

(2015) 10 CAL CK 0026
In the Calcutta High Court
Case No : W.P. No. 15173 (W) of 2010

Amar Kumar Barik and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 14-10-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2015) 10 CAL CK 0026

Hon'ble Judges : Tapabrata Chakraborty, J.

Bench : Single Bench

Advocate : Swapan Kumar Dutta and Anindya Lahiri, for the Appellant

Final Decision : Disposed Off

Judgement

Tapabrata Chakraborty, J.—The instant writ application has been preferred challenging, inter alia, an order dated 9th April, 2010 passed by the respondent No. 3.

2. Shorn of unnecessary details, the facts are that the petitioners were employees of National Instruments Limited (hereinafter referred to as NIL). Pursuant to the directives issued by the Hon'ble Supreme Court on 14th March, 1986, the Government of India appointed a High Power Pay Committee (hereinafter referred to as HPPC) which gave its final report to the Government of India on 24th November, 1988 recommending implementation of Central Government pay structure for the employees of all the 69 Public Sector Enterprises including the NIL following Central Dearness Allowance (hereinafter referred to as CDA) pattern and upon consideration of the same the Hon'ble Supreme Court ultimately delivered the judgment on 3rd May 1990 issuing directions for implementation of the said HPPC report and in compliance of such directives, the Government of India, Ministry of Programme Implementation, Department of Public Enterprises (hereinafter referred to as DPE) issued memoranda dated 12th June, 1990 and 24th October, 1997 observing, inter alia, that the pay scales in respect of employees of all the 69 Public Sector Enterprises

including the NIL would be revised with effect from 1st January, 1996. NIL was, however, declared a Sick Industrial Company on a reference to the Board for Industrial and Financial Reconstruction (hereinafter referred to as BIFR) and after protracted discussions and negotiations between the management of NIL and Unions for rehabilitation, a memorandum of settlement was arrived at on 6th October, 1997 and the employees, in the best interest of revival of NIL agreed that the status quo in respect of existing pay scales would be maintained for a period of at least 3 years. Regarding treatment of sick enterprises, the Pay Revision Committee, inter alia, observed that irrespective of their financial position the Public Sector Enterprises that followed the CDA pattern would get the benefit of the recommendations of the 5th Central Pay Commission as per orders of the Hon"ble Supreme Court. Subsequent thereto, NIL issued salary bills to the petitioners showing accrual of emoluments according to the recommendations of the 5th Pay Commission and interim relief was granted. In the midst thereof, the BIFR by an order dated 12th November, 2002 concluded that the NIL was not likely to become viable on long term basis and that it be wound up. Against the said order an appeal was preferred. Subsequent thereto, the Calcutta University and Jadavpur University submitted their individual proposals to the Department of Heavy Industry expressing the desire to take over their assets and liabilities of NIL and that in a meeting held on 24th June, 2005, decision was adopted to take over the assets and liabilities of NIL by Jadavpur University and the Department of Heavy Industry agreed to take the responsibility of all the dues pertaining to the employees of NIL up to the last date. Subsequent thereto, a representation was made on 6th July, 2006 claiming the benefit of revised pay scales. It was categorically pointed out by the petitioners that employees similarly situated who had retired/resigned under Voluntary Retirement Scheme had been disbursed their dues of the revised pay scales and that they are entitled to the similar benefits. Since such claim of the petitioners was not attended to by the respondents, the petitioners were constrained to prefer an application under Article 226 of the Constitution of India being W.P. No. 985 (W) of 2007 and the same upon contested hearing was disposed of by a judgment dated 30th October, 2009 directing the respondents to re-evaluate the grievance of the petitioners and to re-appreciate the same in the light of the observations made in the said judgment. The respondent No. 3 thereafter passed an order on 9th April, 2010 rejecting the petitioners' claim.

3. Mr. Dutta, learned advocate appearing for the petitioners submits that about 500 CDA employees were given the benefits of pay revision as recommended by the HPPC which were akin to the benefits recommended by the 5th Pay Commission. Only 33 employees including the petitioners have been denied the benefits of pay revision. An invidious discrimination had been meted out to the petitioners by denying them the benefits as per 5th Pay Commission recommendations, though such benefits had been given to the employees who have retired in the normal course or under the Voluntary Retirement Scheme and who had resigned and/or died with effect from 1st January, 1996.

4. He further submits that the impugned order dated 9th April, 2010 has not been passed in the light of the observations as made in the judgment dated 30th October, 2009 passed in W.P. No. 985 (W) of 2007 and hence the impugned order dated 9th April, 2010 is unsustainable in law.

5. In support of his contention, Mr. Dutta has drawn the attention of this Court to the following observations made by this Court in the judgment dated 30th October, 2009:

I. This Court finds it difficult, if not impossible, to brush aside the grievances as ventilated on behalf of the writ petitioners regarding alleged discrimination. It is true that there cannot be any equality amongst unequals. But so far the present case is concerned, I find it difficult to hold that the present writ petitioners stand on a footing different from those who had been given the benefits, which are now being claimed by the writ petitioners. Another very significant aspect is that the concerned organization has always been consistent in keeping provision for such benefits in the budget assessment.

II. The plea of absence of any direct role cannot be raised in order to permit the respondent to wash its hands off when there is clear discrimination. Article 14 of the Constitution does not, perhaps, allow the State to raise that plea and having regard to the fact that a good number of employees standing on the identical footing have been given the benefits of the recommendations of the 5th pay Commission, it would not be just and proper on the part of the State respondents to deny the same to the present writ petitioners.

III. Our laws do not permit the authority to act arbitrarily and extend benefits to a section of employees while denying the same to others.

IV. The contradictions are essentially non-antagonistic in nature.

6. According to Mr. Dutta, the respondents in the impugned order admits that pay revision benefits as per HPPC recommendation akin to the recommendations of the 5th Pay Commission were given to the CDA pattern employees of NIL who have resigned/retired/died. The re-evaluation and/or re-appreciation of the grievances of the petitioners cannot lead to a conclusion which is different from the conclusion reached by the Hon''ble Court that the petitioners stand on an identical footing with the employees who have been given the benefits and that there is discrimination. The authority has consciously remained silent about the observations of the Hon''ble Court which are nothing but absolute findings and have attained finality.

7. Drawing the attention of this Court to the contents of the affidavit-in-opposition filed by the Union of India in the earlier writ application and the impugned order dated 9th April, 2010, Mr. Dutta submits that the respondent No. 3 herein has relied upon circulars dated 11th December, 2006 and 14th October, 2008 and has taken new grounds to justify its action and has rejected the petitioners'' claim by observing that the benefit cannot be extended to the

petitioners, who were the employees of NIL, considering the poor financial condition of the institution and that for extension of such benefit, the government has to bear additional burden.

8. He further submits that the impugned order has been passed without considering the findings as arrived at by the Court in the earlier judgment and that the said order being derogatory to the directives contained in the judgment dated 30th October, 2009 is not sustainable in law. In support of such contention reliance has been placed upon the judgment delivered by the Hon"ble Supreme Court, in the case of Aneesh D. Lawande and Another Vs. The State of Goa and Others, .

9. Per contra, Mr. Mukhopadhyay, learned advocate appearing for the Union of India submits that the onus of implementation of Pay Commission report for CDA employees to the PSUs lies on the Administrative Department. Mere circulation of the Pay Commission report does not tantamount to the approval of the administrative ministry for its implementation.

10. He further submits that the Government of India cannot provide the budgetary support for the employees of CDA pattern giving the effect of the 5th Pay Commission in the case of sick PSUs who cannot meet the additional burden of pay revision from their own internal generation. Doing so, a flood gate will be opened for the other sick PSUs whose employees are also not getting the pay revision by the budgetary support of Government of India. The policy of uniformity towards all sick PSUs cannot be maintained if only the employees of CDA pattern in NIL is paid the benefits of 5th Pay Commission.

11. He further submits that the benefits of 5th Pay Commission extended to any employee and consequential payment was wrongly done at the end of the disbursing authority by mistake and such a mistake cannot confer any right of the petitioners to avail similar benefits. In support of his argument, Mr. Mukhopadhyay placed reliance upon the judgment delivered in case of A.K. Bindal & Ors. -vs- Union of India & Ors.

12. According to him, a perusal of the judgment dated 30th April, 2009 would reveal that the Court did not arrive at any specific finding as regards the petitioners' entitlement and left the matter to be re-evaluated and re-appreciated by the respondents.

13. He further submits that the instant writ application is barred by the principles of res-judicata inasmuch as the issues sought to be agitated in the instant writ application were directly and substantially in issue in the earlier writ application.

14. In support of such contention, Mr. Mukhopadhyay has placed reliance upon the following judgments:

a) Devilal Modi, Proprietor, M/s. Daluram Pannalal Modi Vs. Sales Tax Officer, Ratlam and Others, .

b) Gulabchand Chhotalal Parikh Vs. State of Bombay (Now Gujarat), .

15. He further submits that the order dated 9th April, 2010 is supported with cogent reasons and has been passed in terms of the specific directions given by this Court and in the facts and circumstances of the case there is no cause for interference and the writ application is liable to be dismissed.

16. In reply, Mr. Dutta submits that no reliance can be placed on the judgment delivered in the case of A.K. Bindal (Supra) inasmuch as the said judgment was not found to be applicable to the facts of the case by the Court in the earlier judgment dated 30th October, 2009.

17. I have heard the learned advocates appearing for the respective parties and I have considered the materials on record.

18. A close perusal of the judgment dated 30th April, 2009 reveals that the Court arrived at a specific finding to the effect that the legitimacy of the petitioners' demand cannot be any longer in dispute and that the recommendations of the 5th Pay Commission vis-a-vis the HPPC report have been implemented with effect from 1st January, 1996 in respect of all other employees under CDA scale except the petitioners.

19. The respondent No. 3, however, while passing the order impugned dated 9th April, 2010 did not grant appropriate weightage to the categorical findings as arrived at by this Court in the earlier writ application. The Court in its earlier judgment had negated the argument on behalf of the Union of India to the effect that even if benefits of pay revision have been extended to other employees of NIL and to the employees who availed voluntary retirement, the Government of India had no role to play towards such disbursement of benefits and the same was a calculated, conscious and designed act and was an intra-family arrangement made with an ulterior motive. Such explanation as given by the respondent No. 3 is unsustainable in view of the specific findings arrived at by this Court that the plea of absence of any direct role cannot be a defence when there is a clear discrimination.

20. A perusal of the order impugned reveals that the respondent No. 3, prior to consideration of the petitioners' claim inconsonance with the directives contained in the earlier judgment of this Court, was nurturing a mindset to reject the petitioners' claim and such predetermined intent has been sought to be fortified by incorporating fresh reasons and by placing reliance on new circulars. Furthermore, through the averments made in the affidavit-in-opposition filed in the instant writ application, the respondents have attempted to incorporate fresh grounds and to provide fresh reasons in support of the order impugned. It is well settled that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise (see paragraph 8 of the judgment delivered in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, .

21. Admittedly, the respondents did not file any appeal against the judgment dated 30th October, 2009 passed in W.P. No. 985 (W) of 2007 and that as such the issues decided amongst the parties therein cannot be reopened and the same have attained finality. The respondent No. 3 has made a desperate attempt to reopen the said issues and the order passed thereafter, in derogation to the directives contained in the earlier judgment of this Court, is unsustainable in law.

22. In the instant case the authority was under an obligation to act within the limits as defined by the Court in its earlier judgment upon arriving at a categorical finding that discrimination has been practised by the respondents but while passing the impugned order the respondent No. 3 went beyond the tethers and rejected the petitioners' claim.

23. Any order passed by an authority in defiance of the directives contained in the earlier judgment of this Court and the consequential wrong perpetrated by the respondents should not be permitted to hold good.

24. The respondent No. 3 has stated that the extension of benefit was a mistake committed by the authorities and such mistake and wrong does not confer any right upon the petitioners. Identical plea was taken by the respondents in course of hearing of the earlier writ application and the Court had turned down such plea and the same plea cannot be resurrected for rejecting the petitioners' claim. Such action on the part of the respondents is absolutely arbitrary warranting interference of this Court.

25. I do not find any substance in the argument of Mr. Mukhopadhyay that the instant writ application is barred by the principles of res judicata inasmuch as the cause of action towards preference of the instant writ application is the order dated 9th April, 2010 passed by the respondent No. 3 and is different from that of the earlier writ application.

26. The argument of Mr. Mukhopadhyay to the effect that the conferment of the benefits to the petitioner would open a floodgate is also not acceptable to this Court. The same appears to be an argument of desperation. Only because, there is a possibility of floodgate litigation, the valuable right of a citizen cannot be permitted to be taken away.

27. For the reasons discussed above the impugned order dated 9th April, 2010 passed by the respondent No. 3 is not sustainable in law and the same is, accordingly, set aside and quashed.

28. The said respondent No. 3 is directed to consider the petitioners' claim afresh strictly in the light of the observations made in the judgment dated 30th October, 2009 passed by this Court in the writ application being W.P. No. 985 (W) of 2007, upon granting an opportunity of hearing to a representative of the writ petitioners and to pass a reasoned order and to communicate the said order to the said representative of the petitioners.

29. The entire exercise should be completed by the said respondent within a

period of 12 weeks from the date of communication of this order.

30. With the above observations and directions, the writ application is disposed of.

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

32. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.