IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2024

CORAM:

THE HONOURABLE MR. JUSTICE **D.BHARATHA CHAKRAVARTHY**

W.P.No. 49272 of 2006

The Management,
National Textile Corporation
(Tamil Nadu & Pondicherry)
Retail Marketing Division, Krishnasamy Mudaliar Road,
Kovai 1,
Represented by Deputy Manager Marketing. ... Petitioner

Vs.

1. The Secretary,
Bharathiyar Entyce Show Room Employees Federation,
Visvakarma Mazdoor Bhavan, 231 Shakthi Road,
Ganpathy, Kovai-651 006.

2. The Secretary,
National General Employees Union,
381, Anupparpalayam, Kovai -5.

3. The Secretary,
Entice Employees Trade Union,
29 Bajanai Koil Veedhi,
Asthinapuram, Chennai - 64.

4. The Secretary,
Entyce Show Room Employees Union,
Trichy.

5. The Secretary,
Bharathiyar Entyce Showroom Mazdoor Sangam,
Trichy.

6. The Presiding Officer,
Industrial Tribunal,
Chennai. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorari**,** to call for the records of the sixth respondent in I.D.No.20/2003, Industrial Tribunal, Tamilnadu, Chennai-104 dated 26.07.2006 and quash the same.

For Petitioner	:	Mr.R.Shivakumar for M/s.K.M.Vijayan Associates
For R1, R2, R4 & R5	:	Mr.V.Ajoy Khose
For R3	:	Dismissed vide Court order dated 30.09.2011
For R6	:	Tribunal

ORDER

This writ petition is filed challenging the award of the Industrial Tribunal, Chennai dated 26.07.2006 made in I.D.No. 20 of 2003.

2. The brief facts leading to the filing of this writ petition are that the workmen involved in the present dispute, being members of five different trade unions, were working in the showrooms as Showroom Managers, Senior Salesmen and Salesmen, etc. It is their case that up to the year 1993, their pay scales and those of the sales personnel in the yarn sales depot were the same. After 1993, these workmen working in the showrooms entered into 18(1) settlements with the management, and accordingly, their pay was periodically revised and fixed. However, those workmen working in the yarn sales depot did not enter into any settlement, and for them, the Central Government pay scales were adopted and the Central Dearness Allowance (CDA pattern) was adopted. This resulted in a pay anomaly between these workmen and the said persons. Therefore, the workmen waited for the expiry of the period covered under the settlement in the year 1996, and after December 1996, no settlement or wage revision was entered into between the workmen and the management, and as such, they raised the dispute.

3. The dispute was referred by the Government of Tamil Nadu for adjudication by the Industrial Tribunal, on the following question: "Whether

the demand of Unions that the Showroom employees shall be given basic pay, Dearness allowance and other benefits on par with the employees employed in the head office and Retail Marketing Division of N.T.C. (TN & P) is justified, If yes, pass appropriate orders."

4. After the reference, four of the trade unions filed claim petitions and one of the trade unions did not turn up and file a claim petition. In the claim petition filed by the different unions, it is specifically pleaded by them that the duties and responsibilities of the sales personnel in the yarn sales depots and that of the retail showroom are akin. On many occasions, the personnel have since been transferred, the personnel in the yarn sales depots were also roped in to work in the showroom, and the personnel in the showroom were also deputed to work under the yarn sales depots. The pay and the other allowances applicable to each of them are specifically pleaded.

5. The fact that it was similar up to the year 1993 is demonstrated in the claim statement. It is further stated that the procedure relating to disciplinary enquiry, etc., remained the same in respect of both sets of employees. Only

because some employees were treated on the scale of pay as per the Central Government scale, and for others, consolidated pay was given, and there was an anomaly in the pay. Therefore, it is the claim of the workmen that both of them, being workmen under the same management, namely the National Textile Corporation and both performing identical duties and responsibilities, there cannot be any discrimination in the matter of scales of pay, and therefore, they claim pay parity.

6. The claim was resisted by the National Textiles Corporation by filing a very detailed counter statement. The first portion of the counter statement only delineates the problem faced by the National Textile Corporation. It is pleaded that since different private entities were taken over by the National Textile Corporation, each set of employees came to the National Textiles Corporation with different service conditions, different wages, etc. At some point in time, to achieve uniformity, patterns were started to be followed and several commissions were also formed including the Joint Action Commission to achieve pay parity to all these employees. Wherever it was possible, the Corporation had also given the same. It is further stated that

disparity regarding many of the cadres arose on account of following two different patterns, namely the CDA pattern and IDA pattern.

7. As far as the present dispute is concerned, it is the specific pleading of the management in paragraph No.4 that, it is illogical to make a comparison between the work content of showroom employees and the work content of yarn sales depots. It is different and incomparable. Therefore, they submitted that when the pay has been revised based on the recommendations of the various committees for the various sets of workmen and when the case of the workmen involved in the dispute is not comparable to that of the salesmen who are in the yarn sales depots, the claim petition should be dismissed.

8. On the strength of the said pleadings, the parties went to Trial. On behalf of the workmen one K.Ravindran was examined as W.W.1 and Ex.W.1 to Ex.W.46 were marked. On behalf of the respondent Management one D.Mahendran was examined as M.W.1 and Ex.M.1 to M.9 were marked.

9. The Industrial Tribunal, after analysing the case of the parties, firstly took note that W.W.1 had got into the box and spoken about the fact that the duties and responsibilities of the showroom employees as well as those of the yarn sales depot employees were the same. There was no cross-examination and therefore his testimony remained uncontroverted. Further, the Industrial Tribunal considered the other evidence on record including the admission made by M.W.1 that at times, the showroom employees were also deputed to the yarn sales depots and vice versa, whenever exigencies of service arose. The Tribunal found that they were performing similar types of duties and responsibilities. Thereafter, the Tribunal found that the settlement in Ex.W.9 was entered into on 22.05.1998 and was in force up to 31.12.2000. Therefore, the Tribunal found that when the settlement entered into them was in force up to 31.12.2000 only for a period after that, (i.e. from 01.01.2001), the workmen would be entitled to the benefit of equal pay for equal work and accordingly answered the reference and allowed the claim of the workmen with benefits from 01.01.2001 with arrears and consequential benefits. Aggrieved by the same, the present writ petition is filed by the management.

10. Heard, Mr R. Shivakumar, the learned Counsel appearing on behalf of the petitioner management and Mr V.Ajoy Khose, the learned counsel appearing on behalf of the respondents 1, 2, 4 and 5.

11. The learned counsel appearing on behalf of the petitioner management firstly would submit that the findings of the Industrial Tribunal with reference to the parity of duties and responsibilities are perverse. It is the burden of the workmen to prove that the duties and responsibilities of the yarn sales depot employees as well as those of the showroom employees are the same. They had not discharged the burden at all. No evidence was produced before the Tribunal concerning the similarity of the duties and responsibilities. As far as the yarn sales depot employees are concerned, their job is technical and they should possess technical knowledge about the yarns, the quality of the yarns and the period in which it is manufactured are all very important for pitching the same for sales. Therefore, their duties and responsibilities were very different. Their qualification was also higher. Therefore, there cannot be any parity between the yarn sales depot employees and the workmen involved in the present dispute.

12. In support of his contention that, it is the burden on the part of the trade unions and the workmen, the learned Counsel for the petitioner management would rely upon the judgement of the Hon'ble Supreme Court of India in ***Punjab State Power Corporation Limited* vs. *Rajesh Kumar Jindal and others*[1],** more specifically relying upon paragraph No. 23 which reads as under:-

> *" 23. The burden of proof in establishing parity in pay scales and the nature of duties and responsibilities is on the person claiming such right. The person claiming parity must produce material before the court to prove that the nature of duties and functions are similar and that they are entitled to parity of pay scales. After referring to number of judgments and observing that it is the duty of an employee seeking parity of pay to prove and establish that he had been discriminated against, this Court, in SAIL, held as under: (SCC p. 131, para 22)*
>
> > *"22. It is the duty of an employee seeking parity of pay under Article 39(d) of the Constitution of India to prove and establish that he had been discriminated against, as the question of parity has to be decided on consideration of various facts and statutory rules, etc. The doctrine of "equal pay for equal work" as enshrined under Article 39(d) of the Constitution read with Article 14 thereof, cannot be applied in a vacuum. The constitutional scheme postulates equal pay for equal work for those who are equally placed in all respects. The court must consider the factors like the source and mode of recruitment/appointment, the qualifications, the*

1 *(2019) 3 SCC 547*

nature of work, the value thereof, responsibilities. Reliability, experience, confidentiality, functional need, etc. In other words, the equality clause can be invoked in the matter of pay scales only when there is wholesome/wholesale identity between the holders of two posts. The burden of establishing right and parity in employment is only on the person claiming such right. (Vide U.P. State Sugar Corpn. Ltd. V. Sant Raj Singh, Union of India v. Mahajabeen Akhtar, Union of India v. Dineshan K.K., Union of India v. Hiranmoy Sen, Official Liquidator v. Dayanand, U.P. SEB v. Aziz Ahmad and State of M.P. v. Ramesh Chandra Bajpai"

13. Further, it is the contention of the learned counsel for the petitioner management that the entire award is made only on the basis that the petitioner management did not cross-examine the W.W.1. The omission on the part of the management to cross-examine will not by itself a conclusive proof of whatever W.W.1 had deposed. The Industrial Tribunal ought to have appreciated the other evidence which are also on record, and ought to have come to the conclusion that there is no parity between the duties and responsibilities.

14. Alternatively, the learned counsel appearing on behalf of the petitioner management would submit that in any event, subsequently, pending the writ petition after the award was passed in the year 2006 and when the

stay was granted by this Court, all the 5 unions involved have entered into a settlement with the management, and all the workmen are covered under the 18(1) settlement dated 07.06.2011 which was arrived at between the parties. Once a settlement is arrived at, it is binding on all the parties to the settlement. The learned counsel would rely upon the judgment of this Court in ***C.Govindaraj vs Presiding Officer, Labour Court, Coimbatore and another***[2], more specifically paragraph No. 6 of the judgement. Once the wage settlement entered into by the parties is binding between the parties, then the workmen can no longer claim the benefit under the impugned award. Therefore, it is his second contention that given the subsequent development, the workmen will no longer be entitled to the benefits under the award. Therefore, this Court should record the subsequent settlement entered into between the management and the workmen and accordingly deny the benefits which are granted in the award.

15. Further, it is the contention of the learned counsel appearing for the petitioner that some of the workmen have also gone on voluntary retirement. When the voluntary retirement amounts to a golden handshake, atleast in

2 *2019 SSC Online Mad 6840*

respect of those employees who have gone on voluntary retirement, the award cannot be implemented. With their eyes wide open and with the available wage limits, they have entered into the contract with the management by acceding for cessation of service and as such, for those employees, the award cannot be applied.

16. The learned counsel for the petitioner would also place strong reliance on the judgement of the Hon'ble Supreme Court of India in ***Chairman-cum-Managing Director, National Textiles Corporation Limited and others*** Vs. ***N.T.C. (WBAB & O) limited Employees Union and others*** in case No. Appeal (Civil) 14572 of 1996, wherein the Hon'ble Supreme Court of India had considered in detail concerning the question of equal pay for equal work in the Corporation. The Hon'ble Supreme Court of India took notice of the unique position of the National Textile Corporation and also took notice of the fact that the Sathyan Committee was constituted by the management to allay the grievances of the workmen. While the Hon'ble Supreme Court of India held that the following of different patterns namely IDA and CDA patterns by itself would not justify the management in granting

two different pay scales, at the same time, it has found that the nature of duties of the staff of the two categories had been different, and therefore on the ground of equal pay for equal work, the workmen will not be entitled for the relief.

17. Per contra, Mr.V.Ajoy Khose, the learned counsel appearing on behalf of the workmen would submit that firstly, it can be seen in this case that, the workmen had categorically pleaded about the similarities in duties and responsibilities. In the proof affidavit filed on behalf of W.W.1, all the similarities about the duties are categorically pleaded. This apart, the workmen had also filed several documents in support of their claim. One such document is W.42, which is an award made in I.D.No.31 of 1995 on identical issues with reference to similarly situated employees. The said award was also confirmed by higher fora. To prove the disparity in salary, the salary slips of the workmen and the statement of incentives which are paid, are also marked.

18. He would submit that, therefore, when the witness who is examined on behalf of the workmen has spoken about the parity regarding the duties

and responsibilities and has also marked Ex.W.42 which considered the parity between the duties and responsibilities, the workmen have discharged their burden. The version of W.W.1 remains uncontroverted and the management did not cross-examine WW1. The workmen have cross-examined the management witness and have elicited answers in their favour, which were also taken into account by the Industrial Tribunal while passing the award. If it is the case of the management that the duties and responsibilities are incomparable, they did not let in any evidence whatsoever before the Tribunal. Therefore, in the instant case, when the management has not let in any evidence whatsoever opposing the claim of the workmen, the Industrial Tribunal rightly granted relief to the workmen.

19. He would further submit that as far as the 18(1) settlement which is subsequently entered into is concerned, it doesn't specifically mention anything about the award passed by the Industrial Tribunal. As of the year 2011, there was an order of interim stay which was operating and the vacant application which was filed by the workmen was pending. Citing the pendency of the proceedings, even the regular wage revision which was being

granted was also stopped. The workmen were all receiving the same wages from the year 2000 and even the regular wage revisions, which are periodically granted were also not granted. It is only under that context that the settlement was subsequently arrived at on 07.06.2011. That does not specifically, mention about the extinction of rights under the Award passed by the Industrial Tribunal. When the same is not expressly dealt with by the 18(1) settlement, then the subsequent 18(1) settlement cannot be pressed into service for the purpose of challenging the very award passed by the Industrial Tribunal.

20. The 18(1) settlement was entered into only as a temporary measure, pending the litigation before the Courts of law. When the workmen were driven to the wall by not even being given the regular benefits citing the long pendency of the litigation, then when the management, being an arm of the State, does not expressly mention the supersession of the Award in the 18(1) settlement, the 18(1) settlement cannot be put against the workmen. As far as voluntary retirement is concerned, the learned Counsel for the respondent would rely upon the judgment of the Hon'ble Supreme Court of India in

A.Satyanarayan Reddy and other vs. ***Presiding Officer, Labour Court and others***[3] more specifically, placing reliance on paragraphs 16 and 17 to contend that despite any accrued rights such as the benefits under the Industrial Tribunal award, unless the same is specifically mentioned in the Voluntary Retirement Scheme that the workmen will not thereafter claim, it should not be put against them. Therefore, he would submit that neither the subsequent Award nor the action of some of the employees retiring on voluntary retirement will in any manner affect the Award.

21. I have considered the rival submissions made on either side and have perused the material records of the case.

22. The following questions arise for consideration in this case:-

> 1. Whether the workmen involved in the present Industrial Dispute is entitled for relief in the matter of wages on the principles of equal pay for equal work and parity by comparing themselves to the employees of the yarn sales depot?
>
> 2. Whether the workmen will be disentitled to the

3 *(2016) 9 SCC 462*

relief given the 18(1) settlement dated 07/06/2011 entered into pending the writ petition?

3. Whether those of the workmen who voluntarily retired will be entitled for the benefit of the award?

23. **Question 1:** The workmen involved in the present dispute and the other employees with whom they are comparing themselves are employed under the same management. As per paragraph 15 of the judgement in ***Punjab State Electricity Board vs. Thana Singh and other***[4] to grant the relief, the following are the criteria which have to be looked into:

> *"15. For considering the equation of posts, the following factors had been held to be determinative:*
>
> *1.The nature and duties of a post;*
>
> *2. The responsibilities and powers exercised by the officer holding a post, the extent of territorial or other charge held or responsibilities discharged;*
>
> *3.The minimum qualifications, if any, prescribed for recruitment to the post; and*
>
> *4. The salary of the post (vide Union of India v. P.K. Roy)"*

24. In this regard concerning all four ingredients as stated above, there have been detailed pleadings of the workmen in the claim statements filed by

4 *(2019) 4 SCC 113*

the different unions in detail. In the claim statement filed by the two unions namely Showroom Employees Association and Showroom Mazdoor Sangam, from paragraph No. 9 onwards, the pleadings are made. It is stated that there are no recruitment rules prescribing qualifications for the post and the employees were recruited on a need basis. It is also stated that the duties and responsibilities are akin to each other. The pay up to the year 1993 including the dearness allowance, travel allowance etc., were compared. It is also further stated that the other conditions of service were similar. Similarly, in the claim statement filed by the National General Employees Union and the other union, the detailed pay structures are given from paragraph No. 19 onwards. The grounds are specifically mentioned. It is their specific pleadings that both these employees are similarly placed, and the action of not extending similar benefits is illegal. How the disparity arises is also demonstrated. As far as the counter affidavit is concerned, because the matter was pending before the BIFR at the relevant point of time, much stress is made in the counter affidavit about the different divisions being created by the N.T.C and different patterns which are followed and different benefits being granted under the pay commissions. Only in paragraph No. 44, it is pleaded that the work content of showroom employees and work content of yarn sales depots are different. Though the learned Counsel argues before the Court that even the qualifications in respect of both sets of employees are different, I see no such pleading before the Industrial Tribunal.

25. Even in the proof affidavit filed on behalf of the management, nothing is pleaded on behalf of the management. A short proof of affidavit containing only seven paragraphs was filed as evidence in support of the management. The management only marked nine documents. Those documents relate to a letter from N.T.C to the Director of Finance and Deputy Manager an order passed in the B.I.F.R, the present status of the showroom, the profit and loss account, a notification under the Minimum Wages Act, proceedings of the Labour and Employment Department, State of Tamilnadu and the total salary drawn by the employees etc. Therefore, it can be seen that there is no evidence on behalf of the petitioner management regarding the difference in duties and responsibilities or different qualifications.

26. The workmen had examined one K.Ravindran, who in his evidence

had categorically deposed in chief that both these categories of workmen are similarly placed and their salaries were the same up to the year 1993 and even the conduct and disciplinary rules and other department rules are similar. From paragraph No. 8 onwards in the proof affidavit, the averments that the duties and responsibilities are similar are made and the same remains uncontroverted. There is neither any cross-examination nor any other evidence that is brought on record.

27. In paragraph No. 10, the Industrial Tribunal took into consideration the various exhibits which have been marked to demonstrate the disparity in pay, and also to their entitlement. In paragraph No. 11, the Industrial Tribunal took into consideration the evidence let in by the management concerning the losses made in the showroom and that they intended to close the showroom. Because the evidence of the workmen remains uncontroverted, the Industrial Tribunal also took into consideration the admissions made during the cross-examination of M.W1. M.W.1 specifically admitted that up to 1993, there was pay parity between the yarn depot employees and the showroom employees. From the year 1993 onwards, only because they did not enter into any

settlement with the management, and they were granted the scales of pay as prescribed by the Central Government the disparity in pay arose. The Yarn depot employees had raised an Industrial dispute that the Central Government pay should be granted to them and the dispute ended in their favour.

28. It is also seen, that the Industrial Tribunal also considered the fact that on many occasions, the showroom employees were deputed to positions in the yarn sales depots and vice versa. The Industrial Tribunal specifically considered evidence given by W.W.1 in this regard and the fact that no cross-examination was done regarding the same. In that view of the matter, I am of the view that the Tribunal was right in appreciating the evidence that was let in by the parties and concluding that the employees of the yarn sales depot and the showroom were similarly placed and that, there was pay parity between them until the year 1993. Therefore, since there is disparity in pay, they were also entitled to equal pay for equal work, once the period of settlement between them ended with effect from 31.12.2000 and I uphold the finding of the Industrial Tribunal in this regard.

29. As far as the judgement relied upon by the learned counsel appearing on behalf of the management in ***Chairman-cum-Managing Director, National Textiles Corporation Limited and others*** Vs. ***N.T.C. (WBAB & O) limited Employees Union and others*** cited supra, the Hon'ble Supreme Court was considering the pay parity claim of the mill workers with that of the staff working in the corporate offices of the Mills. In that context, the Hon'ble Supreme Court of India had held that the nature of duties of the staff in the two categories was found to be not on par and therefore held that parity in pay scales may not be possible. Even in the said context, the Hon'ble Supreme Court of India had held that merely because two streams are followed namely IDA and CDA, that cannot be a basis for denying parity of pay scales. Therefore, the said judgement cannot be pressed into service in the instant case where the showroom employees (i.e.), the showroom where the cloth is sold are comparing themselves with another showroom/depot (i.e.), where the yarn is sold. Therefore, in the instant case, by appreciation of evidence when the Industrial Tribunal has found that the nature of duties and responsibilities are the same, the Judgment cited supra cannot be relied upon by the learned counsel for the petitioner management to come to a contrary

finding. On the other hand, if the said judgment is read on the whole, the Hon'ble Supreme Court of India has held that if the disparity is on account of following different streams it cannot be countenanced. Therefore, in the present case, only because they followed different remedies, (i.e) the workmen in the yarn sales depot did not enter into any 18(1) settlement and on the contrary, raised a dispute and immediately after 1993 that they should be given scales of pay as per the Central Government fixation and toed the said line, whereas the present workmen did not immediately tow the said line and were entering into wage settlements after 1993. But after the year 1997, they claimed parity with the Yarn Depot employees. Except for the same, when all the other factors are equal, I answer the question that the showroom employees are entitled to claim pay parity with at of the Yarn Sales Depot employees on the grounds of equal pay for equal work.

30. **Question 2:** There can be no quarrel over the proposition that a settlement entered into under Section 18(1) would be binding on all the parties who have entered into the settlement. However, it has to be seen that the award of the Industrial Tribunal was passed in the year 2006, and the

settlement is after that. The settlement does not contain any whisper whatsoever concerning the award of the Industrial Tribunal. The award of the Industrial Tribunal is that with respect to these categories of workmen, they should be granted the same pay scales as that of the similar post in the yarn sales depot. Whereas the terms of settlement entered into the year 2011 fixes a different scale of pay which is lower than that of the yarn sales depot workmen. In that regard, when the settlement is only after that of the Industrial Tribunal award when nothing is expressly mentioned about the foregoing of rights under the Award, it cannot be held that the subsequent settlement would override the very award itself. As contended by Mr.V.Ajay Khose, the learned counsel appearing on behalf of the workmen citing the pendency of the proceedings about the industrial dispute, when the workmen were denied even the normal wage revision that is based on the existing wages will have nothing to do with their claim of pay parity with that of the similarly placed employees, namely the yarn sales depot employees.

31. More specifically, the management is also an arm of the State and when the Industrial Tribunal has passed an award and when the challenge to

the same is pending before this Court and when both parties expressly abstained from mentioning about the Award passed by the Industrial Tribunal and their rights flowing from the same in the 18(1) settlement, then I am of the view that when it is not even mentioned in the settlement that the settlement is entered into by the parties and that they are forgoing their rights under the award of the tribunal, the same cannot be put against the workmen. Though pressed into service in the context of voluntary retirement, it is in this context the judgment of the Honourable Supreme Court of India in ***A.Satyanarayan Reddy and other*** vs. ***Presiding Officer, Labour Court and others*** cited supra has to be considered. In the said case, the Hon'ble Supreme Court of India was considering the entitlement of the employees who have gone into voluntarily retirement. The Hon'ble Supreme Court of India held that with reference to specific entitlements such as layoff compensation, subsistence allowance, etc., then unless an express clause is there in the voluntary retirement scheme, the same cannot be put against the employees who have gone in the voluntary retirement. Paragraph Nos. 16 and 17 of the judgement are extracted hereunder for ready reference.

"16. As has been laid down in Pritam Singh Gill, a claim pertaining to non-payment of suspension allowance could be agitated under the said provision in spite of the employee being dismissed from service. In A.K. Bindal, the two-Judge Bench has held that after acceptance of the scheme and availing of benefits under VRS an employee could not claim higher wages. The controversy was different. If the VRS had mentioned about the lay-off compensation, needless to say, the claim would have been covered and the amount received by the workmen would have been deemed to have been covered by the quantum of lay-off compensation. That is not the factual position. Therefore, the controversy that arose in Pritam Singh Gill and the dispute that emanated in A.K. Bindal are quite different. Hence, we are disposed to think that there exists no conflict between Pritam Singh Gill and A.K. Bindal.

17. We think it appropriate to say that though there is cessation of relationship between the employee and the employer in VRS but if it does not cover the past dues like lay-off compensation, subsistence allowance, etc., the workman would be entitled to approach the Labour Court under Section 33-C(2) of the Act. If it is specifically covered, or the language of VRS would show that it covers the claim under the scheme, no forum will have any jurisdiction."

32. In this case, even the 18(1) settlement which is entered into is somewhat akin to the same, when the workmen are entitled to specific

benefits under an award of the Industrial Tribunal then unless and otherwise the 18(1) settlement specifically disentitled the benefits of the award then the same cannot be put against them. Therefore, when the award of the Industrial Tribunal was prior in point of time and the management having obtained an order of stay and that the matter was pending before this Court and when any settlement with reference to the same is entered into, the same ought to have been specifically mentioned in the settlement itself. Otherwise, it could only be concluded that it is periodical wage revision without prejudice to their claim in the Industrial Tribunal to claim a higher scale of pay that is prescribed by the Central Government in respect of similarly situated employees. Accordingly, I reject the submission made on behalf of the management that the subsequent settlement for wage revision would disentitle the workmen from claiming the benefits flowing from the award of the Industrial Tribunal.

33. **Question No.3:** Though it is argued that the voluntary retirement scheme does not expressly mention the exclusion of the benefits of the award, no particulars are placed to plead about the date of voluntary retirement, the scheme, the number of employees who are governed under the scheme who

have gone on VRS and as such, this question cannot be decided in the absence of the same.

34. Having answered the question No. 1 to 2 in favour of the workmen, at the same time, this Court is also concerned with the pleadings made by the petitioner management that the management's financial position is in an extremely bad shape and that all the showrooms of the petitioner management were closed one after the other. Most of the mills had become sick and the workmen involved in the showrooms were also now kept idle, but at the same time the Corporation was not closed. The employees are being paid wages. Therefore that factor has also to be taken into account while granting arrears. While I agree that notionally all these workmen will be entitled to pay fixation on par with their counterparts in the yarn sales depot with effect from 01.01.2001 as awarded by the Industrial Tribunal. However, in the interest of justice, as far as the arrears payable by the management is concerned, I hold that the workmen will be entitled to 50% of the total arrears payable.

35. In view thereof, the writ petition is disposed of on the following terms:-

(i). The award of the Industrial Tribunal dated 26.07.2006 made in I.D.No. 20 of 2003 is upheld in as much as it orders equal pay for equal work based on pay parity for the workmen involved in the industrial dispute with effect from 01.01.2001, and it is also upheld that their pay should be fixed on par with their counterparts of the yarn sales depots from the said date and they will be entitled to all periodical increments and all other service benefits. However, regarding arrears alone, instead of the total arrears, they will be entitled to only 50% of the arrears.

(ii) The arrears of pay shall all be paid within four months from the date of receipt of a copy of this order.

(iii). No costs. Consequently, the connected miscellaneous petition is closed.

27.11.2024

Neutral Citation: Yes/No
nsl

To

The Presiding Officer,
Industrial Tribunal,
Chennai.

D.BHARATHA CHAKRAVARTHY, J.

nsl

W.P.No. 49272 of 2006

27.11.2024