

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-10458-2016
Date of Decision: 4th January, 2024

CONFED Haryana through its Managing Director
..... Petitioner

Versus

Presiding Officer, Industrial Tribunal and Labour Court, Chandigarh and
another
..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Jasmeet Singh Bedi, Advocate
for the petitioner.

Mr. Chanderdeep Singh, Advocate and
Mr. S.N. Pilania, Advocate
for respondent No.2.

HARSH BUNGER J. (ORAL)

1. Petitioner has filed the instant writ petition under Articles 226/227 of the Constitution of India seeking setting aside of impugned order dated 12.01.2015 (Annexure P-6) passed by the Presiding Officer, Industrial Tribunal & Labour Court, Union Territory, Chandigarh (hereinafter to be referred as 'the Tribunal'), whereby an application under Section 33-C (2) of the Industrial Disputes Act, 1947 (hereinafter to be referred as 'the 1947 Act') filed by Haryana CONFED Employees Welfare Union (Regd.) [hereinafter to be referred as 'the Union'] has been allowed and members of the Union have been held entitled to arrears of the revised pay scales from

the date of initial appointment.

2. Briefly, respondent No.2-Union submitted a charter of 26 demands upon the petitioner-Management on 09.02.1988, which were referred for adjudication to the Labour Court, U.T., Chandigarh; and out of the said 26 demands, two demands bearing Nos.2 and 3 were accepted by the Labour Court, U.T., Chandigarh vide award dated 04.09.1992 (Annexure P-1) by holding as under:-

“DEMAND NO.2:

..... The claim of the workman is that the helpers and salesmen who are appointed on consolidated salary should be paid the same wages which are paid to helpers and salesman appointed on regular pay scales. In this regard, the statement of MWI is enough to grant this relief to the duties of employees who are getting regular scale and other employees who are getting consolidated salary are same. Therefore, in my opinion, there should be no discrimination between the employees who are working against the same post and having similar nature of work. There is no reason that some of the employees should be paid consolidated regular pay scales. Therefore, demand No.2 is accepted.

DEMAND NO.3

..... After considering the respective contentions raised by the both the parties. I conclude that the employees of the Federation are entitled to revision in their pay scales w.e.f. 1.1.1986. Moreover it is not explained as to on what grounds the revision of pay scales have been adopted w.e.f. a later date. The reason of incurring losses given by the management is not at all relevant for the purpose of granting pay scales to the employees. The workman has placed on record a copy of the award passed by Mrs. Nirmal Yadav, Presiding Officer, Industrial Tribunal Labour Court, Gurgaon in ref.No.378 of 1998 between the workman and management of Haryana Dairy Development Corporation Federation, wherein the

learned Presiding Officer after considering the fact that revision in pay scales w.e.f. 1.1.1986 has also been granted to the employees of the Haryana State employees of Tubewell Corporation Haryana Urban Development Authority, Haryana State small scale industrial and Export Corporation Limited have granted the pay scales to the workmen of Haryana Dairy and Development Corporation Federation w.e.f. 1.1.1986. The act of the management is discriminatory and cannot be sustained. Therefore, it is held that the employees of the claimant union shall be entitled to revision of pay scales w.e.f. 1.1.1986.”

The aforesaid award dated 04.09.1992 (Annexure P-1) was challenged by the petitioner herein by way of filing a writ petition (CWP-536-1993), which came to be decided by this Court vide judgment dated 30.05.1996 (Annexure P-2), whereby the award of Labour Court, U.T. Chandigarh was modified to the extent that the employees of the Haryana State Federation of Consumer's Cooperative Wholesale Stores Limited were declared to be entitled to the revised scales of pay only w.e.f. 01.12.1989 instead of 01.01.1986; and subject to the said modification, the writ petition (CWP-536-1993) was dismissed. Subsequently, Intra Court Appeal (LPA-756-1996) filed against the aforesaid judgment dated 30.05.1996 (Annexure P-2) was also dismissed and even the Special Leave Petition filed before the Hon'ble Supreme Court was dismissed on 14.03.2005.

3. It appears that since the award of Labour Court, U.T. Chandigarh was not implemented, accordingly Contempt Petition (COCP-721-2005) was filed before this Court and the same was decided on 20.07.2006 with the following observations:-

“Alleging non-compliance of the aforementioned award of the judgments, this contempt petition has been filed.

In response to the show cause notice, the respondents have

come up with the plea that in the light of the award passed by the Labour Court, a self speaking order dated 16.3.2006, which has already been taken on record as Mark A, has been passed and all the monetary benefits arising out of the award have been released.

The aforesaid contention is however, disputed by learned counsel for the petitioners and it is argued that some of the consequential monetary benefits have yet not been released.

Conscious of the jurisdiction of a contempt court and not to permit the same to be converted into that of a Executing Court, this petition is disposed of with liberty to the petitioners to impugn that part of the order dated 16.3.2006 which according to them is not in consonance with the award passed by the Labour Court.”

A perusal of the above extracted observations would indicate that reference was made to the administrative order dated 16.03.2006 (Annexure P-3), wherein it was observed as under:-

“ - X - X -

Accordingly, the case was sent to the Advocate General Haryana for seeking necessary advice on 22.7.2005. Advice from the Advocate General Haryana was received on 19.8.2005 wherein it was advised that since the award dated 4.9.92 passed by the Labour Court has attained finality upto the Hon'ble Apex Court, the same is to be implemented in accordance with law, praying the arrears of salary to the workmen, which is found due to them while making meticulous compliance of the court orders. Accordingly, the matter was placed before the Board of Administrators in their meeting held on 14.10.2005 for consideration.

The Board of Administrators decided as under:-

“Matter may be referred to the State Govt. giving full facts, as the case had earlier also been referred to the Govt.”

Accordingly, the case was referred to the State Govt. The State Govt. has accorded the necessary approval on

6.12.2005.

The matter was again placed before the BOA in its meeting held on 17.2.2006 vide agenda item No.1. As per decision of the BOA, the case was moved to Haryana Bureau of Public Enterprises through DFS, Haryana vide this office letter No.298 dated 6.3.2006 for their concurrence. The HBPE vide their U.O. Letter No.1/6/2006/Asstt./HBPE(FD) dated 16.3.2006 has accorded necessary approval.

In view of approval of the HBPE, the Ex-salesmen who were on fixed salary are hereby allowed arrears on account of grant of regular pay scale from 4.9.92 to 19.2.97.”

A perusal of the above extracted administrative order would reveal that petitioner-Department allowed arrears on account of grant of regular pay scale from 04.09.1992 to 19.02.1997.

4. It appears that the aforesaid administrative order dated 16.03.2006 (Annexure P-3) came to be challenged by way of filing a writ petition (CWP-14808-2006) before this Court, however, the same was dismissed as withdrawn with liberty to file an application under Section 33-C (2) of the 1947 Act.

5. Thereafter, respondent No.2-Union filed an application under Section 33-C (2) of the 1947 Act, praying for a direction to the Department to pay arrears of salary in view of the award passed by the Tribunal, however, the same was dismissed by the Labour Court, U.T., Chandigarh vide order dated 13.09.2011 (Annexure P-4) by *inter alia* holding that the same was not maintainable. Subsequently, the said order was challenged before this Court by way of filing a writ petition (CWP-7729-2012), which was allowed by this Court and order dated 13.09.2011 (Annexure P-4) was quashed and the matter was remanded to Labour Court below for deciding the application under Section 33-C (2) of the 1947 Act afresh.

6. On remand, the Tribunal passed an order dated 12.01.2015

(Annexure P-6), whereby the application was allowed and following relief was granted:-

“10. In the light of findings on the issues above, this application is allowed. The workmen are held entitled to arrears of the revised pay scale from the date of initial appointment. The respondent is directed to calculate the arrears of the workmen and disburse the same within three months of receipt of this order. Appropriate Government be informed. Copy of this order be also sent to Learned District & Sessions Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.”

7. Being aggrieved against the aforesaid order dated 12.01.2015 (Annexure P-6), petitioner has filed the instant writ petition before this Court.

8. Learned counsel for the petitioner has submitted that the Tribunal has erred in law and fact while passing impugned order dated 12.01.2015 (Annexure P-6) and granting arrears of the revised pay scales from the date of initial appointment to the workmen. Learned counsel submits that the said relief is itself contrary to judgment dated 30.05.1996 (Annexure P-2) passed by this Court whereby award dated 04.09.1992 (Annexure P-1) was modified to the effect that the employees of the Haryana State Federation of Consumer's Cooperative Wholesale Stores Limited were declared to be entitled to the revised scales of pay only w.e.f. 01.12.1989 instead of 01.01.1986

Learned counsel for the petitioner further submits that the Tribunal while passing the impugned order dated 12.01.2015 (Annexure P-6) has also not complied with judgment dated 10.01.2013 (Annexure P-5) passed by this Court in CWP-7729-2012, whereby the

Labour Court was directed to decide all the issues raised by the parties before it, including sustainability of financial constraints as a defence plea.

With the aforesaid submission, learned counsel for the petitioner has prayed for setting aside of impugned award dated 12.01.2015 (Annexure P-6).

9. On the other hand, learned counsel for respondent No.2-Union has opposed the prayer made by learned counsel for the petitioner. During the course of arguments, learned counsel for respondent No.2-Union has conceded that the employees of petitioner-Department would be entitled to revision of pay scales in terms of order dated 04.09.1992 (Annexure P-1) as modified vide judgment dated 30.05.1996 (Annexure P-2) passed in CWP-536-1993, w.e.f. 01.12.1989. Accordingly, it is submitted that impugned order dated 12.01.2015 (Annexure P-6) be modified by directing that workmen would be entitled to arrears of revised pay scales w.e.f. 01.12.1989 onwards.

As regards the other submission made by learned counsel for the petitioner that Tribunal has not considered the defence of sustainability of financial constraints of the petitioner-Department, it is submitted that petitioner cannot take the said defence, being an instrumentality of the State.

With the aforesaid submissions, learned counsel for respondent No.2 has prayed that the instant writ petition be dismissed, subject to modification of impugned order dated 12.01.2015 (Annexure P-6).

10. I have heard learned counsel for the parties and perused the paper book with their able assistance.

11. As regards the contention of the petitioner that the Tribunal below has not considered its submission of financial constraints in granting the arrears of revised pay; it is observed that in case of **“Brij Mohan Lal v.**

Union of India", 2013(1) S.C.T. 633, Hon'ble Supreme Court had held that wherever the right which is being affected is a basic or a fundamental right, the State cannot be permitted to advance an argument of financial constraints in such matters.

In "*G.B. Pant University of Agriculture and Technology v. State of Uttar Pradesh*", 2000(4) S.C.T. 295, Hon'ble Supreme Court had made the following observations:

"10. Admittedly, Cafeteria employees need succour for livelihood - would they continue to remain half-fed and half-clad as long as they live - is this is the society that we feel proud of : Is this the guarantee provided by the founding fathers of our Constitution or is this the concept of socialism which they conceived ? None of the answers can possibly be in the affirmative. The situation is rather awesome and deplorable - the University by compulsion directs students to be residents of hostel with a definite ban on having food from outside agencies excepting under special circumstances and the provider of food, namely the staff of the Cafeteria ought not to be treated as an employee of the University - whose employees they are if we may ask and we think it would not be impertinent on our part to ask the same - is it the consumer of food ? Since when the consumer of food becomes the employer ? These are the questions which remain unanswered. The society shall have to thrive. The society shall have to prosper and this prosperity can only come in the event of there being a wider vision for total social good and benefit. It is not bestowing any favour to anybody but it is a mandatory obligation to see that the society thrives. The deprivation of the weaker section we had for long but time has now come to cry halt and it is for the law Courts to rise up to the occasion and grant relief to a seeker of a just cause and just grievance. Economic justice is not a mere legal jargon but in the new millennium, it is the obligation for all to confer this economic justice to a seeker. Society is to remain,

social justice is the order and economic justice is the rule of the day. Narrow pedantic approach to statutory documents no longer survives. The principle of corporate jurisprudence is now being imbibed on to industrial jurisprudence and there is a long catena of cases in regard thereto - the law thus is not in a state of fluidity since the situation is more or less settled. As regards interpretation widest possible amplitude shall have to be offered in the matter of interpretation of statutory documents under industrial jurisprudence. The draconian concept is no longer available. Justice - social and economic, as noticed above ought to be made available with utmost expedition so that the socialistic pattern of the society as dreamt of by the founding fathers can thrive and have its foundation so that the future generations do not live in the dark and cry for social and economic justice...”

12. In the instant case, there is no dispute about the fact that respondent No.2-Union had submitted charter of 26 demands, which was subject matter of adjudication by the Labour Court, U.T. Chandigarh; and vide award dated 04.09.1992 (Annexure P-1), two demands were accepted by the Labour Court, U.T. Chandigarh, whereby employees of the Union were held entitled to relief of pay scales w.e.f. 01.01.1986. It is also not disputed that award dated 04.09.1992 (Annexure P-1) was modified by this Court vide judgment dated 30.05.1996 (Annexure P-2) passed in CWP-536-1993, whereby employees of the petitioner-Department were declared to be entitled to the revised pay scales only w.e.f. 01.12.1989 instead of 01.01.1986. It is also not in dispute that the said order has been upheld up to the Hon'ble Supreme Court.

13. Furthermore, learned counsel for respondent No.2-Union has fairly conceded that in terms of judgment dated 30.05.1996 (Annexure P-2), employees of the petitioner-Department would be entitled to the revised pay scales w.e.f. 01.12.1989 onwards.

14. Keeping in view the aforesaid position, order dated 12.01.2015 (Annexure P-6) shall stand modified to the extent that the workmen would be entitled to the arrears of revised pay scales w.e.f. 01.12.1989.

15. The instant writ petition is dismissed with the aforesaid modification in order dated 12.01.2015 (Annexure P-6) passed by the Tribunal.

16. All pending application(s), if any, shall also stand closed.

4th January, 2024
Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No