

(2016) 01 OHC CK 0075
In the Orissa High Court
Case No : O.J.C. No. 12760 of 1998

General Secretary, N.T.P.C. Power Workers Union and Others	APPELLANT
Vs	
Chairman-Cum-Managing Director, National Thermal Power Corporation and Others	RESPONDENT

Date of Decision : 19-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Factories Act, 1948 — Section 51, Section 54, Section 55, Section 56
Industrial Disputes Act, 1947 — Section 18, Section 9
Thermal Power Station (Acquisition and Transfer) Act, 1994 - S

Citation : (2016) 2 LLJ 621

Hon'ble Judges : Biswanath Rath, J.

Bench : Single Bench

Advocate : S.K. Mishra, P.K. Mohapatra and S.S. Sahoo, for the Appellant;
Jayanta Das, Sr. Advocate, B.S. Tripathy, N. Sarkar, D. Ray, J. Sahoo, H. Sahu,
J.K. Misra and J.P. Patnaik, for the Respondent

Final Decision : Partly Allowed

Judgement

Biswanath Rath, J.—1. Petitioner- the NTPC power workers Union along with another have filed the writ petition seeking direction for quashing of Clauses 2.1, 2.2 & 2.3 of Annexure-12 relating to pay scale and placement of workmen/employees in the N.T.P.C, pay scale after declaring the aforesaid clauses as illegal and further to quash the orders under Annexure-14 & 15 so far those relate to doing away with earlier conditions of services touching the working hours, holidays and pensionary benefits of the employees of T.T.P.S as existed under Annexures-2, 3 & 1 respectively, further issuing a mandamus directing the opposite party Nos. 1 & 2 to allow the employees/workmen of T.T.P.S. with the benefits of the revised scale of pay which came into force on 1.4.1995 as appearing vide Annexures-5 & 6. Further directing the opposite party Nos. 1 & 2 to continue with the advantageous service condition of the employees/workmen of the Talcher Thermal Power Station herein after called as T.T.P.S relating to

pension, working hours and holidays as delineated under Annexures-1, 2 & 3 and also quashing the MOU under Annexure-17 and the settlement under Annexure-18 after declaring those as illegal.

2. The facts as narrated in the writ petition and submitted during course of argument by the petitioners are that the Talcher Thermal Power Station hereinafter called and referred as T.T.P.S. was earlier an unity of erstwhile Orissa State Electricity Board hereinafter called as OSEB. All its employees/Workmen were the employees of OSEB and were also governed by the Service Conditions maintained by the OSEB establishment. In the meantime, the T.T.P.S. got vested with National Thermal Power Corporation hereinafter referred to as N.T.P.C on 3.06.1995. The employees of the T.T.P.S. were governed by the Orissa Electricity Board Employees Pension (including old age and family pension) Regulation, 1992 in short 1992 Pension regulation. The working hours of these employees were also prescribed by the Office Order No. 15141 dated 10.09.1974 (Annexure-2). Similarly, the holidays due and admissible till 2.6.1995 were laid down by Office Order dated 9.12.1994 as appearing under Annexure-3.

3. While the matter stood thus, the Government notified the Talcher Thermal Power Station (Acquisition & Transfer) Act, 1994 in the Orissa Gazette Extra Ordinary on 10.07.1995 and vide notification dated 1.06.1995 as per the provisions of the Act namely Section 3, T.T.P.S. stood transfer and vested with the State Government and similarly as per the Section 5 (1) read with Department of Energy Notification dated 1.06.1995 T.T.P.S. got vested with N.T.P.C, the opposite party No. 1 with effect from 3.06.1995. The petitioners further claimed that the OSEB got abolished on 31.03.1996 and was replaced by the GRIDCO on 1.04.1996 on coming into force of Orissa Electricity Reforms Act, 1995 and thus contended that had there been no vesting with the opposite party No. 1, the employees of the T.T.P.S. would have continued as OSEB employees and later on they would have become employees of GRIDCO.

4. In the meantime, by the Office order dated 10.03.1998 issued by the GRIDCO, wage structure/pay scale of the GRIDCO employees, who were the regular employees of the erstwhile OSEB, got revised on 1.04.1995. By office order dated 21.04.1998, the GRIDCO made it clear that the pay revision benefits are also extended to the T.T.P.S. employees of the erstwhile OSEB who were on its role as on 1.04.1995.

5. It is next contended by the petitioners that while the position stood thus during July, 1998, the petitioners came to know from variety of sources that the opposite parties have managed to reach a memorandum of understanding with NTPS Men's Congress Union relating to change of service conditions of the workers and employees of T.T.P.S compelling the petitioner No. 2 making a representation on 21.07.1998 protesting against such attempt of the Management. The Assistant Labor Commissioner intervened in the matter and called the General Secretaries of five unions for a joint discussion on 4.08.1998 where all the Unions were requested for copy of the MOU signed on 22.06.1998

in order to find out whether the service conditions delineated therein are more advantageous or not. The copies of MOUs were not supplied to them, consequently, on 4.08.1998 all the five Unions made a protest alleging unfair attitude of management and the matter remained undecided. In the meantime, instead of supplying copy of MOUs, the ALC, Angul supplied a copy of comparable statement on allowances, advances and facilities. It is alleged by the petitioners that the comparable statements remained silent on the scale of pay, number of holidays as well as difference of work.

6. The attempt of the Unions for supply of original documents got failed, which again followed with the representations dated 10.08.1998 & 12.08.1998. In the meantime, even though several other meetings were conducted involving the petitioners but there was no improvement in the matter. On the other hand, the petitioners were surprised to receive an Office Order dated 21.08.1998 issued by the opposite party No. 2 altering many service conditions of the employees/workmen of T.T.P.S. to their disadvantage. While the matter stood thus, on 25.08.1998, the opposite party Nos. 1 & 2 published a new holiday list in a clear contrast to the holidays in force vide Annexure-3. Similarly, on 28.08.1998 a new working hour schedule was circulated by the opposite party No. 2 (Annexure-15) altering the earlier schedule in force (Annexure-2). The petitioners again submitted a representation on 28.08.1998 to the opposite party No. 2 drawing his attention to the Section 11 of the Talcher Thermal Power Station (Acquisition & Transfer Act) 1994 in short hereinafter called as the Act, 1994 and it was not responded.

7. Referring to Section 11(1) of the Act, 1994, the petitioners contended that the action of the opposite parties in the matter of scale of pay, working hour, holiday schedule as well as pensionary benefits remained contrary to the provision contained therein and there is a deliberate ignorance of the protection contained in Section 11(1) of the 1994 Act by the Management.

It is under these premises, the petitioners contended that the action of the opposite party-management in the matter of vital areas like pay scale, pension, hours of working, number of holidays and other service conditions have been altered to the disadvantage of the employees and in clear violation of the Section 11(1) of the 1994 Act. Consequently, the petitioners also sought for declaration of settlement as well as the MOU as bad for its remaining contrary to the protection granted to the employees/workmen U/s. 11(1) of the Act, 1994 and taking shelter of this provision contended that there was no question for putting the employees/workmen to a position disadvantageous to the benefits, they were already in enjoyment.

8. Taking resort to the amended provision of Section 18 of the Act, 1994, the petitioners-Union contended that in view of the specific provision contained therein, reading with the provision contained in Section 11 of the Act, 1994, the Settlement as well as MOU arrived at in the meantime since remain to the disadvantage of the employees/workmen are all invalid and cannot be

enforceable.

It is based on the aforesaid averments, claims, justifications and further relying on the decisions in the cases in between Oswal Agro Furnas Furarie Ltd. Vrs. Oswal Agro Furarie Workers Union as reported in , AIR 2005 SC 1555, H.L. Trehan & Others Vrs. Union of India & Others, as reported in , AIR 1989 SC 568, Rashmi Ranjan Srichandan & Others Vrs. Principal-Cum-Secretary, Sri Jayadev College of Education & Technology & Others as reported in , 2000 (I) OLR 255, Whirlpool Corporation Vrs. Registrar of Trade Marks as reported in , AIR 1999 SC 22, Dr. Bal Krishna Agarwal Vrs. State of Uttar Pradesh & Others as reported in , 1995 (1) Scale Page-29, Sri Sanjay Mishra, learned counsel for the petitioners contended that the writ petition is maintainable in spite of availability of the alternate remedies on the premises of long pendency of this case before this Court, claimed for a decision in the matter by this Court in exercise of Power under Article 226 of the Constitution of India rather than pushing them to the Industrial Adjudication after keeping the matter pending here for more than 17 years. Petitioners also justified their claim on maintainability of the writ petition on the basis that their case can be decided purely based on Section 11 of the Act, 1994 and without taking resort to the provisions of the I.D. Act, 1947.

9. Even though, in the writ petition the petitioners challenge the action of the management referring the provision contained in Section 9 of the Industrial Dispute Act but considering the long pendency of the litigation in this Court and finding that their case can be determined taking into consideration the provision at Section 11 of the Act, 1994 the petitioners, abandoned their submissions on the challenges involving the Industrial Dispute Act and confined their arguments as well as the claims only referring to the provisions of the Section 11 of Act, 1994.

10. Per contra, by filing a preliminary counter affidavit as well as notes of submissions supported with affidavit, the opposite parties contended that a settlement on the core issue is already arrived at in course of a conciliation proceeding under the provisions of Industrial Dispute Act, 1947 hereinafter called as the Act, 1947, the disputes raised herein is for an Industrial Adjudication and as such the petitioners are estopped from raising the present disputes by way of a writ petition under Article 226 of the Constitution of India, the writ petition as a whole is not maintainable.

The opposite parties further submitted that the settlement being a tripartite settlement, it not only bind the Union participated in the settlement but also binds all the workmen and it is in this circumstance, requested for not entertaining the writ petition and directing the petitioners to take recourse to the Dispute Redressal Mechanism provided under the I.D. Act, 1947.

11. In answering to the submission of the petitioners that in view of the provisions contained in Section 18 of the Act, 1994 taking away the effect of the settlement under Section 18 of the I.D. Act, the opposite parties through their

Senior Counsel contended that the stipulation therein clearly mandates that the provisions under the T.T.P.S. Act or the Act, 1994, they have effect notwithstanding anything inconsistent therewith contained in The Code of Civil Procedure, 1908, The Transfer of Properties Act, 1882 or The Registration Act, 1908 or in any other State Laws for the time being in force and any instrument have effect by virtue of any of the said laws other than this Act and consequently, the provision of the Act 1994 do not over ride any Central law or in any instrument having effect by virtue of the said laws and therefore the tripartite settlement dated 20.08.1998 arrived in course of conciliation is binding on all including the petitioners.

12. During course of argument, considering the submission of the petitioners that they do not take resort to the provisions contained in the Industrial Disputes Act and confine their argument only based on the materials available on record and the provisions contained in the Act, 1994, the opposite parties during course of argument also dropped their question on the maintainability of the writ petition.

13. Coming to the allegations in respect of pay scale, working hour, holidays as well as pension as agitated by the petitioners, the opposite parties contended that the T.T.P.S. vested with NTPC with effect from 03.06.1995 in terms of Section 10 of the Act, 1994, all the employees on the regular role of power station on 03.06.1995 stood absorbed in the services of NTPC as per Section 10(2) (a) of the Act, 1994. All such employees are to be governed by the rules and regulations of NTPC in force from time to time. As per section 11 of the Act, 1994, such employees absorbed in the NTPC were/are required to hold office and render services under NTPC on the same terms & conditions, same right and privileges as to pension, gratuity, leave and other matters as applicable to them immediately before such vesting till their remuneration and other conditions of service as a package are duly altered by the corporation to their advantage. The opposite parties further contended that by virtue of memorandum of settlement dated 20.08.1998 arrived between the management of NTPC and their workmen represented through NTPC Men's Congress Union in course of Conciliation Proceeding, the remuneration and other conditions of services of such workmen observed in the NTPC as a package have been duly altered by the NTPC to their advantage with effect from the date of signing of the memorandum of settlement on 20.08.1998. Challenging the status of the petitioners-Union at the time of settlement the opposite parties contended that the process for verification of membership of Trade unions was conducted in terms of Rule 13 of The Verification of The Membership and Recognition of Trade Union Rules, 1994 and the petitioner union was excluded in terms of rule 13 of the said rule as by the time the verification took place the petitioner union had not completed a year in NTPC, consequently the NTPC Men's Congress Union being the Union having majority support of workmen submitted 18 point charter of demand in the year 1997 including a demand on service condition of workmen. A Memorandum of Understanding was ultimately signed involving the change in the terms and

conditions of service of workmen of TTPS to the advantage of the workmen as a package on 22.06.1998 between the management of NTPC and the aforesaid recognised union. The MoU was placed before the Assistant Commissioner, Angul and the Assistant Labour Commissioner, Angul on his intervention in the matter noticed the rest five registered unions for a meeting on 04.08.1998 in his office. The Assistant Labour Commissioner admitted an industrial dispute on 18 points of charter of demand submitted by the recognized union on 10.08.1998 and notices were accordingly issued to the recognized unions as well as the management to appear in the conciliation proceeding. Consequently, the notices were also issued to the rest five registered Unions to contact NTPC management for clarification and for their intimating the development to the Assistant Labour Commissioner by 13.08.1998. Along with the said letter, a copy of comparable statement indicating the benefits proposed to be extended as a package with effect from 03.06.1995 was also forwarded to all five registered Unions. It is in the said process the settlement dated 20.08.1998 (Annexure-18) arrived as a package and to the advantage of the employee/workmen, the settlement is in vogue. The subsequent office memorandum dated 21.08.1998 indicated that the terms of settlement has been made effective from 21.08.1998 as clearly reflected in Annexure-12 which was followed with a circular dated 22.08.1998. It is on the basis of the conditions in the circular ad-hoc advance against arrear payment payable with effect from 03.06.1995 as per the direction of the settlement dated 20.08.1998 has been paid to all the workmen.

14. The management disputed the claim of the petitioners, on the premises that there was no objection from any corner either from the member/workmen of the petitioners union or anybody else were received against the circular dated 22.08.1998 and having accepted the said circular, the petitioners are estopped from making any further claims contrary to the settlement dated 20.08.1998. The management further contended that on 28.08.1998 another circular was issued by the opposite party No. 2 concerning, the working hours for office and administrative staff working in the office/plant, the said circular has been implemented with effect from 01.04.1998. So far as the General Shifting Timing is concerned, an amended circular was issued on 28.08.1998 and the same has already been implemented from 01.09.1998. Present claim of the petitioners in the matter of working hour if entertained, will unsettle the settled positions as on 01.09.1998. It is in these premises, the management claimed that the pay scale allowance benefit and all other terms and conditions of services of all absorbed workmen of the NTPC and TTPS as per the settlement dated 20.08.1998 were/are admittedly to their advantage in comparison to the terms and conditions hitherto to enjoy by them in the erstwhile OSEB. Taking reliance of the provisions in paragraph 2.2., 2.3, 2.4, 2.5, 2.6 and 2.7 of the memorandum of settlement dated 20.08.1998, the management claimed that these provisions would indicate that these are made keeping in view and taking into consideration the GRIDCO pay revision as on 02.06.1995. So far as the pension and terminal benefits as alleged by the petitioners are concerned relying on the paragraph Nos. 2.11,

2.12 and 2.13 of the settlement dated 20.08.1998, the management submitted that the benefits under NTPC pattern are more beneficial than the benefits available on the OSEB pattern and therefore the petitioners may not have any grievance on this issue. Similarly, the other allowances and advances as per the rules of NTPC are also advantageous in comparison to the pattern provided under the OSEB. The dispute so far in relation to timing of work/working hour for office and administrative staff work in the plant and township are concerned, the management contended that following the circular dated 28.08.1998, there appears there is no change either in the timing of work or working hours in respect of different workmen working in the plant. However, for the workmen working in the office discharging administrative functions eight hours per day has been prescribed as working hours instead of 6 & 1/2 hours which remains contrary to the provisions in The Factories Act, 1948. Following provisions of The Factories Act, 1948 and the system followed by the NTPC remaining in consonance with the provisions of The Factories, Act, the system followed by NTPC cannot be found to be faulted with. So far as the dispute in relation to the prescribed holiday is concerned, the Management submitted that the same has been made with a view to achieving better productivity and efficient in administration keeping in view the rules and regulations of NTPC read with provisions in section 10(2)(a) of the Act, 1994 and the prescription adopted by the NTPC cannot be held to be disadvantage to the workmen or employees under the petitioners.

15. In filing a rejoinder, the petitioners while reiterating their stand already taken in the writ petition gave much emphasis on the settlement arrived at between the parties and the procedure adopted by the conciliation officer. In view of the abandonment of the claim of petitioners based on the provision of Industrial Dispute, Act, the entire rejoinder becomes redundant.

16. The submission of the opposite parties so far the protection of pension in their counter in filing the rejoinder, the petitioners contended that under the present system, the management has introduced a contributory pension scheme instead of Non-Contributory Pension Scheme as adopted by the OSEB. Since both the pension schemes are made operative, there cannot be any grievance by the petitioners in the continuing system. Presently, the employees/workmen brought by way of merger are enjoying benefit of both the pension system and their cannot be any grievance on the same.

17. In filing an additional affidavit dated 06.02.2001 and 03.02.2005, the petitioners brought to the notice of the court regarding recognition status of the petitioners by the management in the meanwhile.

18. Similarly, in filing an additional clarificatory affidavit, the management brought to the notice of the court that the NTPC power workers union after becoming a recognized union signed a subsequent wage settlement in the year 2007 for revision of pay etc. and the said wage settlement is based on the foundation laid in 1998 tripartite settlement and new pay structure is already in

place with effect from 01.01.2007, it was, therefore, contended by the management that having accepted and acted upon binding agreement/settlement effective from 03.06.1995, the majority recognized union further acted upon the same agreement/settlement of 2007 and it is under these premises they are estopped from raising a contrary view.

The management in support of their case relied on The Jhagrakhan Collieries (P) Ltd. Appellate Versus Shri G.C. Agrawal. Presiding Officer, Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur, And others Respondent as reported in , 1975 (3) SCC 613, Herbertsons Limited.... Appellant Versus The workmen of Herbertsons limited and others.... Respondents as reported in , (1976)4 SCC, 736, Barauni Refinery Pragatisheel Shramik Parishad Appellant Versus Indian Oil Corporation Limited.... Respondent as reported in , (1991) 1 SCC 4, Tata Engineering And Locomotive Appellant Versus Their Workmen.... Respondents as reported in , (1981) 4 SCC 627, P. Virudhachalam And others.... Appellants Versus management of Lotus Mills and Another... Respondents as reported in , (1998) 1 SCC 650 and National Engineering Industries Ltd.... Appellant Versus State of Rajasthan And others Respondents as reported in , (2000) 1 SCC 371.

19. In view of the abandonment of claim of the petitioners taking resort to the provisions contained in the I.D. Act, this Court proceeds in the matter to determine the issue involved therein only taking into consideration the provision contained in Section 11 of the Act, 1994.

From the submissions by the parties, this Court finds the main thrust of the argument of the petitioners by way of present petition is with regard to discrepancies in the matter of pay scale, pension, hours of work and holidays.

20. The undisputed facts as appears from the pleadings and submissions of the respective parties are that there is no dispute that the employees/workmen represented through the petitioner No. 1 union were originally the employees of the TTPS an unit of Orissa State Electricity Board (OSEB) later on known as GRIDCO and were governed by service conditions as prescribed for OSEB employees. There is also no dispute on the fact that the TTPS got vested with NTPC with effect from 03.06.1995 by virtue of the Act, 1994 and the employees of the TTPS became employees of NTPC. There is also no denial to the fact that the wage structure of erstwhile OSEB employees as on 01.04.1995 revised by GRIDCO for regular employees of GRIDCO and regular employees of erstwhile OSEB as on 01.04.1995 were revised with effect from 01.04.1995(Annexure-5). The scales as revised under Annexure-5 of different category of employees with effect from 01.04.1995, reads as follows.

There is also no dispute that on an agitation by the employees transferred to NTPC, Talcher on the alleged non-payment of revised wages from 01.04.1995 the Director, HRD of the GRIDCO by letter dated 21.04.1998 (Annexure-6 series) communicated the District Labour Officer that the Board of Directors have

decided to extend the benefit of revision of scale of pay to the transferred employees to the establishment of NTPC to extend the revision scale of pay in favour of such employees/workmen for the period 01.04.1995 to 02.06.1995. There is also no denial to the fact that on coming into the force of the TTPS (Acquisition and transfer) Act, 1994, TTPS got vested in NTPC with effect from 03.06.1995 consequently, employees of TTPS became employees of NTPC, therefore, there is no doubt that on merger of TTPS employees with NTPC but for the provision contained in Section 11 of the Act, 1994, their pay scales taking into account benefit of revision of pay scale with effect from 01.04.1995 as provided under Annexures-5 as well as 6 series would have to be protected. The petitioners by producing a comparative statement have demonstrated the differential fitment of the scale of pay of different category of employees as follows.

To such claim of the petitioners the management claims that the package provided to the employees by way of a tripartite settlement is to the advantage of the benefit they were getting earlier. Since the package involves several other benefits, the package should be treated as a whole package and cannot be considered item-wise. Opposite parties further contended that in view of the arriving at the tripartite settlement involving scale of pay of employees involving the recognized Union vide Annexure-18, the same is binding on all such employees including the union and its members. For the significance of Section 11 of the Act, 1994 in the present case the same needs to be quoted as herein below:

Bare reading of the Section 11 of the Act, 1994 makes it abundantly clear that every employee of the power station observed shall hold office or render service under the corporation on same terms and conditions and with the same rights and privileges as to pension, gratuity, leave and other matters as would be applicable to him immediately before such vesting. The provision is mandatory, therefore, the protection also becomes mandatory.

Looking to the Law of land as enunciated by the Hon''ble Apex Court in the Case in between H.L. Trehan and others Versus Union of India and others, as case involving merger of Caltex Oil Refinery (India) Ltd. in the Government Company and as reported in , AIR 1989 SC 568, the Hon''ble Apex Court in Categorical term held that changes in service condition of employees of the merger establishment cannot be altered in absence of compliance of natural Justice.

Law is also otherwise settled by a catena of decisions as to if, there is prescription for doing a particular Act in a particular manner, the said Act shall be done in that manner or not, in a case in between Nazir Ahmad.... Appellant v. King, Emperor.... opposite party as reported in , AIR 1936 PC 253, Municipal Corporation of Delhi v. Jagdish Lal and another as reported in , AIR 1970 SC 7 and Babu Verghese & Ors.... Appellants v. Bar Council of Kerala & Ors.... Respondents as reported in , AIR 1999 SC 1281 and Ramchandra Keshav Adke (Dead) by Lrs., Appellants v. Govind Joti Chavare and others.... Respondents

as reported in , AIR 1975 SC 915.

21. Petitioners allege that the wage structure of erstwhile OSEB as on 01.04.1995 as revised by GRIDCO were extended to OSEB employees observed in NTPC for the period 01.04.1995 to 02.06.1995 as appeared at Annexure-6. Therefore, the petitioners claim that the arrear in the revised scale should have been applied with effect from 01.04.1995 instead of 03.06.1995 is justified. In view of the protection granted to the workmen vide Section 11 of the Act, 1994, the petitioners and their employees/workmen are entitled to the pay revisions with effect from 01.04.1995 and as they clearly claimed that on 01.04.1995 their pay was revised based on documents vide Annexures-5 & 6 and as a consequence, wage revisions should be calculated taking into consideration their salary revisions with effect from 01.04.1995. Hence, the management is to revise their scale of pay accordingly and release all such arrears by making necessary calculations, but for the developments vide settlements dated 12.07.2010 involving the petitioner No. 1 as a recognized Union, particularly, so far it relates to revision of Scale of Pay w.e.f. 1.1.2007, it is now to be decided as to upto what period the worker/employees will be entitled to the above benefit.

22. Bare perusal of the memorandum of settlement dated 12.07.2010 it clearly appears that the petitioner No. 1 as a recognized union was a party to the settlement, President, General Secretary and the Four Secretaries are also signatory to the said settlement in paragraph 5-O, the petitioners Union in the matter of scale of pay agreed to the following extent. The 5.0 Scale of pay reads as follows:

"5.0 Scales of Pay The revised Scales of Pay as formulated by Sub-Committee of NBC consisting of Union and Management representatives on 11.06.2010 will be as follows:

As the petitioners have arrived at a settlement in the matter of scale of pay by virtue of a settlement in 2010 but w.e.f. 1.1.2007 having agreed for the particular revision in scale of pay with effect from 01.01.2007, the consideration of arrear wages based on revision, if any, with effect from 1.4.1995 under the erstwhile employer and benefit, if any, to be accrued in such consideration process will be granted only upto 01.01.2007."

23. This Court considering the submissions of the parties, perusing the settlement arrived between the parties as appearing at Annexure-18, taking into consideration the decision of the Hon"ble Apex Court (supra) and taking into consideration the observation made hereinabove, is of the opinion that in view of the clear statutory provision contended in Section 11 of the Act, 1994, the conditions of the scale of pay in the MoU vide Annexure 17 and the settlement vide Annexure-18 being disadvantageous to the employees cannot over ride the statutory provision, consequently both the MoU as well as the Settlement vide Annexures 17 & 18 so far it relates to the revision in the Scale of Pay of the employees/workmen is declared in operative, but however, considering the

position so far it relates to fixation of scale of pay taking into consideration the benefit granted to the employees/workers by virtue of Annexure-5 & 6, under the circumstances this Court remits the matter back to the Management to calculate the arrear on account of revision of scale of pay of workers/employees of OSEB(TTPS) merged in NTPC for the period with effect from 01.04.1995 till 01.01.2007 and release the arrears with interest @ 6% per annum from the date of entitlement till the date of payment.

24. Now coming to answer on the dispute raised involving pension is concerned, the petitioners allege that the pension scheme introduced by the opposite party No. 1 is to the disadvantage of the workmen/employees, Sri Dash, learned senior counsel appearing for the opposite parties brought to the notice of this Court that in absence of provision of continuation of service on the petitioners inclusion in the new establishment may be by virtue of merger, the petitioners are in enjoyment of non-contributory pension as enjoyed under the erstwhile employer. Besides, the petitioners those satisfied the conditions of the new scheme are also getting the benefits of contributory pensions as implemented in NTPC. Therefore, the allegation so far the pension in the new establishment is concerned, since the petitioners are getting double benefit of pension, the present pension system cannot be treated to the disadvantage of the pension benefit available to the employees/workmen earlier.

Under the circumstances, this Court finds force in the submission of the management and rejects the contentions of the petitioners so far it relates to pension.

25. The dispute, so far as working hour as raised by the workers is concerned from the submissions of the respective parties, this Court gathers that there is a great difference between the working culture of OSEB vis-?-vis the NTPC. When the role of OSEB was purely in the nature of administrative except some role in the maintenance side, the role of the NTPC is that of an industrial one and in an industry there appears to be two sets of working culture one set of employees employed in the administrative office and the other is the employees employed in the Industrial side. The establishment of NTPC being an establishment under the Factories Act is bound to follow The Provisions of the Factories Act, 1948. Section 54 read with Section 55 of the Factories Act, 1948 prescribes the working hour to be followed by the factories and read as follows:--

"54. Daily hours.--Subject to the provisions of section 51, no adult worker shall be required or allowed to work in a factory for more than nine hours in any day:

[Provided that, subject to the previous approval of the Chief Inspector, the daily maximum hours specified in this section may be exceeded in order to facilitate the change of shifts.]

1. Proviso added by Act 25 of 1954. 2. S.55 renumbered as sub-sec.(1) by Act 25 of 1954. 3. Subs. for "The period" by Act 40 of 1949.

55. Intervals for rest.--[(1) 3[The periods of work] of adult workers in a factory each day shall be so fixed that no period shall exceed five hours and that no worker shall work for more than five hours before he has had an interval for rest of at half an hour. 34 The Factories Act, 1948 Sec. 56

[(2) The State Government or, subject to the control of the State Government, the Chief Inspector, may, by written order and for the reasons specified therein, exempt any factory from the provisions of sub- section (1) so however that the total number of hours worked by a worker without an interval does not exceed six.]"

From bare reading of the above provisions, it is amply clear that the NTPC being a factory is bound to follow the statutory provisions and the petitioners have no authority to claim any benefit, they are enjoying under their erstwhile employer. Provisions for working hours as prevailing in the OSEB or the GRIDCO remained contrary to the provisions in the Factories Act. Therefore, while appreciating the submissions of the management in this regard, this Court rejects the claim of the petitioners in the said regard.

26. So far the claim of the petitioner on the holidays provided by the opposite party establishment claimed less benefited in comparison to the holidays they were enjoying under the erstwhile employer is concerned, the claim of the petitioners seems to be claiming the protection of holidays, they were enjoying under the erstwhile employer by the present employer. The petitioners by producing several documents as appearing at Annexure-14 demonstrates that they were in enjoyment of 38 days (36 holidays + 2 restricted holidays) under the erstwhile employer whereas the same has been reduced to 12 + 2 restricted holidays and with further entitlement of 10 days special additional holidays subject to encashment of leave if not availed making it to maximum 24 days. The Management on the other hand, contended that the days of holidays is indicated to be 24 along with 2 days restricted holidays. Petitioners themselves filed holiday for the calendar year, 1995 covered under the certified standing order under OSEB indicating 18 holidays along with the restricted holidays. By filing document the management contended that number of holidays for the year 1996 has been specified by the NTPC, TTPS to be 12 and 10 restricted holidays and in addition to it each employee is entitled to 10 specified additional leave for 10 days in a year and therefore total holidays available to an employee becomes $12+2+10=24$ days. That apart OSEB/Gridco had never any en-cashable half pay leave whereas NTPC provides to all its employees en-cashable half pay leave to a maximum of 300 days to be en-cashed by each of the employees on superannuation. In addition to the above the employees are also entitled to a maximum EL of 300 days at the time of superannuation as further 15 days additional leave i.e. lieu leave. Looking to the totality of the above, this Court finds leave available under NTPC as a whole package cannot be treated less beneficiary and leaving thereby no scope for entertaining the claim of the petitioners on account of "holiday" which is hereby rejected.

27. Petitioners challenge so far it relates to clause 2.1, 2.2 & 2.3 of Annexures-12 is concerned, this Court observes as follows:

"So far the petitioners challenge to clause 2.1 of the office order dated 21.08.1998 as available at Annexure-12 is concerned, since this clause protects the pay of the members/workmen of the erstwhile OSEB establishment taking into account their pay scale in OSEB as existed at the time of vesting of TTPS in NTPC prior to retrospective revision w.e.f. 1.4.1995 by the Gridco in view of clear provision contained in Section 11(1) of the Act 1994, cannot be sustained and in view of direction hereinabove the pay scale of OSEB employees or the TTPS employees on their merger in view of vesting of TTPS in NTPS has to be done taking into effect the pay revision effected by Gridco w.e.f. 1.4.1990 and extended to employees/worker vide Annexure-5 & 6 with all consequential pay revisions at least till 1.1.2007 i.e. till the date petitioner No. 1-union effected a fresh settlement with the management and arrears if any, be released in favour of the members/workmen with 6% interest from the date of entitlement till the date of payment.

Now coming to the challenge of the petitioner to the clause 2.2. and 2.3 of the office order dated 21.08.1998 (Annexure-12) these two claims are already covered by the direction hereinabove and need no further direction."

28. This Court has perused the decisions cited by the respective parties and on perusal of the same, this Court finds except , AIR 1989 SC 568, no other citation is relevant for the present case for the reason of different facts & situations therein.

29. This court while allowing the claim of the petitioner so far it relates to refixation of scale of pay in the manner, it has directed in paragraph No. 25 read with paragraph No. 29 disallows the claim of the petitioners on pension, hour of working and holidays.

30. The writ petition stands allowed in part to the extent indicated hereinabove. However, there shall be no order as to cost.