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**(2002) 02 GAU CK 0049**

**In the Gauhati High Court**

**Case No :** Writ Appeal No. 380 of 2001 and 31 of 2002 in Civil Rule No. 6507 of 1998

Bongaigaon Refinery and Petrochemicals Ltd. and Others

APPELLANT

Vs

Praveen Choudhury and Others

RESPONDENT

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**Date of Decision :** 28-02-2002

**Acts Referred:**

**Citation :** (2002) 1 GLT 358

**Hon'ble Judges :** R.S. Mongia, C.J.;Aftab H. Saikia, J

**Bench :** Division Bench

**Advocate :** K.N. Choudhury, D.K. Das, A. Baruah, M.B. Sarma and C. Choudhury, for the Appellant; P.K. Goswami, A.C. Borbora, R. Borbora and B. Chakraborty, for the Respondent

**Final Decision :** Dismissed

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## Judgement

R.S. Mongia, C.J.—This judgment and order will dispose of both Writ Appeal No. 380 of 2001 and Writ Appeal No. 31 of 2002, filed by the Bongaigaon Refinery and Petrochemicals Ltd. (for short, BRPL) and the Union of India, respectively, challenging the judgment and order passed by the learned Single Judge, dated 16.2.2001 in Civil Rule No. 6507 of 1998.

2. We have heard Mr. K.N. Choudhury, learned Counsel for the Appellants in W.A. No. 380/2001 and Mr. C. Choudhury, learned Sr. Central Govt. Standing Counsel for the Appellant in W.A. No. 31/2002, as well as Mr. P.K. Goswami, learned Counsel appearing for the Respondents in both the appeals.

3. Dehors of any details suffice it to mention that the BRPL issued an office order on 31.3.92 adopting the IDA pattern of pay scales etc. in respect of their Executives. The opening paragraph of the said order reads as under:

In pursuance of the DPE's OM No. 2(43)/90/DPE/(WC) dated 12th June, 1990, following scales of pay, Dearness Allowance and perks/perquisites in IDA pattern have been approved by the Government of India for adoption in BRPL.

4. Paragraph 1.4 of the said office order, which is relevant for the purpose of this case, was in the following terms:

1.4. The Executives who are in CDA scales of pay on implementation of HPPC recommendation shall have the option to switch over to IDA pattern and related scales of pay and such option can be exercised from a date not earlier than 1.1.89.

5. On 8.7.92 option was sought from the Executives whether they wish to opt for switchings over to IDA pattern of pay scales. The letter reads as under: -

In terms of the Clause 1.4 of the Office Order No. PER 5.30.00 dated 31.3.92, the Executives who are presently governed by HPPG pay scale, can exercise their option to switch over to IDA pattern and related scales of pay from a date not earlier than 01.01.89.

You are, therefore, requested to kindly exercise your option (irrevocable) if so interested, within 9th August, 1992 in the prescribed format. After expiry of the above time limit exercising of option will be permitted only from a prospective date and in such cases prospective date will be reckoned from January or July of the calendar year. Thanking you.

6. It would be seen from the aforesaid letter that if an Executive had opted for IDA pattern of pay scale upto 9th August, 1992, the same would be effective from 1st January, 1989, as per paragraph 1.4 of the order dated 31.3.1992, already reproduced above. However, if options were given any time after 9th August, 1992, the effective date of conversion into IDA pattern of pay scales would be January or July of the calendar year in which the options were exercised. The IDA pattern would be effective from January of the calendar year if the option is exercised anytime between January to June of the calendar year and if the option is exercised between July and December of the calendar year, the effective date would be July of that calendar year.

7. It may be observed here that vide circular dated 20.8.92, the BRPL extended the date "9th August, 1992" to "24th August, 1992."

8. The writ Petitioners (now Respondents) gave their options in August, 1996. However, they mentioned in the options that the switching over to IDA pay scales should be from 1st July, 1991. The reason why they mentioned "1st July, 1991", need not be gone into here. This prayer was rejected on the ground that no order/instructions issued by the BRPL allowed any conversion to IDA pay scale retrospectively if the options had been made after 24th August, 1992.

9. When the matter was sent by the BRPL to the Government of India, a similar stand was taken by the Government of India that no retrospective effect could be given to the options which were made after 24th August, 1992. This led the writ Petitioners (now Respondents) to file the writ petition, i.e., Civil Rule No. 6507 of 1998, in this Court. For reasons, which we need not go into, the learned Single Judge allowed the writ petition, vide judgment and order dated 16.2.2001, and

held that the writ Petitioners (now Respondents) would be entitled to the conversion to IDA pay sales with effect from December, 1996, and not from 1st of July, 1991, as claimed by them.

10. Two appeals had been filed, i.e., Writ Appeal No. 380/2001 (filed by the BRPL) and Writ Appeal No. 31/2002 (filed by Union of India), as indicated above.

11. We have heard the learned Counsel for the parties. The only case put forth by the learned Counsel for the Appellants is that the options which were given by the writ Petitioners (now Respondents) were conditional in nature, i.e., they wanted the conversion to IDA pattern of pay scales with effect from 1.7.91, and not prospectively. This, as per the circulars of the BRPL as also of the Government of India, could not have been allowed retrospectively, as claimed by the writ Petitioners (now Respondents) and, as such, it was argued, there was nothing wrong in rejecting such a prayer of the writ Petitioners.

12. Of course, the Appellants were right in rejecting the claim of the writ Petitioners to give retrospective effect to the conversion to IDA pattern of pay scales from 1.7.1991, inasmuch as, they had opted for the same after 24.8.1992 (they had opted in August, 1996). As per the letter dated 8.7.92, read with paragraph 1.4 of the office order dated 31.3.92, retrospective effect from 1.1.89 could only be given if the Executives had opted for conversion into IDA pay scales upto 24th August, 1992. However, the same circulars go to the extent that if it has not been done upto 24th August, 1992, then it will be either from January or July of the calender year in which the options are given. This right of the writ Petitioners at least to get conversion prospectively from January or July of the year in which they had opted, was not taken away by any circular or office order. According to us, the learned Single Judge was right that at least from the calender year in which they had opted, they were entitled to conversion into IDA pay scales. It would have been a totally different case if after 1992 and before the writ Petitioners had opted, the right to give option had been taken away, which, as observed above, was not done.

13. For the foregoing reasons, we find no merit in these appeals, which are hereby dismissed.

14. Learned Counsel for the BRPL has stated that the directions of the learned Single Judge would be carried out within three months from today. On this statement of the learned Counsel for the Appellants, learned Counsel for the Respondents (writ Petitioners) stated that the counsel for the parties will make a joint request before the learned Single Judge hearing the contempt petition to adjourn the case till after three months.