

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

+ W.P.(C) No. 5751/2002

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20th May, 2015

P.K. MOHANDAS & ORS

..... Petitioners

Through: Mr. Harish Sharma and Mr.
B.K.Saini, Advocates.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Kirtiman Singh, CGSC with Mr.
Waize Ali Noor and Ms. Perna Shah
Deo, Advocates for R-1.

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 under Article 226 of the Constitution of India by the erstwhile employees of the respondent no.2/Company, and which petitioners have already retired after taking the Voluntary Separation Scheme (VSS) benefits.

2. A similar petition claiming similar reliefs was W.P.(C) No. 705/1998 and this writ petition was dismissed by this Court on 2.7.2013.

Even the review petition filed being Review Petition No. 436/2013 was dismissed on 6.9.2013. These judgments dated 2.7.2013 and 6.9.2013 read as under:-

“ **Judgment dated 2.7.2013:-**

1. No one is present on behalf of the parties although it is 3.15 P.M. This matter is effective Item No. 5 on the Regular Board of this Court. I have therefore perused the record and am proceeding to decide the matter.

2. By this writ petition, the petitioner, which is an association of employees of the respondent No. 3/employer, seeks fixation of particular pay scales. The relief clauses of the writ petition read as under:

“A. Quashing the circular or direction of the first respondent expressed in letter annexed at Annexure P-4, and direct the Union of India to implement the new pay scales to all public Sector Enterprises uniformly, and in particular, to the respondent no. 3.

B. Directing the respondents no. 1 and 2 to treat the respondent no. 3 in parity with all other Public Sector Enterprises, and to give a rational and upgraded pay scales to the employees of the respondent no. 3, in accordance with the prevailing pay scales in other Public Sector Enterprises.

C. Directing respondents 1 and 2 to grant the new pay scales to the petitioner's members with effect from 1 January, 1992.

D. Any other order that may be deemed fit in the circumstances may also be passed.”

3. In the counter affidavits filed by the respondents, it is stated that respondent No. 3 does not have the necessary financial resources to grant the higher scales of pay. In the counter affidavits, it is averred that the respondent No. 3 has been making losses and cannot generate the funds for higher scales of pay.

4. The Supreme Court in its recent judgment in the case of ***Indian Drugs & Pharmaceuticals Ltd. Vs. Workmen, Indian Drugs & Pharmaceuticals Ltd., (2007) 1 SCC 408*** held that Courts cannot step in and fix salaries of employees of an organisation because the employer knows best its financial conditions and other circumstances for deciding about what should be the payments made to its employees. The Supreme Court has cautioned against taking over of executive functions because courts are ill-equipped to do so. The Supreme Court further observed that certain decisions are best left with the executive and the administration. The relevant observations of the Supreme Court are contained in paragraphs 16, 18, 37 and 40 and which read 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.”

5. Accordingly, the prayers asked for in the writ petition cannot be granted as it would violate the categorical ratio laid down by the Supreme Court in the case of ***Indian Drugs & Pharmaceuticals Ltd. (supra)***.

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

Review Petition order dated 6.9.2013:-

C.M. No.12444/2013 (exemption)

Exemption allowed subject to just exceptions.

C.M. stands disposed of.

Review Petition No.436/2013

1. This is a petition for review of the judgment dated 2.7.2013. No one appeared for the petitioner when the judgment was passed on 2.7.2013. No one appears for the petitioner today. There is no error apparent on the face of the record as stated in the application because the judgment in the case of ***Indian Drugs & Pharmaceuticals Ltd. Vs. Workmen, Indian Drugs & Pharmaceuticals Ltd., (2007) 1 SCC 408*** has been rightly applied. In fact, in another case of *Officers*

& Supervisors of I.D.P.L Vs. Chairman & M. D. IDPL(2003) 6 SCC 490 it has been held by the Supreme Court 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 and Anr. v. Union of India and Ors. 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 Corporation of India Officers' Association (supra). However, after the said judgment in which conditional directions were issued, as is apparent, the Central Government vide its O.M. 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 No. (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 No. (i) cannot be implemented.” (underlining added).

2. Therefore, Courts cannot issue directions much less to sick companies to grant monetary benefits to its employees when the effect of grant of monetary benefits would be to put unnecessary financial burden on the institution. Aspect of monetary burden is best decided by the institution itself and not the Courts.

3. Dismissed.”

3. Clearly therefore petitioners have no case not only because of the ratio of the judgment of the Supreme Court in the case of ***A.K. Bindal and Another Vs. Union of India and Others, (2003) 5 SCC 163*** which holds that employees who have taken VRS/VSS after taking VRS/VSS cannot seek monetary benefits inasmuch as on taking VSS the umbilical cord of the relationship of employer and employee snaps. Also the Supreme Court has held in the case of ***Indian Drugs & Pharmaceuticals Ltd. Vs. Workmen, Indian Drugs & Pharmaceuticals Ltd. (2007) 1 SCC 408*** that courts cannot fix the pay-scales of employees, and the relevant observations

in this regard of the Supreme Court have been reproduced in para 4 of the judgment dated 2.7.2013.

4. It is also required to be noted that respondent no.2 was a sick company and ordered to be wound up and therefore the ratio 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* applies and which is quoted in the review petition order dated 6.9.2013. The ratio of *I.D.P.L.*'s case (*supra*) will squarely apply because employees of a sick company cannot insist and get particular pay-scales, and this is all the more so with respect to the petitioners who have already taken VSS and therefore cannot approach the court in view of the ratio of *A.K. Bindal*'s case (*supra*).

5. Dismissed.

MAY 20, 2015
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VALMIKI J. MEHTA, J.