(2003) 09 JH CK 0023

In the Jharkhand High Court

Case No : C.W.J.C. No. 3436 of 1999 (R)

Dr. Krishna Kumar and Others — APPELLANT

Vs

Union of India (UOI) and Others — RESPONDENT

Date of Decision : 15-09-2003

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2003) 4 JCR 729

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : M.S. Anwar and Altaf Hussain, for the Appellant; P.K. Prasad, Senior Standing Counsel Central Government for Respondent Nos. 1 and 2, Anil Kumar Sinha and R. Mukhopadhaya, for the Respondent

Judgement

Tapen Sen, J.—The petitioners, in the instant case, have prayed for an appropriate direction upon the respondent No. 3 (Heavy Engineering Corporation, Ranchi) to implement and pay to them the revised pay scale inclusive of clearness allowance, non-practicing allowance and other benefits; in respect of Medical Officers following the Central Dearness Allowance pattern with effect from 1.1.1996 as per the recommendation of the 5th Pay Revision Commission. The petitioners have also made a prayer to give interim reliefs admissible to them i.e., the Medical Officers of the Heavy Engineering Corporation (hereinafter referred to as "the Corporation") with effect from 16.9.1993, 1.4.1995 and 1.4.1996. They also seek for issuance of a writ of mandamus so that the respondents pay them the arrears of dearness allowances for the period 1.7.1997 to 31.12.1998.

2. The petitioners are all doctors of the Corporation who are appointed prior to 1.1.1989 and some of them, as has been pleaded in para 5, are on the outskirts of their service career, and would soon superannuate. They further state that they are governed by the Central Government Pay Scales following the C.D.A. pattern and accordingly, they have made a grievance that the respondent

authorities have not allowed them those scales which they should be given and which is drawn by other Central Government Employees following the said C.D.A. pattern.

3. Mr. M.S. Anwar, learned Senior Advocate appearing on behalf of the petitioners heavily relied upon the judgment of the Hon''ble Supreme Court of India in the case of Jute Corporation of India Officers'' Association Vs. Jute Corporation of India Ltd. and Another, , and submitted that the respondent-Corporation should strictly abide by the directions given by the said Apex Court. That judgment has been brought on record by Annexure 1 to the writ application.

4. Apart from the aforesaid facts, Mr. Anwar also submits that the Medical Officers of the Corporation became entitled to revision of their pay scales in the year 1996 itself but such entitlement has remained an empty formality and the respondents have not responded to their lawful grievances, which, according to Mr. Anwar, is so very integral to their service condition. Mr. Anwar further relies upon the decision of the Board of Directors taken in its 233rd meeting and from Annexure-10, it will be evident that while discussing the matter in relation to revision to Scales of Pay with effect from 1.1.1996 of the Medical Officers on CDA pattern, the Board took certain other decisions. The resolution has been quoted in Annexure 10 and the same is also reproduced hereinbelow :--

"Item No. 5 : Revision of Scales of pay w.e.f. 1.1.1996 of Medical Officers on CDA Pattern.

Board discussed the matter and accorded its approval to the revision of scales of pay of Medical Officers on CDA pattern as explained in the note. Board, however, desired that all legal aspects may be examined before implementation of the same. Board also desired that so far as payment of arrears etc. in respect of pay revision of Medical Officers was concerned, it should be at par with other Executives of the Company.

Director (Personnel) mentioned that keeping parity with the other Executives of the Company, only Basic Pay, D.A. HRE and NPA will be paid as per the revised scales. These and other perquisites may be revised as and when Company''s financial conditions permits to be applicable for all employees. He further added that after implementation of the wage revision in respect of Medical Officer on CDA pattern, there will be wide disparity in the emoluments of Medical Officers on CDA pattern and other Executives of the Company.

Board desired that effective steps may be taken to gradually reduce this disparity by having new incumbents of IDA pattern."

5. However, upon perusal of the aforementioned resolution, there is an indication that the Company''s financial condition was not conducive for purposes of releasing the payments and accordingly, it was decided to be reviewed as and when financial condition permitted them to do so. This aspect cannot be ignored taking into consideration the statements made in the counter affidavit also,

where the respondent authorities have very specifically and categorically stated and referred to the financial crunch of the Corporation in various paragraphs without specifically denying the entitlement of the petitioners.

6. In the backdrop of the aforementioned facts, the only question that therefore falls for consideration before this Court is as to whether a Government Company which is limping under financial stress and strain can nevertheless be whipped by a. judicial order to go on paying revision of wages to its employees. Such a question fell for consideration again before the Hon''ble Supreme Court of India as recently as in the year 2003 in the case of the Officers and Supervisors of I.D.P.L. v. Chairman & M.D. I.D.P.L. and Ors. 2003 (5) SC 157.

7. The judgment of the Apex Court in the case of the I.D.P.L. (Supra) took into consideration the earlier judgment which was heavily relied upon by Mr. Anwar and which was brought on record vide Annexure-1 to this writ application. The recent judgment of the Hon''ble Supreme Court of India in the case Of I.D.P.L. (supra) referred to above, the three paragraphs which are relevant to be quoted are paragraphs 7, 8 and 11 and they are being reproduced below :--

"7. In the above background, the question which arises for consideration is whether the employees of public sector enterprises have any legal right to claim revision of wages that though the industrial undertakings or the Companies in which they are working did not have the financial capacity to grant revision in pay-scale, yet the Government should give financial support to meet the additional expenditure incurred in that regard.

8. We have carefully gone through the pleadings, the annexures filed by both sides and the orders passed by the BIFR and the judgments cited by the counsel appearing on either side. Learned counsel for the contesting respondent drew out attention to a recent judgment of this Court in A.K. Bindal and Another Vs. Union of India (UOI) and Others, , in support of her contention. We have perused the said judgment. In our opinion, since the employees of government companies are not government servants, they have absolutely no legal right to claim that the Government should pay their salary or that the additional expenditure incurred on account of revision of their pay-scales should be met by the Government. Being employees of the companies, it is the responsibility of the companies to pay them salary and if the company is sustaining losses continuously over a period and does not have the financial capacity to revise or enhance the pay-scale, the petitioners, in our view, cannot claim any legal right to ask for a direction to the Central Government to meet the additional expenditure which may be incurred on account of revision of pay-scales. We are unable to countenance the submission made by Mr. Sanghi that economic viability of the industrial unit or the financial capacity of the employer cannot be taken into consideration in the matter of revision of pay-scales of the employees.

11. In our view, the economic capability of the employer also plays a crucial part in it; as also its capacity to expand business or earn more profits. The contention

of Mr. Sanghi, if accepted, that granting higher remuneration and emoluments and revision of pay to workers in other governmental undertakings and, therefore, the petitioners are, also entitled for the grant of pay revision may, in our opinion, only lead to undesirable results. Enough material was placed on record before us by the respondents which clearly show that the first respondent had been suffering heavy losses for the last many years. In such a situation the petitioners, in our opinion, cannot legitimately claim that their pay scales should necessarily be revised and enhanced even though the organization in which they are working are making continuous losses and are deeply in the red. As could be seen from the counter affidavit, the first respondent company which is engaged in the manufacture of medicines became sick industrial company for various reason and was declared as such by the BIFR and the revival package which was formulated and later approved by the BIFR for implementation could not also be given effect to and that the modifications recommended by the Government of India to the BIFR in the existing revival package was ordered to be examined by an operating agency and, in fact, IDBI was appointed as an operating agency u/s 17(3) of SICA. It is also not in dispute that the production activities had to be stopped in a major two units of the company at Rishikesh and Hyderabad w.e.f. October, 1996 and the losses and liabilities are increasing every month and that the payment of three instalments of interim relief could not also be made due to the threat of industrial unrest and the wage revision in respect of other employees is also due w.e.f. 1992 which has also not been sanctioned by the Government of India."

8. At paragraph 8, their Lordships have very categorically stated that being, employees of the Government Company, it is the responsibility of that Company to pay them but if the Company continues to sustain loss year after year and does not have the financial capacity to revise or enhance the pay-scale, them those employees cannot claim any legal right to ask for a direction to the Central Government to meet the additional expenditure which may be incurred on account of revision of pay-scales. At paragraph 11, their Lordships have further stated that the economic capability of the employer also plays a crucial role and, in the opinion of this Court also, economic capability of the employer becomes a relevant yard stick for purposes of adjudication of such cases. In the background of what has been stated and quoted above, this Court is unable to issue any writ of mandamus in the nature as prayed for by the writ petitioners, save and except to record that no sooner financial crunch/difficulty improves, the respondents authorities shall do the needful in accordance with law.

9. With the aforesaid observations, this writ application is disposed off.

