

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

+ W.P.(C) No. 1166/2014 & W.P. (C) 3036/2014

% **11th February, 2015**

W.P.(C) No. 1166/2014

CENTAUR HOTEL EMPLOYEES UNION
(REGD.) AND ANR.

..... Petitioners

Through: None.

versus

HOTEL CORPORATION OF INDIA LTD.

..... Respondent

Through: Ms. Meenakshi Sud, Advocate

W.P.(C) No. 3036/2014

HCI OFFICERS WELFARE ASSOCIATION
DELHI (REGD.)

..... Petitioner

Through: Mr. Yasharth Kant, Advocate

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Ms. Anjana Gosain, Mr. Pradeep
Desodya, Advocates for
respondent/UOI.
Ms. Meenakshi Sud, Advocate for
respondent no. 2.

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

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

W.P.(C) No. 1166/2014

1. No one appears for the petitioner although it is 12.45 p.m. When notice was issued in this case on 19.2.2014, the following order was passed by a learned Single Judge of this Court:

“1. I have put to Mr. J.P. Sengh, learned senior counsel, two judgments of the Supreme Court, namely, *K. Nagaraj & Ors. v. State of Andra Pradesh & Anr., (1985) 1 SCC 523* and an earlier Constitution Bench judgment in the case of the *Bishnu Narain Misra v. State of Utter Pradesh & Ors., (1965) 1 SCR 693*.

2. In these judgments, the power of the Government to reduce the age of retirement was considered. The court broadly came to the conclusion that the exercise of this power could not be assailed on the ground that it was arbitrary or was hit by principle of retrospectivity.

3. List on 18.3.2014.

4. In the meanwhile, respondents will file an affidavit to bring on record the relevant material, on record.”

2. A reading of the Constitution Bench judgment of the Supreme Court in the case of *Bishnu Narain Misra Vs. State of Utter Pradesh & Ors. (1965) 1 SCR 693* makes it clear that courts do not substitute decisions of

the government or government organizations regarding fixing of a particular age of retirement and which is in the exclusive and normal prerogative of the government/government organizations. In the present case, petitioners claim that they should be retired not at the age of 58 years but at the age of 60 years, and therefore, the ratio of the judgment of the Supreme Court quoted above and especially the ratio of the Constitution Bench judgment in the case of *Bishnu Narain Misra (supra)* will apply, and therefore this writ petition has no merit and is dismissed accordingly.

3. After the judgment is dictated, counsel for the petitioner appears and he has been apprised of the above judgment.

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4. There are two issues which are raised in this writ petition. First issue is with respect to challenge to reducing the age of retirement from 60 years to 58 years and the second is with respect to claim of revision of higher pay-scales because it is claimed that the respondent/employer has not enhanced the pay-scales and the final revision of the pay scheme was not in line with the Air India Ltd.

5. So far as the first aspect of reduction of age is concerned, adopting the reasoning given while deciding the W.P. (C) 1166/2014, this relief cannot be granted, and therefore, the writ petition is dismissed so far as this prayer is concerned.

6. So far as the second relief is concerned regarding directions to the employer that particular wage structures or pay-scales or monetary emoluments should be granted to the employees of the respondent no.2/employer/Hotel Corporation of India, this relief prayed for is also totally misconceived and the issue has been held against the petitioner in terms of the ratio of the judgment in the case of *Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd (2007) 1 SCC 408* wherein the Supreme Court has observed that it is highly improper for the judges to step into the sphere of aspects with respect to fixing of pay-scales, appointment to posts etc etc except in very rare and exceptional cases. The Hon'ble Supreme Court has also observed that courts cannot arraign to itself powers which are the powers of the executive or the legislature. The relevant observations of the Supreme Court in this regard are contained in para 40 of the judgment and which para 40 reads as under :

“ 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: AIR 2005 Mad 1* and we fully agree with the views expressed therein.”

7. I may also state that there is no law that pay-scales which are granted to the Central Government Employees or the State Government Employees, the same pay structure has necessarily to be granted even to the autonomous organizations either of the Central Government or of the State Government. Courts cannot step in for fixing of pay-scales of employees of an organization because the organization knows best as per its circumstances and financial conditions as to what should be the pay-scales of its employees and which pay-scales are fixed as per the decisions of the parent ministry of the organization with the consent of the Ministry of Finance. Therefore, in view of the ratio of the judgment of the Hon'ble Supreme Court in the case of *Indian Drugs and Pharmaceuticals Ltd. (supra)*, this Court cannot order fixing of particular pay revision as claimed by the petitioners.

8. Similarly, claim to other monetary reliefs which are not in terms of any service rules of the respondent/employer ie reliefs for grant of any monetary emoluments, the same cannot be granted to the petitioner following the ratio of the judgment in the case of *Indian Drugs and Pharmaceuticals Ltd.(supra)*.

9. Dismissed.

FEBRUARY 11, 2015
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VALMIKI J. MEHTA, J