Form No. J (2)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Smita Das De

MAT 2019 of 2023
IA NO: CAN/2/2023
CAN/3/2024

Union of India & Ors.
vs.
Supriyo Kumar Mondal & Ors.

For the Appellants	:	Ms. Chandreyi Alam, Advocate Mr. S. N. Dutta, Advocate
For the Respondents Petitioners	:	Mr. Swapan Dutta, Senior Advocate Mr. Anindya Lahiri, Senior Advocate Mr. Sambuddha Dutta, Advocate Ms. Pranati Das, Advocate
Heard on	:	18.03.2025
Judgment on	:	18.03.2025

DEBANGSU BASAK, J.:-

1. Appeal is at the behest of Union of India and directed against the judgment and order dated July 14, 2023 passed in W.P.A. 20201 of 2022.

2. By the impugned judgment and order, learned Single Judge, set aside the decision of the Under Secretary, Government of India dated November 2, 2021 and directed Union of India to release the benefits as per the recommendations of the 5th Pay Commission and other consequential benefits which the private respondents before us are entitled to as expeditiously as possible.

3. Learned advocate appearing for the appellants submits that, the learned Single Judge erred in issuing such direction. She points out that, the private respondents were employees of the National Instruments Limited (N.I.L). NIL became sick company and was referred to the Board For Industrial and Financial Reconstruction (BIFR) established under the Sick Industrial Establishment (Special Provision) Act, 1985 for revival.

4. Learned advocate appearing for the appellants submits that, since NIL was a sick company and was not making any profit, the recommendations made by the 5th Pay Commission were not applicable so far as the private respondents are concerned. She submits that, the recommendations of the 5th Pay Commission in respect of public sector undertakings which were not profit making were not applicable. Since NIL was a non profit making public sector undertaking at the relevant point of time, the employees of NIL were not entitled to the benefits of the 5th Pay Commission. She submits that, a section of employees of NIL were

extended the benefits of 5th Pay Commission erroneously. Immediately, on detection of such erroneous pay being disbursed by NIL appropriate authorities directed NIL not to do so.

5. Learned advocate appearing for the appellants submits that, the respondents cannot claim negative equality in the sense that, the respondents cannot seek pay parity with the other employees who were erroneously extended the benefits under the 5th Pay Commission more particularly when, such employees were not entitled to the same as NIL was non profit making public sector undertaking.

6. Learned advocate appearing for the appellants submits that NIL was subsequently transferred to Jadavpur University. Till the date of transfer, the Jadavpur University, NIL never made any profits for the recommendations of the 5th Pay Commission to be extended to the private respondents herein.

7. Learned Senior Advocate appearing for the private respondents submits that, issue as to the entitlement of the private respondents stood settled between the parties in the earlier rounds of litigation between the parties. He submits that, this issue was considered and settled in three writ petitions and appeals preferred against orders passed in such writ petition as also Special Leave Petition.

8. Private respondents approached the writ court by way of W.P.A. 20201 of 2022 seeking a direction upon the authorities to release the benefits as per the recommendations of 5th Pay Commission and other consequential benefits after setting aside and cancelling the order dated November 2, 2021.

9. The order dated November 2, 2021 of the Under Secretary of the Government of India who rejected the prayer of the private respondents for grant of the recommendations of the 5th Pay Commission.

10. Private respondents are employees of the NIL. At the relevant point of time NIL was a public sector enterprise. Issue as to whether, the employees of public sector enterprises were entitled to recommendations of 5th Pay Commission or not received consideration of the Hon'ble Supreme Court. Pursuant to the order of Hon'ble Supreme Court, Government of India appointed a High Power Pay Committee (HPPC), to consider the issue as to the applicability of the 5th Pay Commission to employees of public sector enterprises. HPPC gave its final report on November 24, 1998 recommending implementation of Central Government pay structure for the employees of all 69 Public Sector Enterprises including NIL which followed Central Dearness Allowance pattern. This report was taken into consideration by the Hon'ble Supreme Court which by its order dated May 3, 1990 issued directions for implementation of the HPPC report. In

compliance of such directives, Government of India issued memoranda dated June 12, 1990 and October 24, 1997 observing *inter alia* that the pay scale of employees of all 69 Public Sector Enterprises including NIL would be revised with effect from January 1, 1996.

11. NIL was declared a sick industrial company and a reference was made to the Board for Industrial and Financial Reconstruction (BIFR) for its rehabilitation. In such proceedings, a memorandum of settlement was arrived at on October 6, 1997, where, the employees in the best interest of revival of NIL agreed that the *status quo* in respect to existing pay scale would be maintained for a period of at least three years.

12. Pay Revision Committee of the Union of India observed that, irrespective of their financial position, public sector enterprises that applied central dearness allowance pattern would get benefits of the recommendations of the 5th Pay Commission.

13. Subsequent to such decision of the Pay Revision Committee NIL issued salary bills to the private respondents showing accrual of emoluments according to the recommendations of the 5th Pay Commission. Interim relief was also granted.

14. BIFR by an order dated November 12, 2002 held that, NIL was no longer viable and recommended its winding up. Against the recommendations for

winding up of NIL passed by the BIFR an appeal was preferred before the Appellate Authority for Industrial and Financial Reconstruction (AAIFR).

15. Calcutta University and Jadavpur University submitted proposals to the appropriate authority expressing desire to take over the assets and liabilities of NIL.

16. In a meeting held on June 24, 2005 a decision was taken to transfer NIL to Jadavpur University along with all assets and liabilities. It was also agreed that the Department of Heavy Industry would take the responsibility of all dues pertaining to the employees of NIL up to the last date.

17. Private respondents herein made a representation on July 6, 2006 claiming benefits of the revised pay scale. Such claim not being addressed, the private respondents filed a writ petition being W.P. 985(W) of 2007 which was disposed of by an order dated October 30, 2009 directing the appellants to reevaluate the grievance of the private respondents and reappreciate the same in light of the observations made in such order. The authorities passed an order dated April 9, 2010 rejecting the claim of the private respondents.

18. Decision dated April 9, 2010 was challenged by way of a writ petition being W.P.15173(W) of 2010. Such writ petition was disposed of by an order dated October 14, 2015 by directing the authorities to consider the

claim of the private respondents afresh strictly in light of the observations made in the judgment dated October 30, 2009 passed in W.P.985(W) of 2007.

19. Two appeals were directed against the order dated October 14, 2015. One was at the behest of the appellants herein while the other was by the employees. Appeal of the appellants was dismissed while the appeal of the employees were disposed of by the common order dated August 8, 2019. The appeal court directed the authorities to exercise its discretion in a proper and lawful manner and take a decision within the time period specified.

20. A Special Leave Petition directed against the order dated August 8, 2019 was dismissed on June 5, 2020.

21. Authorities passed an order dated November 2, 2021 negating the claim of the private respondents. This decision dated November 2, 2021 was made the subject matter of the writ petition in which the impugned order was passed.

22. In the impugned order learned Single Judge took into account the rival contentions of the parties including the liability, if any, of the appellants to pay the recommendations of the 5th Pay Commission as extended to the private respondents. Learned Single Judge found that the private

respondents are entitled to such benefits. Learned Single Judge gave reasons for the same.

23. We find from the records made available to Court that, private respondents were employees of NIL. At the relevant point of time benefits of the 5th Pay Commission were extended to Public Sector undertakings who were following the Central Dearness Allowance Scheme. NIL as a Public Sector Undertaking was doing so. This extension of benefit was notwithstanding the financial condition of the public sector undertakings concerned. The benefit of 5th Pay Commission as extended by the relevant authorities at the material point of time was also extended to a section of the employees of NIL.

24. Nothing is placed before us to suggest that, none of the private respondents are entitled to benefits of the 5th Pay Commission. Inability or lack of financial strength is canvassed as one of the grounds for non-payment.

25. With respect we are not in a position to accept that financial constraint can be put forward as a valid defence for non-payment of the 5th Pay Commission benefits that the private respondents are entitled to. Such benefits were extended by the relevant authorities, contemporaneously, irrespective of financial condition of the concerned public sector enterprise.

26. In such circumstances, we find no ground to interfere with the impugned judgment and order.

27. We direct the authorities to pay in terms of the impugned judgment and order dated July 14, 2023 and extend the period to comply with the same for a period of four weeks from date.

28. MAT/2019/2023 along with the connected applications are disposed of without any order as to costs.

(Debangsu Basak, J.)

29. I agree.

(Smita Das De, J.)

CHC/Dd