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

\+ **W.P.(C) 3045/2017**

N.D. AGARWAL & ORS ..... Petitioners

Through: Ms. Sadiqua Fatma, Advocate.

versus

UNION OF INDIA & ANR ..... Respondents

Through: Ms. Barkha Babbar, Advocate for UOI.

Mr. Praveen Kumar Mehdiratta, Advocate for R-2.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

ORDER

% **25.02.2020**

1. The present petition has been filed by 20 Petitioners who are ex-employees of Respondent No. 2/Hindustan Prefab Limited, challenging an order dated 7th October, 2016 of the Central Administrative Tribunal, Principal Bench ('CAT') in OA No. 3590/2013. The said OA was filed by the present Petitioners and 3 other ex-employees of Respondent No. 2, Some of the Petitioners superannuated and others either took Voluntary Retirement from Service ('VRS') or resigned.

2. The Petitioners are aggrieved by the non-payment of the arrears of pay subsequent to a revision in the pay scales which became effective from 1st January, 1997. The Petitioners were governed by Industrial Dearness

Allowance ('IDA') pattern prevalent in Respondent No. 2 Company. Another set of employees of Respondent No. 2 who were governed by the Central Dearness Allowance ('CDA') pattern received arrears arising from the revision in their pay scales with effect from 1st January, 1996 owing to an Office Memorandum ('OM') dated 24th October, 1997 for revising the pay of employees governed by the CDA pattern in Public Sector Enterprises ('CPEs').. The CAT by the aforesaid impugned order dated 7th October, 2016 dismissed the Petitioners' claim for arrears of the pay in the revised pay scale.

3. The background facts are that the Petitioners, who were governed by the IDA pattern, could initially not avail a revised pay scale that became effective from 1st January, 1997, as it was only the CDA pattern pay scales that were revised. Subsequently, the Ministry of Industry, Department of Public Enterprises ('DoPE') appointed a Committee under the Chairmanship of Justice S. Mohan to recommend revision of pay and allowances of those who were receiving pay in the IDA pay scales. Based on the recommendations of the said Committee, the DoPE issued an Office Memorandum ('OM') dated 25th June, 1999 revising the pay scales of those governed by the IDA pattern with effect from 1st January, 1997.

4. It is stated in the petition that after the said OM came to be issued, the employees governed by the IDA pattern approached this Court by filing C.W.P. No. 2999/2000 titled as ***S. D. Naskar and Ors. v. UOI and Ors.*** and C.W.P. No. 5093/2001 titled as ***Vinod Kumar and Ors. v. UOI and Ors.***

5. Both these writ petitions were disposed of by a common order dated 23rd January, 2004. The relevant portions of the said judgment are reproduced hereunder:

> "30. Learned counsel for the Union of India did not dispute that to meet the increased wage bill for CDA pattern employees of Hindustan Prefab Ltd., the Government had sanctioned the wage increase notwithstanding that it was a loss-making company and further that the Government was footing the increased wage burden.
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> 31. Now, if the Government does not have an obligation to meet the additional wage bill for the employees of Hindustan Prefab Ltd. the Government could well refuse to sanction pay revision for all category of employees. But it cannot discriminate. The Government cannot say that it sanctions the wage revision for CDA pattern employees and then proceed to issue the 'gift cheque' and to the IDA pattern employees say 'thumbs up'. Decision of the Government has to apply across the board.
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> 32. Though para/clause 11 of the O.M. dated 19.07.1995 and para/clause 7 of the O.M. dated 25.06.1999 are salutary and indeed have been upheld by the Supreme Court, but as noted in paras 29 to 31 above, the problem at hand is different. There is discrimination within the employees of Hindustan Prefab Ltd. Discrimination is a consequence of governmental action. It is the action which is bad in law and not the clause. <u>Nexus of the criteria with the object sought to be achieved is the recruitment of Article 14.</u>
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> 33. Basis of every pay revision is to neutralise the increased cost of living. This would be common and underlying to all categories of employees. Predicated on this basis, all employees under same employer from one homogeneous category. In N.T.C's case in para 10, the Supreme Court held:
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> > "Discrimination between the two categories of

> staff cannot be justified on the basis of applicability of the CDA pattern and the IDA pattern to the respective categories of staff. The IDA pattern cannot be taken to debar any revision of pay scales"
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> 34. Directions are accordingly issued to Hindustan Prefab Ltd. to forthwith staff negotiations with the representatives of the employees governed by IDA. Pay pattern pertaining to their wage revision. Agreed revised wages be paid w.e.f. 1.1.1997. Prayers (ii) to (iv) in CW No. 5093/2001 are granted. No costs."

6. From 2004 to 2013 many resolutions and office orders were passed. An MOU was signed between representative of the Petitioners and the Management on 27th November, 2004. Pursuant thereto, Board Resolution was passed to implement the above decision of this Court on 22nd February, 2005.

7. Despite, the aforesaid MoU and resolutions, when the order of this Court dated 23rd January, 2004 was not implemented, contempt petitions came to be filed in this Court. The said petitions were disposed of by a common order dated 22nd November, 2006, giving the Petitioners liberty to initiate proceedings for "their complaint that the Central Government has adopted a discriminatory approach".

8. A decision was taken by the Respondent to pay the arrears prior to 1st April, 2009 contingent upon the future profits of Respondent No.2. Aggrieved by the stance of the Respondents that the payment of arrears was made contingent on future profits the Petitioners moved Central

Administrative Tribunal ('CAT') by filing OA No.359/2013 praying for issuing directions to Respondent No.2 to release the arrears of pay revision. Some part payments were made in the meantime. However, on 7th October, 2016, the CAT dismissed the OA of the Petitioners on the reasoning that Respondent No. 2 is not denying its commitment to make payment of arrears of pay revision. The relevant portions of the order of the CAT are as under:

> "8. It is quite apparent from the records that the HPL has not been able to pay arrears of pay to its employees on account of its precarious financial situation. Respondent No.1 has already given a mandate to HPL to release 205 of its PBT every year towards settling the past arrears. The HPL is not getting any financial assistance from the Government for discharging this liability. Under these circumstances, issuance of any directive to HPL for the disbursement of salary arrears to its employees, including those who have already retired, would be meaningless. It has been submitted on behalf of respondent No. 2 that HPL is not backtracking from its commitment to pay salary arrears, which, of course, will be done out of the future profits of the company and in accordance with Annexure A-6 mandate of respondent No.1. We agree with the learned counsel for respondent No. 2 that those employees of the HPL, who had already resigned or had taken VRS, would not be eligible for any such financial benefits from the company, as observed by the Apex Court in A. K. Bindal's case (supra).
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> In view of the observations made in the previous paragraphs, we do not find any merit in the present O.A.
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> The O.A. is accordingly dismissed. No order as to cost."

9. In the meeting of the Board of Directors of Respondent No. 2 held on 22nd September, 2016 a Resolution was passed whereby, the the

disbursement of pay revision arrears amounting to Rs.2.58 crores, subject to it being within 20% pre-tax limit, was approved. However, the Respondent No.2 by another Board Resolution and by its Office Order No.611/2016 decided to disburse interim arrears of only Rs.98.33 lakhs. It is against this background that the Petitioners filed the present petition challenging the order of the CAT dated 7th October, 2016.

10. Pursuant to the notice issued on 10th July, 2017, counter affidavits have been filed on behalf of the Respondents..The Petitioner has also filed rejoinders to these counter affidavits. On 3rd September, 2019, the following order in the writ petition was passed:

> "**W.P.C. 3045/2017**
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> Present writ petition pertains to 20 persons including those persons, who have sought VRS. Counsel for the respondents submits that 70% payment already stands paid and remaining 30% payment would be made out of 20% profit received by the company. Respondent No. 2 will file an affidavit giving details of the profit of the company in the last three years. The petitioners will place an affidavit with regard to the amount received by each petitioner and balance amount due. Let the same be done within three weeks."

11. As directed by the aforesaid order, the Petitioners have placed on record an affidavit showing the amount due in respect of the each of the Petitioners as on the said date i.e. 14th October, 2019. As per the said affidavit the total amount due was Rs.1,08,25,866/-, out of which the Petitioners have already received Rs.33,67,857/- and the remaining amount due is Rs.74,58,009/-.

12. The Respondents have filed a response to this affidavit in which they

have divided these 20 employees in three categories. As per the Respondent No.2, the amount is due only in case of Petitioner Nos.1,8,9,12 and 16, who had superannuated. Accordingly, onlythey are entitled to arrears of pay revision and therefore the balance amount due to them has been quantified. In the second category, Petitioner Nos. 2,4,5,7,10,13,15,17,18 and 20 have been placed and the contention of Respondent No. 2 in their case is that since these Petitioners had resigned on their own, they are not entitled to arrears of revision of pay. Similarly, in the third category Petitioner Nos. 3,6,11,14 and 19 have been mentioned as the persons who had taken VRS. It is stated that they would not be entitled to any arrears of the pay revision.

13. We have learned counsel for the parties. As far as the liability of Respondent No.2 to make payment of the arrears to the employees covered under the IDA scheme is concerned, there can be no doubt that the common judgment of this Court in W.P.(C) Nos. 2999/2000 and 5093/2001 dated 23rd January, 2004, the said liability to pay revised wages with effect from 1st January, 1997 cannot be denied.

14. The reliance placed by the CAT on the judgment of the Hon'ble Supreme Court in the matter of ***A. K. Bindal v. Union of India 2003 (5) SCC 163*** is misplaced, as in the present case the Petitioners who had opted for VRS are demanding the arrears of pay due to them . Their entitlement to the revised pay scale was decided by this Court in its judgment dated 23rd January, 2004 and they are not before Court seeking re-fixation of their pay in a higher pay-scale as the same had been ordered by this Court long time ago.

15. Hence, the ex-employees/Petitioners who had taken VRS cannot be said to not be entitled to the arrears of their pay which was due to them when they opted for VRS. Similarly, the ex-employees who resigned from their service are also entitled for the amount due to them which is liable to be paid in view of the judgment of this Court dated 23rd January, 2004.Respondent No. 2 cannot avoid the said liability on one pretext or another. The entire basis of the judgment of CAT that since Respondent No. 2 has acknowledged its liability and has committed itself to paying the dues to the Petitioners and that, therefore, the OA merited dismissal is erroneous. Where the Respondent No.2 is backtracking from its commitment to pay arrears and is delaying the same on one pretext or the other, it gives rise to a valid cause of action to the Petitioners to agitate their grievances before the appropriate forum.

16. The arrears of pay with effect from 1st January, 1997 to 1st April, 2009 cannot be delayed endlessly. The full and final payment of the amount due is to be made in a time bound manner.

17. In view of the above facts and circumstances, the Court orders the Respondent No. 2 to make the payment of the balance amount due to the twenty Petitioners herein who were covered under IDA scheme on parity with other employees of Respondent No. 2 who were covered under CDA scheme and file an affidavit of compliance before the next date of hearing.

18. The petition is allowed in the above terms. It is however kept pending

for compliance with the aforesaid direction.

19. List for compliance on 15th July, 2020.

S. MURALIDHAR, J.

TALWANT SINGH, J.

FEBRUARY 25, 2020
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