, J.