THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT APPEAL NO.1518 OF 2018

JUDGMENT: (per SK,J)

Hindustan Cables Limited, Kolkata, a Government of India undertaking, and the Chief General Manager at its Hyderabad Unit are in appeal aggrieved by the order dated 19.09.2018 passed by a learned Judge of this Court allowing W.P.No.27450 of 2003. The said writ petition was filed by the respondents herein assailing the action of the first appellant company in not paying them retirement benefits in terms of the revised pay scales as per the Office Order dated 31.05.2001. A consequential direction was sought to revise the computation of the voluntary retirement benefits of the writ petitioners and to pay them the same along with arrears with effect from 01.01.1997 till the date of their retirement.

By the order under appeal, the learned Judge held the writ petitioners entitled to the reliefs claimed by them and accordingly directed the first appellant company to extend the said benefits to them within eight weeks from the date of receipt of a copy of the order.

Aggrieved thereby, the appellants are before this Court.

The respondents-writ petitioners opted for voluntary retirement from service in March, 2001. However, by virtue of its Office Order dated 31.05.2001, the first appellant company extended the later revision of pay scales to those employees also who had opted for voluntary retirement from service even earlier. This is clear from Clause 8.3 of the said Office Order, which reads as under:

'8.3 <u>Payment to the executives who have ceased to be in the service after 1.1.1997</u>

All executives who were on the rolls as on 1.1.1997 but subsequently ceased to be in services on account of superannuation, resignation, VRS, termination, death, etc., would be eligible for the benefit of revised scale of pay up to the period they were in employment of the Company.'

Sri B.Shiva Kumar, learned counsel appearing for the appellants, would however state that Clause 10.6 of the said Office Order also needs to be taken into consideration. This clause reads as under:

'10.6. However, the payment of arrears from 1.1.1997 to 31.3.2001 will be paid when the company is able to generate sufficient resources and clears all the arrears of statutory dues.'

Perusal of the order under appeal demonstrates that the learned Judge took note of the fact that other employees who had opted for voluntary retirement from the service of the first appellant company approached this Court by way of W.P.No.24197 of 2002 seeking the very same relief as the respondents-writ petitioners. The said writ petition was allowed by order dated 11.11.2003 and the same was confirmed in appeal, in W.A.No.919 of 2004, which was dismissed by order dated 05.11.2009. S.L.P.No.9146 of 2010 filed before the Supreme Court calling in question the said Division Bench order was also dismissed on 29.03.2016. The learned Judge accordingly held that when the respondents-writ petitioners were similarly situated to the petitioners in W.P.No.24197 of 2002, no cause was made out to discriminate between these two sets of identically situated people and granted relief to them.

Though Sri B.Shiva Kumar, learned counsel, would place reliance on the judgment of the Supreme Court in A.K.BINDAL V/s. UNION OF

INDIA[1], we find that the said case is entirely different when compared to the case on hand. That was a case where the employee asked for the benefit of the revised pay scales having opted for voluntary retirement and his retirement came into effect before the revision of the pay scales. In the case on hand, the situation is different as the first appellant company itself came up with the Office Order dated 31.05.2001, whereby it deemed it appropriate to extend to employees, who had opted for voluntary retirement, the benefit of the revised pay scales for the period that they were in employment.

Sri B.Shiva Kumar, learned counsel, fairly concedes that the petitioners in W.P.No.24197 of 2002 were paid the benefits in terms of the order passed therein which was confirmed by the Supreme Court. He also does not dispute the fact that the respondents-writ petitioners are identically situated to the petitioners in W.P.No.24197 of 2002.

That being so, we are not impressed by his submission that the first appellant company should be permitted to seek protection under Clause 10.6 of the Office Order dated 31.05.2001 and put off payment of the benefits due to the respondents-writ petitioners, though they stand identically situated to the petitioners in W.P.No.24197 of 2003 who were already paid such full benefits. Even if such payment was made under threat of contempt proceedings, it means that given the right amount of pressure, the first appellant company is able to generate sufficient resources for payment and it cannot therefore seek to press into service Clause 10.6 at this stage and put off the payments due to the respondents-writ petitioners in terms of the order under appeal.

[1] (2003) 5 SCC 163

Viewed from any angle, we find no grounds to distinguish between the respondents-writ petitioners and the petitioners in W.P.No.24197 of 2002. As the first appellant company managed to generate resources to meet the dues of the petitioners in the said case, it cannot now claim incapacity when called upon to make payment to the respondents-writ petitioners who stand identically situated.

The appeal is bereft of merit and is accordingly dismissed. However, taking note of the fact that the time granted by the learned Judge may have already expired or is about to expire shortly, we grant eight weeks time to the appellants, from the date of receipt of a copy of this order, to remit the amounts due and payable to the respondents-writ petitioners in terms of the order under appeal.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

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SANJAY KUMAR,J

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M.GANGA RAO,J

Date:20.11.2018

GJ