

13.11.2024
Item Nos.74-95.
gd/ssd

WPA/11380/2012
INDIAN JUTE INDUSTRIES' RESEARCH
ASSOCIATION & ANR
VS
UNION OF INDIA & ORS
with
WPA/11381/2012
INDIAN JUTE INDUSTRIES' RESEARCH
ASSOCIATION & ANR
VS
UNION OF INDIA & ORS
with
WPA/11383/2012
INDIAN JUTE INDUSTRIES' RESEARCH
ASSOCIATION & ANR
VS
UNION OF INDIA & ORS
with
WPA/11384/2012
INDIAN JUTE INDUSTRIES' RESEARCH
ASSOCIATION AND ANR
VS
UNION OF INDIA AND ORS
with
WPA/11385/2012
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VS
UNION OF INDIA & ORS
with
WPA/11386/2012
INDIAN JUTE INDUSTRIES' RESEARCH
ASSOCIATION AND ANR
VS
UNION OF INDIA AND ORS
with
WPA/11387/2012
INDIAN JUTE INDUSTRIES' RESEARCH
ASSOCIATION & ANR
VS
UNION OF INDIA & ORS
with
WPA/11389/2012
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WPA/11390/2012

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VS

UNION OF INDIA & ORS

with

WPA/11391/2012

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ASSOCIATION AND ANR

VS

UNION OF INDIA AND ORS

with

WPA/11392/2012

INDIAN JUTE INDUSTRIES RESEARCH
ASSOCIATION & ANR

VS

UNION OF INDIA & ORS

with

WPA/11394/2012

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WPA/11397/2012

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WPA/11398/2012

INDIAN JUTE INDUSTRIES' RESEARCH
ASSOCIATION AND ANR

VS

UNION OF INDIA AND ORS

with

WPA/11399/2012

INDIA JUTE INDUSTRIES' RESEARCH
ASSOCIATION & ANR

VS

UNION OF INDIA & ORS

with

WPA/11400/2012
 INDIAN JUTE INDUSTRIES' RESEARCH
 ASSOCIATION AND ANR

VS

UNION OF INDIA AND ORS

with

WPA/11401/2012
 INDIAN JUTE INDUSTRIES' RESEARCH
 ASSOCIATION & ANR

VS

UNION OF INDIA & ORS

with

WPA/11403/2012
 INDIAN JUTE INDUSTRIES' RESEARCH
 ASSOCIATION AND ANR

VS

UNION OF INDIA AND ORS

with

WPA/11404/2012
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 ASSOCIATION & ANR

VS

UNION OF INDIA & ORS

with

WPA/11405/2012
 INDIAN JUTE INDUSTRIES' RESEARCH
 ASSOCIATION AND ANR

VS

UNION OF INDIA AND ORS

Mr. Victor Chatterjee

..for the Petitioners.

Mr. Arjun Ray Mukherjee,

Mr. Sunny Nandy

..for the Respondent no.4.

Supplementary affidavit dated 14th March,
 2024 filed in Court is taken on record.

Affidavits filed by the private respondents are
 taken on record.

As prayed for by Mr. Ray Mukherjee, learned
 Advocate for the private respondents, leave is granted

to the private respondents to file the supplementary affidavit which was affirmed on October 4, 2024.

Let such supplementary affidavit be taken on record. A copy of such supplementary affidavit has already been served upon Mr. Chatterjee, learned Advocate for the writ petitioners.

Indian Jute Industries' Research Association (for short IJIRA) has challenged the order of the Regional Labour Commissioner (Central), Kolkata and the appellate authority under the Payment of Gratuity Act, 1972 dated 30th April, 2012. By the said order the appellate authority directed the petitioner company to disburse the balance amount of gratuity as indicated in the said order along with admissible simple interest to the respondent employees within a stipulated time. The private respondents in the aforesaid writ petitions are the ex-employees of IJIRA. They applied for voluntary retirement as per the VRS Scheme floated by the said authority.

Challenging the calculation of gratuity made by IJIRA the private respondents herein filed an application before the controlling authority.

The controlling authority by an order dated May 16, 2011 directed the writ petitioner Association to pay the balance gratuity amount as indicated in the order dated May 16, 2011 together with simple

interest accrued thereupon at the rate of 10 per cent per annum within the time limit as indicated in the said order.

Challenging the order of the controlling authority the writ petitioner company preferred an appeal before the Regional Labour Commissioner (Central), Kolkata.

The appellate authority modified the order of the controlling authority by holding that the writ petitioner Association ought to have included enhanced DA for the purpose of computation of gratuity to the employees who opted for VRS Scheme.

The order of the appellate authority dated April 30, 2012 is under challenge in these writ petitions at the instance of IJIRA.

Mr. Chatterjee, learned Advocate appearing for the petitioners submits that the prayer for voluntary retirement of the members of the association was considered and allowed prior to 1st of July, 2009, and, therefore, the appellate authority could not have directed the increased DA to be included while calculating the amount of gratuity payable to the employees who retired under the VRS Scheme.

Per contra, Mr. Ray Mukherjee, learned Advocate representing the private respondents submits that the Association with an oblique motive took a decision to increase the amount of DA after

the private respondents retired from service under the VRS Scheme. He submits that there is no basis for fixing the cut off date of 1st of July, 2009 for payment of increased DA.

Heard the learned Advocates for the parties and perused the materials placed.

Minutes of the 176th Meeting of the Council of Management held on 10th November, 2009. Agenda No.XI deals with proposal for increase in emoluments of IJIRA staff.

After going through the said Resolution this Court finds that the last salary scale of IJIRA were approved by the Council in its 174th Meeting held in August, 2008 and the salary of the individuals for the basic scale of salary, dearness allowance pay equivalent to 50 per cent basic and 47 per cent dearness allowance was made effective from 1st November, 2008. It further appears from the said Resolution that the only periodic increase has been in the dearness allowance which was fixed at 47 per cent in the 174th Meeting held in August, 2008. This Resolution further records that such DA was the same as the Central DA applicable with effect from 1st of July, 2008. It was further resolved that there shall be an increase of DA of 26 per cent effective from 1st of July, 2009. The reason for such increase in DA was on account of escalation in the price of all

types of commodities and the authorities felt that at least increase in DA should be allowed from 1st of July, 2009 for the staff of IJIRA.

It appears from the said Resolution that the earlier DA at the rate of 47 per cent was fixed one year back i.e. on 1st July, 2008 and the decision to increase the DA to 73 per cent with effect from 1st of July, 2009 cannot be said to be arbitrary exercise by the authorities in order to deprive the employees who retired under the VRS Scheme.

This Court, therefore, finds that the order of the appellate authority holding that the fixation of the cut off date of 1st of July, 2009 for increase of DA was to deprive the employees who retired under VRS Scheme calls for interference.

This Court, therefore, holds that the private respondents shall not be entitled to increase gratuity that was made applicable with effect from 1st of July, 2009. The order of the appellate authority stands modified only to that extent.

In the said supplementary affidavit affirmed on October 4, 2024 a tabular chart has been annexed. In the said chart the balance amount payable to the private respondents; the amount deposited with the High Court pursuant to an order dated 27th August, 2012; and the amount along with interest which was deposited in the Office of the

Assistant Labour Commissioner, Kolkata on 21st July, 2011 have been indicated in the said tabular chart.

The learned Advocate for the petitioner and the private respondents uniformly submit that in terms of the order passed by this Court the private respondents will be entitled to the amount as indicated under the column with the caption “Balance amount payable”.

It appears from the order dated 27th August, 2012 that the petitioners were directed to deposit the principal amount of gratuity as indicated in the order of the appellate authority with the learned Registrar General, High Court, Calcutta and the learned Registrar General was directed to deposit the same for short term fixed deposit in a nationalized bank.

Mr. Chatterjee, learned Advocate submits that pursuant to the said order the amount has already been deposited.

In view thereof, this Court directs the learned Registrar General to release the amount as indicated in the tabular chart as Annexure-‘S-1’ to the supplementary affidavit affirmed on October 4, 2024 to the private respondents together with interest accrued thereupon on the fixed deposits which were made pursuant to the order dated 27th August, 2012.

The balance amount, if any, lying in the deposit shall be paid to the writ petitioner Association.

The entire exercise shall be completed by the learned Registrar General within a period of four weeks from the date of receipt of a server copy of this order.

Mr. Ray Mukherjee, learned Advocate submits that the private respondents are entitled to interest in respect of the amounts lying in deposit with the Office of the Assistant Labour Commissioner, Kolkata for the period from the date of retirement under the VRS Scheme till the date of making such deposit with the Office of the Assistant Labour Commissioner.

Liberty is granted to the private respondents to make an application before the Controlling authority within a period of two weeks from the date of receipt of a server copy of this order. If such application is made, the controlling authority shall calculate and pay the amount with interest payable which the private respondents may be entitled to from the date of their respective retirement under the VRS Scheme till the 27th August, 2012 and after paying the said amount to the private respondents the balance amount shall be refunded to the petitioner Association. The entire exercise shall be completed by the controlling authority within a

period of four weeks from the date of making the application by the private respondents.

In the event the private respondents do not approach the Controlling authority within the time indicated hereinbefore, it will be open to the petitioner Association to approach the Controlling authority for refund of the amount which is lying in deposit with such authority.

With the above observations and directions, the writ petitions stand disposed of.

There will be no order as to costs.

Urgent certified copy of this order, if applied for, be given to the learned advocates for the parties on usual formalities

(HIRANMAY BHATTACHARYYA, J.)