(2004) 12 GUJ CK 0002

In the Gujarat High Court

Case No : Misc. Civil Application No. 163 of 2002

K.K. Parmar APPELLANT

Vs

Official Liquidator RESPONDENT

Date of Decision : 21-12-2004

Acts Referred:

Companies (Court) Rules, 1959 — Rule 308

Citation : (2005) 60 SCL 1

Hon'ble Judges : K.A. Puj, J

Bench : Single Bench

Advocate : Ashok L. Shah, for the Appellant; Party-in-Person, for the Respondent

Judgement

K.A. Puj, J.—The applicants who are company paid staff working in the office of the Official Liquidator have taken out this judges summons seeking direction from this Court to the Official Liquidator to frame a scheme for the payment of remuneration and other terms of employment of the applicants and other Company paid staff in the office of the Official Liquidator on the basis of equal pay and other benefits for equal work as of Central Government Staff and particularly, on the lines suggested in the judgment and order of the Bombay High Court dated 26.04.1994 in Misc. Company Application No. 24 of 1994. The applicants have also prayed for interim direction, during the pendency, formulation and finalisation of scheme to grant monetary benefits as are granted to the Company paid staff of the Official Liquidator, High Court of Bombay under order dated 18.08.2001 of the Bombay High Court or as may be deemed fit and proper by this Court.

2. Heard Mr. A.L. Shah, learned advocate appearing for the applicants and the Official Liquidator.

3. Mr. Shah has submitted that the applicants are employed in the office of the Official Liquidator. as company paid staff. There are two types of employees working in the office of the Official Liquidator in various High Courts including the

office of the Official Liquidator attached to this Court. One type of employees consists of those employees, who are in the employment as employees of Central Government, Department of Company Affairs. The other set of employees are those persons who are not employees of the Government of India, Department of Company Affairs, but who are employed by the Official Liquidator as special or additional staff to help him in the work of liquidation. He has further submitted that this other set of employees is employed by the Official Liquidator under Rule 308 of the Companies (Court) Rules, 1959. They are known as company paid staff and are not the employees of the Government of India, Department of Company Affairs. The Official Liquidator maintained funds for payment of salary, etc. to this Company Paid Staff. The said fund is maintained by the Official Liquidator from the funds available with him from various Companies in liquidation. Though the applicants are in the employment of the office of the Official Liquidator as Company Paid Staff for last several years and are doing similar work for similar number of hours as that of the regular employees of the Government of India, Department of Company Affairs in the office of the Official Liquidator the salaries/emoluments of the Company Paid Staff is much lower and the conditions of service are much inferior than the salaries and emoluments and conditions of service of the Government of India paid employees in the office of the Official Liquidator.

4. Mr. Shah has further submitted that a Misc. Company Application was filee by one similar Company Paid Staff member in the office of the Official Liquidator attached to the High Court of Bombay, by way of Misc. Company Application No. 24 of 1994. The Bombay High Court vide its order dated 26.04.1994 directed the Official Liquidator Bombay to frame a scheme for payment of salaries/ emoluments to Company Paid Staff in the Office of the Official Liquidator of the High Court of Bombay. Based on the said directions given by the Bombay High Court vide its order dated 26.04.1994, the Official Liquidator of the Bombay High Court filed its report before the Bombay High Court and the Bombay High Court has passed an order on 30.07.1999 observing that in the interest of justice and to maintain a fair and reasonable parity with regard to both the Government paid and Company Paid Staff, the Company Paid Staff should be given an ad hoc increase of 40% in their gross salary for the Class III employees and 50% increase on the gross salary for the Class IV employees with effect from 01.01.1999. The earlier order of the Bombay High Court dated 26.04.1994 in MCA No. 24/1994 was taken in appeal to the Supreme Court and the order of the Bombay High Court dated 30.07.1999 was only an interim order/direction pending the decision of the Supreme Court. Mr. Shah has further submitted that similar matters involving similar points from various other High Courts were pending before the Hon''ble Supreme Court of India and while disposing of all these matters vide order dated 27.08.1999 in Civil Appeal No. 5642 of 1994 etc. and Writ Petition (C) No. 473 of 1998 and Civil Appeal No. Government of India and Others Vs. Court Liquidator''s Employees Assn. and Others, the Hon''ble Supreme Court has observed that the High Courts have found that the Company

Paid Staff have been discharging the duties from years together without any break identical to that of the Government Paid Staff in the same Liquidator''s office. It was also found that the Company Paid Staff working both under the Court Receiver and in the office of the Official Liquidator were grossly under paid and they have no retiral benefits even after working for 10-25 years. The Hon''ble Supreme Court held that it was unable to agree with the contention of the Counsel of the appellants being Central Government / Liquidators that the Company Paid Staff cannot be absorbed/regularised as they were not employed by the Government in accordance with the Rules. The Hon''ble Supreme Court has further observed that the orders of the High Courts challenged in the said appeals did not call for any interference.

5. Mr. Shah has further submitted that following the judgment and order of the Hon''ble Supreme Court dated 27.08.1999, the Bombay High Court in Misc. Company Application No. 24 of 1994 by its judgment and order dated 18.08.2001 passed the final order sanctioning a payment of a total amount of Rs. 47,11,414/- to the Company Paid Staff of the Bombay High Court. He has further submitted that since the case of the Company Paid Staff in the office of the Official Liquidator attached to this Court is identical with the case of the Company Paid Staff in the office of the Official Liquidator attached to the Bombay High Court, the applicants have addressed a letter dated 17.10.2001 to the Official Liquidator to initiate appropriate prompt action to formulate proper scheme for payment to the Company Paid Staff in the office of the Official Liquidator attached to this Court, on the lines suggested and directed by the Bombay High Court and as approved by the Hon''ble Supreme Court. He has further submitted that the applicants have repeatedly written several letters to the Official Liquidator as well as to the Government of India, Department of Company Affairs, but the applicants have not received any reply or response and hence, the applicants were constrained to file the present application before this Court.

6. Mr. Shah has further submitted that for payment to the Company Paid Staff and to fix up their remuneration and terms of service, consent or approval of the Government of India is not necessary. The emoluments, etc. of Company Paid Staff are fixed up by the High Court in the report of the Official Liquidator under Rule 308 of the Company Court (Rules), 1959, which does not require any reference to be made to the Government of India, Department of Company Affairs. He has, therefore, submitted that in view of the Bombay High Court''s Judgment in Misc. Company Application No. 24 of 1994 dated 18.08.2001 and the Judgment of the Hon''ble Supreme Court of India dated 27.08.1999, the Official Liquidator should be directed to immediately formulate proper scheme for payment to the applicants and other Company Paid Staff in the office of the Official Liquidator on line similar to the scheme formulated by the Bombay High Court and approved by the Bombay High Court by its judgment dated 18.08.2001.

7. Mr. M.A. Kuvadiya, the Official Liquidator attached to this Court has submitted that in compliance of the order dated 27.08.1999 passed by the Hon''ble Supreme Court, the Central Government framed a scheme on the lines of 1978 Scheme to absorb Company Paid Staff working in different offices of Official Liquidator throughout India against Group "C" posts. Based on the said Scheme, the Regional Director interviewed the Company Paid Staff for absorption into government service on 23rd and 24th December, 1999 and prepared a penal of Company Paid Staff. As and when vacancies arose, they are considered for absorption. The Official Liquidator has further submitted that the office of the Official Liquidator, Mumbai cannot be compared with the office of the O.L., Ahmedabad, in so far as Reserve Fund created from the investment income of the Official Liquidator is concerned. The orders passed by the Bombay High Court are not applicable to the Company Paid Staff in Ahmedabad. He is taking all efforts to give proper emoluments and benefits to the Company Paid Staff keeping in view the fund position and length of service of the respective staff and also to protect the interest of general body of creditors and contributories. The pay of the Company Paid Staff was last revised by the Official Liquidator after obtaining the approval of the Hon''ble Company Judge on 23.10.1996. The Company Paid Staff are being paid dearness allowance on par with the Central Government employees and in addition to this, they are also being paid 15% ex-gratia on yearly gross salary in lieu of bonus paid to Government Employees.

8. Mr. A.L. Shah, learned advocate appearing for the applicants in rejoinder has submitted that Official Liquidator has not addressed to the real issue which was raised by the applicants. There was no dispute about the proposition that in compliance with the order dated 27.08.1999 passed by the Hon''ble Supreme Court, the Central Government has framed a scheme to absorb Company Paid Staff working in different offices of the Official Liquidator throughout India against Group "C" post. He, however, submitted that even in the said scheme also, the Company Paid Staff of Group D cadre is not included. The judgment of the Hon''ble Supreme Court is regarding framing of the scheme for absorption of Company Paid Staff. It does not cover the case of equal pay to the Company Paid Staff which is doing the same work as the Central Government Paid Staff. The important issue that the Official Liquidator has avoided answering is that the terms and conditions of the Company Paid Staff working since years in the office of the O.L., particularly as regards payment of remuneration and other monetary and other benefits should be equal to the Central Government employees doing similar work in the office of the Official Liquidator. While the Company Paid Staff may wait for their absorption in the Central Government employment pursuant to the scheme framed in this regard, following the judgment of the Hon''ble Supreme Court dated 27.08.1999, till they are so absorbed, the Company Paid Staff in the office of the Official Liquidator should be paid salaries and other monetary benefits equal to those available to the Central Government employed staff and precisely for this reason, the present application is moved by the applicants.

9. Mr. Shah has further submitted that Official Liquidator is not right in saying that the office of the Official Liquidator attached to the High Court of Bombay cannot be compared with the office of the O.L., Ahmedabad in so far as reserve fund created from the investment income of the Official Liquidator is concerned. The fund position with the Official Liquidator, Ahmedabad is much stronger than that with the Official Liquidator, Mumbai. The Official Liquidator is earning huge interest on the fund available with him and since the Company Paid Staff working with him is rendering services not to a particular Company in Liquidation but in respect of the office of the Official Liquidator and in respect of various Companies in liquidation, the reserve fund created by him must be utilised interalia for the purpose of paying salaries, bonus and other monetary benefits to Company Paid Staff.

10. Mr. Shah has furnished certain statements showing calculations of amount of difference to be paid to the Company staff in respect of salary, gratuity, earned leave, etc. and detailed basis of such calculation. Mr. Shah has submitted that the framing of a scheme for the payment of remuneration and other terms of employment of the Company paid staff in the office of the Official Liquidator on the basis of equal pay and other benefits for equal work as of Central Government Staff will take some time and hence, pending formulation and finalisation of the Scheme, the Court may issue interim direction to grant monetary benefits to the Company paid staff.

11. After having heard learned advocate Shri Ashok L. Shah appearing for the applicants and the Official Liquidator and after having considered their respective pleadings and rival contentions and different orders passed by the Bombay High Court as well as the judgment of the Hon''ble Supreme Court in the case of Government of India and Ors. v. Court Liquidator''s Employees Association and Ors. etc. (Supra), the Court is of the view that there must be a proper Scheme for the Company paid staff working in the office of the Official Liquidator and there should not be any disparity in the pay scale of the Company paid staff and that of the Central Government Staff working in the same office and discharging the same duty. It is, however, true that there is much difference in their recruitment procedure. Company paid staff is not recruited by normal and regular selection process undertaken by the Department of Company Affairs, Government of India. They are employed by the Official Liquidator with the sanction of the Company Judge, under Rule 308 of the Companies (Court) Rules, 1959. This will have certainly some bearing on the question of their absorption or regularisation and without the consent or concurrence of the Central Government or without hearing them in the matter, no such direction can be given in these proceedings. Law of equity and justice, however, demands that principle of equal pay for equal work should necessarily be observed in respect of company paid staff. The Official Liquidator is, therefore, directed to frame complete and exhaustive scheme for remuneration and other benefits of Company paid staff, on the basis of equal pay for equal work, and after studying and examining the schemes prepared, if any, by the offices of the Official Liquidators in the other

States, including the State of Maharashtra. The Scheme so framed should be placed before this Court for necessary sanction and approval. This exercise should be done as expeditiously as possible, preferably within the period of six months from the date of receipt of writ from this Court or from the date of receipt of the certified copy of this order, whichever is earlier.

12. The next question that remains for consideration of this Court is in respect of issuance of direction to the Official Liquidator to grant interim monetary benefits to the Company paid staff. Here the moot question is from which date Company paid staffs are entitled to this benefit. They have claimed on the basis of such benefits having been given to the Company paid staff working in the office of the Official Liquidator from 1994. Statements of calculations produced before the Court are from 1994 onwards. The Bombay High Court, however, vide its interim order dated 30.07.1999, granted such monetary benefits on ad hoc basis, with effect from 01.01.1999. While passing the final order on 31.07.2001 in Misc. Company Application No. 24 of 1994, the Bombay High Court, inter alia, accorded the sanction for payment of Rs. 44,76,821/- towards arrears payable after deducting tax on arrears a sum of Rs. 2,56,593/totalling to Rs. 47,11,414/-. The order, however, does not clearly indicate as to from which date the arrears were ordered to be paid. In any case, the said application was filed in the Bombay High Court in the year 1994 whereas the present application is filed in this Court in the year 2002. The applicants have lodged their claim before the Official Liquidator vide their letter dated 17.10.2001, wherein they have relied on the decision of the Hon''ble Supreme Court referred to above, which was decided on 27.08.1999. The Court is, therefore, of the opinion that the applicants are entitled to the monetary benefit from the date of the decision of the Hon''ble Supreme Court, if not from the date of their application filed before this Court. It is, however, in no case, they are entitled from the year 1994.

13. The Court has not examined the correctness or otherwise of the statements produced by the applicants. The Official Liquidator has also not raised any dispute about these statements. It, however, requires detailed scrutiny and verification by the Chartered Accountant. The Court found that in some of the cases, the applicants have shown the figures of gratuity equivalent to the amount of difference in salary. It is also to be seen as to whether any amount of gratuity can be paid at this stage. It is also to be seen as to whether periodical increase, ex-gratia payments, payment of dearness allowance on par with Central Government Staff etc., are taken into consideration while preparing the above statements. The Official Liquidator is, therefore, directed to refer all these issues to the Chartered Accountant from amongst the approved panel of the Chartered Accountant and after obtaining detailed report from him, submit it alongwith his own report containing necessary comments, suggestions and recommendations, while submitting the Final Scheme, within the time specified above.

14. By way of an ad hoc arrangement, the Official Liquidator is hereby directed

to pay 25% of the differential amount of arrears of salary only commencing from the date of Supreme Court judgment i.e. 27.08.1999 to 31.12.2004. The applicants'' claim regarding gratuity, earned leave, medical relief, L.T.C., etc. will be considered at the time of considering the Scheme as a whole alongwith the report of the Chartered Accountant. The amount so ordered to be paid to the applicants will be adjusted against the final payments to be made to them.

15. It is made clear that this order would not fasten any additional liability on the Central Government and no one from the Company paid staff shall be entitled to make any claim against the Central Government on the basis of this order. Their right of absorption under the Scheme of Central Government will not, however, either way, be affected by this order.

16. Since the Court has directed the Official Liquidator to file his detailed report alongwith the Scheme and Report of the Chartered Accountant, there is no need to keep this application pending and all other orders will now be passed on the report of the Official Liquidator.

17. Subject to the aforesaid directions and observations, this application is accordingly disposed off without any order as to costs.

18. After pronouncement of the judgment, Mr. A.L. Shah, learned advocate appearing for the applicants has submitted that the Official Liquidator may be directed to encash prematurely Fixed Deposit Receipts, if necessary, for the purpose of making payment to the applicants. The Official Liquidator is accordingly permtted to encash prematurely Fixed Deposit Receipts.

