Form No. J.(2)
Item No.31

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

HEARD ON: 03.09.2024 & 04.09.2024

DELIVERED ON: 04.09.2024

CORAM:
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

W.P.A. 17135 of 2019
Burn Standard Ex-Officers' Welfare Association-2022 & Anr.
Vs.
The Union of India & Ors.

Appearance:-
Mr. Debashis Kundu
Mr. Soumyen Dutta
Mr. Rajendra Nath Barik ....For the Petitioners

Mr. S.C. Prasad
Ms. Sarda Sha .....For the Union of India

JUDGMENT

(Judgment of the Court was delivered by HIRANMAY BHATTACHARYYA, J.)

1. The petitioner no. 1 is an Welfare Association of Ex-Officers' of Burn Standard Company Limited and the petitioner no. 2 is its General Secretary.
2. The instant writ petition has been filed by the Welfare Association being aggrieved by the non-payment of arrear salary for the period from January 01, 1992 to December 31, 1999 on the basis of 1992 pay-scale and non-payment of 1997 scale of pay as well as for non-payment of other statutory dues and allowances together with interest thereon.
3. It is not in dispute that the Burn Standard Company Limited (for short 'BSCL') had implemented the pay-scales of the year 1987 in all the Grades of

the officers of the said company. The pay-scales fixed with effect from January 1, 1992 were implemented on and from January 1, 2000 with payment of arrears.

4. The Government of India, Ministry of Heavy Industries and Public Enterprises, Department of Public Enterprises introduced a revised Voluntary Retirement Scheme (VRS) vide office memorandum dated May 5, 2000. The said scheme was subsequently, modified by an Office Memorandum dated November 6, 2021. The petitioners claim to have applied under the modified VRS scheme dated November 6, 2001 till March 31, 2002.
5. The petitioners have approached this Court alleging that the pay-scale of 1997 in BSCL was given effect to notionally with effect from January 1, 1997 and therefore, they are entitled to the arrear salary as per the 1997 pay-scale.
6. The writ petitioners further contend that as per the modified VRS scheme, *ex gratia* payment on the pay-scale of January 1, 1992 levels as increased by 50% was paid to the petitioners. The petitioners state that since the 1997 pay-scale was given effect to w.e.f. January 1, 1997, such *ex gratia* payment along with other benefits, which were paid to the writ petitioners under the modified VRS scheme is to be recalculated on the basis of the 1997 pay-scale and the amount based on such recalculation together with interest thereon is to be paid to the writ petitioners.
7. Mr. Kundu, learned advocate appearing for the petitioners refers to the VRS scheme dated May 5, 2000 and the revised modified scheme dated November 6, 2001 and submits that the Government of India, Ministry of Heavy Industries and Public Enterprises, Department of Public Enterprises by an

Office Memorandum dated February 28, 2002 clarified certain points, which were raised before the said authority.

8. By referring to clause 6 of the said office memorandum, Mr. Kundu would contend that the *ex gratia* payment has to be recalculated on the basis of the revised scales of pay as the revised scales of pay were made effective notionally with effect from January 1, 1997.

9. Mr. Kundu further refers to the order passed by the Hon'ble Supreme Court dated July 15, 2019 in Civil Appeal No(s). 5251-5254 of 2019 arising out of the proceeding initiated before the National Company Law Appellate Tribunal in support of his contention that the Hon'ble Supreme Court made it clear that the workmen and ex-employees will be entitled to avail the remedies as are available to them in law.

10. Mr. Prasad, learned advocate appearing for the Union of India disputed the contentions raised by Mr. Kundu. He raised an objection as to the maintainability of the writ petition at the instance of the Association. He further submits that the instant writ petition involves disputed questions of fact, which cannot be decided in a writ petition.

11. By referring to the order dated June 20, 2011 issued by the Government of India, Ministry of Railways (Railway Board) with regard to implementation of 1997 pay-scales, Mr. Prasad contended that the said pay-scales were directed to be implemented with effect from October 1, 2010 and it was clarified therein that no arrear would be payable for the period prior to October 1, 2010.

12. In reply, Mr. Kundu contended that Government of India, Ministry of Heavy Industries and Public Enterprises, Department of Public Enterprises

subsequently issued an Office Memorandum dated May 1, 2012 and submits that it is evident from the said Office Memorandum that 1997 pay-scale was directed to be adopted notionally with effect from January 1, 1997.

13. Heard the learned advocates for the parties and perused the materials placed.

14. The petitioner no.1 is an association registered under the West Bengal Societies Registration Act, 1961. The object of the said society is to look after the welfare of the ex-officers of BSCL. The instant writ petition has been filed by the registered association to espouse the cause of the members. To the mind of this Court, this writ petition at the instance of the registered association represented by its General Secretary is maintainable.

15. The issue involved in this writ petition is with regard to interpretation of the terms and conditions of the Voluntary Retirement Scheme and as to whether the members of the association are entitled to certain benefits as per the said scheme. In the considered view of this Court, the writ petition does not involve disputed question of fact, as argued by Mr. Prasad.

16. The petitioner/Association filed the writ petition claiming that some of their members, who applied under the Voluntary Retirement Scheme are entitled to arrears of salary for a certain period and for differential amount of *ex gratia* payment as per the 1997 pay-scale together with interests thereon.

17. In order to decide the said issue, it would be relevant to take note of the Office Memorandum dated May 5, 2000. In paragraph 3 (iii) of the said memorandum, it was specifically stated that *"Arrears of wages due to revision etc. will not be included in computing the eligible amount."* The said scheme was modified vide Office Memorandum dated November 6, 2001. Clause a)

thereof states that *"Ex-gratia payment in respect of employees on pay scale at 1.1.87 and 1.1.92 levels, computed on their existing pay scales in accordance with the extant scheme, shall be increased by 100% and 50% respectively."*

18. Clause 2 specifically states that all other provisions of the DPE guidelines dated May 5, 2000 are to continue.

19. It is not in dispute that the members of the petitioner association, who applied under the VRS scheme, as per the modified VRS scheme dated November 6, 2001 received the *ex gratia* payment as increased by 50% as at the relevant point of time, such employees were receiving pay at the pay-scales at January 1, 1992 levels.

20. In view of clause 2 of Office Memorandum dated November 6, 2001, paragraph 3(iii) of the Office Memorandum dated May 5, 2000, which deals with arrears of wages, shall continue to apply in the case of employees, who had applied under the VRS scheme.

21. Clause 6 of the Office Memorandum dated February 28, 2002 would be relevant for the purpose of deciding the issue involved in the instant writ petition for which the same is extracted hereunder:

"<u>OFFICE MEMORANDUM</u>

Subject : Voluntary Retirement Scheme/ Volunatry Separation Scheme for the employees of Public Enterprises.

The parameters on the basis of which the VRS could be formulated by the PSEs for their employees have been spel out in this Department O.M. of even number dated 5.5.2000 and 6.11.2001. However, there are certain points on which some more clarifications have been solicited by the PSEs as well as by the administrative Ministries/Departments. These points have been examined. The points raised as well as the clarifications thereon are given hereunder:

1. ***************	******************
2. **************	******************
3. *************	******************
4. ***************	*****************
5. ***************	*****************
6. Whether the payments made ex-gratia (with 50% increase), gratuity, leave encashment and pay arrears are recalculated in case pay revision would be allowed at latter date w.e.f. 1.1.97?	*Ex-gratia will be recalculated on the basis of revised scales of pay in case the revised scales of pay are made effective subsequently (actually with effect from 1.1.1997). The increased ex-gratia (50%) paid would also be adjusted. The other elements like gratuity, leave encashment etc. are to be paid as per the provisions of the relevant statutes and service conditions. These are outside the computation of ex-gratia on voluntary retirement.*
7. ********************	******************
8. ********************	******************
9. ********************	*******************

22. The point raised under clause 6 of the said Memorandum was whether the payments made as *ex gratia* with 50% increase, gratuity, leave encashment, pay arrears are recalculated in case pay revision would be allowed at a later date with effect from January 1, 1997. It was clarified that *ex gratia* will be recalculated on the basis of revised scales of pay in case the revised pay-scales are made effective subsequently (actually with effect from January 1, 1997).

23. It appears from the Office Order dated June 20, 2011 that the Government have decided that the 1997 scales of pay and other benefits for Board level, below Board level and non-Unionised Supervisors of Burn Standard and Company Limited may be implemented with effect from October 1, 2010 through Presidential Directive. Under clause 2(i) of the said Office Order, it was specifically stated that implementation of 1997 scales of pay will be

effective prospectively from October 1, 2010 for Board level, below Board level including NUS and no arrears would be payable for the period prior to October 1, 2010. The revised scales of pay was also given in a tabular chart in the said office order.

24. A Voluntary Retirement Scheme is nothing but an invitation to make an offer for voluntary retirement in terms of a scheme. An employee has the option either to opt for the said scheme or not. An offer for voluntary retirement made by an employee, if accepted, gives rise to a concluded contract between the employer and the employee. The relationship between the parties with regard to the Voluntary Retirement Scheme shall be governed by the provisions of the Contract Act. An employee opting to retire voluntarily in terms of a Voluntary Retirement Scheme shall be entitled to the benefits in terms of the said Scheme. VRS results in cessation of relationship between the employer and employee.

25. The Office Memo dated January 1, 2012 states that the Ministry of Railways being the administrative ministry in respect of BSCL may notionally adopt 1997 Pay Revision in BSCL w.e.f. January 1, 1997 and from September 15, 2010 on actual basis in terms of DPEOM dated June 25, 1999.

26. No material has been produced before this Court by the petitioner to show that the 1997 scale of pay was made effective actually w.e.f. January 1, 1997. In view of clarification given under Clause 6 of the Office Memo dated February 28, 2002 *ex gratia* will be recalculated on the basis of revised scales of pay in case the revised scales of pay are made effective actually w.e.f. January 1, 1997. Recalculation of *ex gratia* is not contemplated in case of notional adoption of 1997 pay revision in BSCL w.e.f. January 1, 1997. This

Court is, therefore, of the considered view that the clarification given under Clause 6 of the Office Memo dated February 28, 2022 cannot come to the aid of the petitioners.

27. As rightly argued by Mr. Prasad, the said Office Order dated 20.06.2011 relates to the existing employees and the employees, who retired under VRS cannot take advantage of the said Office Order to claim arrears on salary as per the 1997 scale of pay for any period prior to October 1, 2010.

28. The Office Memorandum dated May 1, 2012 cannot also come to the aid of the writ petitioners in case on hand as the same also relates to implementation of 1997 pay-scales for the existing employees and not to employees, who opted for voluntary retirement.

29. Clause (v) of the Office Memorandum dated May 1, 2012 specifically states that the issue of payment or not of arrears for 1997 pay revision may be decided on the basis of the financial position of the BSCL and as per the provisions under the Presidential Directive. There is nothing on record to show that any decision was taken to pay arrears of 1997 pay revision to employees, who opted for VRS under Office Memorandum dated November 6, 2001. The petitioners, therefore, cannot take advantage of the said Office Memorandum.

30. Since the Voluntary Retirement Scheme dated May 5, 2000 specifically states that arrears on wages due to revision will not be included in computing the eligible amount and such clause has not been superseded by the modified VRS scheme dated November 6, 2001, this Court is of the considered view that the petitioners cannot claim the benefits of 1997 pay revision.

31. In view thereof, this Court holds that the writ petitioners are not entitled to any relief. The writ petition accordingly, fails and the same stands dismissed.

32. There shall be however, no order as to costs.

33. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)

Pallab AR(Ct.)