

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 28921 of 2008

Tapan Kumar Bose & Ors.

Vs.

National Jute Manufacturers Corporation Ltd. & Ors.

With

WPA 8178 of 2009

Arup Ratan Dutta & Ors.

Vs.

National Jute Manufacturers Corporation Ltd. & Ors.

With

WPA 1944 of 2011

Jibon Kumar Chatterjee & Ors.

Vs.

Union of India & Ors.

For the Petitioners : Mr. N.C. Bihani, Ld. Sr. Adv.
Ms. P.B. Bihani,
Mr. Soumya Mukherjee.

For the Union of India : Mr. Dibashis Basu,
Mr. Arun Bandyopadhyay.

For the N.J.M.C. Ltd. : Mr. Jaydip Banerjee,
Mr. Rahul Karmakar,
Mr. Surya Prasad Chattopadhyay.

For the Added Parties : Mr. Soumya Majumder, Ld. Sr. Adv.
Mr. Victor Chatterjee.

Hearing concluded on : 26.02.2025

Judgment on : 19.03.2025

SHAMPA DUTT (PAUL), J. :

1. The three writ applications have been preferred praying for direction upon the respondents to grant promotion to the petitioners from the date on which the juniors to the petitioners have been given promotion to Code 11 and also consider the petitioners for further promotion to the next higher code, which also have been granted to such employees in the meantime.
2. **The case of the petitioners in short is that:-**
 - i. The petitioners herein have been employed with the respondent no. 1 since the 1980's by reason of Section 3 of the said Act.
 - ii. The employees who were on the master roll of the said jute mills as on the date of nationalization were deemed to continue in service and deemed to be government employees. Subsequently, the NJMC Service Rules & Regulations, 1982 (hereinafter referred to as "the said Rules") was enacted which was applicable to all the employees of the said Corporation.
 - iii. In terms of the said Rules, the employees of the respondent No. 1 were categorized into three categories, namely, (i) Managerial; (ii) Supervisory; and (iii) Non-Supervisory.

- iv. These posts were further subcategorized into different codes from 1 to 15 and the non-supervisory category commenced from the last code, i.e. Code No. 15 upto Code No. 12 and the Supervisory Codes were limited to Code Nos. 10 and 11 and the Managerial Code Nos. were from Code Nos. 9 to 1.
- 3.** The petitioner's further case is that they have been working in Non-Supervisory Selection Grade being Code No. 12 SG(A) and all of them are entitled to promotion to Code No. 11 in the Executive Cadre.
- 4.** It is further stated that there are different unions in that the said Corporation and a Memorandum of Settlement was entered into by and between the respondent No. 1 and the representatives of the different unions on 19th May, 1989. Thereafter a supplementary Memorandum of Settlement was also entered into by and between them on 29th September, 1997.
- 5.** In response of several writ petitions made by the Union ultimately the Assistant General Manager (Personnel), the respondent No. 4 herein, considered the case of the employees working in the terminal pay-scale [12 SG(A)] and found that 41 such employees were entitled to promotion.
- 6.** After considering the same the respondent No. 4 gave his approval to the same and recommended that 50% of such cases may be

considered **according to seniority** but nothing was done about the promotion.

7. The petitioners state that five persons who are junior to the petitioners have been given promotion (out of turn) between the period of 28th August, 2001 and 1st September, 2002 by wrongfully superseding the petitioners.
8. It is the case of some of the writ petitioners herein that in **writ petition 19179(W) of 2003**, vide order dated 29.04.2004 the High Court directed the respondents to consider the case of the petitioners in that writ petition for promotion in accordance with the promotional policy in the memorandum of settlement between the parties.
9. The Court in **WPA 19179(W) of 2003** considered the plea of the respondent company of 'financial crunch' and pleas and directed vide order dated 29.04.2004 as follows:-

“.....The Petitioners herein have not rested their case solely on the basis of the Note-Sheet as mentioned above, but have challenged the very arbitrary action of the Respondent in the matter of giving promotion. It is also significant to mention here that in the Affidavit-in-Opposition filed on behalf of the Respondents, there is a categorically averment that promotion to the employees working in Code No. 12 has become over-due. There are clear instances of discrimination. In that view of the matter I hereby direct the Respondents to consider the case of the Petitioners and grant promotion in accordance with the promotional policy contained in the Memorandum of Settlement

arrived at by and between the parties. The Respondents shall complete the entire exercise of considering the case of the Petitioners in the manner as indicated above within a period of 3 (three) months from the date of communication of this order. The writ petition is thus allowed.

No order as to costs.

Urgent Xerox certified copy, if applied for, shall be supplied to the parties as expeditiously.”

10. As the respondents failed to do so, a **contempt application** was filed and by an order dated 30th September, 2008 the Court directed the respondents to comply with the order within a specified period.
11. **It is stated that the said writ petitioners therein have been accommodated by the respondents but the present writ petitioners in spite of being similarly placed and being senior to some of them have not been given the benefits and are being illegally and wrongfully deprived.**
12. **Affidavit-in-opposition has been filed by the respondent no. 1, the answering respondent in this case, whose case is that:-**
 - i. *In the year 2005 the company had announced a Voluntary Retirement Scheme. The said Scheme contained various benefits to be granted to the employees on acceptance of such scheme.*
 - ii. *In April, 2009 an Agreement was signed between the monthly Paid employees and accordingly both the clerks at the head*

office and the monthly paid employees of the Mill opted for the said Scheme and were relieved. They were all relieved with effect from 30.4.2009.

- iii. Most of the writ petitioners submitted their applications in the printed format accepting the said Voluntary Retirement Scheme.*
- iv. All the employees who retired voluntarily under the said scheme accepted all the dues which were payable to them under the said Scheme without raising any objection whatsoever and such payments were made by the Company to them.*
- v. It is stated that the said Scheme had been accepted by the writ petitioners as well as by the added respondents, they were paid all their dues in full and final settlement and were relieved from service absolutely and forever. The master and servant relationship between the parties herein ceased to exist and as such the writ petitioners are not entitled to the reliefs as prayed for herein.*

13. The respondent no. 1 further states that in the case of officers and non-unionized employees the pay scales are governed as per DPE guidelines. These guidelines did not provide for implementation of Industrial Dearness Allowance for the unionized non-supervisory employees. In the Agreement of 1997 as far as the implementation

of Dearness Allowance as per percentage Industrial Dearness Allowance is concerned is vague as there is no formula available. It is further stated that the order dated 29th April, 2004 passed in the other writ application (WP No. 19179(W) of 2003) covered only 21 employees.

- 14.** It appears that in spite of a note sheet placed by the Assistant General Manager (Personnel) it was not acted upon. The 21 employees who were party to the other writ application were given the benefit, but not on seniority. The respondent no. 1's contention is that they do not have sufficient financial assistance to consider the prayer for promotion of the writ petitioners herein.
- 15. The plea of "financial crunch" was duly considered in WP 19179(W) of 2003, and thus has no substance.**
- 16. The memorandum of settlement dated 24.09.1997** contains the following Clause:-

"V) Dearness allowance as per the Industrial DA percentage on Basic may be implemented in respect of the non-supervisory personnel in case the same is implemented in respect of the officers."

- 17. The VRS notice for officers of NJMC/respondent no. 1 dated 29th December, 2010 is as follows:-**

"The Union Cabinet in their meeting dated 25.11.2010 approved the following proposal:

"Grant of Composite Package of Revision of Pay Scales (92/97), which will be paid w.e.f. 01.04.2010,

VRS (on 97 Pay Scale) and arrears @ 40% may be offered for full and final settlement of dues of officers and executives in light of the judgments of Hon'ble High Court, Kolkata".

18. This decision was communicated to NJMC by the Ministry of Textiles (MOT) vide its letter No. 17.2.2010 JE dated 6th December, 2010.

19. In continuation to above the MOT vide their letter F.No. 17/2/2000-JE dated 10th December 2010 it was further clarified that:-

*"As per the cabinet decision, **the new salaries of the officers/executives (1997 Pay scale can be paid w.e.f. 1st April 2010.** The officers/executives, who were on roll from 1-1-92 shall be entitled to 40% arrears for the period from 1-1-92 to 31-12-1996 of 1992 Pay Revision and from 1-1-97 to 31-3-10 of 1997 Pay Revision."*

20. Thus the dearness allowance as per the industrial DA percentage on basic was implemented in respect of the officers and executive w.e.f. 1st April, 2010.

21. **From the above facts the following is evident:-**

- i. **The writ petitioners in WPA 19179 (W) of 2003 were granted promotion in accordance with the promotional policy contained in the memorandum of settlement as directed by the High Court vide order dated 29th April, 2004.**

ii. As per the memorandum of settlement, the non-supervisory personnel would be considered in case the same was implemented in respect of the officers.

iii. The officers and executives were given the benefits w.e.f. 01.04.2010.

22. The said materials on record, require that in the interest of justice, the benefit granted to the 21 employees as per direction of the High Court in WPA 1997(W) of 2003 dated 29.04.2004 and the officers and executives on and from 01.04.2010, be also extended to all the writ petitioners and the added respondents herein in the three writ petitions being WPA 28921 of 2008, WPA 8178 of 2009 and WPA 1944 of 2011.

23. The writ petitions stand disposed of with the direction that the Respondents shall grant promotion to all the petitioners and the added respondents herein who qualify as per rules, in accordance with the promotional policy contained in the Memorandum of Settlement arrived at by and between the parties, within a period of 3 (three) months from the date of communication of this order.

24. The writ petitions being WPA 28921 of 2008, WPA 8178 of 2009 and WPA 1944 of 2011 are allowed.

25. All connected applications, if any, stand disposed of.

- 26.** Interim order, if any, stands vacated.
- 27.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

[Shampa Dutt (Paul), J.]