

(2001) 06 BOM CK 0013
In the Bombay High Court
Case No : Writ Petition No. 806 of 1997

National Textile Corporation

APPELLANT

Vs

Kamala Singh and Others

RESPONDENT

Date of Decision : 26-06-2001

Acts Referred:

Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 28

Citation : (2001) 4 ALLMR 653 : (2001) 4 BomCR 774 : (2002) 92 FLR 493 : (2001) 4 MhLj 796

Hon'ble Judges : D.Y. Chandrachud, J

Bench : Single Bench

Advocate : T.S. Shetty and Pushkar Gadkar, for the Appellant; C.U. Singh and Kiran Bapat, for the Respondent

Final Decision : Dismissed

Judgement

D.Y. Chandrachud, J.—These proceedings arise out of an order passed by the Industrial Court holding that the petitioner has committed an unfair labour practice under Items 5 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971. The 1st to 7th respondents to these proceedings were engaged by certain Textile Mills prior to nationalisation by and under the provisions of the Sick Textile Undertakings (Nationalisation) Act, 1974 ("the Nationalisation Act.") The 1st and 3rd respondents were engaged in by the Mumbai Textile Mills in September 1980 and 21st August, 1976, respectively. The 2nd respondent was engaged on 2nd April, 1978 by Bharat Textile Mills. The 4th to 7th respondents were engaged by Jupiter Textile Mills on 9th May, 1973, 1st August, 1972, 8th June, 1973, and 10th April, 1978, respectively. Therefore, it is common ground that these were pre-nationalisation employees. The undertakings of the aforesaid Mills came to be acquired by virtue of the provisions of section 3(1) of the Nationalisation Act, and vested in the National Textile Corporation, the petitioners. It is common ground between the learned Counsel that the erstwhile Mills in which the present

respondents were employed have been listed out in the First Schedule in the Nationalisation Act. Items 2 and 3 of the First Schedule relate to the Ahmedabad Jupiter Spinning, Weaving and Manufacturing Mills, Item 33 to Edward Textile Mills, and Item 88, the Seksaria Cotton Mills. There is no dispute about the fact that Bharat Textile Mills is the same as Edward Textile Mills referred to in Item 33 of the First Schedule and Mumbai Textile Mills the same as Saksaria Cotton Mills referred to in Item 88. There is no dispute that under the provisions of the Nationalisation Act the services of respondent Nos. 1 to 7 came to be transferred to the National Textile Corporation u/s 14(1) of the Act. Sub-section (1) of section 14 provides that every person who was a workman within the meaning of the Industrial Disputes Act, 1947, and was employed in a Nationalised Sick Textile Undertaking ("N.T.C.") would on and from the appointed date become an employee of the National Textile Corporation. The terms and conditions governing the service of such employees would be such as would have been applicable if the rights in relation to the Sick Textile Undertaking had not been transferred to and vested in the N.T.C. These terms and conditions would continue until the employment with the N.T.C. was duly terminated or until the remuneration, terms and conditions of employment were duly altered by the N.T.C.

2. Prior to the appointed date which was stipulated under the Nationalisation Act of 1974 industrial settlements had been entered into between the recognized union Rashtriya Mill Mazdoor Sangh, and the Mill Owners' Association which represented the management of the Textile Mills in Mumbai. The workmen employed in the Mills were governed by these industrial settlements. After nationalisation, the workmen engaged by the erstwhile privately owned textile Mills became the employees of the N.T.C. The question as to what should be the pattern of wage fixation for employees of public sector corporations formed the subject matter of several writ petitions which were filed before the Supreme Court under Article 32 of the Constitution. These petitions were heard and disposed of by a Bench of three learned Judges of the Supreme Court on 3rd May, 1990. The judgment of the Supreme Court in Jute Corporation of India Officers' Association v. Jute Corporation of India Ltd., W.P. No. 13044 of 1984 and other companion matters is reported in Jute Corporation of India Officers' Association Vs. Jute Corporation of India Ltd. and Another, . In the writ petitions which came to be disposed of by the judgment of the Supreme Court the relief which had been claimed was the implementation of the recommendation of a High Power Pay Committee in respect of the emoluments to be paid to the employees belonging to Class-I and Class-II in various Public Sector Enterprises. The High Powered Committee which was appointed to go into the question of wage fixation submitted its recommendations in a Final Report, dated 2nd November, 1988. The Central Government not having implemented the report of the Committee, several writ petitions were filed before the Supreme Court seeking the implementation of its recommendations. The judgment of the Supreme Court contains several operative directions, the following amongst

those being material for the purposes of the present controversy :

"(i) The scales of pay and dearness allowance as recommended in the report will be extended to those employees who have been appointed with specific terms and conditions for grant of Central D.A. This will be equally applicable to the employees who by rules laid down by the public sector enterprises are being paid Central dearness allowance.

(ii) The employees appointed on or after January 1, 1999, will be governed by such pay-scales and allowances as may be decided by the Governments in its discretion. Those appointed earlier with I.D.A. patterns will continue to be governed in accordance with the terms and conditions of their appointment.

(iii) The pay revision for those employees in respect of whom the recommendations are hereby being directed to be implemented hereafter, will take place only as and when similar changes are effected for the Central Government employees. These employees will, however, continue to enjoy the option to switch over to the I.D.A. pattern of the scales of pay etc. on a voluntary basis."

3. After the judgment of the Supreme Court was pronounced, the Government of India in the Ministry of Implementation (Department of Public Enterprises) issued an office Memorandum on 12th June, 1990 containing instructions in regard to the action which was required to be pursued by public sector enterprises which had been following the D.A. pattern of the 3rd/4th Central Pay Commissions. Paragraph 3 of the Memorandum issued by the Central Government classifies the employees of these undertakings into eight different categories. The Memorandum specifies as to what would be the governing principles for the determination of the terms of service with reference to each of the aforesaid categories. The dispute between the public sector enterprises and various classes of employees was initially in regard to the implementation of the Industrial Dearness Allowance. The Memorandum which was issued by the Central Government in the light of the judgment of the Supreme Court provided for the applicability, or otherwise, of the Industrial D.A. pattern to various classes of employees. It would be convenient at the present stage to extract paragraph 3, which is the relevant part of the Memorandum :

"3. APPLICABILITY OF THE RECOMMENDATION :

(i) EMPLOYEES APPOINTED ON OR AFTER 1-1-1986:

All employees following 3rd C.P.C. D.A. pattern appointed on or after 1-1-1986 but before 31-12-1988 would be deemed to have been appointed in the revised scales.

(ii) EMPLOYMENTS ON C.D.A. PROMOTED AFTER 1-1-1986:

Employees who have been promoted after 1-1-1986 but were in receipt of Central D.A. on pre-revised pay in posts held by them before their promotion,

their pay would be first fixed in the manner indicated in Annexure VI in the lower posts.

(iii) EMPLOYEES APPOINTED ON OR AFTER 1-1-1989:"

All appointments made on or after 1-1-1989 in respect of all categories of employees by these P.S.E.'s would be deemed to have been governed by the I.D.A. pay scales and I.D.A. Appropriate pay scales on the I.D.A. patterns for employees appointed on or after 1-1-1989 may be formulated by the P.S.E.s concerned, in consultation with the administrative Ministry and referred to D.P.E. for approval.

(iv) EMPLOYEES INITIALLY APPOINTED ON INDUSTRIAL D.A.:

All employees who were earlier appointed on Industrial D.A. pattern will continue to be governed in accordance with the terms and conditions of their appointment.

(v) EMPLOYEES ON IDA PROMOTED TO EXECUTIVE CADRES AFTER 1-1-1989 :

Unionised employees and unionised/non-unionised supervisors who have been and are on I.D.A. patterns and related scales of pay on their promotion to the executive posts on or after 1-1-1989 would be entitled to I.D.A. only and their pay will be fixed in scales related to the I.D.A. scheme.

(vi) EMPLOYEES WHO CHANGED OVER FROM CDA TO IDA SINCE JULY, 1984 :

The unionised and non-unionised employees of enterprises working in P.S.Es. like Food Corporation of India, Hindustan Paper Corporation Ltd., National Hydro-Electric Power Corporation Ltd., Housing and Urban Development Corporation Ltd., Hindustan Cables Ltd., Hindustan Photo films Ltd., etc., who voluntarily agreed to change over before or after 1-1-1989 but before the Supreme Court judgment of 3-5-1990 to the Industrial D.A. Scheme and related scales of pay on retrospective basis w.e.f. 1-8-1985 or thereafter would not be entitled to the benefits of the recommendations made by the H.P.P.C. In such cases, they would get their wage/pay revision as per the norms laid down by the Government for such categories of employees from the date of expiry of their wage/pay settlement.

(vii) EMPLOYEES WHO DID NOT OPT FOR IDA SCHEME:

Employees who did not opt for I.D.A. and related scales of pay would get the benefit for revised pay under these orders.

(viii) EMPLOYEES WHO HAVE CEASED TO BE IN SERVICE OF PSEs AFTER 1-1-1986 :

All employees, who were on the rolls of service on account of superannuating, resignation, voluntary retirement, termination of employment, death, etc., would be eligible for the benefits of these orders upto the period they were in employment."

4. In so far as the present case is concerned, the dispute between the parties principally focuses upon the construction to be placed on Clause (iii) of paragraph 3 of the Memorandum. Respondent Nos. 1 to 7 were employees of the Nationalised Mills whose services came to be transferred to the petitioner as a result of the Nationalisation Act of 1974. On and from the appointed date these employees became the employees of the petitioner Corporation. The petitioner by an order dated 6th March, 1991 placed respondent No. 6, who was a Senior Clerk, on the N.T.C. Pay Scale of Rs. 425-700 on a basic pay of Rs. 640/- with effect from 1st January, 1991 and designated him as an Assistant. There is no dispute about the fact that similar orders were issued in favour of all the other respondent workmen as a result of which they were placed on N.T.C. Pay Scales by the Corporation. Similarly there is no dispute about the fact that the N.T.C. Pay Scales were equivalent on the date on which the office orders were issued in the case of each one of the respondent workmen to, what was admissible under the recommendations of the 3rd Central Pay Commission (Central D.A. Pattern). The office order which was issued in respect of respondent No. 6 provided that the 3rd Central Pay Commission Scales of pay were subject to revision based on the Industrial D.A. Pattern with effect from the date of the placement. Accordingly, by and under the terms of the office order, the workman concerned was required to signify his acceptance of the new service conditions associated with the N.T.C. Pay Scales in lieu of those covering the Mill grades by which the workman was previously governed. The office order of 6th March, 1991 was, followed by a further office order dated 27th April, 1992. By the subsequent order the petitioner notified that consequent upon the finalisation of the Industrial Dearness Allowance pattern of Pay Scales applicable to employees appointed on or after 1st January, 1989 under the Pay Scales prescribed by the 3rd Pay Commission, the revised pay structure of the concerned workman together with the progression in salary had been determined with effect from 1st January, 1991. Accordingly, the revised basic pay and scales of pay were notified and each one of the workmen was required to communicate his acceptance to the revised pay scale. The dispute between the parties in the present case arose out of what transpired thereafter. N.T.C. adopted the position that the workmen in the present case had been placed in the N.T.C. Scales of Pay after 1st January, 1989 and would not be entitled to the benefit of a wage revision on the basis of the recommendations of the fourth Pay Commission. According to N.T.C. the benefit of wage revision on the basis of the Fourth Pay Commission would be admissible only to those employees to whom N.T.C. Scales of Pay had been granted prior to 1st January, 1989.

5. The complaint which was filed by the workmen in the present case before the Industrial Court has its genesis in this decision of the N.T.C. The complaint which was filed under Items 5 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 essentially focused on two grievances which, according to the complainant workmen constituted an unfair labour practice. The first grievance highlighted in the

complaint was that as a result of the wage fixation carried out by the petitioner, the Provident Fund contribution in respect of each of the employees had in fact been reduced, which was not permissible u/s 12 of the Employees Provident Fund and the Miscellaneous Provisions Act, 1952. This according to the workmen, constituted a breach of Item 9 of Schedule IV of the Act. The second and perhaps more fundamental grievance before the Industrial Court was that all the complainant workmen had joined the petitioner corporation prior to 1989. Despite this, the Corporation had, carried out wage fixation as if the complainant workmen had joined after 1st January, 1989. According to the workmen while the benefits of the pay revision under the recommendation of the 4th Pay Commission had been extended to certain categories of workmen, by N.T.C., these had not been extended to the complainant workmen which amounted to showing "favouritism and partiality to one set of workmen regardless of merit" within the meaning of Item 5 to Schedule IV of the Act. In sum and substance, therefore, what was sought to be submitted was that:

- (i) The complainants had been in employment much prior to 1-1-1989 :
- (ii) Their dates of appointment could not be treated as after 1-1-1989 as had been done by the employer for the purposes of wage fixation; and
- (iii) While other employees were given the benefit of the 4th Pay Commission's recommendations the complainant-workmen had been denied a Pay Revision. In the circumstances, besides declaratory relief, the complainants sought a direction to the effect that all of them like other employees of N.T.C. should be given the benefit of the 4th Pay Commission wage revision.

6. The claim of the workmen was contested on behalf of the petitioner. On behalf of the petitioner it was sought to be submitted that each one of the concerned workmen had been granted the benefit of N.T.C. Pay Scales in place and stead of the Mills Pay Scales to which he had been hitherto entitled as pre-nationalisation employees. The employer sought to submit that the workmen had confirmed their acceptance of the N.T.C. Pay Scales in 1990-91 after which on 27th April, 1992 office orders had been issued extending to them the benefit of the Industrial Dearness Allowance Scheme. The petitioner in its written statement in the proceedings below sought to contend that employees of the corporation placed in the N.T.C. Scale are classified into two categories : (i) those who were extended N.T.C. Scales prior to 31st December, 1998: and (ii) those who were placed on the N.T.C. Scales on and after 1st January, 1989. The case of the petitioner was those of its employees who had been placed on N.T.C. Scales of pay prior to 31st January, 1989 were alone eligible for D.A. as applicable to the Central Government Employees. On the other hand, those employees placed in the N.T.C. Scales on and after 1st January, 1989 would be entitled only to the Industrial Dearness Allowance as applicable to the public sector enterprises. The complainant workmen having been placed on the N.T.C. Scales on or after 1st January, 1989 were not eligible to the benefit of the 3rd or 4th Pay Commission. In paragraph 9 of the written statement the petitioner sought to contend that the

judgment of the Supreme Court dated 3rd May, 1990 regarding pay fixation was not applicable to the complainant-workmen. On the other hand, in paragraph 11 it was sought to be submitted that the classification between employees based on whether or not they were placed in the N.T.C. Pay Scales prior to 1st January, 1989 was in conformity with the judgment of the Supreme Court. According to the Corporation the judgment of the Supreme Court itself made a rational classification based on the switch over from the Mills grade to the N.T.C. grade.

7. Evidence was adduced on behalf of the contesting parties before the Industrial Court. The Industrial Court by its order dated 4th April, 1997 has come to the conclusion that the petitioner had engaged in unfair labour practices both under Items 5 and 9 of the IVth Schedule to the Act upon which the petitioner was directed to give the benefit of the wage revision under 4th Pay commission to the complainant-workmen. The Industrial Court had held against the petitioner on both the counts on which an allegation of unfair labour practice was sought to be made. The Industrial Court has held that the reduction in the contribution to the Provident Fund violated the provisions of the section 12 of the Act, 1952. The Industrial Court also held that by denying to the employees placed on wage N.T.C. Pay Scales after 1-1-1989 the benefit of the revision under the 4th Pay Commission recommendations a revision which was allowed to those employees who were placed on N.T.C. Pay Scales prior to 1-1-1989 an unfair labour practices has been committed under Item 5 of Schedule IV.

8. On behalf of the petitioner the findings which were arrived at by the Industrial Court were sought to be impugned principally on the basis of the judgment of the Supreme Court delivered on 3rd May, 1990, and the Office Memorandum of the Government of India dated 12th June, 1990. At the outset it would be necessary to refer to the position that while issuing these directions the Supreme Court held that the scales of pay and Dearness Allowance recommended by the report of the High Power Pay Committee will be extended to those employees who have been appointed with specific terms and conditions for the grant of Central Dearness Allowance. The Pay Scales and Dearness Allowance recommended by the High Power Pay Committee would similarly to be applied to those employees who were being paid the Central Dearness Allowance under the applicable rules laid down by the public sector enterprises. The Supreme Court, however, directed that those employees who were appointed on or after 1-1-1989 would be governed by the Pay Scales and allowances as may be decided by the Government in its discretion. Employees appointed earlier on the Industrial Dearness Allowance or I.D.A. pattern were to continue to be governed by the terms of conditions of their appointment. All the seven workmen, who form the subject matter of dispute in the present case, admittedly were appointed in the service of the petitioner much prior to January 1, 1989. Indeed, there is no dispute about this position. But, it may be noted as a matter of record that in the course of the cross-examination of witness Nos. 1, who deposed on behalf of the petitioner, P.W. Waghmare, Manager Personnel (Administration), there is an express admission to the effect that the workmen concerned had

been employed with the National Textile Corporation prior to 31-12-1988.

9. On behalf of the petitioner the justification for not granting the benefit of the recommendations of the 4th Pay Commission to the complainant workmen was sought to be advanced during the course of the evidence of its two witnesses. P.W. Waghmare, the Manager Personnel (Administration) of N.T.C. stated that all the complainants had been placed in the N.T.C. Pay Scales after 1-1-1989 and that they were not, therefore, entitled to the benefit the 4th Pay Commission's recommendations. The witness stated that employees who were paid N.T.C. Pay Scales before 1-1-1989 were only entitled to the said benefits. During the course of cross-examination the witness stated that he was getting his salary in accordance with the recommendations of the 4th Pay Commission and stated that his appointment was prior to 1989. The witness admitted that "it is correct that by considering the date of placement and not the date of employment the, further steps have been taken by the Corporation". (para 3 of notes of evidence).

10. The second witness who deposed on behalf of the petitioner was Shri N.T. Nair, Senior Manager (Internal Audit). This witness sought to state that it was in accordance with the directions of the Supreme Court that employees who were placed in the N.T.C. Grade prior to 1-1-1989, would be entitled to the benefits of the recommendations of the High Power Pay Committee. The employees placed in the N.T.C. grade after 1st January, 1989 would be governed by the Industrial D.A. pattern. The witness also stated that at the time of fitment it was not the length of the service of the employees which was the criteria to be considered, but the total emoluments of the employee. This witness expressly admitted that the employer's contribution to the Provident Fund had in certain cases been marginally reduced. During the course of the cross-examination the witness admitted that except the judgment of the Supreme Court there were "no other documents about directions of the fitment". The witness also admitted in terms that each one of the complainant workmen had joined N.T.C. prior to 31st December, 1988. The witness admitted in terms that when the orders of fitment were issued, he knew about the reduction in the contribution towards the Provident Fund, but that individual workmen had not been informed about the said reduction. There was no committee which carried out the work of fitment but this was done individually.

11. The evidence which was adduced on behalf of the petitioner shows that the only ground on the basis of which the workmen were sought to be deprived of the benefit of the recommendations of the 4th Pay Commission was that they had been placed on the N.T.C. Pay Scales on and after 1st January, 1989. Indeed, both the witness sought to classify employees of N.T.C. between those who had been granted the N.T.C. Pay Scales prior to 1st January, 1989 and those granted N.T.C. Pay Scales subsequently, on the basis of the judgment of the Supreme Court. Since the action of the petitioner has been sought to be justified with reference to the decision of the Supreme Court it would be necessary to again revisit the operative directions in the judgment in order to determine

whether the stand of the petitioner is correct and proper.

12. In its judgment the Supreme Court expressly held that employees who were appointed on or after 1st January, 1989 will be governed by such Pay Scales and Allowances as may be decided by the Government in its discretion. Those who were appointed earlier in accordance with the Industrial Dearness Allowance pattern were to be governed by the terms of appointment. The judgment of the Supreme Court is thus abundantly clear. Employees who came to be appointed after 1st January, 1989 would be governed by such Pay Scales as may be prescribed by the concerned Public Sector Enterprises. Employees who had been appointed on the I.D.A. pattern earlier would be continued to be governed in accordance with the terms of appointment. The learned Counsel appearing on behalf of the petitioner however sought to submit that for the purposes of the directions issued by the Supreme Court the expression "appointed" must mean the date on which the employee was placed on the N.T.C. Pay Scales. This is not a permissible or proper reading of the judgment of the Supreme Court. N.T.C. seeks to introduce a qualification into the judgment of the Supreme which, to say the very least, is impermissible for N.T.C. to do. The respondent workmen became the employees of N.T.C. under the Nationalisation Act of 1974. They came into the employment of N.T.C. much prior to 1-1-1989. They were appointed much prior to 1-1-1989. The directions which have been laid down by the judgment of the Supreme Court are those which are uniformly applicable to all Public Sector Enterprises. The directions are absolutely clear in that they provide that it was only in the case of employees appointed after 1st January, 1989 that the pay and allowances would be such as would be decided by the Government in its discretion. It would be impossible to equate the expression "appointed" in the operative directions of the judgment of the Supreme Court to mean "placed in the N.T.C. Pay Scales". Even if regard is had to the Memorandum which was issued by the Central Government on 12th June, 1990, it would be abundantly clear that category (iii) in paragraph 3 of the Memorandum deals with appointments which were made on or after 1st January, 1989. A reading of paragraph 3 of the Memorandum would similarly demonstrate that the expression "appointments made on or after 1st January, 1989" would refer to initial appointment or recruitments made on or after 1st January, 1989.

13. The evidence which was adduced on behalf of the petitioner would leave no manner of doubt that the distinction which was sought to be made in the grant of the benefits of the 4th Pay Commission recommendations was exclusively on the basis of whether or not the employee had been placed in the N.T.C. Pay Scales prior to 1st January, 1989. This distinction was sought to be justified with reference to the decision of the Supreme Court which as already noted earlier does not support the position adopted by the petitioner. It must be emphasised that no other justification whatsoever was sought to be advanced either in the Written Statement or in the evidence before the Industrial Tribunal for making the distinction between the employees who were placed on N.T.C. Pay Scales before and after 1st January, 1989. All the complainant workmen who had

moved the Industrial Court were employee of Textile Mills prior to the nationalisation. All the workmen were similarly placed and circumstanced as other workmen of the Nationalised Mills whose services were taken over by the petitioner under the terms of the Sick Textile Undertakings (Nationalisation) Act, 1974. The pre-nationalisation workmen whose services were taken over by N.T.C. constitute one homogeneous group. There is, in my view, absolutely no justification, tenable in law or in fact for sustaining the distinction which was sought to be made between this homogeneous group of employees based on the date on which they were placed in the N.T.C. Scales of pay. The date on which the workmen concerned were placed on the NTC Scales of pay-whether before or after 1st January, 1989-is a consideration extraneous to whether or not he or she should be granted the benefit of the recommendations of the 4th Pay Commission. It was not open to the petitioner to segregate a homogeneous group employees into two disparate categories based upon the date on which they were granted the N.T.C. Pay Scales. Significantly, the object of granting the N.T.C. grade, according to the witness for the employer was "for their betterment so that they can have the chances of promotion in the officers categories". There was no justification then, for discriminating against those employees who came to be placed in the N.T.C. Pay Scales on and after 1st January 1989. This is, therefore, a case where the discrimination which was sought to be made between employees based upon the date on which they were placed in the N.T.C. Pay Scales has no valid or tenable basis. This is a discrimination "otherwise than on merits" within the meaning of Item 5 of Schedule IV to the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. For the purpose of Item 5 of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971, the validity of the cut off date as in the present case must be decided by the Court with reference to whether a valid distinction has been made between two classes of employees on merits. If a distinction is not based upon "merits" but on a consideration which is extraneous to the claim of the employees to equal treatment at the hands of the employer with other employees similarly circumstanced, the distinction made would be discriminatory and would amount to an unfair labour practice under Item 5. In order not to constitute a discrimination otherwise than on merits under Item 5, the distinction which the employer makes has to be with reference to a reasonable or rational criteria. The distinction has to be based on intelligible differentia, one which has a rational relationship with a legitimate object which the employer seeks to pursue. In the present case, the discrimination is not on merits but on an extraneous consideration, namely on whether or not the employees had been placed in the N.T.C. Scales after 1-1-1989. The respondent workmen were taken into the service of the N.T.C. much prior to 1-1-1989, in fact under the Nationalisation Act of 1974. To deny them the benefit of the 4th Pay Commission recommendations, which has been granted to other employees on the basis that they were appointed after 1-1-1989 is a discrimination otherwise than on merits.

14. In the circumstances of the present case, it would not be open for the

petitioner to contend that the respondent-workmen having accepted the grant of the N.T.C. Pay Scales were estopped from questioning the applicability of the IDA pattern and from claiming the benefit of the recommendations of the 4th Pay Commission. First and foremost a question of waiver can arise only if the employee concerned was fully apprised of the facts and had consciously opted to exercise his right to receive the benefit of a certain pattern of wage fixation. In the present case, the workmen were in effect given no option at all. The workmen were granted a fitment into the N.T.C. Pay Scales initially and thereafter, in 1992 were required to communicate their acceptance of pay fixation on the basis of the Industrial D.A. pattern. No option was given to the workmen of making a conscious decision for the grant of a particular pattern of wage fixation. The workmen were never informed that by accepting the N.T.C. scales after 1-1-1989, they would have to forsake a pay revision under the High Power Pay Committee's recommendations. The only alternative which was available to them was to not accept what was being granted to them and to continue on the Mill grade which they had been granted in the earlier years prior to and after nationalisation. Indeed even in the course of the cross-examination of the complainant-workmen what was sought to be suggested to them was that they may go back to the Mill grade by forfeiting the benefit of the N.T.C. pay scales.

15. Even as regards the contribution to the Provident Fund, the Industrial Court has come to the conclusion that a reduction in the Provident Fund contribution has taken place without the attention of the employees being drawn expressly to this issue. Shri N.T. Nair who deposed on behalf of the employer expressly admitted that he was aware of the fact that there would be a reduction in the employer's Provident Fund contribution but this was not brought to the notice of the workmen.

16. In the circumstances of the present case, I am of the view that the Industrial Court was entirely justified in reaching to the conclusion which the Court did, namely, that there was a breach of the provisions of Items 5 and 9 of Schedule IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971. The complainant-workmen formed one homogenous group together with other employees who were appointed prior to 1st January, 1989. All the complainant-workmen like other similarly circumstanced employees were employed by the Textile Mills prior to nationalisation whose services continued with the petitioner after nationalisation. An artificial distinction was sought to be made on the basis of the date on which the workmen were placed in the N.T.C. scales of the pay. The order of the Industrial Court does not call for any interference in the exercise of the writ jurisdiction of this Court under Article 226 of the Constitution. The petition shall accordingly stand dismissed. In the circumstances there shall be no order as to costs.

17. On the application made by the learned Counsel for the petitioner, the operation of this order is stayed for a period of four weeks subject to the

condition that the petitioner shall continue to abide by the interim order, dated 21st June, 1997 which continued to operate during the pendency of these proceedings.

Certified copy expedited.