



2023:DHC:7272



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

% **Reserved on : 25th August, 2023**
Pronounced on: 6th October, 2023

- + W.P.(C) 7358/2020
MS PARMINDER KAUR
- + W.P.(C) 7327/2020
RAMESH KUMAR BAHUGUNA
- + W.P.(C) 7360/2020
ASHOK BHAUMIK
- + W.P.(C) 7362/2020
HRISHIKESH CHOWDHURY
- + W.P.(C) 7363/2020
ASHOK VASHISHT
- + W.P.(C) 7534/2020
MOHINDER SINGH RANA
- + W.P.(C) 7535/2020
MOHAN LAL KANOJIA
- + W.P.(C) 7536/2020
ASHOK KUMAR
- + W.P.(C) 7564/2020
SABYASACHI SAHA
- + W.P.(C) 7565/2020
KRISHAN KUMAR SINGH
- + W.P.(C) 7566/2020
KANHIYA LAL



2023:DHC:7272



- + W.P.(C) 7569/2020
SUNIT SUMAR SINGH
- + W.P.(C) 7572/2020
P RADHA KRISHNAN NAIR
- + W.P.(C) 7597/2020
GIRISH MISHRA
- + W.P.(C) 7635/2020
NEETA KAKWANI
- + W.P.(C) 7636/2020
ARVIND KUMAR SHAHI
- + W.P.(C) 7892/2020
ARUN KUMAR SARASWAT
- + W.P.(C) 7893/2020
NARESH KUMAR YADAV
- + W.P.(C) 7894/2020
BALI RAM ROY
- + W.P.(C) 7897/2020
VINOD KUMAR BHARDWAJ
- + W.P.(C) 7898/2020
MOHAN LAL MEHRA
- + W.P.(C) 7911/2020
ATTAR SINGH
- + W.P.(C) 7912/2020
HIRA LAL
- + W.P.(C) 7929/2020
HARKESH NATH



2023:DHC:7272



- + W.P.(C) 7931/2020
JAGDISH CHANDER GAMBHIR
- + W.P.(C) 7940/2020
CHHEDI RAM BHASKAR
- + W.P.(C) 7982/2020
SHOBHA RANI
- + W.P.(C) 8016/2020
RAJESH BIHARI MATHUR
- + W.P.(C) 8126/2020
SAVITHRI THAPAR
- + W.P.(C) 8127/2020
PROMOD KUMAR ARORA
- + W.P.(C) 8128/2020
RAJENDER SINGH CHAUHAN
- + W.P.(C) 8129/2020
MAHIPAL
- + W.P.(C) 8222/2020
NEENA SETHI
- + W.P.(C) 8223/2020
BABU LAL TAMOLIYA
- + W.P.(C) 8224/2020
SUNIL KUMAR CHOPRA
- + W.P.(C) 8225/2020
TEJ PAL SINGH



2023:DHC:7272



- + W.P.(C) 8226/2020
DAVENDER MIGLANI
- + W.P.(C) 8265/2020
BHAVANI SATYAN
- + W.P.(C) 8276/2020
SAMUEL KONGARI
- + W.P.(C) 8277/2020
SUNIL CHANDER PURI
- + W.P.(C) 8278/2020
MATVAR SINGH DECEASED THROUGH HIS WIFE SMT
GYANTI SINGH
- + W.P.(C) 8328/2020
OM PRAKASH KANOJIA
- + W.P.(C) 8329/2020
RAJ KUMAR
- + W.P.(C) 8330/2020
BIHARI LAL DECEASED THROUGH HIS WIFE SMT
VIDHYA
- + W.P.(C) 8334/2020
BIJOY N BEHERA
- + W.P.(C) 10122/2020
NIRANJAN MALIK
- + W.P.(C) 10209/2020
MAHESH CHAND YADAV
- + W.P.(C) 10295/2020 & CM APPL. 28334/2021
MADAN PAL SINGH



2023:DHC:7272



- + W.P.(C) 10313/2020
SURESH KUMAR SAHOTRA
- + W.P.(C) 10314/2020
JAGJIT SINGH
- + W.P.(C) 10315/2020
RAJDEEP SINGH AHLUWALIA
- + W.P.(C) 10318/2020
RAJESH CHAUHAN
- + W.P.(C) 10322/2020
HARISH KUMAR GAUTAM
- + W.P.(C) 10998/2020
LATE SHRI SUKH BAHADUR THROUGH MAN KUMARI
- + W.P.(C) 368/2021
SURESH PETER
- + W.P.(C) 711/2021 & CM APPL. 1757/2021
RAJVIR SINGH
- + W.P.(C) 2005/2021
VINOD KUMAR SHARMA
- + W.P.(C) 2369/2021
SURINDER DUGGAL
- + W.P.(C) 2373/2021
LATE SHRI SUBHASH KAMBLE (DEACESED) THOUGH
ASHA KAMBLE
- + W.P.(C) 2410/2021
GAUTAM MUKHERJEE



2023:DHC:7272



- + W.P.(C) 2451/2021
KAMESHWAR PRASAD MAHTO
 - + W.P.(C) 4344/2021
TILAK RAJ ADHIKARI
 - + W.P.(C) 4679/2021
LATE SHRI HARI PADA JANA THROUGH ARTI JANA
 - + W.P.(C) 4798/2021
BALVINDER SINGH NIGAH
 - + W.P.(C) 6215/2021
VINOD KUMAR KANOJIA
 - + W.P.(C) 6240/2021
JAGBIR SINGH UJJAINWAL
 - + W.P.(C) 6381/2021 & CM APPL. 20050/2021
SURESH KUMAR KADIAN
 - + W.P.(C) 6554/2021 & CM APPL. 20570/2021
PRADEEP KOCHHAR DECEASED HIS THROUGH WIFE
REENA KOCHHAR
 - + W.P.(C) 7126/2021
MAHENDRA SINGH BAWRA Petitioners
Through: Mr.Deepak Biswas, Ms.Ruchika
Rathi and Ms.Varsha Agarwal,
Advocates
- versus
- HOTEL CORPORATION OF INDIA AND ORS Respondents
- Through: Mr.A.P.Singh, Mr.Shreyansh
Rathi, Ms.Sonam Gosain and
Ms.Surbhi Singh, Advocates for



2023:DHC:7272



HCI alongwith Mr.K.Gopal
Krishna, CFO

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant writ petition has been filed by the petitioners seeking following reliefs:

“i. issue a writ, order or direction in the nature of mandamus, and/or any other appropriate writ, order or direction under Article 226 and 227 of the Constitution of India for implementation of 2008 Guidelines issued by Respondent No.4 for the revision of scale of pay for the year 2007;

ii. issue a writ, order or direction in the nature of mandamus and/or any other appropriate writ, order or direction under Article 226 and 227 of the Constitution of India directing the Respondent Nos.1 and 2 for disbursement of arrears and payments of gratuity in terms of 2008 Guidelines issued by Respondent No.4 for revision of scale of pay for the year 2007 and.

iii. pass such other and further reliefs as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.”

FACTUAL MATRIX

2. The issue involved in the writ petitions is common, therefore, all the petitions are disposed of by this Common Order. The petitioners in the present batch matters are the non-unionized employees falling in the category of Board level and below Board level category of employees of



2023: DHC: 7272



respondent no. 1. The petitioners retired during the period of 2010 – 2020.

3. The respondent no. 1 is Hotel Corporation of India, a public limited company which was incorporated on ^{8th} July 1971 is a subsidiary of respondent no.2 i.e., Air India Limited before till its disinvestment in January 2022 and is now owned by Air India Assets Holding Limited. The respondent no.3 is the Ministry of Civil Aviation; respondent no.3 is the Ministry of Civil Aviation, the nodal ministry for civil aviation as well as the regulates respondent no. 2; and the respondent no.4 is the Department of Public Enterprises, the nodal department for all Central Public Sector Enterprises (hereinafter called “CPSEs”).

4. The first revision to the salary of the employees of respondent no. 1 was introduced in the year 1982, for a period of 5 years, i.e. till the year 1987. The Bureau of Public Enterprises issued a direction on 13th August 1984 *vide* BPE DO No. 2 (145)/72- BPE (WC), to all CPSEs to follow the Industrial Dearness Allowance pattern instead of the Central Scales of pay and Dearness Allowance pattern.

5. Pursuant to the said direction, the respondent no. 1 followed Industrial Dearness Allowance and accordingly, the pay scale was revised for the position of Executives below the Board level and non-unionized supervisors by respondent no.4’s DO letter dated 4th April 1990 with effect from 1st January 1987.

6. The respondent no. 4 *vide* its notification bearing DPE OM no. 2(50)/86/DPE(WC) dated 19th July 1995, again revised the pay scale of below Board level and non-unionized supervisors with effect from 1st January 1992 for a period of another 5 years.



7. On 25th June 1999, the respondent no. 4 further issued the guidelines for revision of pay scales for Board level positions and below Board level positions, including the non-unionized supervisors in Public Enterprises Sectors w.e.f. 1st January 1997 (hereinafter referred to as “1997 Guidelines”) for a period of 10 years. The pay scale of the petitioners in the batch matter was never revised after the year 1997.

8. On 26th November 2008, the respondent no. 4 issued a notification stating the guidelines for revision of pay-scale of Board level and below Board level executives, and non-unionised supervisors of CPSEs, and such revision was directed to be implemented from 1st January 2007 (hereinafter referred to as “2008 Guidelines”) for a period of 10 years. The said guidelines were never implemented by respondent no.1.

9. Due to the disparity in the pay scale for below Board level executives and unionised workers, the Board of Directors of the respondent no. 1 in its 211th Minutes of Meeting dated 30th June 2010, recommended the revision of the pay scale for the below Board level executives with effect from 1st January 2007, in terms of the 2008 Guidelines. Accordingly, the said Board of Directors directed the management of the respondent no. 1 to seek directions from the respondent no. 3 regarding the implementation of the revised pay scale according to the 2008 Guidelines.

10. Pursuant to the same, the Board of Directors of the respondent no. 1 at its 212th Board of Directors meeting dated 8th August 2010, approved the proposal regarding the revision of pay scale w.e.f. 1st January 2007, with hike of 20 % on the basic pay as well as the Dearness Allowance.



2023:DHC:7272



Accordingly, the said Board informed the management of respondent no. 1 to approach the respondent no. 3 to seek implementation of the same.

11. It is stated that the management of the respondent no. 1 *vide* letter dated 17th August 2010, made a representation to the Secretary of the respondent no. 3 regarding the hike of 20 % on the basic pay, plus, DA drawn in the pre-revised scale as on 1st January 2007, for the Board level and below Board executives as well as for the non-unionised supervisors of the respondent no.1.

12. The petitioners also sent a letter to respondent no. 3 on 25th September 2013, in response to respondent no. 1's letter, however, no decision/approval on behalf of the respondent no. 3 regarding the implementation of the revised pay scales for below Board level executives of the respondent no. 1, was taken. Consequently, the respondent no. 3 directed the respondent no. 1 to send its proposal for revision of the pay alongwith the approval of CMD of the respondent no. 2.

13. A Memorandum of Understanding dated 6th October 2016, was entered between the respondent no.1 and respondent no. 2, for estimation of liabilities which the respondent no.1 was liable to pay to its employees as on 1st October 2016 and in accordance with the 2008 Guidelines.

14. Further, on 23rd March 2017, the respondent no.1 gave an interim relief to all its permanent employees, w.e.f. 1st January 2017, and accordingly, issued a letter dated 5th July 2017, to the respondent no. 3, for implementation of the said interim relief. On 3rd August 2017, fresh guidelines were issued (hereinafter "2017 Guidelines") for revision of pay w.e.f. 1st January 2017.



2023:DHC:7272



15. The petitioners made representation on 12th September 2019, to respondent no. 1 for revision of pay but to no avail. Aggrieved by the inaction of the respondents in granting the revised pay to the petitioner, the petitioners have approached this Court under its extraordinary writ jurisdiction.

16. The petitioners filed the petition on the ground that they have not received revised pay since 1997 despite the non-unionised employee of the respondent no.1 has been given such revised pay and there is violation of the legal right of the petitioners. The respondents filed counter-affidavit in this regard and submitted that the respondent no. 1 is not in a good financial condition and running in losses, therefore will not be able to bear the revised pay of the petitioners. It further asserted that the revision of pay is not a vested right of the petitioners and that the petitioners being of different class cannot claim parity with non- unionised employee.

17. The petitioner filed its rejoinder vehemently opposed the contentions of asserted by the respondent and submitted that the ground pertaining to financial condition of the respondent no. 1 is false and submitted that the petitioner is hiring employees, therefore, it has the capacity to for the revised pay of the petitioners.

SUBMISSIONS

(On behalf of the petitioner)

18. Learned counsel appearing on behalf of the petitioners submitted that the 2008 Guidelines and 2017 Guidelines issued by the respondent



2023:DHC:7272



no. 4 for the revision of pay from the year 2007 have not been implement yet and the same is wrong and arbitrary in nature..

19. It is further submitted that the petitioners were compelled to discharge their services as per the 1997 pay scale till their superannuation, and thus, are subsequently entitled to the revision of pay along with the consequential benefits in terms of gratuity and pension under the Employees Pension Scheme, 1995, from January 2007 onwards. It is submitted that the petitioners in the present batch of petitions retired between the years 2011 to 2020, and accordingly, are eligible for the revision of pay scale in terms of the 2008 Guidelines and 2017 Guidelines, as applicable to them and in accordance with their respective retirement dates.

20. It is contended that no revision of pay for the petitioners since 1st January 1997, and omission of two revisions for unionised workers, have resulted in the unionised employees (who are otherwise of lower grade as compared to the petitioners) are drawing more salaries than the petitioners.

21. It is vehemently contended by the learned counsel appearing on behalf of the petitioners that the revision of pay of the unionised workers of the respondent no. 1, and non- revision of pay scales of the below Board level executives, is discriminatory in nature and violative of the right of the petitioners under Article 14 of the Constitution of India.

22. The counsel appearing on behalf of the petitioners has placed reliance on the judgment passed in *Union of India & Ors. v Delhi Judicial Service Assn. & Anr.*, 1995 Supp (2) SCC 343, *Gurcharan Singh Grewal & Anr. v Punjab State Electricity Board & Ors.* (2009) 3



2023:DHC:7272



SCC 94 , *UB Singh & Ors. v. Union of India & Ors.* 2006 SCC OnLine All 1672 and *Amar Kumar Barik v National Instruments Ltd.* 2009 SCC OnLine Cal 2267, to buttress its argument that a senior employee cannot be paid a salary lesser than its junior employee.

23. It is submitted that despite the approval of the Board of the Management of the respondent no. 1, no approval regarding the revision of the pay scale was granted by the respondent no. 3.

24. It is submitted that the petitioners were assured by the respondent no. 1 that the revision of pay was in the process of being implemented and pursuant to such implementation, all the petitioners would receive their arrears along with the consequential benefits w.e.f. 1st January 2007. The respondent, in fact, tried to deceive the petitioners by these assurances, which were nothing but merely false hopes.

25. It is further submitted that as per the Minutes of the Meeting dated 25th March 2019, which was chaired by the Chief Managing Director of the respondent no. 2, the officer's welfare association of members of the respondent no.1 was assured that the wages of the petitioners i.e., the non- unionised employee would be revised post the implementation of revised wages of unionised employees of the respondent no.1.

26. It is contended that the petitioners have been treated discriminatorily and unfairly by the respondent no. 1.

27. It is submitted that since the last pay revision on 1st January 1997, till the retirement of petitioners (which retired in the period of 2011 to 2020), they have been working at the outdated pay scale of 1997. The respondent no. 1 has acted wrongfully by not considering the financial



2023:DHC:7272



needs of the petitioners which increased in due course of time due to various factors, especially, inflation.

28. In view of the forgoing submissions, the counsel for the petitioners prays that the petitions may be allowed, and the reliefs, as sought by the petitioners, may be granted.

(On behalf of the respondents)

29. *Per Contra* the learned counsel appearing on behalf of the respondents vehemently opposed the instant petition and submitted that at the outset, the same is not maintainable, and hence, is liable to be dismissed.

30. It is submitted that the writ may be dismissed on the ground of maintainability of the petition since, the petitioners retired during the period of 2010 to 2017, and thus, there has been a huge delay in filing the same. Hence, the petition is barred by limitation

31. It is submitted that the petitioners in the instant batch matters have prayed for a writ of mandamus for implementation of the revised pay scale. It is submitted by the counsel for the respondent in this regard that the mandamus is issued by the High Court under Article 226 of the Constitution of India only in exceptional cases when there is a legal and vested right of the party before the Court which has been violated by the public authority falling under the definition of “State” as per Article 12.

32. It is further submitted that as per the facts of the instant batch of petitions, the revision of pay scale is not a statutory right of the petitioners, and therefore, there is no violation of any right of the petitioners. Moreover, there is no statutory duty casted upon the



2023:DHC:7272



respondent No.1 to revise the pay of the petitioners and hence, the same cannot be prayed for by way of issuance of a writ of mandamus.

33. The counsel for the respondents has placed reliance on the following judgments, *Punjab State Co-operative Milk Producers Federation Ltd. and Anr. v. Balbir Kumar Walia and Ors.*, 2021 SCC OnLine SC 461, *Chandrashekar A.K. v. State of Kerala*, (2009) 1 SCC 73, *State of Punjab v. Amar Nath Goyal and ors.*, (2005) 6 SCC 754, *Indian Drugs and Pharmaceuticals Ltd. v. Workmen, Indian Drugs and Pharmaceuticals Ltd.*, (2007) 1 SCC 408, and *Centaur Hotel Employee Union v. Hotel Corporation of India*, 2015 SCC OnLine Del 7277, to buttress the its submission that revision of pay is not a vested right of the employee.

34. It is vehemently contended that the revision of pay is a policy decision of the employer/respondent No.1 and thus, it has the discretion of implementing the same, depending upon several factors and the same cannot be claimed as a matter of right by the petitioners.

35. It is respectfully submitted that as per Clause 3 and Clause 4 of the Office Memorandum dated 26th November 2008, it is stipulated that the CPSEs could only adopt and implement the pay revision, in case there is less than 20% reduction in profit before tax in the period of 12 months for the CPSE. Moreover, as per Clause 16 of the said Office Memorandum further stipulates that the concerned CPSE will have to bear the additional financial implication on account of pay revision from its own resources and that no budgetary support will be provided.

36. It is submitted that the respondent No. 1, since the year 2003, has consistently been making losses, and is in no condition to revise the pay



2023:DHC:7272



scales of its employees. Furthermore, after the disinvestment of its erstwhile parent company i.e., respondent No. 2, the respondent no. 1 did not even receive any budgetary support from its parent company. Moreover, the respondent no. 3 *vide* letters dated 12th July 2019, 28th October 2019 and 6th January 2020, had refused to bear the burden of wage revision of the unionized workmen as well as of the officers' category employees of the respondent no.1. The details of the loss incurred by the respondent no. 1 has been enunciated below:

Financial year	Losses (Rs.In crores)
2003-04	15.07
2004-05	7.75
2005-06	3.03
2006-07	12.70
2007-08	24.97
2008-09	18.61
2009-10	29.11
2010-11	26.71
2011-12	21.29
2012-13	35.62
2013-14	40.47
2014-15	50.45
2015-16	57.76
2016-17	61.77
2017-18	55.86
2018-19	71.20
2019-20	65.54



2023:DHC:7272



37. It is contended that the parity as sought by the petitioners between their pay scale revision to that of the unionized workers is wrong since both fall under separate categories, thus comparison of both is wrong and misleading. Moreover, the wage revision of the unionized workers has been done in compliance with the order passed by the Central Government Industrial Tribunal, Chandigarh. As per the said order the respondent no. 1 was directed to revise the pay scale of the unionized workers.

38. It is submitted that in view of the foregoing contentions raised by the respondent no.1, the instant petition may be dismissed.

FINDINGS AND ANALYSIS

39. The matter was heard at length with arguments advanced by the learned counsels. This Court after perusing the entire material on record has taken into consideration the facts, judicial pronouncements relied on by the parties and pleadings presented by the learned counsel of the parties.

40. The case of the petitioners is that the petitioners superannuated in the year 2010-2020 and are working at the 1997 pay scale since then. Despite the 2008 Guidelines and 2017 Guidelines which were issued for pay revision, the same have not been implemented till date. The petitioners by way of the present batch of petitions seek revision of the pay as per the 2008 Guidelines and 2017 Guidelines along with the consequential benefits.

41. Now, this Court will adjudicate upon the following issues-

1. Whether the instant writ is barred by limitation?



2. Whether the writ of mandamus may be issued by this Court to the respondent no. 1 for revision of pay of the petitioners ?

3. Whether the petitioners can claim parity with the unionised employees in terms of revision of pay?

42. This Court will now deal with the first issue – *Whether the writ is barred by limitation?*

43. The respondent has contended that the petitioners have retired between the period of 2010-2016, therefore, the writ filed in the year 2020 is barred by limitation.

44. It is a settled position of law that there is no limitation provided for filing of the writ petition, however, the party should approach the Court in a reasonable amount of time. Moreover, in case a reason which the Court deems fit for the delay in filing of the writ petition, then the High Court under Article 226 may hold that there is no delay in filing the said petition.

45. The Hon'ble Supreme Court in ***NDMC v. Pan Singh, (2007) 9 SCC 278***, enunciated upon the aspect of limitation period in filing of the writ petition. The relevant paragraphs are as follows:

“17. Although, there is no period of limitation provided for filing a writ petition under Article 226 of the Constitution of India, ordinarily, writ petition should be filed within a reasonable time. (See Lipton India Ltd. v. Union of India [(1994) 6 SCC 524] and M.R. Gupta v. Union of India [(1995) 5 SCC 628 : 1995 SCC (L&S) 1273 : (1995) 31 ATC 186] .)



18. In *Shiv Dass v. Union of India* [(2007) 9 SCC 274 : (2007) 2 Scale 325 : (2007) 1 Supreme 455] this Court held : (SCC p. 277, paras 9-10)

“9. It has been pointed out by this Court in a number of cases that representations would not be adequate explanation to take care of delay. This was first stated in *K.V. Rajalakshmiah Setty v. State of Mysore* [AIR 1967 SC 993]. There is a limit to the time which can be considered reasonable for making representations and if the Government had turned down one representation the making of another representation on similar lines will not explain the delay. In *State of Orissa v. Pyarimohan Samantaray* [(1977) 3 SCC 396 : 1977 SCC (L&S) 424 : AIR 1976 SC 2617] making of repeated representations was not regarded as satisfactory explanation of the delay. In that case the petition had been dismissed for delay alone. (See also *State of Orissa v. Arun Kumar Patnaik* [(1976) 3 SCC 579 : 1976 SCC (L&S) 468 : AIR 1976 SC 1639].)

10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. It would depend upon the fact of each case. If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years. The High Court did not examine whether on merit the appellant had a case. If on merits it would have found that there was no scope for interference, it would have dismissed the writ petition on that score alone.”

46. The petitioners had a reason for delay in approaching the Court and the said reasoning of the petitioners is sound and logical, hence there is



2023:DHC:7272



no such unjustifiable delay in approaching the Court. Therefore, the instant petitions are not barred by the limitation and cannot be dismissed on ground of delay and laches.

47. This Court is of the view that there is no unreasonable delay as such caused in approaching this Court under Article 226, by the petitioners since, the petitioners were assured by the respondent no. 1 that their pay will be revised post the revision of pay of the unionised workers. Hence, the petitioners were justified in waiting for a certain time period before approaching this Court

48. Hence, issue no. 1 is decided and it is held that the writ petition is not barred by limitation.

49. Now advertent to the next issue i.e., issue no. 2 -*whether the petitioners are entitled for pay revision by issuance of writ of mandamus by this Court?*

50. In the present case, this Court has to adjudicate upon whether revision of pay is a statutory right of the petitioners or not. It is the case of the petitioners' counsel that the petitioners' pay scale has not been revised after the year 1997. They have worked from the year 1997 till their superannuation i.e., between the period ranging from 2010 to 2017, at the same pay scale which was fixed in the year 1997.

51. The counsel for the respondents vehemently argued that the revision of pay is not a vested right of the petitioners. Moreover, the respondents brought to the attention of this Court, the poor financial condition of the respondent no.1, i.e., where the petitioners were employed, submitting to that effect that it is running in losses for many years and does not have the capacity to revise the pay of the petitioners.



2023:DHC:7272



Being a CPSE, it has to bear its own financial burden since it gets no financial support from the respondent no. 3 or respondent no. 4.

SCOPE OF ISSUING MANDAMUS

52. Mandamus is one of the prerogative writs issued by the High Court or the Supreme Court in the manner of command to any authority that falls under the definition of “State” as per Article 12 of the Constitution of India for the purpose of fulfilling their constitutional/ statutory/ public duty. It is used as a last resort in cases where the Court is satisfied that without its intervention there will be denial to justice to the party invoking such writ.

53. For issuance of writ of mandamus, the petitioner has to establish that the petitioner has a vested right and the public authority has violated such vested right of the petitioner. There is a corresponding legal duty of the public authority, which could be enforced by way of issuing writ of mandamus. Such legal duty is casted upon the public authority by way of a statute or common law. The said duty has not been done by the public authority. Moreover, the party approaching this Court seeking mandamus has claimed such relief with a *bonafide* intention and does not have any alternative remedy.

54. The Court has to be very hyper vigilant while issuing a writ of mandamus since the writ of mandamus is an extraordinary remedy to be invoked only upon special occasions and in exceptional circumstances. It is invoked to supplement the deficiency in law, if any, and cannot be invoked as an appellate mechanism against the decision of any Court, Tribunal, or Authority which is exercising statutory power. The writ of



mandamus is an invincible weapon in cases, where there is a failure of justice or exercise of power in an illegal way or arbitrary manner.

55. The above-stated principle governing the issuance of mandamus by the Courts under its writ jurisdiction has been recently recapitulated by the Hon'ble Supreme Court in the judgment of ***Hero Motocorp Ltd. v. Union of India*, (2023) 1 SCC 386** as follows:

“75. It can thus be seen that unless the appellants show any statutory duty cast upon the respondent Union of India to grant them 100% refund, a writ of mandamus as sought could not be issued. The position is reiterated by this Court in K.S. Jagannathan [Comptroller & Auditor General of India v. K.S. Jagannathan, (1986) 2 SCC 679 : 1986 SCC (L&S) 345] as under : (SCC pp. 692-93, para 20)

“20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the Government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the



discretion conferred upon the Government or a public authority, and in a proper case, in order to prevent injustice resulting to the parties concerned, the court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion.”

76. It could thus be seen that this Court holds that a writ of mandamus can be issued where the Authority has failed to exercise the discretion vested in it or has exercised such a discretion mala fide or on an irrelevant consideration.

77. This position was again reiterated by this Court recently in Bharat Forge [Union of India v. Bharat Forge Ltd., (2022) 17 SCC 188 : 2022 SCC OnLine SC 1018] as follows : (SCC paras 18-19)

“18. Therefore, it is clear that a writ of mandamus or a direction, in the nature of a writ of mandamus, is not to be withheld, in the exercise of powers of Article 226 on any technicalities. This is subject only to the indispensable requirements being fulfilled. There must be a public duty. While the duty may, indeed, arise from a statute ordinarily, the duty can be imposed by common charter, common law, custom or even contract. The fact that a duty may have to be unravelled and the mist around it cleared before its shape is unfolded may not relieve the Court of its duty to cull out a public duty in a statute or otherwise, if in substance, it exists. Equally, Mandamus would lie if the Authority, which had a discretion, fails to exercise it and prefers to act under dictation of another Authority.

19. A writ of mandamus or a direction in the nature thereof had been given a very wide scope in the conditions prevailing in this country and it is to be



issued wherever there is a public duty and there is a failure to perform and the courts will not be bound by technicalities and its chief concern should be to reach justice to the wronged. We are not dilating on or diluting other requirements, which would ordinarily include the need for making a demand unless a demand is found to be futile in circumstances, which have already been catalogued in the earlier decisions of this Court.” (emphasis supplied)”

56. In light of the aforementioned judgment, the scope of the mandamus has been expounded very perspicuously. Therefore, now for adjudicating upon the present issue, this Court will examine whether the revised pay is a vested right of the petitioners i.e., employee of a CPSE.

WHETHER REVISED PAY IS A VESTED RIGHT/ LEGAL RIGHT OF THE PETITIONERS

57. It is a settled principle of law that the revised pay cannot be claimed as a right by the employees. The decision to revise the pay scales of the employees vest with the public authority/employer. The High Court under Article 226 of the Constitution of India, in its writ jurisdiction, cannot adjudicate upon the fact whether there should be revision of the pay. Such discretion vests with the employer, since the employer knows what is best for it. There is no straightjacket formula for the pay revision, however, the authority has to take into account the interest of the employees, financial condition of the public authority, the interest of the public at large since it's a public authority, etc.

58. The Court does not sit as an appellate mechanism over the said decision of the public authority. Courts must restrain from intervening in



such executive policy decisions of the public authority therefore, there is a limited scope for interference by the High Courts. Under Article 226, the Courts may intervene in exceptional cases, where there is a gross violation of the rights of the parties such as two employees in the same category are not getting the same benefits hence, the party before the Court is seeking equal pay for equal work or a decision by the public authority is unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors.

59. The aforesaid principle regarding whether revision of pay is a legal/vested right and has been discussed in a catena of judgments. The said judgments are discussed herein below.

60. The Hon'ble Supreme Court in the judgment of **A.K. Bindal v. Union of India, (2003) 5 SCC 163** held as follows:

“18. We are unable to accept the contention of Shri Venkataramani that on account of non-revision of pay scales of the petitioners in the year 1992, there has been any violation of their fundamental rights guaranteed under Article 21 of the Constitution. Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. The scope and content of this article has been expanded by judicial decisions. Right to life enshrined in this article means something more than survival or animal existence. It would include the right to live with human dignity. Payment of a very small subsistence allowance to an employee under suspension which would be wholly insufficient to sustain his living, was held to be violative of Article 21 of the Constitution in State of Maharashtra v. Chandrabhan Tale [(1983) 3 SCC 387 : 1983 SCC (L&S) 391 : 1983 SCC (Cri) 667 : AIR 1983 SC 803] . Similarly, unfair conditions



of labour in People's Union for Democratic Rights v. Union of India [(1982) 3 SCC 235 : 1982 SCC (L&S) 275 : AIR 1982 SC 1473] . It has been held to embrace within its field the right to livelihood by means which are not illegal, immoral or opposed to public policy in Olga Tellis v. Bombay Municipal Corpn. [(1985) 3 SCC 545 : AIR 1986 SC 180] But to hold that mere non-revision of pay scale would also amount to a violation of the fundamental right guaranteed under Article 21 would be stretching it too far and cannot be countenanced. Even under the industrial law, the view is that the workmen should get a minimum wage or a fair wage but not that their wages must be revised and enhanced periodically. It is true that on account of inflation there has been a general price rise but by that fact alone it is not possible to draw an inference that the salary currently being paid to them is wholly inadequate to lead a life with human dignity. What should be the salary structure to lead a “life with human dignity” is a difficult exercise and cannot be measured in absolute terms. It will depend upon the nature of duty and responsibility of the post, the requisite qualification and experience, working condition and a host of other factors. The salary structure of similarly placed persons working in other public sector undertakings may also be relevant. The petitioners have not placed any material on record to show that the salary which is currently being paid to them is so low that they are not able to maintain their living having regard to the post which they are holding. The observations made in paras 276 and 277 in Delhi Transport Corpn. v. D.T.C. Mazdoor Congress [1991 Supp (1) SCC 600 : 1991 SCC (L&S) 1213 : 1990 Supp (1) SCR 142] strongly relied upon by learned counsel for the petitioners, should not be read out of its context. In the said case the Court was called upon to consider the constitutional validity of Regulation 9 of the



Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952, which gave power to terminate the services of an employee after giving one month's notice or pay in lieu thereof. The termination of services of some of the employees on the ground that they were inefficient in their work by giving one month's notice was set aside by the High Court as in its opinion Regulation 9(b) gave absolute, unbridled and arbitrary powers to the management to terminate the services of any permanent or temporary employee and, therefore, the same was violative of Article 14 of the Constitution. It was in this context that the aforesaid observations were made by one Hon'ble Judge in his separate opinion. The issue involved was not of revision of pay scale but that of termination of services which has an altogether different impact on an employee.

*19. The contention that economic viability of the industrial unit or the financial capacity of the employer cannot be taken into consideration in the matter of revision of pay scales of the employees, does not appeal to us. The question of revision of wages of workmen was examined by a Constitution Bench in *Express Newspaper (P) Ltd. v. Union of India* [AIR 1958 SC 578] having regard to the provisions of the *Industrial Disputes Act* and the *Minimum Wages Act* and the following principles for fixation of rates of wages were laid down : (AIR p. 605, para 73)*

“(1) that in the fixation of rates of wages which include within its compass the fixation of scales of wages also, the capacity of the industry to pay is one of the essential circumstances to be taken into consideration except in cases of bare subsistence or minimum wage where the employer is bound to pay the same irrespective of such capacity;

(2) that the capacity of the industry to pay is to be considered on an industry-cum-region basis after taking a fair cross-section of the industry; and



(3) that the proper measure for gauging the capacity of the industry to pay should take into account the elasticity of demand for the product, the possibility of tightening up the organisation so that the industry could pay higher wages without difficulty and the possibility of increase in the efficiency of the lowest-paid workers resulting in increase in production considered in conjunction with the elasticity of demand for the product — no doubt against the ultimate background that the burden of the increased rate should not be such as to drive the employer out of business.”

(emphasis supplied)

20. The same question was again examined in Hindustan Times Ltd. v. Workmen [AIR 1963 SC 1332] and the Court recorded its conclusion in the following words in para 7 of the Report : (AIR p. 1336)

“7. While industrial adjudication will be happy to fix a wage structure which would give the workmen generally a living wage, economic considerations make that only dream for the future. That is why the Industrial Tribunals in this country generally confine their horizon to the target of fixing a fair wage. But there again, the economic factors have to be carefully considered. For these reasons, this Court has repeatedly emphasised the need of considering the problem on an industry-cum-region basis, and of giving careful consideration to the ability of the industry to pay.””

(emphasis supplied)”

61. The above said principle was further elucidated by the Hon’ble Supreme Court in the judgment of ***Officers & Supervisors of I.D.P.L. v. Chairman & M.D., I.D.P.L., (2003) 6 SCC 490*** and it was held as follows:



"11. In our view, the economic capability of the employer also plays a crucial part in it, as also its capacity to expand business or earn more profits. The contention of Mr Sanghi, if accepted, that granting higher remuneration and emoluments and revision of pay to workers in other governmental undertakings and, therefore, the petitioners are also entitled to the grant of pay revision may, in our opinion, only lead to undesirable results. Enough material was placed on record before us by the respondents which clearly shows that the first respondent had been suffering heavy losses for the last many years. In such a situation the petitioners, in our opinion, cannot legitimately claim that their pay scales should necessarily be revised and enhanced even though the organization in which they are working are making continuous losses and are deeply in the red. As could be seen from the counter-affidavit, the first respondent company which is engaged in the manufacture of medicines became a sick industrial company for various reasons and was declared as such by the BIFR and the revival package which was formulated and later approved by the BIFR for implementation could not also be given effect to and that the modifications recommended by the Government of India to the BIFR in the existing revival package was ordered to be examined by an operating agency and, in fact, IDBI was appointed as an operating agency under Section 17(3) of SICA. It is also not in dispute that the production activities had to be stopped in the two major units of the company at Rishikesh and Hyderabad w.e.f. October 1996 and the losses and liabilities are increasing every month and that the payment of three instalments of interim relief could not also be made due to the threat of industrial unrest and the wage revision in respect of other employees is also due w.e.f. 1992 which has also not been sanctioned by the Government of India.



17. In *A.K. Bindal* [(2003) 5 SCC 163 : 2003 SCC (L&S) 620] this Court specifically held that the economic viability or the financial capacity of the employer is an important factor which cannot be ignored while fixing the wage structure, otherwise the unit itself may not be able to function and may have to close down which will inevitably have disastrous consequences for the employees themselves. The Court also negated other contentions raised by the employees and referred to and relied upon the fact that the company was a sick unit. Facts of the present case are similar.

18. Further, directions issued in *Jute Corpn. of India Officers' Assn.* [(1990) 3 SCC 436 : 1991 SCC (L&S) 58] would have no bearing in the present case as the scheme under the SICA has failed to revive the Company. When the company cannot be revived because of large losses, there is no question of enhancing scales of pay and dearness allowances. Direction (ii) issued in that case indicates that the employees appointed on or after 1-1-1989 will be governed by such pay scales and allowances as may be decided by the Government in its discretion. If the company itself is dying, the Government has discretion not to grant enhanced pay scales or dearness allowances and for the same reason Direction (i) cannot be implemented."

62. The Hon'ble Supreme Court in the judgment of ***Chandrashekar A.K. v. State of Kerala, (2009) 1 SCC 73***, further held that the revision of pay scale is not a vested right and the same has been reiterated herein below:

"14. The question as to whether the scale of pay would be revised or not is a matter of policy decision for the State. No legal right exists in a person to get a revised scale of pay implemented. It may be recommended by a body but



ultimately it has to be accepted by the employer or by the State which has to bear the financial burden. This aspect of the matter has been considered by this Court in HEC Voluntary Retd. Employees Welfare Society v. Heavy Engg. Corpn. Ltd. [(2006) 3 SCC 708 : 2006 SCC (L&S) 602] stating: (SCC p. 716, para 19)

“19. It is not in dispute that the effect of such voluntary retirement scheme is cessation of jural relationship between the employer and the employee. Once an employee opts to retire voluntarily, in terms of the contract he cannot raise a claim for a higher salary unless by reason of a statute he becomes entitled thereto. He may also become entitled thereto even if a policy in that behalf is formulated by the Company.””

(See also LIC v. Retired LIC Officers Assn. [(2008) 3 SCC 321 : (2008) 1 SCC (L&S) 622])”

63. In light of the aforementioned judgments, it is a well-settled law that the revised pay is not a legal right of the employees of the public authority. Instead the same is a discretion in the hands of the public authorities, which is exercised by them after taking into consideration plethora of factors.

64. The public authority being a “State” and discharging public functions has to take into account the various interests and balance out the same. They have to also act in a way that they are able to sustain themselves too and hence, the Court may exercise limited judicial restraint in this regard as the public authorities usually act in the best interest of everyone’s interest.



65. Now this Court will examine the issue of whether financial constraints of the employer are taken into account for deciding upon the revision of pay scale of the employee.

WHETHER FINANCIAL CONSTRAINTS OF THE EMPLOYER IS A RELVANT FACTOR FOR REVISION OF PAY

66. It is the case of the respondents that the respondent no.1 itself may not be able to function if such revision of pay is granted since, there is a paucity of funds and may have to close down which will inevitably have disastrous consequences for the employees themselves. Hence, in view of the fact that respondent no. 1 has been running in losses and is not in a position to sustain itself it cannot grant revision of pay to the petitioners.

67. The basis of the formation of CPSEs are self- sustaining units, they are made with the intention to be an autonomous unit and operate without any financial support from its parent organization. In case such units are not able to sustain themselves, then such units cannot grant revision of pay to its employees. The financial health of the CPSE is one of the key determinants in granting of revision of pay.

68. The principle governing the financial condition of an organization is a key factor for deciding the revision of pay and the same has been dealt by the Hon'ble Supreme Court in the judgment of **State of Maharashtra v. Bhagwan, (2022) 4 SCC 193**, wherein the following was observed:

“14.6. Relying upon the decision of this Court in State of Kerala v. Naveena Prabhu [State of Kerala v. Naveena Prabhu, (2009) 3 SCC 649 : (2009) 1 SCC (L&S) 759] , it was submitted by Shri Mehta, learned Solicitor General that



in financial matters court would abstain from issuing directions having financial implications. It was submitted that the court would not generally interfere with a Government's policy decision.

14.7. It was further urged that in the present case, the High Court has not at all considered the financial implications on extending the pensionary benefits to the employees of WALMI. It is submitted that the High Court has not at all considered and appreciated the additional financial burden, which will be recurring, if the pensionary benefits are extended to the employees of WALMI.

14.8. It was submitted by Shri Tushar Mehta, learned Solicitor General of India that as held by this Court in a catena of decisions, whether to grant a particular service benefit like pension, etc. should be left to the employer as it will have a financial implication. Reliance was placed on the decisions of this Court in Finance Deptt. v. W.B. Registration Service Assn. [Finance Deptt. v. W.B. Registration Service Assn., 1993 Supp (1) SCC 153 : 1993 SCC (L&S) 157] ; State of Bihar v. Bihar Secondary Teachers Struggle Committee [State of Bihar v. Bihar Secondary Teachers Struggle Committee, (2019) 18 SCC 301] and Punjab State Coop. Milk Producers Federation Ltd. v. Balbir Kumar Walia [Punjab State Coop. Milk Producers Federation Ltd. v. Balbir Kumar Walia, (2021) 8 SCC 784 : (2021) 2 SCC (L&S) 838] .”

69. The said principle has been further enunciated in the judgment of ***Punjab State Coop. Milk Producers Federation Ltd. v. Balbir Kumar Walia, 2021 SCC OnLine SC 461*** and the following was held:

“25. This Court in A.K. Bindal [A.K. Bindal v. Union of India, (2003) 5 SCC 163 : 2003 SCC (L&S) 620] also considered two earlier judgments [South Malabar Gramin



Bank v. Coordination Committee of South Malabar Gramin Bank Employees' Union and Officers' Federation, (2001) 4 SCC 101 : 2001 SCC (L&S) 669 and Associate Banks Officers' Assn. v. SBI, (1998) 1 SCC 428 : 1998 SCC (L&S) 293] that the financial capacity of the employer cannot be held to be a germane consideration for determination of the wage structure of the employees, therefore, it must be confined to the facts of the aforesaid case. It was held that economic viability or the financial capacity of the employer is an important factor which cannot be ignored while fixing the wage structure, otherwise the unit itself may not be able to function and may have to close down which will inevitably have disastrous consequences for the employees themselves.

26. In South Malabar Gramin Bank [South Malabar Gramin Bank v. Coordination Committee of South Malabar Gramin Bank Employees' Union and Officers' Federation, (2001) 4 SCC 101 : 2001 SCC (L&S) 669] , one of the contentions raised was whether financial viability could be the sole criterion in deciding the wage structure of the Regional Rural Bank ("RRB") employees. The Tribunal constituted to consider the wage structure inter alia held that the Regional Rural Banks Act places special emphasis on the development of rural economy by providing credit and other facilities to productive activities in the rural areas, particularly to small and marginal farmers, agricultural labourers, artisans and small entrepreneurs. The objects and reasons of the Act provide a highway for the social welfare and common good of the rural poor living in the priority sector. The RRBs have brought about socio-economic revolution in the hitherto unbanked underdeveloped priority sector by ameliorating the poverty conditions of the underprivileged, SCs/STs and other weaker sections of the society. That was the paramount objective of the Act. The Court held that the RRBs are in fulfilment of the hopes and aspirations aroused in the Preamble and the directive principles of the Constitution, and the performance of such institutions in furtherance of those principles shall not be judged from the curved angle of



viability or from the point of view of a private moneylender or businessman or from mere profit and loss statements. This Court held as under : (SCC pp. 122-23, para 12)

“12. ... This conclusion of the Tribunal has become final, the award in question not having been assailed and on the other hand having been implemented. In the aforesaid premises, it is a futile attempt on the part of the employer as well as the Union of India to reagitate the dispute, which has already been resolved and has been given effect to. In our considered opinion, therefore, the aforesaid contention on behalf of the appellant cannot be sustained and it would no longer be open, either for the Bank or the Union of India to raise a contention that in determining the wage structure of the employees of the RRBs, the financial condition would be a relevant factor.”

27. In a judgment reported as *Officers & Supervisors of I.D.P.L. v. I.D.P.L.* [Officers & Supervisors of I.D.P.L. v. I.D.P.L., (2003) 6 SCC 490 : 2003 SCC (L&S) 916], this Court held that the employees cannot legitimately claim that their pay scales should necessarily be revised and enhanced when the organisation in which they are working are making continuous losses and are deeply in the red. It was held as under : (SCC pp. 497-98, para 11)

“11. In our view, the economic capability of the employer also plays a crucial part in it, as also its capacity to expand business or earn more profits. The contention of Mr Sanghi, if accepted, that granting higher remuneration and emoluments and revision of pay to workers in other governmental undertakings and, therefore, the petitioners are also entitled to the grant of pay revision may, in our opinion, only lead to undesirable results. Enough material was placed on record before us by the respondents which clearly shows that the first respondent had been suffering heavy losses for the last many years. In such a situation the petitioners, in our opinion, cannot legitimately claim that their pay scales should necessarily be revised and enhanced even though the organisation in which they are working are making continuous losses and are deeply in the



red. As could be seen from the counter-affidavit, the first respondent company which is engaged in the manufacture of medicines became a sick industrial company for various reasons and was declared as such by the BIFR and the revival package which was formulated and later approved by the BIFR for implementation could not also be given effect to and that the modifications recommended by the Government of India to the BIFR in the existing revival package was ordered to be examined by an operating agency and, in fact, IDBI was appointed as an operating agency under Section 17(3) of SICA. It is also not in dispute that the production activities had to be stopped in the major two units of the company at Rishikesh and Hyderabad w.e.f. October 1996 and the losses and liabilities are increasing every month and that the payment of three instalments of interim relief could not also be made due to the threat of industrial unrest and the wage revision in respect of other employees is also due w.e.f. 1992 which has also not been sanctioned by the Government of India.”

28. This Court in a judgment reported as S.C. Chandra v. State of Jharkhand [S.C. Chandra v. State of Jharkhand, (2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897] was examining the question of equal pay for equal work where the claim of the appellants was to release and pay dearness allowance. Hon'ble Markandey Katju, J. in a separate but concurring judgment held that the “Fixation of pay scale is a delicate mechanism which requires various considerations including financial capacity, responsibility, educational qualification, mode of appointment, etc. ...” (SCC p. 290, para 26).

29. In Mineral Exploration Corpn. Ltd. v. Arvind Kumar Dixit [Mineral Exploration Corpn. Ltd. v. Arvind Kumar Dixit, (2015) 2 SCC 535 : (2015) 1 SCC (L&S) 526] , this Court was dealing with an appeal against an order [Mineral Exploration Corpn. Ltd. v. Arvind Kumar Dixit, 2012 SCC OnLine Bom 1945] of the High Court, which did not interfere with the award of the Industrial Tribunal which had extended the actual financial benefits to the respondents by



holding that they cannot be denied benefit of “wage revision” by notional fixation and re-computation of their retiral dues (severance package). This Court referred to A.K. Bindal [A.K. Bindal v. Union of India, (2003) 5 SCC 163 : 2003 SCC (L&S) 620] and Officers & Supervisors of I.D.P.L. [Officers & Supervisors of I.D.P.L. v. I.D.P.L., (2003) 6 SCC 490 : 2003 SCC (L&S) 916] to accept the argument of the appellant that if the wage revision office order is interpreted to include all the employees who were superannuated/voluntarily retired between 1-4-1997 to 1-4-2003, it would frustrate the measures taken, including the Voluntary Retirement Scheme, to improve the condition of public sector undertaking. The Court thus upheld the cut-off date in view of the financial constraints faced by the appellant.

30. In the third category of cases, in respect of Central or State Government, the factor of financial constraints has been found to be relevant when the liberalised benefits were granted from a particular date. In Amar Nath Goyal [State of Punjab v. Amar Nath Goyal, (2005) 6 SCC 754 : 2005 SCC (L&S) 910] , the question examined was whether limiting of benefits only to the employees who retired or died on or after 1-4-1995 after calculating the financial implications was irrational or arbitrary, the Court held as under : (SCC p. 763, para 26)

“26. It is difficult to accede to the argument on behalf of the employees that a decision of the Central Government/State Governments to limit the benefits only to employees, who retire or die on or after 1-4-1995, after calculating the financial implications thereon, was either irrational or arbitrary. Financial and economic implications are very relevant and germane for any policy decision touching the administration of the Government, at the Centre or at the State level.”

40. In K.T. Veerappa v. State of Karnataka [K.T. Veerappa v. State of Karnataka, (2006) 9 SCC 406 : 2006 SCC (L&S) 1823] , the Court upheld the principle that fixation of pay and parity in duties is the function of the



executive and financial capacity of the Government is also a relevant factor to be considered, though on facts, it was held that the employees of the University were entitled to revision of pay on a par with the employees of the State. It was held as under : (SCC pp. 411-12, para 13)

“13. He next contended that fixation of pay and parity in duties is the function of the executive and financial capacity of the Government and the priority given to different types of posts under the prevailing policies of the Government are also relevant factors. In support of this contention, he has placed reliance on State of Haryana v. Haryana Civil Secretariat Personal Staff Assn. [State of Haryana v. Haryana Civil Secretariat Personal Staff Assn., (2002) 6 SCC 72 : 2002 SCC (L&S) 822] and Union of India v. S.B. Vohra [Union of India v. S.B. Vohra, (2004) 2 SCC 150 : 2004 SCC (L&S) 363] . There is no dispute nor can there be any to the principle as settled in State of Haryana v. Haryana Civil Secretariat Personal Staff Assn. [State of Haryana v. Haryana Civil Secretariat Personal Staff Assn., (2002) 6 SCC 72 : 2002 SCC (L&S) 822] that fixation of pay and determination of parity in duties is the function of the executive and the scope of judicial review of administrative decision in this regard is very limited. However, it is also equally well settled that the courts should interfere with administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors.”

(emphasis supplied)”

70. In view of the aforementioned judgments, it is held that the revision of pay is not a right vested with the employees of a public authority especially in the case where the said public authority is running into losses or financially is not in a position to grant such kind of revision of pay. The public authority has to take into consideration various



interests apart from the interest of its employee before granting such revision of pay to its employee and it has to balance out all the interest and accordingly, take a decision for revision of pay.

71. The public authorities are clothed with such a power since it's the said public authority who knows the best about how to successfully run itself. It has the power to take executive policy decisions. Moreover, there is limited judicial intervention that can be exercised by the Courts under its writ jurisdiction in entertaining writs pertaining to challenging the said policy decisions of the public authorities.

72. Furthermore, the Hon'ble Supreme Court in the judgment of ***Union of India v. T.V.L.N. Mallikarjuna Rao, (2015) 3 SCC 653***, dealt with the aspect of limited judicial intervention in the policy decision of the executive and held as follows:

"27. The Government on consideration of the report submitted by the Committee issued Office Memorandum dated 11-9-1989 prescribing therein different pay scales and different grades of Data Entry Operators besides the mode and manner of recruitment to and qualifications for each entry grade post as well as eligibility and experience for promotional grades. The Court or the Tribunal, in our opinion, would be exceeding its power of judicial review if it sits in appeal over the decision of the executive in the matter of prescribing the pay structure unless it is shown to be in violation of Articles 14 and 16 of the Constitution of India. Difference in pay scales based on educational qualifications, nature of job, responsibility, accountability, qualification, experience and manner of recruitment does not violate Article 14 of the Constitution of India.

30. In *Mewa Ram Kanojia v. All India Institute of Medical Sciences [(1989) 2 SCC 235 : 1989 SCC (L&S) 329 : (1989)*



10 ATC 51] this Court has *inter alia* held as follows: (SCC pp. 239 & 241, paras 5 & 7)

“5. While considering the question of application of principle of ‘Equal pay for equal work’ it has to be borne in mind that it is open to the State to classify employees on the basis of qualifications, duties and responsibilities of the posts concerned. If the classification has reasonable nexus with the objective sought to be achieved, efficiency in the administration, the State would be justified in prescribing different pay scales but if the classification does not stand the test of reasonable nexus and the classification is founded on unreal, and unreasonable basis it would be violative of Articles 14 and 16 of the Constitution. Equality must be among the equals. Unequal cannot claim equality.

7. Even assuming that the petitioner performs similar duties and functions as those performed by an Audiologist, it is not sufficient to uphold his claim for equal pay. As already observed, in judging the equality of work for the purposes of equal pay, regard must be had not only to the duties and functions but also to the educational qualifications, qualitative difference and the measures of responsibility prescribed for the respective posts. Even if the duties and functions are of similar nature but if the educational qualifications prescribed for the two posts are different and there is difference in measure of responsibilities, the principle of ‘equal pay for equal work’ would not apply.”

31. *It was further reaffirmed in a three-Judge Bench judgment of this Court in Shyam Babu Verma v. Union of India [Shyam Babu Verma v. Union of India, (1994) 2 SCC 521 : 1994 SCC (L&S) 683 : (1994) 27 ATC 121] wherein the Court held: (SCC p. 525, para 9)*

“9. ... The nature of work may be more or less the same but scale of pay may vary based on academic qualification or experience which justifies classification. The principle of ‘equal pay for equal work’ should not be applied in a mechanical or casual manner. Classification made by a body of experts after full study and analysis of the work



should not be disturbed except for strong reasons which indicate the classification made to be unreasonable. Inequality of the men in different groups excludes applicability of the principle of 'equal pay for equal work' to them. The principle of 'equal pay for equal work' has been examined in State of M.P. v. Pramod Bhartiya [(1993) 1 SCC 539 : 1993 SCC (L&S) 221 : (1993) 23 ATC 657] by this Court. Before any direction is issued by the Court, the claimants have to establish that there was no reasonable basis to treat them separately in matters of payment of wages or salary. Then only it can be held that there has been a discrimination, within the meaning of Article 14 of the Constitution."

73. Now before discussing the instant petition on merits, this Court refers to a judgment passed by the Coordinate Bench of this Court where a similar issue pertaining to the revision of the pay of the non- unionised employee of the same CPSE i.e., respondent no. 1 was dealt with in the judgment of ***Centaur Hotel Employee Union v. Hotel Corporation of India***, 2015 SCCOnLine Del 7277, wherein it was held as follows:

"6. So far as the second relief is concerned regarding directions to the employer that particular wage structures or pay-scales or monetary emoluments should be granted to the employees of the respondent no. 2/employer/Hotel Corporation of India, this relief prayed for is also totally misconceived and the issue has been held against the petitioner in terms of the ratio of the judgment in the case of Indian Drugs and Pharmaceuticals Ltd. v. Workman, Indian Drugs and Pharmaceuticals Ltd. (2007) 1 SCC 408 wherein the Supreme Court has observed that it is highly improper for the judges to step into the sphere of aspects with respect to fixing of pay-scales, appointment to posts etc. etc. except in very rare and exceptional cases. The Hon'ble Supreme Court has also observed that courts cannot arraign to itself powers which are the powers of the



executive or the legislature. The relevant observations of the Supreme Court in this regard are contained in para 40 of the judgment and which para 40 reads as under:

“40. The Courts must, therefore, exercise judicial restraint, and not encroach into the executive or legislative domain. Orders for creation of posts, appointment or these posts, regularisation, fixing pay scales, continuation in service, promotions, etc. are all executive or legislative functions, and it is highly improper for Judges to step into this sphere, except in a rare and exceptional cases. The relevant case-law and philosophy of judicial restraint has been laid down by the Madras High Court in great detail in Rama Muthuramalingam v. Dy. Supdt. of Police: AIR 2005 Mad 1 and we fully agree with the views expressed therein.”

7. I may also state that there is no law that pay-scales which are granted to the Central Government Employees or the State Government Employees, the same pay structure has necessarily to be granted even to the autonomous organizations either of the Central Government or of the State Government. Courts cannot step in for fixing of pay-scales of employees of an organization because the organization knows best as per its circumstances and financial conditions as to what should be the pay-scales of its employees and which pay-scales are fixed as per the decisions of the parent ministry of the organization with the consent of the Ministry of Finance. Therefore, in view of the ratio of the judgment of the Hon'ble Supreme Court in the case of Indian Drugs and Pharmaceuticals Ltd. (supra), this Court cannot order fixing of particular pay revision as claimed by the petitioners.

8. Similarly, claim to other monetary reliefs which are not in terms of any service rules of the respondent/employer ie reliefs for grant of any monetary emoluments, the same cannot be granted to the petitioner following the ratio of the judgment in the case of Indian Drugs and Pharmaceuticals Ltd. (supra).

9. Dismissed.”



74. Moreover, the issue of revision of pay of the non- unionised employee of the respondent no. 1 has also been decided by the Coordinate Bench of the High Court of Jammu and Kashmir in the judgment ***Centaur Hotel Officers Welfare Assn. v. Union of India and Others*** 2022 SCC OnLine J&K 299, wherein it was held as follows:

“13. Again, in Chairman & MD, Kerala SRTC v. K.O. Varghese, (2007) 8 SCC 231, the Supreme Court, while setting aside the decision of the Kerala High Court authorizing Kerala State Road Transport Corporation to pay enhanced emoluments to its employees, observed as under:

“18. We are not in a position to endorse this reasoning or conclusion of the High Court. KSRTC is an. autonomous Corporation established under the Road Transport Corporation Act, 1950. It can regulate the service of its employees by making appropriate regulations in that behalf. Until such regulations are framed, it is entitled to take note of its financial health in considering whether a particular recommendation for enhanced pay or pension in respect of Government employees should be adopted by it and if it is to be adopted by it, from what point of time. This, of course, would be subject to any direction that may be issued by the State Government in terms of Section 34 of the Act.

19. In the letter dated 24.9.1992 referred to by the High Court, the Government had indicated that since the financial position of KSRTC was not sound, the question of accepting the recommendations of the Fifth Pay Commission relating to pension and allied matters may be deferred for better times.

xxx xxx xxx xxx xxx
23. Even before us, also, it has been clearly pleaded by KSRTC that its financial position is unsound. In fact, the High Court has also noticed it. This Court has held that the



financial position of a Corporation like KSRTC is certainly relevant when the Corporation takes a decision as to whether it should implement a recommendation for enhanced emoluments and pension. Since we find from the relevant aspects brought out that the financial position of KSRTC is not sound, we are of the view that the decision taken by the State Government not to implement, here and now, the recommendations of the Fifth Pay Commission for KSRTC and the decision based on it by KSRTC are fully justified. Certainly, the decision cannot be said to be vitiated by any extraneous consideration or perverse appreciation of the circumstances obtaining.”

X

X

X

15. From the foregoing enunciation of law on the subject, it is crystal clear that a loss-making public-sector entity cannot be forced to revise the pay scales of its employees as the employees of a Government company or a corporation, which has a separate entity from the Government itself, cannot equate themselves with the Government employees. It is only if the financial health of the Government Company or a corporation is sound that its employees can claim revision of pay scales.

16. Even the office memoranda, on which the petitioner Association has placed reliance, take due cognizance of the financial health and affordability of the Public Sector Undertakings while recommending pay revision of the employees. Clauses (3), (4) and (16) of the office memorandum dated 26th November, 2008, are relevant to the context and the same are reproduced as under:

“3. Affordability for implementation of pay revision : - The revised pay scales would be adopted subject to the condition that additional outgo by such revision for a period of 12 months should not result in more than 20% dip in profit before tax (PBT) for the year 2007-2008 of a CPSE in respect of executives as well as non-unionised supervisory staff taken together in a CPSE. CPSEs that



cannot afford to pay full package, can implement with either part PRP or no PRP. These CPSEs may pay the full package subsequently, provided the dip in the profit (PBT) is fully recouped to the original level.

4. The CPSEs which are not able to adopt revised pay scales (2007), may give an increase on the basic pay plus DA drawn in the pre-revised scale as on 01.01.2007, with a uniform lower fitment of 10% or 20% depending upon their affordability, with the approval of their Ministry/Department.

16. Financial implications : The CPSE concerned has to bear the additional financial implications on account of pay revision from their own resources and no budgetary support will be provided.”

17. A perusal of the afore-quoted clauses reveals that revised pay scales have to be adopted subject to the condition that such revision should not result in more than 20% dip in the profit. Clause (16) of the said memorandum further provides that CPSE has to bear the additional financial implications on account of pay revision from their own resources and no budgetary support will be provided by the Government.

18. It has been contended by learned Senior counsel appearing for the petitioner Association that at least 10% to 20% of increase in basic pay plus DA has to be given in terms of Clause (4) quoted above. The argument is without merit as the said increase has to be given with approval of the Ministry and Clause (16) provides that the Government will not provide any budgetary support. In view of this position, the increase of 10% to 20% in pay etc. has to be given from the resources of the Corporation. Since respondents No. 4 and 5 are, admittedly, loss making entities, as such, they cannot be compelled to pay the increased pay scales in terms of Clause (4) to its employees.

19. So far as the office memorandum dated 3rd August, 2017 is concerned, it also contains similar clauses. Clauses (3)



and (17) are relevant to the context and the same are reproduced as under:

“3. Affordability : The revised pay scales would be implemented subject to the condition that the additional financial impact in the year of implementing the revised pay-package for Board Level executives, Below Board level executives and Non-Unionised Supervisors should not be more than 20% of the average Profit Before Tax (PBT) of the last three financial years preceding the year of implementation.

17. Financial Implications : Expenditure on account of pay revision is to be entire borne by the CPSEs out of their earnings and no budgetary support will be provided by the Government.”

20. A perusal of the aforesaid Clauses clearly show that it is only in case a CPSE is a profit-making entity, it can implement the revised pay package and it is further revealed that no budgetary support will be provided by the Government.

21. In the face of aforesaid clear-cut guidelines provided in the office memoranda, on which the petitioner Association has based its claim, the petitioners cannot claim revision of their pay scales as a matter of right as it is an admitted position that their employer i.e., respondents No. 4 and 5 are running in losses for past several years. Asking respondents No. 4 and 5 to implement the revised pay scale, when Government of India has categorically refused to take share of this financial burden, would lead to closure of these entities. The revision of pay by a Government company or a public sector undertaking is a policy decision which it has to take, after considering various factors which include its financial viability and, of course, the rate of inflation and cost of living. However, rate of inflation and cost of living are not the only factors which are to be considered while taking a decision regarding revision of pay but the financial viability of the company or corporation is equally important



while taking a decision in this regard. Respondents No. 4 and 5 have already granted interim relief of Rs. 5000/per month to the officers of the petitioner Association keeping in view their financial viability and the increase in cost of living. Compelling them to revise the pay scales of the officers of the petitioner Association would be detrimental to the interests of respondents No. 4 and 5 as also to the interests of officers of the petitioner Association as it is in nobody's interest to bring the Corporation itself to grinding halt by putting additional burden on its already precarious financial conditions.”

75. The aforesaid judgments have analysed the Clauses of the office memorandum as per which the aspect of the financial condition of the respondent no. 1 was taken into account for the aspect of the revision of the pay of the employee of the respondent no. 1. The Courts accordingly, held that the revision of pay as claimed by the non-unionised employee is not a legal right vested in the favour of an employee, especially given the financial condition of the CPSE i.e. the respondent no. 1 which is running in losses for years.

76. Now advertent to the facts of the present case, the Office Memorandum dated 26th November 2008, which deals with the 2008 Guidelines pertaining to the revision of pay of the Board levels and below Board level executives and non-unionised in CPSEs has been reproduced below:

“3. Affordability for implementation of pay revision : - The revised pay scales would be adopted subject to the condition that additional outgo by such revision for a period of 12 months should not result in more than 20% dip in profit before tax (PBT) for the year 2007-2008 of a CPSE in respect of executives as well as non-unionised supervisory staff taken together in a CPSE. CPSEs that cannot afford to



pay full package, can implement with either part PRP or no PRP. These CPSEs may pay the full package subsequently, provided the dip in the profit (PBT) is fully recouped to the original level.

4. The CPSEs which are not able to adopt revised pay scales (2007), may give an increase on the basic pay plus DA drawn in the pre-revised scale as on 01.01.2007, with a uniform lower fitment of 10% or 20% depending upon their affordability, with the approval of their Ministry/Department.”

77. On perusal of the aforesaid memorandum, it was directed to the CPSEs including the respondent no.1 that *firstly*, the CPSEs may adopt the revised pay on the condition that additional outgo by such revision for a period of 12 months should not result in more than 20% dip in profit before tax and *secondly*, CPSEs which are not adopting the first option may give an increase on the basic pay plus DA drawn in the pre-revised scale as on 1st January 2007, with a uniform lower fitment of 10% or 20%, the same was however, subject to the affordability/financial condition of the said CPSEs adopting the same.

78. In light of the aforementioned office memorandum, this Court is of the view that the respondent no. 1 has committed no illegality or irregularity by non- adoption of the revised pay scale since, the memorandum prescribed that the revised pay scale may be adopted in case the same would not result in dip in profit of more than 20 %, in the present case, the respondent no. 1 which is in losses from many years therefore, could not adopt the revised pay scale for the petitioners.



79. Furthermore, as per the office memorandum, the CPSEs which did not implement the aforesaid revised pay scales was given another option that such CPSEs may give an increase on the basic pay plus DA drawn in the pre-revised scale as on 1st January 2007, with a uniform lower fitment of 10% or 20%, however, the same was subject to the affordability of the CPSEs and as per the factual matrix of this case, respondent no. 1 running in losses is not in a condition to afford the same running in losses from years. Therefore, there is no illegality or wrong committed by the respondent no. 1 in not adopting the same.

80. This Court is of the considered view that the financial condition of an employer has to be looked into for taking decision on the revision of the pay scale of an employee since the respondent no. 1 is running in losses for many years and therefore, petitioners despite the respondent no. 1 running in losses cannot claim revised pay as their vested right. This Court cannot compel the respondents, by issuing a writ of mandamus for revision of pay since, the same would only put the State's finances under considerable strain.

81. Under Article 21 of the Constitution of India, the petitioners' have right to compensation which is minimum wages or fair wages, however, it does not include under its ambit revision of the pay of such wages. Therefore, the public authority merely for the benefits of its employee cannot burden the public exchequer given the fact that the respondent no.1 is already a loss- making unit and public exchequer is already bearing the losses and by such revision of pay, it will only be an additional burden upon it. Such additional burden would have a cascading



effect on the public exchequer and this Court is not inclined to pass any such orders.

82. Moreover, this Court has to take into account the aspect of limited judicial restraint that must be exercised by this Court under its extraordinary writ jurisdiction, it shall only intervene in cases where there is an illegality committed by the public authorities or there is such circumstances which apparently at the face of it warrants intervention of the High Court under its writ jurisdiction.

83. Accordingly, issue no. ii is decided by this Court.

84. Now this Court will adjudicate upon the issue no. iii- *whether the petitioners being non-unionised can claim parity with the unionised employees in terms of revision of pay?*

85. It is the case of the petitioner that the unionised workers have been granted two revision of pay in 1st January 2002, where a hike of 15 % was given and 17th August 2008, a 5% increase on annual increment per year has been given on the other hand, non-unionised employee/ petitioners have not been given any revision in their pay-scale after 1997.

86. The respondent submitted in this regard that the petitioners belonging from different class i.e. non- unionised workers cannot claim parity with the unionised workers. Moreover, there is an award in favour of the unionised workers rendered by the CGIT, Chandigarh for payment of revised wages to the unionised workers of the respondent no.1.

87. The same contention was also raised before the Jammu and Kashmir High Court by the non-unionised employee of the respondent and the Court in the judgment of *Centaur Hotel Officers Welfare Assn.(Supra)* held as follows:



“22. The contention of the petitioner Association that by implementing the revision of pay of Unionised employees, they have been invidiously discriminated, is also without any merit. The officers of the petitioner Association is a different class and their case cannot be equated with the case of Unionised employees who have been given revised pay scale in terms of a negotiated settlement pursuant to award of the Industrial Tribunal. Even otherwise, respondents No. 4 and 5 have given interim relief of Rs. 5000/per month to the officers of the petitioner Association so that their gross salary is not less than that of Unionised employees. The argument advanced by the learned counsel for the petitioners is, therefore, without any merit”

88. It is a settled law that the parity can be claimed among the employees pertaining to the amelass. However, the parity cannot be claimed when the same is drawn between two different classes performing different work or are at two different post. Since, the interest of the two varies and the public authority has to look into balancing all the various interest and accordingly, it may take decision in the best interest of the employees belonging to different class.

89. This Court is of the view that the petitioners cannot claim parity by stating that the pay scales of the unionised workers of the respondent no. 1 were revised. Since the petitioners i.e, non- unionised employee is a different class and their case cannot be equated with the case of unionised employees who have been given revised pay scale in terms of a negotiated settlement pursuant to an award passed by the Industrial Tribunal.

90. Accordingly, issue no. iii is decided by this Court.



2023:DHC:7272



CONCLUSION

91. In view of the aforementioned discussions and judgments cited, the writ petition under Article 226 of the Constitution of India is dismissed against the respondents in view of the above said discussions for the following reasons:

- a) Petitioners do not have a vested right/legal right in claiming revised pay especially since the respondent no.1/employer of the petitioners is running in losses since the year 2003 and hence, is not in a position to revise the pay scale of the petitioners.
- b) Moreover, the petitioners cannot claim parity with the unionised employee since the petitioners fall in a different class and their case cannot be equated with the case of unionised employees who have been given revised pay scale in terms of a negotiated settlement pursuant to an award of the Industrial Tribunal.

92. This Court discerns no material to establish the propositions put forth by the petitioners. The petitioners have not been able to make out its case for the grant of reliefs, as has been prayed by them.

93. Accordingly, all the writ petitions stand dismissed along with pending applications, if any.

94. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

OCTOBER 6 , 2023
dy/db/ryp