



2023:DHC:7262



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

% **Reserved on: 25<sup>th</sup> August, 2023**  
**Pronounced on: 6<sup>th</sup> October, 2023**

- + W.P.(C) 9020/2020, CM APPL. 29144/2020, 12149/2022, 7485/2023  
& 44065/2023  
RAJENDERI SINGH CHHETRI & ORS.
- + W.P.(C) 9044/2020, CM APPL. 29156/2020 & 28333/2021  
KRISHNAN KUMAR SINGH & ORS
- + W.P.(C) 10687/2020  
RAJPAL
- + W.P.(C) 8331/2020  
PRABHU DAYAL BAIRAWA
- + W.P.(C) 466/2021  
KULOMANI SATTI AND ORS
- + W.P.(C) 475/2021  
PRADEEP KOCHHAR DECEASED HIS THROUGH WIFE  
REENA KOCHHAR
- + W.P.(C) 547/2021 & CM APPL. 1450/2021  
PRABHU DAYAL BAIRWA AND ANR
- + W.P.(C) 2019/2021  
SWAPAN KUMAR NAG
- + W.P.(C) 2072/2021  
VINOD KUMAR SHARMA
- + W.P.(C) 4723/2021



CHATTAR PAL TANWAR (DECEASED) HIS WIFE KIRAN  
BALA

+ W.P.(C) 4320/2021  
LAXMAN SINGH BISHT AND ANR

+ W.P.(C) 4343/2021  
TILAK RAJ ADHIKARI AND ANR

+ W.P.(C) 10383/2021  
TAPAN GHOSH AND ORS

..... 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  
Sing, Advocates for HCI alongwith  
Mr.K.Gopal Krishna, CFO  
Ms.Anjana Gosain, Ms.Nippun  
Sharma and Ms.Hetika Vadhera,  
Advocates for R-3/Ministry of Civil  
Aviation)

**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 disbursement of wage revision arrears and consequential benefits thereof to the unionised (retired) workers of the respondent no. 1 in accordance with the MOU dated August 08, 2019 and the Award dated November 29, 2016 passed by CGIT respectively.*

*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 for disbursement of the said wage revision arrears to the retired unionised workers/ employees in a time bound manner.*

*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 instant batch of writ petition pertains to unionised workers of the Hotel Corporation of India, i.e., respondent no.1. The prayer as sought by the petitioner is –Disbursement of the wage revision arrears and the consequential benefits thereof to the unionised (retired) workers of the respondent no. 1 in accordance with the MOU dated 8<sup>th</sup> August 2019 and the Award dated 29<sup>th</sup> November 2016 passed by the Central Government Industrial Tribunal respectively in a time bound manner.



3. For the purpose of adjudication of the instant petition, it is imperative to state the facts. The petitioners herein had joined the respondent No. 1 under the category of unionised workmen between the period of 1982 and 1991 and retired in the period of 2010-2020.

4. The respondent no. 1 is Hotel Corporation of India, a public limited company which was incorporated on 8<sup>th</sup> 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”).

5. 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 1987. The Bureau of Public Enterprises had issued a direction dated 13<sup>th</sup> July 1984, to all the Central Public Sector Enterprises (hereinafter referred to as “CPSEs”), to follow the Industrial Dearness Allowance pattern instead of the Central Scales of pay and Dearness Allowance pattern.

6. The Department of Public Enterprises vide its notification dated 12<sup>th</sup> April 1993, withdrew the ban on the 5<sup>th</sup> round of wage negotiation and subsequently, allowed the management of CPSEs to commence their wage negotiations. Thereafter, the department issued a DPE OM No. 2(11)/96-



DPE (WC) dated 14<sup>th</sup> January, 1999 and vide the said office memorandum it had passed directions to the management of CPSEs to commence the 6<sup>th</sup> round of wage negotiations with its workers.

7. On 11<sup>th</sup> February, 2004 the Government of Public Enterprises issued a notification bearing DPE OM No. 2(11)/96-DPE (WC)-GL-I (2004 Guidelines), whereby, it had directed to commence the next round of wage negotiations. Further, on 9<sup>th</sup> November, 2006, the department had issued another notification bearing DPE OM No. 2(7)/2006-DPE (WC)-GL-XIV (hereinafter referred to as 2006 Guidelines) directing the above said management to commence the 7<sup>th</sup> round of wage negotiation which provides that the management of the CPSEs would be free to negotiate the wage structure and that the Government shall not provide any budgetary support for the wage. In addition, the validity period of wage settlement would be for a period of 10 years with 100% Dearness Allowances w.e.f., 1<sup>st</sup> January, 2007.

8. The negotiations in terms of 2006 Guidelines were kept due and no negotiations for wage revisions were initiated by the management of the respondent no. 1 w.e.f., 1<sup>st</sup> January 2007 till 31<sup>st</sup> December 2011

9. The Memorandum of Undertaking was signed between the respondent no. 1 and the unionized category of employees dated 17<sup>th</sup> August, 2007 w.e.f., 1<sup>st</sup> January, 2002 to 31<sup>st</sup> December, 2006 and on 19<sup>th</sup> February, 2008 w.e.f., 1<sup>st</sup> January, 2006 to 31<sup>st</sup> December, 2006, respectively in terms of the 2004 Guidelines issued by the Government Department.



10. On 1<sup>st</sup> May, 2008, the department issued a notification bearing OM No. 2(7)/06-DPE (WC)-GL VI, clarifying that the validity of the wage settlement would be for a period of less than 10 years but not less than 5 years. Thereafter, the Government issued a notification bearing DPE OM No. 2(110)/11-DPE (WC)-GL-XIV/13, dated 13<sup>th</sup> June, 2013, directing commencement of a next round of wage negotiations.

11. Pursuant to the industrial dispute was raised by the unionized workers of respondent no. 1, the Central Government issued a notification bearing no. L-42011/27/2014-IR (DU), dated 9<sup>th</sup> June, 2014, in accordance to the guidelines of Department of Public Enterprises.

12. A Memorandum of Understanding dated 6<sup>th</sup> October 2016, was entered into by the respondent no.1 and respondent no. 2, for estimation of liabilities which the respondent no.1 was liable to pay its employees as on 1<sup>st</sup> October 2016.

13. In the meanwhile, CGIT (hereinafter “Central Government Industrial Tribunal”) passed the award dated 29<sup>th</sup> November 2016, and held that the unionised workers of the respondent no. 1 are entitled to revision of wages w.e.f. 17<sup>th</sup> August 2008. Pursuant to the said award, the respondent no. 1 seeking implementation of wage revision for officers and staff w.e.f. 1<sup>st</sup> January 2017, issued a letter dated 5<sup>th</sup> July 2017 to the respondent no. 3.

14. Before the implementation of pay revision, the Department of Public Sector Enterprises issued an Office Memorandum bearing No. W-02/0015/2016- DPE (WC)-GL-XXIV/17, dated 24<sup>th</sup> November 2017,



prescribing directions for commencement of the next round of wage negotiations between the management of CPSEs and the respective workers/trade union with effect from 1<sup>st</sup> January 2017.

15. In accordance with the above said award of CGIT, the respondent no. 1, in its 241<sup>st</sup> Board Meeting held on 20<sup>th</sup> March, 2018, decided to form a Wage Negotiation Committee to commence the wage negotiations with the union of all units of respondent no. 1. Subsequently, the department of Public Enterprises had issued an Office Memorandum dated 14<sup>th</sup> June, 2018, regarding the revised guidelines for time bound closure of sick and loss making Central Public Sector Enterprises and disposal of assets.

16. On 25<sup>th</sup> May, the management of the respondent and the Union Committee engaged into bilateral negotiations and successfully came to a mutual conclusion. A Memorandum of Understanding dated 8<sup>th</sup> August 2019, was entered into by the petitioners and the respondent no. 1 as per which the wages of the unionised worker were to be revised w.e.f. from 17<sup>th</sup> August 2008, for a period of 10 years in compliance with the Award of CGIT.

17. The Regional Labour Commissioner (Central), Jammu, vide letter dated 7<sup>th</sup> July, 2020, bearing No. 50 (49)/2019/RLC/Jmu, directed the respondents no. 1 and 2 to release the wage revision arrears to the petitioner of unionized category in 4 equal Installments.



18. The petitioners retired from the employment of respondent no. 1 but they did not receive their payments as per the revision in wage scale w.e.f., 17<sup>th</sup> August, 2008, till their date of superannuation.

19. The petitioner filed its petition being aggrieved by the respondent's inaction by not paid the arrears due to the petitioners despite the award passed by the CGIT, in the favour of the petitioners along with the Memorandum of Understanding (hereinafter "MOU") which has been executed mutually between the petitioners and the respondent pertaining to the revision of the wage w.e.f., 17<sup>th</sup> August 2008. Moreover, the petitioners have pleaded that the said conduct amounts to discrimination among the unionized workers who are currently working in the organization/respondent no. 1 and petitioners i.e., the ones who have retired since, the latter have not been paid their dues pertaining to the wage revision.

20. The respondent in its counter-affidavit has filed its countered the averments of the petitioner by submitting that the respondent no.1 is running in losses and does not have the requisite finances to pay the revised wages to the petitioners. Moreover, as per the said MOU entered into between the petitioner and the respondent no. 1, it is stated that the petitioner may be entitled to the revised wage depending upon the financial condition of the respondent no.1.

21. As per the rejoinder to the counter affidavit filed by the petitioners, the petitioners have submitted that pursuant to filing of the instant petition, the petitioners had filed a representation dated 20<sup>th</sup> October 2020 to the





respondent no. 1. It has been further stated, the respondent no.1's lack of funds cannot be a ground for the non- payment of arrears of wages of the petitioners.

## **SUBMISSIONS**

*(On behalf of petitioners)*

22. Learned counsel for the petitioners submitted that the lack of payment of arrears to the retired unionized workmen of respondent no. 1 is arbitrary, illegal and violates their fundamental rights as provided under the Constitution of India.

23. It is submitted by the petitioners that the respondent no. 3 has pervasive control over the management, functions, and daily affairs of the respondent no. 1 and 2 and thus, they can be defined as a State within the ambit of Article 12 of Constitution of India.

24. It is submitted by the petitioners that the first revision to the original wage of the employees of respondent no. 1 was carried out in the year 1982 and the same was applicable for a period of 5 years i.e. till the year 1987.

25. It is submitted that the terms of 2013 guidelines were kept due and no negotiation for wage revision was initiated by the management of respondent no. 1, hence the grievance of the petitioners was not addressed.

26. It is contented by the petitioners that respondent no. 1 had issued a letter bearing reference no. MD/HCI/DEL/161 on dated 5<sup>th</sup> July, 2017 to the respondent no. 3 for implementation of wage revision for officers and staff



for grant of interim relief w.e.f. 1<sup>st</sup> January, 2017 but nothing could be availed from the same.

27. It is further submitted that, the respondent no. 1 decided to disburse the revised wage arrears of the present unionized workers in November 2020, and the same was done without considering the wages of the petitioner which has been accrued prior to this date.

28. It is submitted that as per the award dated 29<sup>th</sup> November 2016 passed by the CGIT it has been held that the petitioners being unionised employee is entitled to revision of pay from 17<sup>th</sup> August 2008.

29. It is further submitted that the petitioners have a vested right of revision of pay in terms of the MOU dated 8<sup>th</sup> August 2019, since as per the said MOU the arrangement was made between the petitioners and respondents for payment of the arrears of wages in compliance with the award passed by the CGIT in favor of the petitioners.

30. It is contended that the petitioners have been wrongfully and arbitrarily deprived of their dues, and hence, their legal rights have been grossly violated by the respondents.

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



*(On behalf of respondents)*

32. *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.

33. 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, no violation of any right of the petitioners has been committed. Moreover, there is no statutory duty casted upon the respondent No.1 to revise the pay of the petitioners and hence, the same cannot be prayed for, by way of issuance of the writ of mandamus.

34. The counsel for the respondents has placed reliance on the judgments titled as, *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 his contention that the revision of pay is not a vested right of an employee.

35. 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 cannot be claimed as a matter of right by the petitioners.



36. It is submitted that the concerned signatory parties, while signing the MOU, agreed that the arrears of wage revision would be considered only on the availability of funds. The respondent no. 1 is a company incurring huge losses and is in fact, entirely dependent upon the respondent no. 2 for funds. Therefore, it is contented by the respondents that due to the unavailability of requisite funds, the arrears of retired workmen could not be paid off.

37. It is further submitted that the respondent No. 1, since the year 2003, has consistently been making losses, and is in no condition to revise the pay scales of its employees. Furthermore, after 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 12<sup>th</sup> July 2019, 28<sup>th</sup> October 2019 and 6<sup>th</sup> January 2020, had refused to bear the burden of wage revision of the petitioners. The details of the loss suffered by the respondent no. 1 has been detailed herein 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                 |



| Financial year | Losses (Rs.In crores) |
|----------------|-----------------------|
| 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                 |

38. It is contended that all the office memorandums on the basis of which the petitioners are seeking revision of pay, had to be executed by such CPSEs taking into consideration their financial condition and for pay revisions to be executed, however, the respondent no. 1 is running in losses for years and is not in position to execute such pay revision.

39. It is submitted that in view of the foregoing contentions raised by the respondents, the instant petition may be thus, dismissed.

### **ANALYSIS AND FINDINGS**

40. The matter was heard at length with arguments advanced by the learned counsels. This Court has adequately perused the entire material on record, the facts of the case, judicial pronouncements relied upon by the parties, and the pleadings presented by the learned counsel of the parties.



41. The case of the petitioners is that the petitioners, retired employees of the respondent no. 1, have not been paid their dues pertaining to the revision of pay scales by respondent no.1, despite an MOU dated 8<sup>th</sup> August 2019, being executed in their favour, and the order of the CGIT dated 29<sup>th</sup> November 2016, as per which the respondents were held entitled to the wage revision w.e.f. 17<sup>th</sup> August 2008. It has been further contended that the respondent no.1 has wrongly and arbitrarily denied the benefits of the revision of pay scale to its retired employees/petitioners and however, it paid the said benefits to its current unionised workers.

42. The respondents, in their rival submissions, have submitted to the effect that they did not possess sufficient financial resources to pay for wages at the revised pay scale to the petitioners. Moreover, as per the said MOU, it was agreed between the parties that the arrears of wage revision would be considered only on the availability of the funds, and since the respondent no. 1 has been suffering losses for years with no financial support from its parent organisation as well, therefore, it is not in a position to pay the same to the petitioners.

43. The question that arises for consideration of this Court is that whether the respondent no .1 shall pay the revision of pay scales w.e.f. 17<sup>th</sup> August 2008 to the petitioners in terms of the MOU dated 8<sup>th</sup> August 2019, executed in their favour, and in accordance with the order of the CGIT dated 29<sup>th</sup> November 2016, directing the respondent no. 1 to pay the petitioners in terms of the revised pay scale.



44. Before delving further, this Court finds it apposite to discuss the aspect of finality of the award passed by the CGIT. The said aspect has been discussed in Section 17 and Section 17A of the Industrial Disputes Act, 1947. The aforementioned sections have been reproduced herein below for ready reference:

*“17. Publication of reports and awards.—(1) Every report of a Board or Court together with any minute of dissent recorded therewith, every arbitration award and every award of a Labour Court, Tribunal or National Tribunal shall, within a period of thirty days from the date of its receipt by the appropriate Government, be published in such manner as the appropriate Government thinks fit. (2) Subject to the provisions of section 17A, the award published under sub-section (1) shall be final and shall not be called in question by any Court in any manner whatsoever.*

*17A. Commencement of the award.—(1) An award (including an arbitration award) shall become enforceable on the expiry of thirty days from the date of its publication under section 17: Provided that—*

- (a) if the appropriate Government is of opinion, in any case where the award has been given by a Labour Court or Tribunal in relation to an industrial dispute to which it is a party; or*
- (b) if the Central Government is of opinion, in any case where the award has been given by a National Tribunal, that it will be inexpedient on public grounds affecting national economy or social justice to give effect to the whole or any part of the award, the appropriate Government, or as the case may be, the Central Government may, by notification in the Official Gazette, declare that the award shall not become enforceable on the expiry of the said period of thirty days*



*Under Section 17(1), an award shall be published by the appropriate Government within 30 days of its receipt. Under Section 17(2), the award becomes final subject to Section 17A. Under Section 17A, an award becomes enforceable on the expiry of 30 days from the date of its publication under Section 17.”*

45. As per the said provisions, an award passed by the CGIT becomes enforceable only after the expiry of 30 days from the date of its publication under Section 17 of The Industrial Dispute Act, 1974. The same is subjected to two conditions. *Firstly*, if the appropriate Government is of the opinion, in any case, where the award has been given by a Labour Court or Tribunal in relation to an industrial dispute to which it is a party. *Secondly*, if Central Government is of the opinion, in any case, where the award has been given by a National Tribunal it will be inexpedient on public grounds affecting national economy or social justice to give effect to the whole, or any part of the award, and the appropriate Government may, by notification in the Official Gazette, declare that the award that the award may not be enforced. In such circumstance, the award passed by the Labour Court or Tribunal shall not be enforceable on the expiry of the said period of thirty days. Therefore, subject to the said exceptions the award becomes enforceable within 30 days from the publication of the said Award.

46. The enforceability of the award passed by the Industrial Tribunal within 30 days from the date of publishing of such award has been discussed by the Hon'ble Supreme Court in the judgment of ***Hindustan***





***Times Ltd. v. Workmen*, (1964) 1 SCR 234**, and the relevant paragraphs of the same are as follows:

*“27. There remains for consideration the question of retrospective operation of the award. Under Section 17-A of the Industrial Disputes Act, 1947, an award shall come into operation with effect from such date as may be specified therein but where no date is so specified it shall come into operation on the date when the award becomes enforceable. Even without a specific reference being made on this question it is open to an Industrial Tribunal to fix in its discretion a date from which it shall come into operation. The reference, in the present case, included as a matter in dispute the question of retrospective effect in these words:*

*“Whether all the above demands should be made applicable retrospectively with effect from April 1, 1956 and what directions are necessary in this respect?”*

*28. The Tribunal rejected the workmen's claim forgiving effect to its award from April 1956. Wherever however the Tribunal has given relief the Tribunal has directed that the award should come into effect from the date of reference i.e. 23rd January, 1958. On behalf of the Company Mr Pathak contends that there is no reason why the award should be given effect to from any date prior to the date of its pronouncement. We are not impressed by this argument. No general formula can be laid down as to the date from which a Tribunal should make its award effective. That question has to be decided by the Tribunal on a consideration of circumstances of each case. There have been cases where this Court has made an award effective from the date when the demand was first made. There are other cases where the orders of the Tribunal directing the*



*award to be made effective from the date of the award has not been interfered with. It is true that in some cases this Court has modified the Tribunal's award in such a case. But it does not appear however, that any general principles have been laid down. Indeed, it is difficult and not even desirable that this Court should try to lay down general principles on such matters that require careful consideration of the peculiar circumstances of each case for the exercise of discretion. It is sufficient to say that we find no reason to interfere with the Tribunal's direction in this caste that the reliefs given by it would become effective from the date of the reference.”*

47. The said aspect has also been dealt with by the Rajasthan High Court in the judgment of **Rajasthan Khadi Sangh v. Presiding Officer, 2007 SCC OnLine Raj 573**. The observation of the Court are reproduced herein:

*“6. Sub-section (1) of Section 17A, thus, provides that an award becomes enforceable on expiry of thirty days from the date of its publication under Section 17. Sub-section (4), inter alia, subject to the provisions of sub-section (1), provides that the award shall come into operation with effect from such date as may be specified therein, but where no date is specified, it shall come into operation on the date when the award becomes enforceable under sub-section (1). That ‘enforceability of the award’ and ‘coming into operation of the award’ are different concepts bearing different connotation admit of no doubt and ambiguity. According to sub-section (1) of Section 17A, an award becomes enforceable after expiry of thirty days from the date of publication under Section 17, but its operation may be specified in the award. If a specific date of its operation is mentioned, the operation of the award is effective from the date*



*of the operation so mentioned. On the other hand, non-specification of the date in the award concerning its operation would mean that it comes into operation when it becomes enforceable.*

*X*

*X*

*X*

*8. In other words, what the Supreme court has held with reference to Section 17A of the Industrial Disputes Act is that an award shall come into operation with effect from such date as may be specified therein but when no date is so specified it shall come into operation on the date when the award becomes enforceable. If the Tribunal chooses not to give retrospective operation to its award specifically and expressly, in our considered view, the operation of such award is the date when which the award becomes enforceable. The retrospective operation of the award is ordinarily not to be inferred in the absence of any specific statement to that effect in the award.”*

48. Since, the applicable law with regard to the instant dispute has been discussed in the preceding paragraphs; this Court will now delve into the facts of the matter in hand. The order passed by the CGIT dated 29<sup>th</sup> November 2016, has been reproduced below for reference :

*“As per the charter of demand, the workmen agitated the matter for the revision of wages on 17.6.2008, meaning thereby the workmen terminated the earlier settlement entered into in the year 2007 vide notice dated 17.06.2008. In view of the provisions of Section 19(2) of the Act, the workman can claim revision of pay only after the expiry of two months from the date of notice and taking the charter of the demand dated 17.06.2008 as notice for terminating the settlement, the*



*workmen are entitled to revision of pay only from 17.08.2008. Thus, the workmen are entitled to revision of pay w.e.f. 17.08.2008 and not w.e.f. 1.1.2007 and the respondent management shall revise the pay of the workmen by taking into consideration all the circumstances and the existing formulas. In result, the reference is answered in favour of the workmen, holding that the workmen are entitled to wage revision w.e.f. 17.08.2008 and management would revise the pay expeditiously as soon as possible and probably within six months of the publication of the Award.”*

49. As per the said order of the CGIT, it was held that the workmen including the petitioners are entitled to wage revision w.e.f. 17<sup>th</sup> August 2008 and not from 1<sup>st</sup> January 2007. Therefore, the learned Tribunal directed the respondent no. 2 to revise the pay of the workmen, including the petitioners, taking into consideration all the circumstances and the existing formulas, and further held that they are entitled for such revision of pay. It was also directed that such payment was to be made to the unionised workmen, including the petitioners, expeditiously, within six months from the date of publication of the Award.

50. This Court is of the view that in terms of the order passed by the CGIT, the workmen including the petitioners are entitled to the payment of their revised wages w.e.f. 17<sup>th</sup> August 2008. Moreover, considering the provision provided under Section 17 and Section 17A of the Industrial Tribunal Act, 1947, since the award has not been subject to the conditions as



laid in the said provision, the Award became enforceable after 30 days of its publication..

51. Now, advertent to the MOU dated 8<sup>th</sup> August 2019, as per which the petitioners are claiming pay scale revision, the respondents have drawn the attention of this Court towards para 7 of the recital of the said MOU which has been reproduced herein below:

***“7. Arrears of Wage Revision***

*Arrears on revision of scales of Pay to the existing and retired employees would be considered only on availability of funds.”*

52. In regard to the above stated argument, this Court is of the view that the workmen, including the petitioners, are entitled to the payment of the wage revision w.e.f. 17<sup>th</sup> August 2008, however, not in terms of the said MOU, since, it has been agreed between the respondent no.1 and the petitioners, that the arrears of revision of wages shall be subject to the availability of the funds with the respondent no. 1. In the present facts, the respondent no. 1 had been suffering losses for years, thereby, not possessing sufficient funds for the payment of arrears of wage revision. Hence, though the petitioners are entitled to the wage revision in terms of the CGIT award, however, not in terms of the said MOU.

53. Now advertent to the submission raised by the petitioner pertaining to the parity between unionized workers working presently with the respondent no.1 and the petitioners/retired unionized workers of the respondent no.1 in terms of payment of arrears of wage revision



54. The petitioners had raised a contention that the unionized workers who are still working with the respondent no. 1 have been paid their arrears in terms of the wage revision, however, the same has still not been paid to the petitioners/retired unionized employees of the respondent no.1.

55. It is a well- settled law that the employer, while giving benefits to its employees, cannot discriminate between its retired employees and the ones which are currently working under the employer. It is subjected to the condition that unless there is a sound reasoning behind why the two classes are treated differently, the employer shall not discriminate between the two categories.

56. The issue of wrongful classification among the employees working at the same position has been discussed by the Hon'ble Supreme Court in the judgment of ***All Manipur Pensioners Assn. v. State of Manipur, (2020) 14 SCC 625***, the relevant paragraphs of the same are as follows:

*“8. Even otherwise on merits also, we are of the firm opinion that there is no valid justification to create two classes viz. one who retired pre-1996 and another who retired post-1996, for the purpose of grant of revised pension. In our view, such a classification has no nexus with the object and purpose of grant of benefit of revised pension. All the pensioners form one class who are entitled to pension as per the pension rules. Article 14 of the Constitution of India ensures to all equality before law and equal protection of laws. At this juncture it is also necessary to examine the concept of valid classification. A valid classification is truly a valid discrimination. It is true that Article 16 of the Constitution of India permits a valid classification. However, a valid classification must be based on a just objective. The result to be achieved by the just objective*





*presupposes the choice of some for differential consideration/treatment over others. A classification to be valid must necessarily satisfy two tests. Firstly, the distinguishing rationale has to be based on a just objective and secondly, the choice of differentiating one set of persons from another, must have a reasonable nexus to the objective sought to be achieved. The test for a valid classification may be summarised as a distinction based on a classification founded on an intelligible differentia, which has a rational relationship with the object sought to be achieved. Therefore, whenever a cut-off date (as in the present controversy) is fixed to categorise one set of pensioners for favourable consideration over others, the twin test for valid classification or valid discrimination therefore must necessarily be satisfied.*

*8.1. In the present case, the classification in question has no reasonable nexus to the objective sought to be achieved while revising the pension. As observed hereinabove, the object and purpose for revising the pension is due to the increase in the cost of living. All the pensioners form a single class and therefore such a classification for the purpose of grant of revised pension is unreasonable, arbitrary, discriminatory and violative of Article 14 of the Constitution of India. The State cannot arbitrarily pick and choose from amongst similarly situated persons, a cut-off date for extension of benefits especially pensionary benefits. There has to be a classification founded on some rational principle when similarly situated class is differentiated for grant of any benefit. 8.2. As observed hereinabove, and even it is not in dispute that as such a decision has been taken by the State Government to revise the pension keeping in mind the increase in the cost of living. Increase in the cost of living would affect all the pensioners irrespective of whether they have retired pre-1996 or post-1996. As observed hereinabove, all the pensioners belong to one class. Therefore, by such a classification/cut-off date the*



*equals are treated as unequals and therefore such a classification which has no nexus with the object and purpose of revision of pension is unreasonable, discriminatory and arbitrary and therefore the said classification was rightly set aside by the learned Single Judge of the High Court. At this stage, it is required to be observed that whenever a new benefit is granted and/or new scheme is introduced, it might be possible for the State to provide a cut-off date taking into consideration its financial resources. But the same shall not be applicable with respect to one and single class of persons, the benefit to be given to the one class of persons, who are already otherwise getting the benefits and the question is with respect to revision.”*

57. This Court is of the view that the respondent no. 1 has acted in contravention with Article 14 of the Constitution of India by creating such wrongful classification between the retired unionised workers/petitioners and the unionised employees which are currently employed with the said respondent. The respondent no. 1 shall pay the retired unionised workers/petitioners their arrears of wage revision at par with the currently employed unionized workmen.

### **SCOPE OF MANDAMUS**

58. 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 a denial of justice to the party invoking such writ.





59. 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 a writ of mandamus and such legal duty is casted upon the public authority by way of a Statute or a common law. The pre-requisite for issuing such writ is that the said duty has not been duly discharged by the concerned public authority and the party approaching this Court for seeking mandamus has claimed such relief with a *bonafide* intention, and does not have any alternative remedy.

60. The Court must be 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 an 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.

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



*“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)”*

62. In light of the above discussions, this Court is of the considered view that the present petitioners have a legal/vested right in claiming the wage revision as per the CGIT award dated 29<sup>th</sup> November 2016 and there is a



legal duty of the respondent in paying the petitioners the said arrears. Therefore, this case is a fit case for issuing the writ of mandamus regarding the arrears of wage revision claimed in terms of the award passed by the CGIT, wherein, the respondent no. 1 was directed to pay the petitioners.

63. The judgments as cited by the respondents regarding revision of pay is not a vested right does not support their case since, the passing of the award in the favour of the unionised workers vested legal right in the petitioners for the revision of the wages.

64. This Court in view of the aforementioned discussions, issues writ of mandamus, thereby, directing the respondent no. 1 for payment of arrears of wage revision due to the petitioners in compliance with the award dated 29<sup>th</sup> November 2016 passed by the CGIT.

### **CONCLUSION**

65. In view of the foregoing discussion, it is held by this Court that the petitioners have been able to make out their case and accordingly, this Court by way of its extraordinary jurisdiction under Article 226 of the Constitution of India is inclined to intervene, by issuing a writ of mandamus to the respondents. Therefore, the instant writ petition filed under Article 226 is maintainable against respondents in view of the above said discussions, and this Court accordingly deems it fit to allow the instant petition in view of the aforesaid terms.



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66. The respondent No. 1 is hereby, directed to pay the arrears of the wage revision w.e.f. 17<sup>th</sup> August 2008, in compliance with the CGIT award dated 29<sup>th</sup> November 2016, to the petitioners.

67. Accordingly, all the writ petitions are allowed and stand disposed of. Pending applications, if any, stand disposed of.

68. The judgment be uploaded on the website forthwith.

**CHANDRA DHARI SINGH, J**

**OCTOBER 6, 2023**

Dy/db/ryp