IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

BEFORE:

THE HON'BLE JUSTICE M. V. MURALIDARAN

W.P.A.No. 10326 of 2019
Ram Krishna Ray & Ors.
Vs
Union of India & Ors.

Mr. Asim Hati,

Mr. Debabarata Mondal,

Ms. Sreetama Neogi,

Ms. Antarisksha Karmakar

------- for the Petitioners

Mr. Promod Kumar Drolia,

Mr. Santosh Kumar Pandey --- for the respondent nos. 1-2

Mr. Anil Kumar Gupta

--- for the respondent nos. 5-6

Mr. Chayan Gupta,

Mr. Kausik De,

Mr. Mohini Majumdar

----------------- for IDBI

Hearing Concluded On : 30.01.2024

Judgment On : 21.02.2024

M. V. Muralidaran, J.

Heard Mr.Asim Hati, learned counsel for the petitioners. None appears for the respondents.

2. This writ petition has been filed by the petitioners seeking writ of mandamus directing the respondents to fix the pay scale, implementation of 2007 pay scale and disburse the arrear amount in respect of the balance 60% payment towards arrear and payment thereto along with prevailing interest.

3. Brief facts are as follows:-

The petitioners are officers of National Jute Manufacturers Corporation Limited [*NJMC Limited*] and they were opted VRS for revival of the company. After accepting the voluntary retirement under duress, the petitioners were demanding 100% arrear payment of security benefits as well as implementation of 2007 pay revision, whereas the ratio was decided by the concerned Ministry for 40% only. Due to erosion of its net worth, NJMC Limited was referred to BIFR and the BIFR declared the company as sick industrial company and IDBI was appointed as operating agency with a direction to prepare a revival scheme of the company and thereafter the IDBI submitted company's DRS to the BIFR. After that, the Government of India approved a restricting proposal of NJMC Limited.

3.1. The pay scale of officers has not been revised since 1987 on account of guidelines of Department of Public Enterprise in respect of sic company. Not only that NJMC Limited did not consider the impact of pay revision under 2007 pay scale and it has to be recalculated the dues considering the impact of 2007 pay scale for the officers. The petitioners, the officers of NJMC Limited filed two writ petitions, bearing W.P.Nos.1505 of 1999 and 2394 of 1999, for removal of disparity in their pay structure and, this Court, directed to form a team of experts in dealing with the matter relating to rationalization of pay structure including the representatives of the petitioners.

3.2. The expert committee recommended a pay package for officers of the NJMC Limited, implementation of 1992 and 1997 pay scale and 40% arrear payment. While making such recommendation, the expert committee stated that the issue of further revision of scales of pay of officers with effect from 1.1.2007 was not on the agenda of the committee and, ultimately, no recommendation was made on that account. The officers of NJMC Limited have put their objection since beginning and demanded 100% arrear payment as well as implementation of 2007 pay scale. Despite the direction of this Court to fix up the pay scale and payment of arrear amount, the expert committee declared a pay package which is a complete violation of the order of the Court.

3.3. According to the petitioners, in its hearing dated 4.9.2014, the BIFR observed that there should be depth examination of payment related issues of VRS employees in the light of MA report and issued a direction that the IDBI MA would examine the said issues related to VRS employees. However, the IDBI did not give effect of revised gratuity payment under the Gratuity Act with effect from 2011 and no reference has been made to BIFR for revision of the scheme giving effect of enhanced gratuity. The different forum of officers repeatedly requested both IDBI and NJMC Limited to follow the BIFR directions to resolve the said issues, however, no result was out come till date. Since the respondents have not implemented the 2007 pay scale, the petitioners, through their lawyer, issued a notice on 9.4.2019. Despite receipt of the said notice, the respondents have not considered the said representation, nor any action is forthcoming. Hence, the petitioners have filed the present writ petition.

4. Originally, the Ministry of Textiles, Government of India; the Director, June, Ministry of Textiles, Government of India; the NJMC Limited, Kolkata; the Chairman-cum-Managing Director of NJMC Limited; the Regional PF Commissioner-I, Kolkata; the Regional PF Commissioner, EFFO, Howrah and the Chairman-cum-Managing Director, Industrial Development Bank of India (IDBI) are arrayed as respondents 1 to 7 in the present writ petition. By the order dated 22.8.2019, the seventh respondent, namely the Chairman-cum-Managing Director, IDBI, was deleted from the array of parties, as no cause of action pleaded against respondent No.7. In the order dated 22.8.2019, this Court directed the other respondents to file their affidavits-in-opposition within a period of six weeks and reply, if any, be filed within two weeks by the petitioners thereafter.

4. The learned counsel for the petitioners submitted that the respondent authorities are delaying and did not discharge their duties and obligations as per rule and are acting as per their will to implement the

2007 pay scale, to pay balance 60% of PF, balance 60% payment towards arrear and interest thereon and the same were kept in abeyance illegally in derogation to the rule. The 2007 pay scale, balance 60% of pay, balance 60% payment towards arrear along with interest are no longer any bounty to be distributed by the authority to its employees or their heirs, but have become under various decisions of the Apex Court as well as this Court.

5. The learned counsel for the petitioners further submitted that the respondent authorities have paid only 40% of PF, 1992 and 1997 pay revision and arrears, whereas this Court directed the respondent authorities to fix up pay scale of arrears thereof. Without any reason, the respondent authorities are denying and/or prolonging the said benefits to the petitioners and because of the acts of the respondents, the petitioners are under the extreme hardship. Thus, a prayer has been made to direct the respondents to fix up the pay scale, implementation of 2007 pay scale and disburse the arrear amount in respect of the balance 60% PF, balance 60% payment towards arrear along with interest.

6. Despite a specific direction of this Court and affording reasonable opportunity to file the affidavits-in-opposition, the respondents 1 to 6

have not filed the affidavits-in-opposition. As stated supra, none appeared for the respondents 1 to 6 when the matter is called out.

7. The petitioners are praying for fixation of pay scale and implementation of the 2007 pay scale in their favour. Admittedly, all the petitioners are retired employees of the NJMC Limited. Despite service, none appears on behalf of the NJMC Limited.

8. Earlier, the petitioners have filed W.P.Nos.1505 and 2394 of 1999 before this Court for removal of disparity in their pay structure. This Court, by the judgment and order dated 27.8.2009, allowed the said writ petitions. The operative portion of the order dated 27.8.2009, reads thus:

> *"I think interest of justice will be best served if the job of formulating a rational pay structure for the present petitioners is left to an expert body - of course, with representatives of the present petitioners. Accordingly, the application being W.P.No.1505 of 1999 succeeds.*
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> *This also governs the writ application being W.P.No.2394 of 1999. The respondent authorities are hereby directed to form a team of experts with sufficient experience in dealing with matters relating to*

> *rationalization of pay structure and of course, including representatives of the present petitioners.*
>
> *Such a body must be formed within a period of three months from the date of communication of this order. The said body may, thereafter, consider the grievances of the writ petitioners, as ventilated in the two applications and take appropriate action and submit their reports – taking into consideration the annexures to the two writ applications. This must be done within a further period of four months from the date of formation of the said committee.*
>
> *The respondent authorities must immediately thereafter take appropriate steps towards fixation of pay scales and payment of arrear amount to the petitioners."*

9. According to the petitioners, while making recommendation, the expert committee stated that the issue of further revision of scales of pay of officers with effect from 1.1.2007 was not on the agenda of the committee and, therefore, no recommendation was made on that account.

10. The specific case of the petitioners is that the officers of NJMC Limited have put their objection since beginning and demanded 100%

arrear payment as well as implementation of 2007 pay scale and other arrears. In support, the petitioners have placed on record the letter correspondence, which was annexed to the writ petition.

11. The officers of NJMC Limited are governed by NJMC Service Rules and Regulations, 1982 and the Employees Provident Fund and Miscellaneous Provisions Act, 1952.

12. Drawing this Court's attention to the earlier order and the factual matrix of the matter, the learned counsel for the petitioners submitted that there could be no justification in not considering the matter in its right perspective and not implementing the 2007 pay scale and disbursing the arrear amount and the balance of 60% PF amount in the case of the petitioners.

13. It appears that the expert committee only declared a pay package and has not considered the grievances of the petitioners in proper perspective, which necessitated the petitioners to file the instant writ petition. Before filing the writ petition, it appears, the petitioners have submitted a representation dated 9.4.2019 praying for revision of pay, implementation of the 2007 pay scale, balance 60% of pay, balance 60% payment towards arrear and interest thereon. The said

representation has been duly received by the respondent authorities, however, the same was not considered till date. If the respondent authorities considered the said representation of the petitioners and passed orders thereon, there would have been no cause of action for the petitioners to file the instant writ petition seeking the prayer for revision of pay, implementation of the 2007 pay scale, balance 60% of pay, balance 60% payment towards arrear. The failure on the part of the respondent authorities in deciding the representation of the petitioners, who are all retired employees, is not appreciable. It is the bounden duty of every authority of the respondent to consider and pass orders on the representation filed by the aggrieved party/employee one way or the other. Taking into consideration of the grievance of the petitioners, this Court specifically directed the respondents 1 to 6 to file the affidavits-in-opposition. However, the respondents 1 to 6 have not obeyed the orders of this Court and have failed to file their affidavits-in-opposition.

14. Admittedly, the respondents 1 to 6 have failed to file any affidavits resisting the writ petition. Taking into consideration the averments set out in the writ petition and since the earlier representation of the petitioners is pending with the respondent authorities for nearly five long years, in the interest of justice, it would be appropriate to direct

the respondent to consider the petitioner’s representation dated 9.04.2019 and to pass appropriate order respectively in favour of the petitioner within a stipulated time.

15. In view of the above, this Court is inclined to pass the following orders:

(i) The writ petition is disposed of.

(ii) The respondents are directed to pass appropriate speaking order by giving fair opportunity to the petitioner on the petitioner’s representation dated 9.04.2019.

(iii) The said exercise shall be done within a period of twelve weeks from the date of receipt of this order by considering the petitioner’s long pending grievance.

16. With the above direction, the writ petition is disposed of. There will be no order as to costs.

(M.V. Muralidaran, J.)