

(2013) 08 DEL CK 0011

In the Delhi High Court

Case No : Writ Petition (C) No. 5170 of 2013

Hindustan Insecticides Employees" Union

APPELLANT

Vs

Hindustan Insecticides Ltd.

RESPONDENT

Date of Decision : 22-08-2013

Acts Referred:

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 17(3)

Citation : (2013) 08 DEL CK 0011

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : A.P. Jain and Mr. Anurag Jain, for the Appellant;

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—By this writ petition, the petitioner which is a union of employees of the respondent company-M/s. Hindustan Insecticides Ltd., impugns the order dated 5.3.2013 whereby the retirement age of employees below to board level has been increased from 58 to 60 years albeit only w.e.f. 27.2.2013. It is argued that this date of 27.2.2013 is arbitrarily fixed i.e. it is argued that employees must get benefit of increased age of retirement even from a date prior to this date.

2. On a query counsel for the petitioner admits that the respondent-company is a sick company.

3. A similar issue was dealt with by the Supreme Court in its judgment reported as Indian Drugs and Pharmaceuticals Ltd. Vs. Workman, Indian Drugs and Pharmaceuticals Ltd., wherein the Supreme Court has held that Courts cannot sit in the arm-chair of the administrative authority and decide what should be the terms and conditions of service of employees, including regularization or a particular scale of pay or any other aspects pertaining to monetary emoluments for employment. The relevant observations of Supreme Court in the case of I.D.P.L. (supra) read as under:-

16. We are afraid that the Labour Court and the High Court have passed their orders on the basis of emotions and sympathies, but cases in court have to be decided on legal principles and not on the basis of emotions and sympathies.

18. In *State of M.P. v. Yogesh Chandra Dubey* this Court held that a post must be created and/or sanctioned before filling it up. If an employee is not appointed against a sanctioned post he is not entitled to any scale of pay. In our opinion, the ratio of the aforesaid decision squarely applies to the facts of the present case also.

37. Creation and abolition of posts and regularisation are purely executive functions vide *P.U. Joshi v. Accountant General*. Hence, the court cannot create a post where none exists. Also, we cannot issue any direction to absorb the respondents or continue them in service, or pay them salaries of regular employees, as these are purely executive functions. This Court cannot arrogate to itself the powers of the executive or legislature. There is broad separation of powers under the Constitution, and the judiciary, to, must know its limits.

40. The Courts must, therefore, exercise judicial restraint, and not encroach into the executive or legislative domain. Orders for creation of posts, appointment on these posts, regularisation, fixing pay scales, continuation in service, promotions, etc. are all executive or legislative functions, and it is highly improper for Judges to step into this sphere, except in a rare and exceptional cases. The relevant case-law and philosophy of judicial restraint has been laid down by the Madras High Court in great detail in *Rama Muthuramalingam v. Dy. Supdt. Of Police* and we fully agree with the views expressed therein.

4. I may note that the Supreme Court in the case of *Officers and Supervisors of I.D.P.L. Vs. Chairman and M.D. I.D.P.L. and Others*, has held that employees of sick companies cannot claim benefit which are available to employees of the PSUs, and economic viability and financial capacity of an employer is an important factor which cannot be ignored while fixing the wage structure. The Supreme Court has further held that sick companies have a right as per its financial conditions to decide the terms and conditions of monetary emoluments to be paid to its employees. The Supreme Court further held that government cannot be directed to give financial support to meet the additional expenditure for a sick PSU. Paras 7, 8, 11, 13, 17 and 18 of the said judgment are relevant and they read as under:-

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 our attention to a recent judgment of this Court in *A.K. Bindal and Anr. v. Union of India and Ors.* 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.

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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 reasons 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 the 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 installments 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.

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13. We have already reproduced the directions passed by this Court in Jute Corporation of India Officers' Association (supra). However, after the said judgment in which conditional directions were issued, as is apparent, the Central Government vide its O.M. dated 19.07.1995 decided as follows:-

13. For SICK, PSC registered with the BIFR pay revision and grant of other benefits will be allowed only if it is decided to revive the unit. The revival package should include the enhanced liability on this account. The benefit of pay revision etc. shall be extended to IISCO and financial liability thereof shall be met by SAIL.

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17. In A.K. Bindal (supra), this Court specifically held that the economic viability or the financial capacity of the employer is an important factor which cannot be ignored while fixing the wage structure, otherwise the unit itself may not be able to function and may have to close down which will inevitably have disastrous consequences for the employees themselves. The Court also negated other contentions raised by the employees and referred to and relied upon the fact that the Company was a sick unit. Facts in the present case are similar.

18. Further, directions issued in Jute Corporation of India Officers' Association (supra) would have no bearing in the present case as the Scheme under the SICA has failed to revive the Company. When the Company cannot be revived because of large losses, there is no question of enhancing scales of pay and dearness allowances. Direction No. (ii) issued in that case indicates that the employees appointed on or after January 1, 1989 will be governed by such pay scales and allowances as may be decided by the Government in its discretion. If the company itself is dying, the Government has discretion not to grant enhanced pay scales or dearness allowances and for the same reason Direction No. (i) cannot be implemented.

(Underlining added).

5. The object of fixing of a cut-off date for enhancing the age of employees from 58 to 60 years is an administrative decision. Merely by simply calling that decision as arbitrary will not make the cut-off date arbitrary. A cut-off date is fixed on the ground as to how the said cut-off date will have impact on the finances of a company and which the management can fix as per IDPL cases (supra).

6. Accordingly, I do not find that merely because the date of giving effect to increase of age of retirement from 58 to 60 years is w.e.f. 27.2.2013, the same can be said to be arbitrary in any manner. In view of the above, there is therefore no merit in the petition which is accordingly dismissed, leaving the parties to bear their own costs. All pending applications stand disposed of.