

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

WRIT PETITION NO.3700 OF 2007

- PETITIONERS** : 1. G.M. Nagaraja, aged about 53 years, Occ: Service, Chief Manager, R/o. Gaurishankar Apartments, Laxmi Nagar, Nagpur.
2. A.K. Mall, aged about 52 years, Occ: Service, Manager, R/o. Ameya Apts, Pande Layout, Khamla, Nagpur-25.
3. S.R. Pande, aged about 51 years, Deputy Manager, R/o. 201, Mangaldeep Apartment, Trimurty Nagar, Nagpur-22.
4. PK. Sarkar, aged about 48, Chief Manager, R/o. 87, Maroti Nagar, Dattawadi, Nagpur-23.
5. V. Durairajan, aged about 50 years, Chief Manager, R/o. Yamuna Apartments, 77 Shivaji Nagar, Nagpur.
6. C.V. Chikte, aged about 43 years, Deputy Manager, R/o. 38, Pragati Nagar, Janhit Coop. Society, Jaitala Road, Nagpur.
7. N.A. Khan, aged about 57 years, Senior Officer, R/o. 184, Jaihind Nagar, Mankapur, Nagpur-30.
8. V.B. Patil, aged about 45 years, Senior Officer, R/o. 94-A, Friends Colony, Katol Road, Nagpur.
9. V.G. Jainabadkar, aged about 45, Senior Engineer, R/o. 50, Sahakar Nagar, Khamla, Nagpur-25.
10. V.G. Chaurasia, aged about 44 years, Senior Engineer, R/o. 301, Prachi Apartments, Chandak Layout, Ghat Road, Nagpur.

11. P.S. Wazalwar, aged about 54, Deputy Manager, R/o. 56, Dev Nagar, Khamla Road, Nagpur-15.
12. S.D. Umrikar, aged about 46, Senior Officer, R/o. Shweta Apartments, NIT Layout, Swawalambi Nagar, Nagpur-22.
13. A.G. Marathe, aged about 47, Senior Engineer, 235, Dattadham, Abhyankar Nagar, Nagpur.
14. Karan Singh, aged about 47 years, Senior Engineer Priya Apartments, Pande Layout, Khamla, Nagpur-25.
15. Rajkumar Verma, aged 45, Senior Engineer, R/o. Ameya Apartments, Pande Layout, Khamla, Nagpur-25.
16. K.N. Bardhan, aged 50, Engineer, R/o. 14/1A, Malange Lane Kolkata-700012.
17. Mrs. Chitralkha, aged 53, Junior Officer, R/o. 203, Managaldeep Apartments Trimurty Nagar, Nagpur-22.
18. R.C. Rajput, aged 53, Officer, R/o. Pardhi Nagar, Near Hanuman Temple, Hingna Road, Nagpur-16.
19. S.B. Kulkarni, aged 52, Supervisor, R/o. B-203, Mruganayani Apartments, Vyankatesh Nagar, Nagpur-25.
20. E R. Zod, aged 44 years, Supervisor, R/o. 55, Shesh Nagar, Behind Shitala Mata Decoration, Nagpur.
21. S. Banerjee, aged 51 years, Supervisor, R/o. Sanwad Apartments, Plot No. 40, Saraswati Vihar, Trimurti Nagar, Nagpur-22.

22. S.H. Kapse, aged 52 years, Supervisor, R/o. 68, Vinayak Nagar, Nagpur-24.
23. S.G. Gawai, aged 51 years, Supervisor, R/o. Lumbini Nagar, Jaitala Nagpur-16.
24. R.P. Bhattacharjee, aged 51 years, Supervisor, R/o. 64-B, Christophar Road, Kolkata-700 046.
25. A Rahma, aged 43 years, Highly Skilled-B, R/o. Near Babbu Hotel, Mominpura, Nagpur.
26. G.C. Das, aged 51 years, Highly Skilled-B, R/o. 87, Maroti Nagar, Dattawadi, Nagpur-23.
27. B.E. Bhange, aged 57 years, Highly Skilled-B, R/o. Digdoh (devicha) MIDC, Hingna Road, Nagpur-16.

//VERSUS//

- RESPONDENTS** : 1. Union of India, through Department of Heavy Industries Udyog Bhavan, New Delhi.
2. Richardson & Cruddas [1972] Ltd. through its Managing Director, Corporate Office, Byculla, Mumbai-8.
3. Richardson & Cruddas (1972), F-3, M.I.D.C. Industrial Estate, Hingna, Nagpur 440 016, India Gram : IRONWORKS.
- Amended as per Court's order dated 4.3.2008 4. The Board of Industrial and Financial Reconstruction, (BIFR), having its office at Jawahar Vypar Bhawan 1, Tolstoy Marg, New Delhi through its Chairman.

Mr. Rohan R. Deo, Advocate with Mr. A. Naik, Advocate for the Petitioners.
Ms. Neerja Choube, Advocate for Respondent No.1.
Mr. Rohit Masurkar, Advocate with Mr. S.G. Deshpande, Advocate for Respondent Nos.2 & 3.

CORAM : A. S. CHANDURKAR AND M.W. CHANDWANI, JJ.
DATE ON WHICH ARGUMENTS WERE HEARD : OCTOBER 18, 2022.
DATE ON WHICH JUDGMENT IS PRONOUNCED : JANUARY 06, 2023.

JUDGMENT (Per: A.S. CHANDURKAR, J.)

01] The petitioners who are 27 in number have approached this Court praying that directions be issued to the respondent No.2-Richardson & Cruddas Limited, a Company incorporated under the Companies Act 1956 to grant them voluntary retirement alongwith all benefits or in the alternate to implement revised pay scale of the year 1997 and pay them arrears for a period of 10 years. It is the case of the petitioners that they are employed with the aforesaid Company which is a subsidiary of Bharat Yantra Nigam Limited. It functions under the control of the Ministry of Heavy Industries, Union of India. At the Nagpur Unit of the said Company, there were about 350 employees till the year 1996-97. The strength of said employees was reduced from 350 to 27 by granting those employees benefit under the Voluntary Retirement Scheme in the year 2003. Out of the 27 petitioners, 25 are officers and two are workers. Their engagement was continued at the Nagpur Unit for completion of the existing orders. In the meanwhile on 25.07.2003 the Board for Industrial and Financial Reconstruction-BIFR issued an order of winding up under Section 21 of the Sick Industrial Companies (Special Provisions) Act, 1985 (for short “the Act of 1985”). A winding up order was accordingly passed. The grievance of the petitioners is that most of them have attained the age of 45 years and are continuing in the earlier pay-scale. Those employees who had opted for Voluntary Retirement Scheme in the year 2001-03 have been paid 50% *ex-gratia* in lieu of pending wage revision of 1997. The petitioners however have been deprived of Voluntary Retirement Scheme benefits as well as of the benefit of

wage revision since 1997. The last revision was made effective from 01.01.1992 and though the next pay revision was due from 01.01.1997, the benefits were awaited. The Government of India issued an Office Memorandum on 25.06.1999 in the matter of granting revision of pay-scales to board level posts and below board level posts. Since the petitioners have not been granted the benefit of wage revision, they have approached this Court by the present writ petition.

02] The learned counsel for the petitioners submitted that the petitioners have been deprived of benefit of the Voluntary Retirement Scheme in view of the fact that their claims were not accepted though majority of the employees of the Company were permitted to avail the benefit of that Scheme. Since the petitioners continued in employment, they were at least entitled to the benefit of revision in pay-scales from 01.01.1997. Even though there was an order of winding up passed under Section 21 of the Act of 1985, there was no reason to deprive the petitioners of the benefit of pay revision. He referred to the order passed by the Appellate Authority for Industrial and Financial Reconstruction-AAIFR dated 30.11.2004 and submitted that even under the rehabilitation package such benefit could have been granted. Referring to the subsequent order passed by the AAIFR on 24.09.2007 and especially paragraph 57 thereof, it was submitted that the Company was making profit and dues of secured as well as unsecured creditors had been paid. Since the Company was now running in profit, the relief of wage revision from 01.01.1997 ought to be granted. He also invited attention to the communication dated 18.02.2020 by which the benefit of wage revision from 01.04.2018 had been made available. Since such benefit had now been granted, the petitioners were entitled to

the earlier pay revision from 01.01.1997 till 31.03.2018. In support of his submissions, the learned counsel for the petitioners referred to the decision of the Hon'ble Supreme Court in ***Union of India and Another Vs. SPS Vains (Retd.) and Others [(2008) 9 SCC 125]*** and the decision of this Court in ***Dr. Narayan Haribhau Girdhar and Others Vs. City of Nagpur Municipal Corporation [2015(3) Mh.L.J. 105]***. He fairly brought to the notice of the Court the decision in ***Mineral Exploration Corporation Vs. Arvind Kumar Dixit and Another [(2015) 2 SCC 535]*** wherein it was held that the choice of a cut of date for granting wage revision could not be said to be arbitrary. It was thus submitted that the petitioners were entitled for appropriate relief.

03] The learned counsel appearing for respondent Nos.2 and 3-Company opposed the aforesaid submissions. It was submitted that in view of the order of winding up passed under the Act of 1985, no relief could be granted to the petitioners. Unless the matter of wage revision was included in the rehabilitation package, the petitioners were not entitled to the same. It was further pointed out that though the petitioners sought wage revision from 01.01.1997, the present writ petition had been filed on 24.07.2007 after much delay. There was no explanation for the delay in approaching this Court. He further referred to the additional affidavit placed on record to indicate that from 01.04.2018 the benefit of wage revision was made available. To substantiate his contentions, the learned counsel placed reliance on the decisions in ***Federation of all Maharashtra Petrol Dealers Association Vs. Union of India and Others [(2021) 1 Bom CR 326]*** and ***A.K. Bindal and Another Vs. Union of India and Others [(2003) 5 SCC 163]***.

The learned counsel appearing for respondent No.1 supported the contentions as urged by the learned counsel for respondent Nos.2 and 3.

04] We have heard the learned counsel for the parties and perused the documents placed on record. After giving due consideration to the rival submissions, we find that the petitioners would not be entitled to the reliefs sought by them for the following reasons:

(a) The prayer for grant of voluntary retirement has not been seriously pressed by the learned counsel for the petitioners. It is however seen that the Company introduced the Voluntary Retirement Scheme in the year 2002. Applications made by various employees for seeking benefit under the said Scheme were considered and 228 employees were granted benefit of the same. The Company retained the remaining employees for carrying out its operations. The applications of the petitioners thus were treated to be rejected in the year 2003. The petitioners thereafter till the filing of the present writ petition on 24.07.2007 have not raised any grievance in that regard. In absence of any justifiable legal ground made out to compel the Company to accept the petitioners' applications for voluntary retirement that relief cannot be granted to the petitioners.

(b) Insofar as the grant of benefit of wage revision from 01.01.1997 is concerned, it is seen that the initial wage revision was made effective for executives holding board level posts and below board level posts in the central public undertakings from 01.01.1992. The subsequent wage revision was due from 01.01.1997 and the Ministry of Industries set up a High Level Committee to recommend the revision of pay and allowances in that regard. Based on such recommendations of the Committee, such wage revision was directed from

01.01.1997. As per Office Memorandum dated 25.06.1999 in respect of sick enterprises referred to BIFR, the revision of pay-scales was to be in accordance with the rehabilitation package to be approved by the Board for Industrial and Financial Reconstruction. Paragraph 6 of the Office Memorandum dated 25.06.1999 reads as under:

“6. In respect of sick enterprises referred to the BIFR, revision of pay scales would be strictly in accordance with rehabilitation packages approved or to be approved by the BIFR and after providing for the additional expenditure on account of pay revision in these packages.”

Undisputedly, the Company had been referred to the BIFR which ultimately resulted in passing of an order of winding up. In accordance with the said Office Memorandum unless approved by the BIFR, there could be no revision of pay-scales. It is seen from the orders passed by the Appellate Authority that there has been a recommendation for reviving the Company through a disinvestment process. There has been no recommendation to apply such wage revision from 01.01.1997 insofar as the Company is concerned. It is also necessary to note that on 18.02.2020, the Ministry of Heavy Industries and Public Enterprises has issued a communication to the Company stating therein the manner in which the notional pay in 1997 scale and 2007 scale would be calculated. Annual increments were to be paid so as to reach the notional pay as on 01.04.2018. Thus there has been a revision of pay-scales from 01.04.2018 and onwards. We therefore do not find any legal basis to direct the Company to revise the pay-scales of the petitioners from 01.01.1997. The petitioners would be governed by the decision taken by the Ministry of Heavy Industries and Public Enterprises as communicated on 18.02.2020 since the same has gone unchallenged.

(c) The Company is justified in contending that though the petitioners seek revision of their pay-scales from 01.01.1997, they have approached this Court with their grievance only on 24.07.2007. The reason for not approaching the Court earlier has not been furnished. Similarly, the steps taken after 01.01.1997 to get such benefits have not been indicated. The writ petition thus suffers from unexplained delay and laches. Notwithstanding the aforesaid, the claim of the petitioners has been examined and we have not found any legal right in their favour to direct the Company to grant them the reliefs as prayed for.

05] The decisions relied upon by the learned counsel for the petitioners do not support the claim as made in the writ petition. Since the Company was under the process of financial reconstruction in the light of the provisions of the Act of 1985, the ratio of the aforesaid decisions cannot be applied to the case in hand. The selection of the cut of date of 01.04.2018 for granting pay revision is not under challenge and hence nothing further is required to be said in that regard.

06] Hence for aforesaid reasons, we do not find any case is made out to grant relief to the petitioners. The writ petition stands dismissed. The Rule stands discharged. No costs.

(M.W. CHANDWANI, J.)

(A.S. CHANDURKAR, J.)

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