(2013) 01 DEL CK 0194

In the Delhi High Court

Case No : Writ Petition (C) No. 1621 of 2007

M.S. Saxena and Another — APPELLANT

Vs

Union of India and Others — RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

Citation : (2013) 01 DEL CK 0194

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : R.S. Mathur, for R-2, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This writ petition is filed by the petitioners who are retired employees of the respondent No. 2/M/s. Indian Drugs and Pharmaceuticals Ltd. seeking the relief of grant of revised pay-scales as per the fifth pay commission in terms of the judgment of the Supreme Court in the case of Jute Corporation of India Officers'' Association Vs. Jute Corporation of India Ltd. and Another, . The petitioners were appointed as officers and supervisors in respondent No. 2/M/s. Indian Drugs and Pharmaceuticals Ltd. (IDPL). They already had retired when the present petition was filed.

2. The very issue which is urged in this writ petition was a subject matter of a writ petition in the Supreme Court and the Supreme Court in the case of Officers and Supervisors of IDPL vs. Chairman and MD of IDPL, WP (Civil) No. 222/1998 decided the same on 24.7.2003. The Supreme Court in the said judgment has referred to the fact that the issue of grant of pay-scales in terms of the fifth pay commission also depends upon viability of the units from which financial packages are asked for. The Supreme Court held that the earlier judgment in Jute Corporation of India Officers'' Association (supra) in which five directions were given cannot be enforced as a matter of right against sick public sector undertakings. The relevant portion of the judgment of the Supreme Court in the

aforesaid case reads as under:-

We have already referred to the judgment of this Court in A.K. Bindal and Another (supra) in which this Court has decided that the employees under public sector enterprises cannot be treated as Central Government employees and if the company does not have enough funds no way the revision can be given. 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 wages 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 negative 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. 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 the 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.

Since this Court has already decided the very issue in question and the petitioners have opted for the VRS nothing survives in this petition and the same is liable to be dismissed. The petitioners having applied for VRS it is not open to them to contend that they are entitled for pay revision.

It is also pertinent to notice that one of the units of the company, namely, I DPL Kamgar Union, Rishikesh filed a SLP no 23361 of 1994 challenging the orders of the BIFR dated 10.02.1994 and of AAIFR dated 18.07.1994 and claimed the deferred facilities, the SLP was dismissed by this Court vide its judgment dated 07.01.1995

For the foregoing reasons, we see no merit in the writ petition. We, therefore, dismiss the same. However, there will be no order as to costs.

(underlining added)

3. This writ petition, in my opinion, is a gross abuse of process of law because the very issue which is being urged and canvassed by the petitioner has also been decided against the petitioner in the aforesaid judgment of the Supreme Court in WP (Civil) No. 222/1998 dated 24.7.2003. In the said judgment, the Supreme Court has also dealt with earlier judgment of the Supreme Court in the case of Jute Corporation of India Officers'' Association (supra), which is relied upon by the petitioners in the present case, and the Supreme Court has after referring to this judgment in the case of Jute Corporation of India Officers''

Association (supra) denied relief to the officers and supervisors of IDPL who were represented through an association. In view of the above, there is no merit in the petition, and which is therefore dismissed, leaving the parties to bear their own costs.