
(2002) 10 AHC CK 0181
In the Allahabad High Court
Case No : C.M.W.P. No. 25698 of 1991

I.T.C. Ltd.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-10-2002

Acts Referred:

Constitution of India, 1950 — Article 367
Factories Act, 1948 — Section 112, 49, 49(2), 50
General Clauses Act, 1897 — Section 23(3)
Uttar Pradesh Factories Welfare Officers Rules, 1955 — Rule 3

Citation : (2003) 1 AWC 91 : (2003) 1 LLJ 442

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Advocate : Bharti Sapru and Sudhir Chandra, for the Appellant; K.P. Agarwal and V.N. Agarwal and Yashwant Verma, S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.N. Srivastava, J.—Petitioner is a company within the meaning of the Indian Companies Act, 1956, with a workforce of 1542 workmen on its roll. The State of U. P. issued notification dated 27.2.1990 (Annexure-1 to the writ petition) by way of 7th Amendment, 1990 to Rule 3 of the Uttar Pradesh Factories Welfare Officers' Rules, 1955, which was prompted by the recommendations of the Second Pay Commission Report and also on the basis of the Equivalence Committee 1986. The amendment, it is alleged, has been given retrospective effect, i.e., 1st day of July, 1979. It may aptly be noted here that the recommendation of the Pay Commission are with regard to an amendment in Rule 3 of the rules which deals with grades and emoluments of the Welfare Officers in grade I, II and III. To enforce in obedience the aforesaid notification containing Amendment, Director Factories U. P. initiated correspondence with the petitioner and the last communication addressed by the Director Factories is dated 20.5.1990 embodying direction to comply with the amended rules and pay wages, allowances etc. to the Welfare Officers employed in the factory.

Ostensibly, the petitioner, fearing prosecution which stared stark in the face owing to failure to implement the amended Rules, rushed to knock the door of this Court invoking its procedure under Article 226 by means of the present petition.

2. It would thus appear that the subject-matter of impugment in the instant petition is the Notification No. 226/XXXVI-3-200-(16) (W.O.)-82 dated February 27, 1990 (Annexure-1 to the petition). By way of notification impugned herein, the grade and scale of pay of Welfare Officer were revised w.e.f. July 1, 1979 on the basis of second Pay Commission Report and from January 1, 1986 on the basis of the Equivalence Committee Report.

3. Sri Sudhir Chandra, learned senior advocate, argued that the State is wholly Incompetent to revise the grade and pay scale of Welfare Officer w.e.f. July 1, 1979 on the basis of Second Pay Commission Report and January 1, 1986 on the basis of the Equivalence Commission Report by the notification dated 27th February 1970, i.e., with retrospective effect. He further argued that while the Parliament could amend the law or enforce the same with retrospective effect by making amendment in the Act but so far as the rules which are in the nature of subordinate legislation, the State is wholly incompetent to revise the grade and pay scale of Welfare Officer. Therefore, the Uttar Pradesh Factories Welfare Officer (Seventh Amendment), Rules, 1990, will operate in vacuum. State of Uttar Pradesh and Others Vs. Basti Sugar Mills Co., Ltd., as well and (1979) 2 SCC 146 in support of his contention.

4. Sri Sudhir Chandra, learned counsel for the petitioner next argued that the non-compliance of the provisions would amount to criminal liability and prosecution. He further states that Seventh Amendment Rules of 1990 are incompetent so far as it has been given retrospective operation, therefore, the same may be quashed.

5. Learned counsel for the petitioner further urged that recommendations for the revision of the pay scale of the Pay Commission are only for the Government servants and not for the employees of the private undertakings. The submission further proceeds that since the Welfare Officers are the employees of the private undertakings in the present case, the recommendations of the Second Pay Commission and the Equivalence Commission are not applicable.

6. Sri K. P. Agarwal, learned senior advocate and Sri V. N. Agarwal, learned standing counsel argued that the pay was rightly revised according to the Second Pay Commission Report and Equivalence Commission report from the date when other employees in the State were given revised pay scales which was within competence of the State and its policy decision which should not be interfered with in writ Jurisdiction.

7. I have heard Sri Sudhir Chandra, learned senior advocate assisted by Ms. Bharti Sapru, and Sri K. P. Agarwal, learned senior advocate and Sri V. N. Agarwal, learned standing counsel, appearing for the respondent Nos. 1 to 4.

8. Provisions as relevant to the points requiring consideration, may aptly be considered in its essentials sufficient to appreciate the grievances and controversy involved in this petition. It brooks no dispute that the Rules aforesaid were made by the Governor in exercise of the powers conferred by Sections 49, 50 and 112 of the Factories Act, 1948. The notification impugned in this petition may usefully be excerpted below :

"Grades and emoluments of Welfare Officer.--The grades and scales of pay of Welfare Officer, shall be such as may be determined, by general or special order, by the State Government from time to time.

The grades and scales of pay of the Welfare Officer with effect from July 1, 1979 on the basis of the Second Pay Commission Report and from January 1, 1986 on the basis of the report of Equivalence Committee are shown as below :

Serial No.

Grade

Scale of Pay Rs.

From July 1, 1979

1.

Welfare Officer. Grade I (for Factories ordinarily employing 2500 or more workers per day)

1360-6-1720-E.B.-60-1980-75-2125

2.

Welfare Officer. Grade II (for Factories ordinarily employing 1000 or more workers per day but not exceeding 2499 workers per day)

850-40- 1050-E.B. 50- 1300-60- 1420-E.B. 60-1720

3.

Welfare Officer. Grade III (for Factories ordinarily employing 500 or more workers per day but not exceeding 999 workers per day.

690-40-970-E.B.-40-1050-50- 1200-E.B. -501300-60-1420

From January 1, 1986

1.

Welfare Officer, Grade I (for Factories ordinarily employing 2500 or more workers per day.

3000-100-3500-125-4750

2.

Welfare Officer, Grade II (for Factories ordinarily employing 1000 or more workers per day but not exceeding 2499 workers per day.

2200-75-2800-E.B.-100-4000

3.

Welfare Officer. Grade III (for Factories ordinarily employing 500 or more workers per day but not exceeding 999 workers per day.

2000-60-2300 E.B.-75-3200

9. u/s 49 of the Factories Act, 1948, it is mandatory for every factory to have a Welfare Officer. Section 49 provides as under :

"49. Welfare Officer.--(1) In every factory wherein five hundred or more workers are ordinarily employed the occupier shall employ in the factory such number of Welfare Officers as may be prescribed.

(2) The State Government may prescribe the duties, qualifications and conditions of service of officers employed under sub-section (1)."

10. Sections 50 and 112 of the Act confer power on the State Government to make rules. Sections 50 and 112 are quoted below :

"50. Power to make rules to supplement this Chapter.--(i) The State Government may make rules :

(a) excepting subject to the compliance with such alternative arrangements for the welfare of workers as may be prescribed, any factory or class or description of factories from compliance with any of the provisions of this Chapter.

(b) Requiring in any factory or class or description of factories that representative of the workers employed in the High Court of Judicature at Allahabad the factory shall be associated with the management of the welfare arrangement of the workers."

"112. General Power to make rules.--The State Government may make rules providing for any matter, which under any of the provisions of this Act, is to be or may be prescribed or which may be considered expedient in order to give effect to the purpose of this Act."

Section 23(3) of the General Clauses Act being germane to appreciation of the controversy involved in the petition may also be quoted below :

"23. Provisions applicable to making of rules or bye-laws after previous publication,--Where, by any (Central Act) or Regulation, a power to make rules or bye-laws is expressed to be given subject to the conditions of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely :

XXXXXXXXXX

(3) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration...."

Article 367(1) and (2) of the Constitution may also be reckoned with and the same is quoted below for ready reference :

"367. (1) Unless the context otherwise requires, the General Clauses Act, 1897 shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India.

(2) Any reference in this Constitution to Acts or laws of, or made by, Parliament or to Acts or laws, of or made by, the Legislature of a State shall be construed as including a reference to an Ordinance made by the President or, to an Ordinance made by a Governor as the case may be."

11. I have considered the arguments in its pros and cons raised by both the parties in the light of the precedents cited on both sides, perused the relevant materials on the record and the relevant law on the subject.

12. It is worthy of notice that each factory having requisite strength of workers is required to have a Welfare Officer under the Factories Act, 1948. Accordingly, Uttar Pradesh Factories Welfare Officers Rules, 1955, was framed by the State of U. P. prescribing the mode of appointment, qualification and conditions of service of the Welfare Officers. By way of various amendments from time to time, Uttar Pradesh Factories Welfare Officers Rule, 1955 (Seventh Amendment) Rules were enacted and enforced w.e.f. 1979. It further appears from the counter-affidavit that after 1979 proposal was made for amendment of Rule 3 (1) and sent to the Government for the pay scales, qualification and other conditions of service vide letter dated 21st September, 1983 and since this matter was pending consideration in the meantime the Second Pay Commission Report was enforced from the year 1979. Pay scales were further revised in the year 1986. It is also not disputed that between 1979 and 1986, no orders were passed for revision of the pay scales though employees of State Government were given revised pay scales.

13. The following questions emerge for consideration in this case :

(1) Whether in exercise of power u/s 49(2) read with Sections 50 and 112 of Factories Act, the State of U. P. has power to fix pay scale and salary of Welfare Officers working in the factory?

(2) Whether the Welfare Officers are entitled to get salary payable to State employees in corresponding pay scale?

(3) Whether State Government could revise pay scale from 1979 while Seventh Amendment was brought into effect in the year 1990 and whether it could be treated to be enforceable with retrospective effect?

(4) Whether adoption of State employees pay scale and payment of salary in the

corresponding pay scale to the Welfare Officers from the date State employees were getting salary is bad in law?

14. At the outset, I proceed to deal with the first question. It would crystallise from a combined reading of Section 49, Section 112, and Section 115 of Factories Act that the State Government is empowered to frame rules prescribing condition of service of Welfare Officers. Section 23(3) of the General Clauses Act envisages that there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration. Condition of service includes the pay scale and the pay. It would transpire from a bare reading of Section 112 that the State Government may make rules providing for any matter that may be considered expedient in order to give effect to the intendment of the Act. As mentioned above that power to prescribe salary and pay scale is a condition of service and, therefore, the State rightly framed rules for pay scales of Welfare Officers. It would transpire from the record that on the recommendation of the Second Pay Commission, the pay scale of Government employees were revised and accordingly, it was found necessary to consider the revision of pay scales of the Welfare Officers. Consequently, a proposal for amendment of Rule 3 (1) was submitted to the Government by means of letter dated 21.9.1982. It further transpires from the record that the Government published a draft of U. P. Factories Welfare Officers (Seventh Amendment) Rules 1989 in an extra-ordinary gazette of the U. P. Government Lucknow dated 1.12.1989 to amend Rules 3, 5, 7, 8, 9, 13, 14 and 21 of the existing Uttar Pradesh Factories Welfare Officers Rules, 1955, with the avowed object of inviting objections and suggestions in respect thereof in exercise of power under Sections 50 and 112 read with Section 49 of Factories Act, 1948. It further transpires that no objections or suggestions were received at the end of the Government within the stipulated time of 45 days and as such, in exercise of power u/s 112 read with Sections 49 and 50 of the Factories Act, 1948, the Governor of the U. P. was pleased to make the U. P. Factories Welfare Officers (Seventh Amendment) Rules, 1990, after their previous publication in Government notification dated 1.12.1989.

15. While proceeding to consider the second question, paragraph 3 of counter-affidavit may be adverted to in which it has been specifically stated that the State Government, by notifications dated 13.6.1973 and 21.6.1979, amended the pay scales of Welfare Officers to bring the same at par with the corresponding pay scales admissible to the Government employees under Rule 3 of the aforesaid Rules. This was a policy decision taken by the State as far back as in 1973. The averments in paragraph 3 of counter-affidavit have not been repudiated by the petitioner in rejoinder-affidavit. Para 3 of the counter-affidavit being germane to proper appreciation of the controversy is quoted below :

"That Section 49 of the Factories Act, 1948, provides for appointment of Welfare Officer in the Factories wherein 500 or more workers are ordinarily employed.

Under Sections 49 and 50 of the Act, the State Government may make rules to

prescribe the scale of pay, qualifications, duties and other service conditions of Welfare Officers, as such the Uttar Pradesh Factories Welfare Officers Rules, 1955, were framed prescribing the grades, qualification and other conditions of service vide Notification No. 1916 (LL) 736-V-400 (LL) 50 dated 20.4.1955. It is further made clear that from time to time when it was considered necessary amendments were brought in the above mentioned rules in respect of the pay scales, qualification and other service conditions. Prior to Seventh Amendment of 1990, six amendments were made. The State Government vide notification of Fourth Amendment dated 13.6.1973 and sixth amendment dated 21.6.1979 amended the pay scales of Welfare Officers with the corresponding pay scales of Government employees under Rule 3 of the aforesaid Rules."

Paragraph 12 of the counter-affidavit being relevant to the matter at issue, is also quoted below for ready reference :

"That in reply to the contents of para Nos. 24 and 25 of the writ petition, it is stated that the assertions are totally vague as no comparative data of wage structure of the officers of the petitioner units have been furnished so that the Hon"ble Court may be able to examine the paving capacity of the petitioner unit by revision of pay scales of Welfare Officers. However, it is stated that the scales of pay of Welfare Officers have always been in parity with the employees of State Government. This time also the Seventh Amendment of Uttar Pradesh Factories Welfare Officers Rules the pay scales of Welfare Officers have been fixed in parity with State Government Employees in view of recommendations of Second Pay Commission, 1979 and Samta Samiti, 1986. It is also stated that the State Government was fully justified in providing the grades and scales of pay to the Welfare Officers in view of the recommendations of Second Pay Commission, 1979 and Samta Samiti, 1986 and thereby adding the dignity to the office of Welfare Officers by providing suitable scales."

The only reply furnished in the last part of para 5 of the rejoinder-affidavit, which is being reproduced below :

"The fact that there were six prior amendments cannot confer validity thereto when the same are ex-facie ultra vires. In any event, pay scales in the private sector cannot be linked with pay scales of Government employees."

16. The petitioner did not raise any dispute while State had taken a decision which was incorporated through amendment dated 13.6.1973, prescribing the same pay scale to the Welfare Officers in order to bring the same at par with the corresponding pay scale of Welfare Officer working under the State Government. Once they have accepted and paid corresponding pay scale admissible to State employees, to all the Welfare Officers and salaries in observance of 4th Amendment dated 13.6.1973 and 6th Amendment dated 21.6.1979, it does not lie in the mouth now to raise any hue and cry that welfare officers are not entitled to get corresponding pay scale of State Government employees from a retrospective date. This question is decided accordingly.

17. The third and fourth questions formulated above are the sheet anchor of the arguments canvassed on behalf of the petitioner. It has been held earlier that the State has taken a policy decision which was introduced by 4th amendment dated 13.6.1973. It is also not disputed that so far as the State employees are concerned, the Pay Revision Commission Reports were submitted by the Commission to the State Government attended with its recommendation and State Government accepted recommendations for payment of salary to Government employees and the salary is being paid to Government employees in the revised pay scale with effect from 1.7.1979 and 1.7.1986. The question that begs consideration is whether the adoption could be treated giving the pay scale the retrospective effect and whether this is permissible under law. The right to get the pay scale corresponding to pay scale of State Government employees stands clinched having been decided as far back as in 1973 and all the Welfare Officers were already getting pay scale from the date the pay scales were revised w.e.f. 1.7.1979 and 1.7.1986. It is also clear from paragraph 4 of counter-affidavit that proposal was already sent to the State to amend Rule 3 (1) through letter dated 21.9.1982 and the same was pending at the relevant point of time. Whether existing rights of Welfare Officers could be denied and amendment Rule 3 (1) could be treated to have had retrospective effect requires consideration by this Court. To cap it all, in the book-*Words and Phrases*, Permanent Edition 37A by West Publishing Co.-word retrospective law has been defined and according to the definition, a retrospective law is one affecting rights obligations, acts, transactions and conditions performed or existing prior to adoption of the statute. Every statute, which takes away or impairs vested rights acquired under existing laws or creates a new obligation, imposes a new duty, or attaches new ability in respect of transactions of considerations already, past. Is "retrospective". Retrospective law has further been defined as one made to affect prior acts or transactions or rights already accrued. The importance and primary objective of retrospective law is to take away and impair vested rights acquired under existing law. In case existing rights are not affected, the rules cannot be considered to be giving the rules with retrospective effect. In the present case, by virtue of a policy decision of State Government made in the year 1973 a right was already created in favour of Welfare Officers to get salary in the pay scale corresponding to the pay scales admissible to the State Government employees. This policy decision was observed in acquiescence, as it was not taken in challenge by any of employers throughout the State of Uttar Pradesh. It is also very clear in the present case that by framing Rule 1990 vested rights to get corresponding pay scale of State Government had come to be recognised. Their existing rights, which had already accrued, were simply recognised by adopting the existing pay scale of State Government employees. It is nobody's case that by the impugned rules framed in the year 1990, any existing rights were taken away. To the contrary, the matter of adopting State Government's pay scale for Welfare Officers already in force throughout the Uttar Pradesh was pending and was in active consideration since 1982 and delay in decision by the Government cannot impinge on the rights which had already accrued to the welfare officers.

The arguments of learned counsel for the petitioner that the scales as embodied in the 7th Amendment have been given retrospective effect, is to my mind, does not commend to me for acceptance. Existing right were not taken away by the impugned 7th Amendment and vested rights already acquired as back as in the year 1973 to get corresponding pay scale to the State Government were merely recognised and adopted by the impugned rule.

18. The word "adopted", according to me, is one recognising some thing which exists. In the light of the above, pay scales made admissible by State Government by the 7th Amendment were already existing and were due under the vested right to the Welfare Officers under the policy decision taken as far back as in 1973. By adopting the said pay scales from the date, from which they were made admissible to the others, the same cannot be understood to have been given retrospective effect. The word "adoption" has been defined in the dictionary "to put in the harmony with the changed circumstances." I am of the view that the said adoption of existing corresponding pay scale of the Government in any way cannot be treated to have retrospective application inasmuch as these Welfare Officers were entitled to get this pay scale from the date fixed in Rule 3 of the said Rules. Since by these amendments, the existing rights were recognised, it shall be deemed to be adoption of existing right. The pay scale which they were entitled to get, in view of the above, amendment to Rule 3 (1), was rightly made.

19. It would be useful to advert to the provisions of Articles 372 and 372A of Constitution of India from the perusal of which it is eloquent that the adoption takes place only in respect of any existing law. The argument of the learned counsel for the petitioner that it was given effect with retrospective effect, does not commend to me for acceptance. The impugned notification simply notified the existing pay scale, which was already applicable to the other establishments and for which the Welfare Officer was already entitled to get in absence of adoption. It was actually given effect to what was already in existence. It has already been stated above that Government has already decided as far back as in the year 1973 to provide corresponding pay scale of Government employees to the Welfare Officer. They were already entitled to get the same from the date the pay scales were adopted by the State Government. In the conspectus of what has been discussed above, it follows that by the impugned notification Welfare Officers have been granted corresponding existing scales what were admissible and were being disbursed to the State Government employees and by this reckoning, it cannot be disputed that whatever the Welfare Officers were given was already due under the rights which had already accrued and the same were simply adopted by rules. The argument of Sri Sudhir Chandra to dub the rules as invalid by reason of its being given retrospective effect does not have a cutting edge and cannot be sustained in law. The decision cited by the learned counsel for the petitioner to give prop to his failing case is not attracted for application to the facts and circumstances of the present case.

20. From the perusal of paragraph 3 of the counter-affidavit, it is clear that State Government vide notification dated 13.6.1973 as well as dated 21.6.1979 amended pay scales of Welfare Officers corresponding to pay scale of Government employees as required under Schedule 3 of the aforesaid rule and paid to Welfare Officer salary in said pay scales. Normal practice being adopted is that when the Pay Revision Commission Report comes, it is adopted by different departments of Government as well as by the Government establishments. It is further clear from counter-affidavit that the proposal for amendment in the pay scale, etc. was sent on 21.3.1982 and was pending for consideration. In the meantime, the Pay Revision Commission Report came and was accepted by the Government. It was also enforced in compliance so far the Government departments are concerned. By the impugned notification, the State Government adopted the Pay Commission Report so far as pay scales of Welfare Officers are concerned in order to actualise its implementation in the factories under the Companies Act.

21. Before parting with the discussion, it may quintessentially be stated with appropriateness that amending Rule 3 is in effect the only codified existing rights of the workmen to get all the wages which they could not get in time because of the long drawn-out process caused by the methods. In *Bharat Singh Vs. Management of New Delhi Tuberculosis center, New Delhi and Others*, observations relevant on the point at issue in this case, have been made in paras 10 and 16 to the effect that it is not the case with Section 17B. Here, it is not the conferment of new jurisdiction but the codification in statutory form of a right available to a workman to get back wages when certain conditions are satisfied. This very argument was made by the learned counsel for the employer in *Bharat Singh v. Management, New Delhi Tuberculosis Centre*.

22. Before closing his arguments, the learned counsel for the employer commiseratingly submitted that the matter has been processed for prosecution of the petitioner u/s 92 of the Factories Act for failure to implement the impugned notification dated 27.2.1990. It has already been held earlier that the revision of the pay scales of the Welfare Officers with corresponding pay scales admissible to the State Government employees was a vested existing rights which the Welfare Officers were entitled to get. The employers had already obtained interim order on 13.9.1991 which they have enjoyed in unbroken continuity for more than 11 years. They have had ample time at their disposal to levy implementation to the existing rights of the Welfare Officers and in this perspective, the submission of the learned counsel that the employer would be visited with prosecution u/s 92 of the Factories Act, does not merit consideration after a lapse of 12 years during which they had ample time at their disposal to initiate steps for implementation of the impugned notification. Here it is worthy of mention that impugned notification has the complexion of beneficial legislation in favour of employee and will be interpreted accordingly on the basis of the rule of construction of the social beneficial legislation.

23. In view of the fact stated above, none of the arguments advanced across the bar by the learned counsel for the petitioner is tenable in law. The State Government was fully competent to adopt the existing corresponding pay scales already prevailing in the Government department and existing and already in existence from their respective dates mentioned in the notification. The adoption for giving effect to the intendment of Factories Act cannot be taken to be one having retrospective effect. No other argument has been pressed into service in the instant case.

24. As a result of foregoing discussion, the writ petition is dismissed. There will be no order as to costs.