
(2012) 10 AP CK 0085

In the Andhra Pradesh High Court

Case No : W.A. No's. 586 and 1171 of 2008

M/S. Sponge Iron India Limited

APPELLANT

Vs

M. Ramana Babu

RESPONDENT

Date of Decision : 17-10-2012

Acts Referred:

Constitution of India, 1950 — Article 14

Road Transport Corporations Act, 1950 — Section 34, 34(1)

Citation : (2013) 2 ALD 225 : (2013) 2 ALT 435 : (2013) 2 LLJ 696

Hon'ble Judges : G. Rohini, J;C. Praveen Kumar, J

Bench : Division Bench

Advocate : M. Srikanth and Ms. Bharathi Devi, for the Appellant; S.A. Chari, for the Respondent

Judgement

Honourable Sri Justice C. Praveen Kumar

1. The writ appeals are directed against the order dt. 29-4-2008 passed by the learned single Judge in Writ Petition No. 15090/2005 wherein and whereunder a letter dt. 4-2-2005 issued by the respondent in writ petition (M/s. Sponge Iron India Ltd., Hyderabad) was questioned on the ground that it is violative of Arts. 14,16,21 and 300-A of the Constitution of India. For the sake of convenience the parties herein are referred to as they are arrayed in the writ petition.

2. The writ petitioner joined the service of the respondent-company on 14-11-1979 as Assistant Engineer and worked in the said organisation for nearly 22 years. On attaining superannuation, he retired from service of the respondent-company on 29-6-2002 as Senior Executive. On 16-8-2002 revision of wages were introduced in the company with effect from 1-1-1997. Claiming arrears, in view of wage revision, the writ petitioner approached the authorities by way of a representation dt. 18-1-2005. According to him, though he retired from service of the company after revision of wages, still he is entitled to the benefits of wage revision. By a letter dt. 4-2-2005, the respondent company gave a reply which is as under

..wage revision is on the basis of an agreement between the Union and the Management in so far as the Executives are concerned the same policy decision was taken to keep parity between the two sets of employees and therefore restricted to persons who were actually on the rolls of the company as on 16-08-2002. As you have retired earlier to 16-8-2002 you are not entitled to any arrears in pay revision.

It is also mentioned in the said letter that the writ petitioner is not entitled to incentive payment which has been given only to those persons who were in service as on that date. As stated supra, questioning the said letter, a writ petition was filed.

3. The learned single Judge by his order dt. 29-4-2008 set-aside the impugned letter, directed the respondent-company to extend the benefit of wage revision which was introduced on 16-8-2002 with effect from 1-1-1997 to the writ petitioner and also directed payment of arrears and other benefits which accrued thereon from 1-1-1997 till the date of retirement from service. Aggrieved by the same, the respondent-company filed WA No. 586/2008 and the writ petitioner filed WA No. 1171/2008 seeking interest on the amount to be paid by the respondent-company.

4. The learned counsel for the respondent in the writ petition contends that pursuant to the agreement entered into between the Management and the Union, wage revision was made and it was categorically mentioned in the agreement that the wage revision would be applicable only to existing employees who were on the rolls of the company and that pay revision was extended to the executives who are in service of the company as on the date of order of the Government i.e., 16-8-2002. According to him, the said decision was based on the financial condition of the company. He further contends that the respondent-company has a separate legal entity though it was established by the Government and it cannot depend upon the Government resources. It has to meet the additional expenditure from out of its own resources. According to him, the company is running in losses and strength of the employees was also considerably reduced, therefore, keeping in view these circumstances, an agreement was entered into between the Management and Union extending the benefit of wage revision only to those employees who were in service as on the date of notification.

5. The learned counsel for the writ petitioner contends that the officers cannot be denied the benefit due to delay in notifying the revision which was made effective from 1-1-1997. According to him, though he retired from service prior to the notification, the wage revision was made effective from 1-1-1997 and that he would be entitled to benefit during the period of his service i.e., from 1-1-1997 to 29-6-2002. The said benefit which got accrued to him cannot be taken away by executive instruction or agreement between the Union and Management.

6. As seen from the material placed on record, the scales of Pay of the incumbents of the Board level and below Board level executives were last revised by the Government with effect from 1-1-1992. The Government now decided revision of pay and other benefits for the executives of the respondent-company with effect from 1-1-1997 which may be implemented through Presidential Directives. Earlier, the Government of India vide No. 3(7) 95-KDM dt. 15-1-1997 while approving the revision in the scales of pay and allowances of executives of the company with effect from 1-1-1992 observed at cl. 7 as under:

PAYMENT TO THE EXECUTIVES WHO HAVE CERASED TO BE IN SERVICE OF THE siil AFTER 1-1-1992: All executives who were on the roils of the Company as on 1-1-1992 but subsequently ceased top be in service on account of superannuation, resignation, VR termination of employment, death etc., would be eligible for the benefits of the revised scales of pay upto the period they were in employment of the company.

An Office Memorandum dt. 25-6-1999 issued by the Government of India, Ministry of Industry shows that as next pay revision fell due from 1-1-1997, the Government had set up a high level committee under the Chairmanship of Justice S. Mohan, Retired Supreme Court Judge, to recommend revision of pay and allowances for these executives following IDA pay scales. Based on the recommendations of the Committee, the Government have decided that the scale of pay attached to these Board level posts and below Board level posts would stand revised with effect from 1-1-1997.

7. In exercise of the powers conferred by Art. 93(2) of Articles of Association of the respondent-Company, the President was pleased to direct the respondent-company that the approved scales of pay, fitment formula, DA, guidelines and ceiling on perquisites, as contained in DPE's OM No. 2(49)/98-DPE(WC) dt. 25-6-1999 for Board level and below Board level executives may be implemented by the respondent company with effect from 1-1-1997. That's how, the wage revision was sought to be given effect from 1-1-1997.

8. The learned counsel for the respondent-company relied upon the judgment of the Apex Court in State of Punjab v. Boota Singh, (2000) 3 SCC 733 3 for the proposition that the persons who retired after coming into force of these notifications are governed by different rules of retirement than those who retired under the rules applicable at the time of their retirement. It was a case where by notification dt. 9-7-1985 dearness allowance and ad hoc dearness allowance sanctioned up to Consumer Price Index Level were to be treated as dearness pay for the purposes of calculating pension, gratuity/DCRC and terminal gratuity in respect of the employees retiring on or after 31-3-1985. By another circular dt. 24-11-1988, the employees were allowed to accumulate earned leave up to 360 days. The existing employees were given an option, either to be governed by the existing rules or by the new decision, which option was exercisable within a period of four months from the date of issuance of above mentioned circular. The respondents therein were not given the benefit of both these changes. They filed

writ petition before the High Court of Punjab and Haryana claiming the benefits conferred by the notification dt. 9-7-1985 and the circular letter dt. 24-11-1988 basing their claim on the decision of the Supreme Court in D.S. Nakara and Others Vs. Union of India (UOI), . The Honourable High Court of Punjab and Haryana granted the reliefs to the respondents by relying upon the previous decision of the said court in MOHINDER SINGH V. STATE OF PUNJAB (CWP NO. 3921/90 dt. 22-4-1991). The matter was carried to the Supreme Court. In the facts and circumstances of that case, the Supreme Court felt that retirement benefits which are claimed by the respondent are benefits which are conferred by subsequent orders/notifications. Therefore, persons who retired after the coming into force of these notifications and order are governed by different rules of retirement than those who retired under the old rules. The Supreme Court further observed that the two categories of persons, who retired were governed by two different sets of rules and that they cannot be equated. Further, granting of additional benefits has financial implications also. In view of the facts and circumstances, the Supreme Court allowed the appeal filed by the State.

9. In the present case, the situation is totally different. Here is a case where though notification was issued after the writ petitioner retired from service but pay revision was notified to be effective from 1-1-1997, during which period he was in service. The proposition laid down by the Apex Court in the above case will not apply to the present case.

10. The learned counsel for the respondent-company also relied upon the decision of the Supreme Court in Chairman and M.D., K.S.R.T.C. Vs. K.O. Varghese and Others, It was a case where benefits of 5th pay commission were deferred to the employees of Kerala State Road Transport Corporation because of financial position of Road Transport Corporation was unsound. The said decision of the Government was also reiterated in subsequent letters. The letter dt. 16-5-1995 issued by the Government referring to the financial position of the KSRTC was the subject matter of dispute before the Supreme Court. The Supreme Court held that the said letter which was issued by the KSRTC amounts to a direction in terms of the Section 34(1) of the Road Transport Corporations Act. The Apex Court while finding fault with the High Court observed as under:

.....The question of revision or enhancement of pension to its employees is left to KSRTC, an autonomous corporation, subject of course to any direction that may be issued by the State Government u/s 34 of the Act." The Supreme Court thus held that mere adopting of Part III of Kerala Service Rules does not therefore shackle or control the power of KSRTC to take a decision for giving benefits under 5th pay commission.

The Supreme Court further observed that the financial position of the Corporation like KSRTC is certainly relevant when the Corporation takes a decision as to whether it should implement a recommendation for enhanced emoluments and pension or not.

11. The above judgment was referred to by the learned counsel for the respondent-company to substantiate his contention that the court cannot compel any organization to pay the arrears when the financial condition of the corporation is not sound. At the first blush the said argument appeared to be of some substance, but on a close scrutiny we found the same to be devoid of any merit. In the counter-affidavit filed by the respondent-company in the writ petition, they have admitted that due to reduction of manpower, production increased and productivity was on the higher side and the market for products started improving which resulted the company to turn around the corner in 2000. Therefore, it cannot be said that the company was running in a loss at the time when the notification was issued in the year 2002 making it effective from 1-1-1997. If really, the company was sick or not making any profit, the Government or the respondent-company would not have ventured to revise the pay even in respect of persons who were in service as on 16-8-2002 making it effective from 1-1-1997, since the company has to generate its own resources for meeting any additional expenditure. In *Chairman-cum-Managing Director, National Textiles Corporation Ltd. and Others Vs. N.T.C. (WBAB and O) Ltd. Employees Union and Others*, the Supreme Court held that "if the mill is incurring losses the impact has to be on everyone connected with the mills, in whatever capacity. You cannot have double standards."

12. In support of his contention, the learned counsel for the writ petitioner relied upon the decision of the Supreme Court in *P. PARAMESWARAN AND OTHERS V. SECRETARY TO THE GOVERNMENT OF INDIA*, 1987 (Supp) SCC 18) In the said case, the question that arose for consideration was whether implementation of pay commission's recommendations should be the same for all categories of employees. It was held that denial of the recommendations to the Field Publicity Officers Grade IV from January, 1 1973 as given to all others was found to be discriminatory. A direction was issued to give effect to the revised grade and scales from January 1, 1973 to the petitioners also.

13. The learned counsel for the writ petitioner also relied upon the judgment of the Supreme Court in *State of Mizoram and Another Vs. Mizoram Engineering Service Association and Another*, , wherein scale of pay of Rs. 5900-6700 was confined only to the then Chief Engineer and was not allowed to future entrants in the service. The Apex Court held that State Government cannot be permitted to discriminate between similarly placed individuals in this behalf between those holding the post at the time of revision of pay scales and future incumbents of the post.

14. The writ petitioner in the present case appears to be better placed than the respondent in the above case i.e., *STATE OF MIZORAM* (4 supra). In the above case, revision of pay scales were denied to the persons who were going to occupy the said post. In the case on hand, benefit of arrears under revision of scales were denied on the ground that he was not holding any post on the date of notification i.e., 16-8-2002. As stated above, the writ petitioner retired from

service on 29-6-2002 and he was in service on 1-1-1997 i.e., the date from which the notification dt. 16-8-2002 was given effect to. Further as noted above, the benefit of revision of wages which took place in the year 1992 was extended even to retired employees. So, the denial of claim to the writ petitioner is purely discriminatory in nature.

15. In view of the above observation, we feel that when the benefit can be extended to the persons who were in service as on 16-8-2002, the same benefit can be extended to the employees who were in service on 1-1-1997, i.e., the date from which notification was given effect to. If really, the company was in loss, the same effect should have shown on employees who were in service as on 16-8-2002. Discrimination between two sets of employees i.e., those who retired from service and those who were in service as on 16-8-2002 is purely arbitrary and discriminatory in nature thereby violating Art. 14 of the Constitution of India.

16. It is not in dispute that the writ petitioner retired from service in the capacity of Executive Officer and there was no agreement between the Union of the Executive Officers and the Management. Though it is stated that the agreement entered into between the Union and the Management is equally applicable to the executive officers, the same cannot be accepted. As observed by the learned single Judge that any understanding or settlement between the Union of Workmen and the Management cannot be made applicable to the Executive Officers, who have to be dealt with separately. Therefore, the contention of the learned counsel for the respondent-company that the writ petitioner is not entitled to the benefit of wage revision which was introduced on 16-8-2002 on the ground that he retired from service prior to 16-8-2002 and was not on the rolls of the company as on 16-8-2002 cannot be accepted. As observed earlier, the writ petitioner retired from service on attaining the age of superannuation. It was not a case where he retired from service voluntarily and was conferred with certain additional benefits. Thus, we feel that the respondent-company could not have denied the benefit of revised wages to the writ petitioner.

17. For the foregoing reasons, we find that there are no merits in WA No. 586/2008 and the same is liable to be dismissed.

18. The learned counsel for the writ petitioner contends that the learned single Judge should have granted interest on the delayed payment of arrears at the rate of 18% on the amount which the writ petitioner was entitled to. According to him, a retired employee could claim interest on the delayed payment of arrears. He relied upon the judgment of this court in D. Damayanthi (Deceased) and Others Vs. Secretary, Ministry of Home Affairs, Government of India and Others, . It was a case where, the appellant therein filed writ petition for issuance of a writ of Mandamus directing the respondents 1 and 2 therein to sanction family pension to her from 2-1-1999 i.e., the date of death of her husband up to 14-10-2003 and freedom fighters pension payable to her husband from the date of his representation dt. 8-8-1994 to 2-1-1999, the date of his death, with interest at 12% per annum. The said writ petition was disposed of by

a learned single Judge on 23-1-2008 directing the respondents therein to consider the case of the writ petitioner and pass appropriate orders within a period of six weeks from the date of receipt of the copy of that order. Questioning the same, the writ appeal was filed. A Division Bench of this court held that the writ petitioners are entitled for the interest for the delay caused in payment of pension to late D. Ramulu, family pension to late D. Damayanthi and the present petitioners. This Honourable Court further held that the writ petitioners are entitled for payment of interest at 12% per annum on the said amounts from the respective dates they became due. In the facts and circumstances of that case, the court awarded interest @ 12% per annum from the date they became due. The Apex Court in *Gurdial Singh Vs. Union of India and Others*,), while considering the liability to payment of interest on delayed payment of arrears of pension, directed payment with interest @ 12% per annum from March, 1996 till the date the arrears are actually paid in default of payment of arrears within the time of six weeks as stipulated in the order.

19. In view of the aforesaid findings, the writ petitioner is entitled for revision of pay scales and also payment of arrears due to him in view of wage revision. The respondent company is directed to pay the amount which the writ petitioner is entitled to due to wage revision within a period of three (3) months from the date of receipt of a copy of the order. The respondent is also directed to pay interest at 9% per annum from 1-1-1997 till the date the arrears are actually paid, in default of payment within the time stipulated above. In the result, WA No. 586/2008 is dismissed and WA No. 1171/2008 is disposed of with the above direction. There shall be no order as to costs.