

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05-04-2018

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.10862 of 2014

And

M.P.No.2 of 2014

The General Manager,
M/s.Shri Bharathi Mills,
Mudaliarpet,
Puducherry-4.

... Petitioner

Vs.

1.The Appellate Authority
under the Payment of Gratuity Act, 1972
Labour Department Complex, II Floor,
Vazhadavur Road,
Gandhi Nagar,
Puducherry-605 009.

2.The Controlling Authority,
Payment of Gratuity Act, 1972,
Labour Department,
Puducherry.

3.R.Sakthivel

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari, calling for the records of the first respondent in Appeal No.2/2013 dated 28.2.2014, confirming the order of the second respondent in P.G. Case No.212/2011 dated 27.3.2013 and quash the same.

For Petitioner : Mr.R.Parthiban
For Respondents-1 & 3: No Appearance
For Respondent-3 : Mr.S.Venkataraman

O R D E R

The relief sought for in this writ petition is to call for the records in respect of the order passed by the first respondent in Appeal No.2/2013 dated 28.2.2014, confirming the order of the second respondent in P.G. Case No.212/2011 dated 27.3.2013 and quash the same.

2. The writ petitioner is a Unit of the National Textile Corporation Limited, New Delhi. Through a Gazette Notification dated 4.7.2005, the petitioner was transformed as a company under the name of 'Swadeshee - Bharathee Textile Mill Ltd., Pondicherry'. The third respondent-workman had joined the petitioner-Mill on 1.4.1978 and voluntarily retired from service under the scheme on 4.5.2010. Before the retirement of the third respondent-workman, the workers of the writ petitioner-Mill were agitated for the enhancement of wages. In order to resolve the dispute between the management and the workers, the Government of Pondicherry appointed an One Man Committee headed by Justice N.V.Balasubramanian (Retd.) in order to fix the wages for the workers. An interim arrangement was made by the Government of Pondicherry and accordingly, an interim payment was paid to the employees. Thereafter, the One Man Committee submitted its report before the Government of Pondicherry. However, the said report had not been accepted by the management as well as by the workers. Thus, the negotiation between the management and the workmen continue for a prolonged period and finally a settlement was arrived between the management and the workers on 24.2.2011 and the settlement was given effect from 1.10.2010 only.

3. However, before the final settlement between the management and the workmen, the third respondent offered to go under the VRS scheme and allowed to retire from service on 4.5.2010. The petitioner calculated the wages which was drawn on the last day as per the Gratuity Act under Section 2(s) of the Payment of Gratuity Act, 1972. The third respondent workman received the gratuity amount with protest. Under these circumstances, the third respondent workman claimed the benefit based on the settlement arrived between the management and the workmen on 1.10.2010.

4. The learned counsel appearing on behalf of the third respondent workman contended that the third respondent workman was in service at the time of negotiation and at the time of implementing the settlement, he was not in service. Therefore, the question arose whether an employee and employer relationship existed at the time of implementation of the settlement entered into between the employer and the workmen.

5. The issue was elaborately adjudicated by the Hon'ble Division Bench of this Court in the case of The General Manager, Sri Bharathi Mills vs. N.Karthikeyan and Others [2017 (2) LLN 261 (DB) (Mad.)]. In the said judgment, myself (S.M.SUBRAMANIAM, J.) was also a party. Further, the very same management in the present writ petition was a party before the Hon'ble Division Bench and the Division Bench considered the legal principles in respect of the point raised in the present writ petition and

held as follows:-

"20. We are supported in our view by the judgment of the Supreme Court in the case of A.K.Bindal Vs. Union of India [reported in AIR 2003 SC 2189] in the following lines :

"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 AIR 1983 SC 803. Similarly, unfair conditions of labour in People's Union for Civil Liberties v. Union of India AIR 1982 SC 1473. 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 AIR 1987 SC 108. 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 are 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. & Ors. v. Union of India & Ors.* AIR 1958 SC 578 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 the efficiency of the lowest paid workers resulting in 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 of business."

21. We are also supported in our view by another judgment of the Supreme Court in the case of *Officers and Supervisors of IDPL Vs. Chairman & Managing Director, IDPL* [reported in AIR 2003 SC 2870] in the following lines :

"In our view, the economic capability of the employers 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 instalments 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."

22. Subsequently, the Supreme Court had entertained a doubt as to whether the decision rendered by it in A.K.Bindal has laid down the principle correctly or not. Hence, in the case of A.Satyanarayana Reddy & Others Vs. Presiding Officer, Labour Court, Guntur & Others [reported in 2008 (5) SCC 280], the Supreme Court had referred the

issue to a Larger Bench. Thereafter, the matter was considered in detail by a Three Judges Bench on 30.9.2016 in the decision reported in AIR 2016 SC 4556. Justice Deepak Misra, speaking for the Court, has concluded the issue, in paragraph 16, in the following words :

"Therefore, the controversy that arose in Pritam Singh Gill (supra) and the dispute that emanated in A.K.Bindal (supra) are quite different. Hence, we are disposed to think that there exists no conflict between Pritam Singh Gill (supra) and A.K.Bindal (supra). We think it appropriate to say that though there is cessation of relationship between the employee and the employer in VRS but if it does not cover the past dues like lay-off compensation, subsistence allowance, etc., the workmen would be entitled to approach the Labour Court under Section 33C (2) of the Act. If it is specifically covered, or the language of VRS would show that it covers the claim under the scheme, no forum will have any jurisdiction."

23. From this, it becomes clear that in Pritam Singh Gill, the principle enunciated that for making a claim arising from out of an existing right can be laid under Section 33C(2), is not in conflict with the principle enunciated in A.K.Bindal. In A.K.Bindal, as noticed by us supra, the principle that any claim with regard to enhancement of pay scale for the earlier period, prior to the workmen proceeding on voluntary retirement, does not lie, is equally good. सत्यमेव जयते

24. In this view of settled legal principle, it clearly emerges that for making a claim under Section 33C(2) of the Industrial Disputes Act or to sustain the same, there must be an existing legal right as on the date the jural relationship of employer - employee was snapped. For enforcing such a pre-existing legal right, a claim under Section 33C(2) can be maintained even after the date of the relationship of employee - employer coming to an end.

25. In the instant case, the claim made under Section 33C(2) by the workmen is not for enforcing any of the existing rights as on 04.6.2010 or even 30.9.2010. But, it is rested upon enforcing the wage revision brought into force with effect from 01.10.2010. A right, which has accrued on or after 01.10.2010, cannot be enforced by the employees, who have retired under the VRS 2010 and were relieved on 30.9.2010. Such a claim, which is beyond the period of subsistence of jural relationship of employer - employee, is clearly unsustainable. But, in case there is any other claim, which the workmen have and which is existing prior to 30.9.2010, the same becomes sustainable and the present order shall not be understood as curtailing any such enforceable rights in the hands of the workmen.

26. Hence, we are of the opinion that the orders passed by the Labour Court entertaining the claim petitions under Section 33C(2) of the Industrial Disputes Act on the basis and strength of revised wage structure, are contrary to law and are, hence, unsustainable.

27. Mr.S.Venkataraman, learned counsel appearing for the workmen has made a strenuous effort to convince us that we should not upset the orders passed by the Labour Court, particularly when the management has not raised the plea in so many words.

28. But, however, the present proceedings are grounded upon a misconception of the right in the hands of the workmen and when the Labour Court passed orders, which are contrary to the principles enunciated by the Supreme Court, which principles bind every court in this country under Article 141 of our Constitution, the orders of the Labour Court cannot be allowed to sustain any longer. The orders passed by the Labour Court in the teeth of the principles enunciated by the Supreme Court are clearly unsustainable, as the very foundation or base, upon which, they are rested, is wrong.

29. Hence, we allow the writ appeals and set aside the orders passed by the Labour Court in the claim petitions lodged under Section 33C(2) by the workmen. Consequently, the writ petitions stand disposed of as having become infructuous. The monies deposited so far shall appropriately be refunded to the depositor under proper acknowledgement. No costs. Consequently, all connected pending CMPs are closed."

6. In view of the judgment of the Division Bench of this Court, cited supra, the present writ petition deserves no further consideration. Accordingly, the writ petition stands allowed, the order passed by the first respondent in Appeal No.2/2013 dated 28.2.2014, confirming the order of the second respondent in P.G. Case No.212/2011 dated 27.3.2013 is quashed. The amount already deposited by the writ petitioner-management is directed to be reimbursed by filing appropriate petition before the concerned Court. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Svn

To

1.The Appellate Authority
under the Payment of Gratuity Act, 1972
Labour Department Complex, II Floor,
Vazhadavur Road,
Gandhi Nagar,
Puducherry-605 009.

2.The Controlling Authority,
Payment of Gratuity Act, 1972,
Labour Department, Puducherry.

+1cc to Mr.R.Parthiban, Advocate Sr.No.25470
+1cc to Mr.S.Venkatraman, Advocate SR.No.25807

KK(CO)

sm:13.4.2018

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1/2