IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1085 OF 2005
WITH
CIVIL APPLICATION NO.471 of 2007
WITH
CIVIL APPLICATION (ST.) NO. 6380 OF 2007

Senior Regional Manager (Maharashtra) … Petitioner/Applicant
Food Corporation of India.

Versus

R.S.Naik & Ors. …Respondents

Mr. Hafeezar Rahman for the petitioner/applicant.
Mr. Rahul Motkari for respondent no. 1.

CORAM: G. S. KULKARNI, J.
DATED: 21 February, 2023

P.C.

1. This petition under Article 227 of the Constitution of India assails an order dated 31 December, 2001 passed by the Central Government Industrial Tribunal No. 2 (for short "**the Tribunal**") allowing the applications of the respondents filed under section 33C(2) of the Industrial Disputes Act.

2. The respondents, being employees of the petitioner-Food Corporation of India, had approached the Tribunal with a case that the petitioner had deployed them for extra duty and extracted work from them for the period from 1 February, 1992 to 31 March, 1996 at their various establishments at Mumbai/Manmad. It was contended that the wages of the respondents were being revised from time to time under settlements/agreements entered between the petitioner and the staff bodies. The wages were revised on the Industrial D.A. pattern for the period from "1 August, 1983 to 31 March, 1987", "1 August, 1987 to 31 January, 1992" and "1 February, 1992 to 31 December, 1996". The respondent/workman contended that they were paid difference of "synchronization allowance" based on revised pay and allowances for the first two periodical wage settlements, namely, 1 August, 1983 to 31 March, 1987 and 1 August, 1987 to 31 January, 1992, as also they were entitled to receive the difference of synchronization allowance as per the revised pay and allowance for the period of the third wage revision, i.e., from 1st February, 1992 to 31 December, 1996. The respondents contended that they were not paid the said revision although the respondents repeatedly submitted reminders to the petitioner.

3. In these circumstances, the respondents have filed applications in question invoking Section 33C(2) of the Industrial Disputes Act *inter alia* contending that they were entitled to receive arrears of difference of synchronization allowance with interest @18% p.a. for the period from 1 February, 1992 to 31 March, 1996. The petitioner appeared in the said proceedings before the Tribunal and resisted the contentions of the respondents on several grounds including on maintainability. Responding on such issue of maintainability, the respondents contended that they had raised disputes regarding the non-payment of the synchronization allowance as claimed in the applications for the period from “1 February, 1992 to 31 March, 1996” before the Regional Labour Commissioner, Mumbai. It was contended that the employees association/union had represented the applicants and had addressed letters dated 7 September, 1998 to the authorities on the issue. It was contended that the petitioner/management by its reply dated 31 September, 1998 / 6 December, 1998 recorded as to how the Union was not justified in raising the dispute. The respondents had also taken a categorical stand that there was no dispute in regard to the obligation of the petitioner to pay such amounts. It was the case of the respondent that, however, despite such clear position, the petitioner had raised an objection on maintainability of the proceedings to contend that there exists an “industrial dispute” and the applications as made by the respondents were not maintainable. The respondents also contended that there was no dispute that whenever a wage revision had taken place, the difference of synchronization allowance was paid to them as the revised wages. It was also contended by the respondent that after receiving the reply from the management, the Regional Labour Commissioner (C) had closed the matter without admitting the dispute in conciliation and there was no industrial dispute pending with the Regional Labour Commissioner. Hence, any objection as raised by the petitioner on maintainability of the said applications was totally untenable.

4. On such backdrop, the Tribunal proceeded to adjudicate the applications of the respondents on the point whether the applications are maintainable, the Tribunal held that the respondent's applications were maintainable. It was observed that although a dispute was raised by the respondents before the Regional Labour Commissioner (C), the same does not exist in view of the position taken by the petitioner and hence the petitioner's contention that the applications filed by the respondents under section 33 C(2) were not maintainable, was untenable as also not justified.

5. Insofar as the entitlement of the respondent to the difference of the synchronization allowance was concerned, the Tribunal considered the rival contentions and observed that the petitioner/management in its written statement in paragraph 4 had averred that the petitioner had paid the amount due towards the synchronization allowance to the respondents for the period from 1 February, 1992 to 31 March, 1996 as per the rules and regulations and no arrears or difference was due and payable to the respondents. It was observed that a letter dated 31 January, 2001 was addressed by the Union to the petitioner raising demands for payment of differential amount of synchronization allowance on the revised pay for the period from 1 February, 1992 to 31 March, 1996. The petitioner took a stand that such request of the respondents was re-examined with the approval of competent authority so as to come to a conclusion that the demand was not tenable. In such context, the

Tribunal observed that however, there was nothing on record, either in the documents and in evidence, to accept such contention of the petitioner which would show as to how the demand, only in regard to the third wage settlement was not tenable. Examining the evidence, the Tribunal observed that the petitioner/management was well aware of the difference of claim, which according to the petitioner itself had referred in the written statement. It was thus held that it cannot be said that the claim of respondents was vague and incorrect.

6. Insofar as the contentions as urged on behalf of the petitioner in regard to the calculation of the said amounts are concerned, the Tribunal observed that since specific amount towards the difference was set out and that as per the earlier wage settlements, the respondents had received the difference of synchronization allowance, the petitioner-management was under an obligation to pay the amount claimed in the concerned applications and accordingly, the petitioner was so directed to pay amounts. It was also observed that the difference of synchronization allowance was due and payable long back, accordingly, the Tribunal granted the petitioner three months time to make the payment. The applications of the respondents were accordingly allowed in terms of the following order passed by the Tribunal:

"O R D E R

Applications are allowed.

> *Applicants are entitled to difference of synchronization allowance as per the revised third wage settlement (as per Annexure enclosed) from the Opponent. The Opponent, F.C.I. to pay same to the applicants are entitled to interest @ 6% p.a. till the recovery of the allowance."*

7. The impugned order itself is of the year 2001. It is almost 23 years that the order has been passed. There is something significant which cannot be overlooked and which would also decide the course of the present proceedings. It appears from the record that there were no effective steps taken to move the petition for admission for quite sometime, although this petition assailed an order dated 31 December, 2001 passed by the Tribunal. The petition itself was filed on 11 January, 2005, after four years of the impugned order being passed. Notice before admission on this petition was issued on 16 February, 2006 by a co-ordinate Bench of this Court. It appears from the record that the petition had remained pending admission. It also appears that unfortunately many of the respondents/employees in the intervening period have passed away.

8. It also appears that from the year 2007 till this Bench directed all old matters to be listed, this petition was never moved between the year 2007 till it was taken up by this Court in January, 2023. On 3 January, 2023, when it was informed to the Court that the advocate for petitioner had passed away recently, the Court had passed an order directing the Registrar (Judicial) to take immediate steps to serve the notice on the petitioner. Accordingly, the petitioner had taken steps to engage Advocate Mr. Rahman for the petitioner, who was granted time on 24 January, 2023 and thereafter on 7 February, 2023 to take instructions and make submissions.

9. It is on such backdrop, I have heard Mr. Rahman, learned counsel for the petitioner and Mr. Motkari, learned counsel for respondent no. 1. It appears that other respondents are not represented. In any event, the petition is being heard for admission and/or is at the pre-admission stage.

10. Before the contentions as urged on behalf of the parties are adverted, it needs to be noted and as pointed out by the learned counsel for the petitioner from paragraph 12 of the petition that the impugned order dated 31 December, 2001 passed by the Tribunal was in fact assailed by the petitioner before this Court, in the proceedings of Writ Petition no. 13 of 2003, although filed against other employees similarly placed. It is stated that the petitioner was under a bonafide belief that the decision in the said Writ Petition would prevail and would be binding on all the cases of similar nature, i.e., the case of the present respondents and as such the respondents were not joined as parties to the said Writ Petition. The said Writ Petition came to be adjudicated by a coordinate Bench of this Court, resulting in its dismissal by an order dated 3 December, 2003. The petitioner being aggrieved by the said order passed by the learned Single Judge, had filed a Letters Patent Appeal No. 301 of 2004, which also came to be dismissed by an order dated 26 July, 2004 passed by the

Division Bench of this Court. Against the said decision of the Division Bench in Letters Patent Appeal, the petitioner approached the Supreme Court in Special Leave Petition No. SLP (C) 25720 of 2004. At the time of filing of this petition, the said Special Leave Petition was stated to be pending and it is in these circumstances, the present petition was filed.

11. It is informed by learned counsel for the petitioner that Special Leave Petition was disposed of by an order dated 10 January, 2005 passed by the Supreme Court, whereby, the Supreme Court observing that the parties had agreed that the issue as to whether the application before the Labour Tribunal was maintainable under section 33C(2) of the Industrial Disputes Act should have been disposed of by the High Court. The impugned order was accordingly set aside and the matter was remanded to the Division Bench of the High Court for determining the issue thereby allowing the appeal. However, it appears and as informed by Mr. Rahman, no further order was passed in Letters Patent Appeal by the Division bench. This is the position even after about 18 years the Supreme Court having passed the order.

12. Learned counsel for the parties would not dispute that in the aforesaid situation, there is no embargo on the present proceedings, which are at the pre-admission to be taken up and appropriate orders passed. Accordingly, I have heard learned counsel for the parties

13. Having heard the learned counsel for the parties and having perused the impugned order and the record, it appears to be quite clear that the respondents/workmen were entitled to wages, which were revised from time to time under settlements as reached between the petitioner-management and the workmen-union. This is also the case of the petitioner in paragraph 3 of the petition, hence there is no dispute on this position. It is also categorically pleaded by the petitioner that the wages were based on the Industrial D.A. pattern for the period from 1 August, 1983 to 1 July, 1987, 1 August, 1987 to 31 January, 1992 and 1 February, 1992 to 31 December, 1996. It also appears that there is no dispute on such payment for the period between 1 August 1983 upto 31 January, 1992 , as the respondents were paid all the wages as per the Industrial D.A. pattern including the synchronization allowance. Thus, the synchronization allowance at all material times was due and payable. Once such basic amounts on this count were payable, the arrears had certainly become payable, was the assertion of the respondents.

14. The dispute thus is in regard to the arrears of synchronization allowance for the period from 1 February, 1992 to 31 December, 1996. The respondents although were entitled to receive arrears of difference of synchronization allowance for the period from 1 February, 1992 to 31 March, 1996, the same was not paid. The position on record was clear that the respondents/workmen were paid difference of synchronization allowance based on revised pay allowance for the first two periodical settlements, however, subsequent to the wage settlement for the period from 1 February, 1992 to 31 March, 1996, they were not paid arrears on difference of synchronization allowance and hence the claim was made by them for making said payment. In respect of claim so made, the respondents/unions had also approached the Regional Labour Commissioner *inter alia* contending that the dispute had arisen on such issue. However, the doors for a reference to an industrial dispute to be referred to the Tribunal were closed, as the Regional Labour Commissioner passed an order that a reference need not be made, as there did not exist any dispute. It is also clear from the fact that there is no material in that regard that any further proceeding was adopted by the petitioner to assail the orders passed by the Regional Labour Commissioner in refusing to make a reference.

15. It is hence clearly seen that the petitioner having taken a categorical stand, it was implicit of the petitioner admitting that not only synchronization allowance was entitled to the respondents/workmen, but also they would be entitled to benefit of arrears in that regard for the period in question.

16. In my opinion, the objection of the petitioner to the maintainability of the applications filed by the respondents under Section 33-C(2) of the Industrial Disputes Act, on the ground that the respondents/employees had no existing right to make a claim for arrears of such amounts was rightly rejected by the Tribunal, as also would not require any interference of this Court in the absence of any perversity whatsoever. It thus needs to be observed that the respondents' claims were maintainable. This was the only contention which was primarily raised by Mr. Rahman assailing the order that the claim itself was not maintainable.

17. It also needs to be observed that once the principal head, namely, of the entitlement of synchronization allowance itself was recognized and amounts on such count were paid by the petitioner to the respondents/workmen, as also there was no dispute raised that even under the wage settlement in question, there was an agreement between the parties for payment of such amounts, a position contrary to the same cannot be taken by the petitioner. Thus, not only the synchronization allowance but also the arrears of the revision in that regard were liable to be paid. It was not the case of the petitioner, that said settlement was not binding on it and/or in law the settlements were not required to be given effect. Thus ,certainly the applications which were filed by the respondents under Section 33(C)(2) were maintainable.

18. Mr. Rahman's contention questioning the calculation of the said amounts, in my opinion, is a lame and/or a weak contention being urged only in desperation in assailing the impugned order. Learned Presiding Officer of the Industrial Court has rightly observed that specific amounts towards the difference was set out by the respondents and that as per the earlier wage settlement, the respondents had received the difference of synchronization allowance. The arrears of such amounts as set out in respect of workmen at Manmad, Borivli, City Godown and General Motors as calculated are required to be paid by the petitioner to the respondents. Such issues of calculation cannot be re-opened after 22 years.

19. In regard to the maintainability of the applications of the respondents under section 33-C(2) of the Industrial Disputes Act, Mr. Rahman, learned counsel for the petitioner has referred to the decision of the Supreme Court in *Food Corporation of India vs. K.G. Kulkarni* in Special Leave to Appeal (Civil) No. 25720 of 2004 dated 10 January, 2005. Considering as to what has been observed by the Supreme Court, certainly in the facts of the present case, the said judgment would not in any manner be applicable.

20. In the aforesaid circumstances, in my opinion, no interference whatsoever is called for in the impugned order. The petition is devoid of merits. It is accordingly rejected.

21. The petitioner is directed to pay the amounts as entitled to the respondents within a period of eight weeks from the day a copy of this order ia made available on the website of the High Court.

22. Needless to observe that insofar as those respondents who have expired during the pendency of the present proceedings, their legal heirs would become entitled to the said amounts, which be released in their favour on proper verification of their claim documents.

23. In view of disposal of Writ Petition, Civil Applications do not survive and the same is accordingly disposed of.

G. S. KULKARNI, J