IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.256 of 2005

1. Waman Laxman Vaidya,
Aged adult, Ex-Manager, F & A.
Richardson & Cruddas (1972) Ltd.,
R/o 44 Dindayal Nagar,
Bank of Baroda Colony, Nagpur-22

2. Vinod Chandrashekhar Pandit,
Aged adult, Pensioner,
R/o 1/A Dindayal Nagar,
Nagpur-22. .... **PETITIONERS**

...V E R S U S...

Amended as per Hon'ble Court's order dated 12.07.2022 sd/-Counsel for petitioners (A.M.Ghare, Adv.)

1. Richardson & Cruddas (1972) Ltd.
Government of India Undertaking,
A Subsidiary of Bharat Yantra Nigam Ltd.,
Sir J.J.Road, Byculla,
Mumbai-400 008.

Amended as per Court's order dated 06.01.2021 Sd/-Counsel for petitioners. (A.M.Ghare,Adv.)

2. Union of India, through its Secretary,
Ministry of Heavy Industries and Public Enterprises,
New Delhi.

.... **RESPONDENTS**

Shri P.V.Ghare, Advocate with Shri A.M.Ghare, Advocate for petitioners.
Shri Rohit Masurkar, Advocate with Shri S.G.Deshpande, Advocate for respondent no.1.
Ms Neerja Choube, Advocate for respondent no.2.

CORAM :- A.S.CHANDURKAR AND M.W.CHANDWANI, JJ.
ARGUMENTS WERE HEARD ON 18.10.2022
JUDGMENT IS PRONOUNCED ON 06.01.2023

<u>JUDGMENT</u> (Per A.S.CHANDURKAR, J.)

The petitioners were employed with the respondent no.1-Richardson and Cruddas Limited, a Government of India Undertaking and subsidiary of Bharat Yantra Nigam Limited. Pursuant to a Scheme of Voluntary Retirement the petitioner no.1 opted for the same and was accordingly relieved from service with effect from 30.11.1996. The petitioner no.2 resigned from service in the year 1997. According to the petitioners, the Company revised its pay-scales in the year 1995 with effect from 01.01.1992. The benefit of revision of pay-scale was not given to the petitioners. The petitioners thus claim pensionary benefits on the basis of revised pay-scale alongwith arrears. They entered into communication with the Company by issuing various letters including communication dated 17.10.1999 that was issued by the petitioner no.1. In the said communication they specifically stated that other similarly situated employees had been granted benefit of the revised pay-scale and were paid the entire arrears on account of such pay revision. Names of five such employees were specifically mentioned therein. In response, the Company on 23.11.2001 issued a communication to the petitioner no.1 and on 28.01.2002 to the petitioner no.2 stating therein that the arrears of pay revision effective from 01.01.1992 was payable to ex-officers of the Company. The arrears were to be paid in instalments @ Rs.1,000/- per month until the entire amount of arrears was paid. Accordingly cheque for Rs.1,000/- was enclosed to the said replies given to the petitioners. The petitioners on 27.02.2002 issued a legal notice to the Company stating therein that the payment of the entire arrears by instalment would take about 25 years for such compliance. Similarly situated employees had been paid in lumpsum. Hence by stating that they were accepting the aforesaid amounts under protest, the Company was called upon to pay the arrears of the pay revision. In absence of any further development, present writ petition came to be filed on 25.12.2004.

2. Shri P.V.Ghare, the learned counsel for the petitioners submitted that the Company ought to have paid arrears of pay revision to the petitioners in lumpsum and not by way of monthly instalment. Inviting attention to the communication dated 17.10.1999 and especially assertions with regard to lumpsum payments made to similarly situated employees who also retired under the Voluntary Retirement Scheme, it was submitted that the Company had not denied giving such differential treatment given to the petitioners. He referred to the averments in paragraph 4 of the writ petition wherein the names of similarly situated employees being 1] Shri

J.K.Varshney, 2] Shri M.K.Nashine, 3] Shri C.D.Kothar, 4] Shri V.K.Dange and 5] Shri K.M.Tikekar had not been specifically denied. There was no justification in making the payment of such arrears by monthly instalment. Though the petitioners accepted the instalment @ Rs.,1,000/- per month, considerable period would be required to receive the entire amount of arrears. It was further submitted that though the Company was declared as a sick industry by the Board for Industrial and Financial Reconstruction, it was now under the process of disinvestment. The same was being undertaken under the supervision of the respondent no.2-Ministry. Reference was also made to 48th Annual Report of the Company for the year 2020-21 to urge that the Company was now earning profit and it could be directed to pay the arrears of pay revision to the petitioners in lumpsum. It was thus submitted that appropriate relief be granted to the petitioners.

3. Reply has been filed by the respondent no.1-Company in which it is stated that the process of disinvestment as per the guidelines of the *Niti Aayog* as well as Department of Investment and Public Asset Management was being undertaken. Shri Rohit Masurkar, learned counsel for the respondent no.1 referred to the communication dated 18.02.2020 issued by the Chief Financial Officer wherein reference was made to 46th Annual Report of the Company for the year 2018-19.

Ms Neerja Choube, learned counsel for the respondent no.2 submitted that with regard to payment of arrears of the petitioners, the same was a matter of day-to-day operations of the Company and it was for the Company to comply with the statutory wage revision as per guidelines of the Government of India.

By filing rejoinder, the petitioners have referred to the communications dated 23.04.2002 and 11.05.2002 issued to them respectively indicating that payment of monthly instalment of Rs.1,000/- each was being continued and being accepted under protest.

4. We have heard the learned counsel for the parties and we have perused the documents on record. Insofar as the entitlement of the petitioners to arrears of pay revision is concerned, the same is not disputed by the Company. On the contrary, it has been informed to the petitioners that the arrears on account of such pay revision effective from 01.01.1992 would be paid in instalment of Rs.1,000/- per month. The petitioners have been accepting this payment under protest. The only question therefore is whether a direction to make the payment of arrears admissible to the petitioners in lumpsum can be issued.

As stated above, initially in the communication dated 17.10.1999 issued by the petitioner no.1 and thereafter in paragraph 4 of the writ petition specific averments have been made giving the names of similarly situated employees who have received the amount of arrears admissible from pay revision in lumpsum. There is no denial either to the communication dated 17.10.1999 issued by the petitioner no.1 or to the averments in paragraph 4 of the writ petition despite the fact that an affidavit on behalf of the respondent no.1 has been filed on 09.09.2021. These averments therefore have gone uncontroverted. In the absence of any denial to these assertions it will have to be assumed that the said averments are accepted by the Company. As stated above, the entitlement of the petitioners to arrears pursuant to revision in the pay-scales is not disputed. Though the Company was initially declared as a sick industry, it is seen from the Annual Report of the year 2018-19 and thereafter 48th Annual Report for the year 2020-21 that the profit after tax indicated in the Company's financial performance is Rs.29.47 Crores for the Financial Year 2019-20 and Rs.13.41 Crores for the Financial Year 2020-21. It is thus clear that the Company is now shown to be earning profit.

5. In the light of the aforesaid, we do not find any reason not to issue a direction to the respondent no.1 to pay the petitioners the arrears admissible to them pursuant to revision of the pay-scales that has been made effective from 01.01.1992 in lumpsum. The respondent no.2 has clearly

stated in its affidavit that it being a matter of day-to-day operations of the Company, it is the liability of the Company to make such payment.

6. Accordingly, it is directed that the respondent no.1-Company shall within a period of two months of receipt of copy of the judgment pay the petitioners the balance amount of arrears admissible to them pursuant to revision of the pay-scales with effect from 01.01.1992. Needless to state that the payments already made in instalments shall be taken into account while making the balance payment. In case of any difficulty faced by the Company, it can obtain necessary guidance from the respondent no.2. Failure to pay the balance amount of arrears admissible to the petitioners within aforesaid period of two months from the date of receiving the copy of the judgment would render it liable to pay such balance amount of arrears with interest @6% per annum on the expiry of the said period of two months till realisation.

Rule is made absolute in aforesaid terms with no order as to costs.

(M.W.CHANDWANI, J.) **(A.S.CHANDURKAR, J.)**

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