
(2011) 07 CAL CK 0062
In the Calcutta High Court
Case No : CC No. 80 of 2010

Pradyut Ranjan Dutta and Others

APPELLANT

Vs

Mrs. Rita Menon and Others

RESPONDENT

Date of Decision : 05-07-2011

Acts Referred:

Citation : (2011) 07 CAL CK 0062

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Partha Sarathi Sengupta and Sadhan Roychowdhury, for the Appellant; Arijit Chowdhury and Alope Banerjee for Respondent No. 2, Farook M. Razack, Addl. Solicitor General and P.K. Bhowmick, for UOI, for the Respondent

Final Decision : Dismissed

Judgement

Tapen Sen, J.—The Petitioners in these Applications have alleged violation of the Order/judgment dated 27.8.2009 passed by the Hon'ble Mr. Justice S.P. Talukdar in W.P. No. 1505 of 1999 in GA No. 1280 of 2008 with W.P. No. 2394 of 1999 in GA No. 1281 of 2008. It appears from a copy of the judgment brought on record vide Annexure-P/1 in C.C. 80 of 2010 that the said judgment was delivered along with W.P. No. 2394 of 1999 and GA No. 1281 of 2008. It further appears that both the cases were heard together since his Lordship observed that identical facts and legal points were involved in those cases. Consequently both the Contempt Petitions have also been heard together and are being disposed of by this common judgment.

It appears from the judgment itself that the Petitioners filed the Writ Petitions for a Direction upon the Respondents to extend the benefits of the revised pay scales w.e.f. 1st January, 1992 and to pay all arrears consequent upon such enhancement. They also sought cancellation of Clause 13 of the Office Memorandum dated 19.7.1995.

2. From the judgment, it is further evident that the Petitioners are all Officers of

the National Jute Manufacturers Corporation Ltd. (NJMC for short), a Govt. of India undertaking. It has about 615 Officers and 23000 workers in its 6 Jute Mills. It is the only Public Sector Jute Industry in India. There are two patterns of pay scale of the Officers in Public Sector Enterprises. These two patterns are:

- a) Industrial Dearness Allowance (IDA) pattern; and
- b) Central Dearness Allowance (CDA) pattern.

3. In the NJMC, only the IDA pattern was being followed unlike many other Public Sector Enterprises where both the patterns are followed. It was their further case that the State Governments and the Central Government appoint pay commissions from time to time for revision of the pay scale of employees but, so far as NJMC employees are concerned, pay revisions are dealt with by the Department of Public Enterprises, Ministry of Industries, Govt. of India. Such pay revisions are taken up by the said Department in the absence of Associations or their Representatives who are not parties before the said Department unlike other Govt. employees.

4. It is further evident from the judgment that it was the Petitioners' further case that by an Order of the Supreme Court of India, the pay scales of CDA pattern employees in 69 Public Sector Enterprises under the Govt. of India were revised including those Public Sector Enterprises where the IDA pattern was being followed but where salaries had not been revised. By an Order dated 7.5.1999, the Supreme Court revised the salaries of even the IDA pattern Officers in certain PS Us who were otherwise barred from getting revision of the 1992 pay scale under the same Clause by which Officers of the NJMC were denied the revision of pay scales of 1992.

It was their further grievance, as would appear from the judgment itself, that the pay scales of Officers under the IDA pattern in PS Us under the Govt. of India is normally revised after every five years, while for CDA pattern, the revision is related to the recommendations of the pay commission for Central Government employees as per the Order of the Supreme Court. The last revision under the IDA pattern was made w.e.f. 1.1.1992 but the pay scales of the officers of the NJMC as well as those of many other PS Es were not revised because of the aforesaid Clause 13 of the Office Memorandum dated 19.7.1995, which, reads as follows:

For such PS Es registered with the BIFR, pay revision and grant of other benefits will be allowed only if it is decided to revive the unit. The revival package should include the enhanced liability on this account. The benefit of pay revision, etc. shall be extended to IISCO and financial liability thereof shall be met by SAIL.

5. It is further evident that in the absence of pay revision, the Petitioners continued to get the pay scale of 1987 and thereby, on an average, an Officer of NJMC was incurring a monthly loss of Rs. 6500/- and the outstanding arrears, on an average, came to the tune of Rs. 2.5 lacs on account of non-implementation

of the revised pay scales of 1992 in respect of Officers of the NJMC.

6. B According to the Petitioners, the Govt. had therefore, adopted a discriminatory policy in formulating the pay scales of Officers of the NJMC. Firstly, they discriminated between the Central Government Employees and Public Sector Employees and secondly, they discriminated between the Public Sectors on the basis of "sickness" and they also discriminated between the "sick" public sectors which were referred to the BIFR and those public sectors which were not so referred. The NJMC fell under the category where it was a "sick" undertaking referred to the BIFR.

According to the Petitioners, the "sickness" of any public sector could not be attributed to its employees as it could be due to various factors. They further pleaded that Justice Mohan Committee report of 1997 was critical of any discrimination and as such, enforcement of Clause 13 of the aforesaid Memorandum was bad. It was also illegal because the Supreme Court had directed the employees of the National Textile Corporation to get clearance regarding Clause 13. The BIFR considered the issue and stated that they were unable to comment on the rationale of the said Memorandum owing to some administrative reasons like fund constraints etc. In the opinion of the BIFR, allowing a major chunk of employees belonging to the CDA pattern including those belonging to the Central Government Undertakings, their pay revisions as well as arrears and depriving the IDA pattern employees was irrational. They further grieved that although the Govt. of India on BIFR clearance, has to pay IDA pattern revised pay scales but their inaction was illogical.

7. It is further evident from the judgment that in response to an Application in connection with the case of National Textile Corporation, the Hon''ble Supreme Court directed the Ministry of Textiles to pay the 1992 revised pay scales to the Petitioners of that case i.e. the National Textile Corporation IDA pattern w.e.f. 1.1.1999 pending further settlement by virtue of the Order passed by the BIFR on 24.4.1998.

According to the Petitioners, the Government, thus had kept the case of NJMC pending before the BIFR for six years prior to filing the Application.

With the aforesaid grievances, the Writ Petitioners filed the Writ Petitions which are subject matter of these Contempt Applications.

It appears that Counter affidavits were filed and the matter was heard and decided by a reasoned judgment of the Hon''ble Mr. Justice S.P. Talukdar and while holding that Clause 13 of the Memorandum dated 19.7.1995 cannot stand the test of judicial scrutiny as it was arbitrary and in clear violation of the basic principle that each one is entitled to get according to his ability and need, his Lordship disposed of the Writ Petitions and the Applications observing, inter alia, therein as follows:

But at the same time, this Court is not unaware of the fact that fixation of salary

and allowances involves specialized skill. It is for the financial experts and the persons in the administration or executive wing with experience who can better handle the problem. What is essential is to have a rational approach to the entire problem. This must be followed up keeping in mind that some amount of money had already been kept allotted for this purpose and there is strong favourable recommendation of the authority in this regard.

I think interest of justice will be best served if the job of formulating a rational pay structure for the present Petitioners is left to an expert body - of course, with representatives of the present Petitioners. Accordingly, the application being W.P. No. 1505 of 1999 succeeds. This also governs the writ application being W.P. No. 2394 of 1999. The Respondent authorities are hereby directed to form a team of experts with sufficient experience in dealing with matters relating to rationalization of pay structure and of course, including representatives of the present Petitioners.

Such a body must be formed within a period of three months from the date of communication of this order. The said body may, thereafter, consider the grievance of the writ Petitioners, as ventilated in the two applications and take appropriate action and submit their reports - taking into consideration the annexures to the two writ applications. This must be done within a further period of four months from the date of formation of the said committee.

The Respondent authorities must immediately thereafter take appropriate steps towards fixation of pay scales and payment of arrear amount to the Petitioners.

Consequently, all the pending applications are disposed. There is no order as to costs.

(Quoted)

8. Now, in this Contempt Application, the Petitioners have stated in para-4 that it is a fact that the Respondents have set up a Committee for securing compliance of the judgment in which the representatives of the Petitioners also participated but the terms of the judgment have not yet been complied with and that they have violated the said judgment:

- a) by not granting revision of pay to the Petitioners; and
- b) by not adhering to the time limit fixed by this Court for implementation of the Judgment.

9. The Petitioners have therefore prayed that the alleged contemnor/opposite parties be punished in terms of the prayers made in the Applications for Contempt.

10. On 10.8.2010, an Affidavit was filed by Ramesh Chandra Tiwari (Chairman-cum-Managing Director of NJMC, being the alleged Contemnor/opposite party No. 2). He has brought on record the report of the Executive committee dated 31.3.2010 marking it as Annexure-A. He has stated that on 31.5.2010, he

himself issued a letter to the Joint Secretary (Jute), Ministry of Textiles (MOT, for short), Govt. of India wherein, while referring to the meetings of the NJMC dated 31.3.2010 and 26.5.2010, he stated that a meeting was also held with the Officers of the NJMC on 28.5.2010 at Kolkata wherein it was desired that production in the Mills be started at the earliest. The issue with regard to compliance of the High Court's Order was also looked into.

He further intimated that due to non operation of the mills for the last 7-8 years and consequent upon the voluntary retirement scheme of all workers and staff, the mills are in a dilapidated condition. All the buildings, factory shed, godown, high tension electrical cables are damaged. Restoration of electricity, water supply, sewerage both in the mill premises as well as staff quarters, mazdoor line quarters were required for starting the operations of the mills. The old M/CS (sic) are to be audited to assess and decide about the renovation and modernising the programmes. He also informed that the Cabinet had approved the revival plan of NJMC on 19.3.2010 with provisions for VRS of all officers with a relief package but this was not acceptable to the Officers of NJMC.

He also stated, with reference to the implementation of the order of the High Court that an Order had been passed directing the formation of a Team of Experts to fix the pay scales and arrears of pay to the Officers within seven months i.e. upto 27.3.2010. He also stated that the Expert Committee had made its recommendations but due to delay in compliance, the Officers of NJMC had moved contempt proceedings. He also stated that there was a shortfall of funds in settlement of arrears and VRS of Officers as per recommendations of the Expert Committee and therefore, he suggested, that:

(1) that the officers may be allowed current salary with 97 pay scale from 1.4.2010 (total monthly impact for current salary would be around Rs. 1.13 cr. in lieu of .38 cr at present for 205 officers.

(2) that the eligible executive/offices of NJMC may be disbursed arrears of pay & allowances flowing from the revision of pay scales in a manner and mode not inferior to package adopted for compensation of clerical staff of NJMC arising from the MoS dated 24-09-1997. A separate cabinet note can be moved, to provide funds for payment of the arrears, in compliance of this recommendation, along with VRS (with 1997 IDA pay scales) to all the officers.

He further stated that the implementation of these pay scales would provide immediate relief to the Officers in compliance of the High Court's Order with an assurance that arrears will be settled on cabinet approval.

11. An Affidavit-in-opposition dated 12.8.2010 has been filed by the Deputy Jute Commissioner stating inter alia that he has the highest regard for the High Court and he has also tendered unqualified apology on behalf of the Opposite Party No. 1 (Mrs. Rita Menon, Secretary, Ministry of Textiles, Govt. of India) for anything done or omitted to be done by her which may be contrary to any Order passed by this Court.

He has further stated that the judgment dated 27.8.2009 was served upon the Secretary, Ministry of Textiles (MOT, for short) on 29.9.2009. In compliance of the High Court's Order, an Expert Committee was constituted which submitted its report on 31.3.2010. The said report has been brought on record vide Annexure-A. It has been signed by (1) Amitava Saha (Dy. Manager, NJMC; (2) Basudev Chakraborty (Dy. Manager, NJMC; (3) R. Asokan (Director, Finance, DPE); (4) Manoj Sahay (Director, Pay, D/O, Expdr); (5) R.C. Tiwari (C & MD, NJMC); and (6) Bhupendra Singh (Joint Secretary, Jute, MOT).

The Report of the Executive Committee, inter alia, says that:

(i) that the pay of the eligible Executives/Officers of the NJMC Ltd. may be revised in terms of the revision of scales of pay promulgated by the DPE vide OM No. 2(50)/86-DPE (WC) dated. 19.7.95 and OM No. 2(49)/98-DPE (WC) dated 25/6/99 respectively.

(ii) that the eligible Executives/Officers of the NJMC Ltd. may be disbursed arrears of pay and allowances flowing from the revision of scales of pay in a manner and mode not inferior to the package adopted for compensation of the clerical staff of NJMC arising from the Memorandum of Settlement of 24/9/1997.

(iii) that the issue of further revision of scales of pay of officers of NJMC Ltd w.e.f. 1.1.2007 was not on the agenda of the Committee and consequently, no recommendation was made on that account.

12. On 18.11.2010, the alleged contemnor/opposite party No. 1 (Mrs. Rita Menon, Secretary, MOT, Govt. of India) filed her affidavit tendering unqualified apology for anything done inadvertently which may be contrary to the Order passed by this Court.

She has also referred to the Report of the Expert Committee submitted on 31.3.2010, which, according to her, was within four months from the date of formation of the Committee and which was as per the Order of this Court. She has also stated that the mills of NJMC have been inoperative for the last 7 to 10 years and it has no funds with which it can implement the recommendations of the Expert Committee. It is a "sick company" and a Scheme framed by the BIFR, in terms of the Sick Industrial Companies (Special Provisions) Act, 1985 is in operation in respect of the said company. She has also stated that the Company is dependent on grants from the Govt. of India to pay its employees and implement the recommendations of the Expert Committee.

She has further stated that prior to the judgment dated 27.8.2009, an Office Memorandum dated 19.7.1995 of the Department of Public Enterprises, was in operation which prohibited pay revisions in sick companies referred to the BIFR and therefore, revisions would require the approval of the Union Cabinet for implementation of the recommendations of the Expert Committee for release of funds.

She has stated that there is presently no production in the NJMC as it is a sick

company and there is no revenue generation. It is entirely dependent on the Govt. of India for financial support and a draft revival plan has been submitted before the BIFR.

She has also stated that the NJMC has settled the claims of all secured creditors and of employees who have opted for VRS as per approval of the Union Cabinet given in 2005. Since the Officers have not opted for VRS, therefore their cases are still pending.

13. The Petitioners have filed an affidavit-in-reply dated 20.12.2010. In the said affidavit, which has been duly sworn by the Applicant No. 19 (Goutam Hazra) it has been stated that the operative part of the Order has been violated. It has been stated that the contemnor/opposite parties have violated and committed contempt inasmuch as they have:

(i) not granted the revision of pay; and

(ii) have not adhered to the time limit fixed by the Court for implementation of the Order.

It is stated that the Order of this Court was passed on 27.8.2009. The Committee was constituted on 29.9.2009 and it submitted its Report on 31.3.2010. It has been further stated that although the Report was submitted as far back as on 31.3.2010, the Respondents have not yet paid any arrears although they were directed to revise the pay and to pay the arrears immediately after submission of the said Report. According to the Petitioners, the alleged Contemnor/Opposite parties have brought in irrelevant materials in their Affidavits and have therefore violated the Order.

14. On 10.1.2011, a supplementary affidavit has been filed by the alleged contemnor/opposite party No. 1 (Mrs. Rita Menon). She has stated that the order dated 27.8.2009 was served in the Ministry of Textiles on 29.9.2009 and an Expert Committee was constituted on 1.12.2009 and the Report of the said Committee was subsequently submitted. She has also brought on record the said Expert Committee Report dated 31.3.2010.

15. Two Supplementary Affidavits dated 11.1.2011 have been filed by the Petitioners. In one of the affidavits, it has been stated that during the pendency of the contempt application, the alleged contemnor/opposite party No. 2 (Ramesh Chandra Tiwari, CMD, Director of NJMC) has retired and in his place, one Binod Kispotta has joined on the said post.

16. However, in both the supplementary affidavits, the Applicant No. 19, Goutam Kumar Hazra has stated that during the pendency of the contempt application certain events have taken place. He had stated that on 29.12.2010, a Voluntary Retirement Scheme Notice has been published by the NJMC which, inter alia, notifies that as per Cabinet decision of 2005 and 19th March, 2010, all employees including Officers and Executives of NJMC are required to be given the benefits of VRS and that NJMC has been requested to take immediate action for

notifying and implementing the said VRS in case of Executives.

The Notice further says that the High Court, in its judgment passed in W.P. Nos. 1505 of 1999 and 2394 of 1999, had directed the formation of an Expert Committee to revise the pay and allowances of the eligible Executives/Officers of the NJMC. In its meeting dated 25.11.2010, the Union cabinet had approved the following proposal:

grant of Composite Package of Revision of Pay Scales (92/97), which will be paid w.e.f. 01.04.2010, VRS (on 97 Pay Scales) and arrears @ 40% may be offered for full and final settlement of dues of officers and executives in light of the judgments of Hon"ble High Court, Kolkata.

The said Notice further intimates that the aforesaid decision was communicated to the NJMC by the Ministry of Textiles vide letter dated 6.12.2010 and in continuation thereof, the above MOT, vide letter dated 10.12.2010, further clarified that as per the Cabinet Decision, new salaries of the Officers/Executives (1997) Pay scale can be paid w.e.f. 1st April 2010. The Officers/Executives, who are on roll from 1-1-92 shall be entitled to 40% arrears for the period 1-1-92 to 31-12-1996 of 1992 Pay Revision and from 1-1-97 to 31-12-10 of 1997 Pay Revision.

The Notice further intimates that in compliance of the Decision of the Cabinet dated 25.11.2010, applications were invited for voluntary retirement from all the Executives/Officers of the Mills/Units Head Offices/Corporate Office under the Voluntary Retirement Scheme of NJMC. The last date for applying was notified as 17.1.2011. It was further notified that the mode of calculation of VRS would be as per the Gujrat pattern as envisaged in the Office Memorandums dated 05.05.2000 and 06.11.2001 and all benefits as per the VRS will be given on 1997 pay scales as approved by the Cabinet under a composite package. It was also intimated that the ex gratia amount and other eligible payment as per DPE guideline and composite package approved by the Cabinet shall be paid after audit and completion of necessary formalities as per the VRS guidelines.

17. On the same date, i.e. on 11.1.2011, the alleged contemnor/opposite party No. 2 also filed a supplementary affidavit in which he stated that the judgment and Order of this Court was communicated to the CMD NJMC on 22.9.2009 and in compliance thereof, an Expert Committee was constituted on 1.12.2009.

He has further stated that on 6.12.2010, the Director, Ministry of Textiles, Govt. of India informed the CMD of NJMC the decision of the Government regarding revival of the NJMC and also informed him about modifications of the Scheme. He has also stated that the Under-secretary, Ministry of Textiles, Govt. of India by his letter dated 10.12.2010 had informed the Chairman-cum-Managing Director of NJMC the decision of the Cabinet regarding immediate action to be taken for notifying and implementing the Voluntary Retirement Scheme in case of Executives.

18. On 7.6.2011, the alleged contemnor/opposite party No. 2 has filed a further affidavit wherein he has stated that the BIFR has approved the Revival Scheme of NJMC. The summary record of proceedings of the hearing held on 31.3.2011 has been brought on record vide Annexure-X to the said affidavit.

He has stated that as per the said Scheme, the total estimated cost on VRS and arrear liability of employees which were considered in the said scheme is Rs. 53638 lakh (Workmen-Rs. 35638 lakh Staff- Rs. 8286 lakh and Officers-Rs. 9714 lakh) with cut of date being 31.3.2010. He has further stated that the cost of Rs. 9714 lakh is estimated as per the recommendations of the Expert Committee which was constituted in terms of the Order dated 27.8.2009 passed by this Court. He has also stated that the following should be considered for payment to Officers in the above estimate of Rs. 9714 lakh and 40% arrears shall be calculated as follows:

A. The pay of all the officers who were on roll of NJMC w.e.f. 1.1.1992 shall be notionally revised for 1992 pay revision applicable from 1.1.92 and for 1997 pay revision applicable from 1.1.97 as per respective O Ms and all benefits on this revised pay like increase in DA (as per respective circular/OM). PF (as per PF Act), Gratuity (as per Gratuity Act), Leave salary (as per NJMC rules) etc. on enhanced salary shall be calculated and 40% of this total arrear amount shall be paid to all officers who are retired on normal superannuation or otherwise resigned or deceased from 1.1.92 to 31.3.10.

B. The officers therefore retired up to 31.12.96 are getting benefit of 1992 pay revision and all those who retired from 1.1.97 to 31.3.2010 are getting benefit of both 1992 and 1997 pay revision.

C. The ceiling limit of gratuity before September 1997 was Rs. 1 lac which increased to Rs. 3.5 lacs from September, 1997. Thus officers retired after May 1997 are getting more because of their enhanced entitlement as per Gratuity Act. Therefore the entitlements of 40% arrear benefits are more for those officers who retired at later stage.

D. The officers who are presently on roll will get further extra benefits under VRS scheme wherein 35 days per annum salary for every completed year of service and 25 days per annum for every left out year of service (considering actual retirement age of each employees.) In addition to this these officers who are on roll will also get benefits of enhanced gratuity limit of Rs. 10 lacs with effect from May, 2010. The year wise approximate 40% arrears and VRS benefit applicable in case of current officers and 40% arrear retired Officers are annexed and marked with letter "Y". The notice pay is not included under VRS benefits as VRS notice is already issued since December 2010. This amount is payable subject to audit, with deduction of any outstanding dues, withdrawal of court cases if any, under composite package on taking VRS by all current officers who are on roll of NJMC."

(Quoted)

19. This deponent has also stated that all employees of NJMC have to be retired under VRS as per the Revival Plan approved by the Union Cabinet and by the BIFR. According to him, there were 205 Officers on roll as on 31.3.2010 and therefore, the Union Cabinet has approved all the above benefits under a composite package.

This deponent has also stated that arrears would be calculated on the following basis:

i) Executive/Officers including those retired on normal superannuation or otherwise resigned and the deceased shall be entitled to get 40% arrear of the year wise gross salary which they are entitled in the Notional Revised Scale, from 1.1.92 to 31.12.1996 of 1992 Pay Revision and from 1.1.97 to 31.3.10 of 1997 Pay Revision (-) gross salary already received by them under old Pay Scale towards their full and final settlement of claim of arrears.

ii) Executive/ Officers retired on normal superannuation or otherwise resigned and deceased shall be entitled to get difference of new-salary of 1997 Pay Revision from 1.4.2010.

iii) The 1992 and 1997 revision of pay scales can not be implemented in NJMC being sick and loss making P Su thus Cabinet has approved a composite package with VRS to remaining Officers for successful implementation of revival scheme. Therefore Executive/Officers who are presently on roll of NJMC shall be entitled to get difference of new salary of 1997 pay revision from 1.4.2010 provided they opt for VRS.

iv) That Executive/Officers on roll shall not be entitled to any notice pay in view of VRS notice dated 29.12.2010. v) That the amount payable under the composite package is subject to vigilance clearance and the withdrawal of any pending court case.

vi) That the amount payable under the composite package is subject to adjustment of any outstanding dues against Executive/Officers.

(Quoted)

20. The Petitioners have filed an affidavit-in-opposition dated 17.6.2011 being an opposition to the affidavit dated 7.6.2011 referred to above and filed by the alleged contemnor/opposite party No. 2. The Petitioners have stated that the said affidavit is in gross abuse of the processes of the Court. They have stated that during the pendency of the contempt proceedings, it was forcefully submitted on behalf of the contemnors before this Court that upon implementation of the composite package of voluntary retirement containing implementation of the revised pay scale @ 40% of arrears, each of the Petitioners shall get Rs. 50-60 lakh. According to the Petitioners, this statement was denied and disputed by the learned Counsel appearing for the Petitioners. They have also stated that since there was a controversy with regard to the quantum of entitlement of the Petitioners, a prayer was made on their behalf that the alleged contemnor/

opposite parties be directed to file an affidavit stating the entitlement of the Petitioners as per the proposed composite package and that was why the said affidavit dated 7.6.2011 was filed.

They have also stated that upon a perusal of the said affidavit dated 7.6.2011 it would transpire that the benefit of VRS of about 7 Petitioners/Officers having three years" service left , will be Rs. 53.55 lakh, 49.64 lakh, 45.34 lakh, 40.03 lakh and 32.08 lakh (those placed in Code 7 to Code 11 respectively).

Those Officers who have retired between 1.4.2011 to 31.3.2010 (total of 113) would be getting Rs. 13 to 16 lakh, 12 to 16 lakh, 11 to 14 lakh, 9 to 10 lakh and 7 to 10 lakh (those placed in Code 6 to Code 11).

It has further been stated that those Officers retired between 1.4.2002 to 31.3.2007 (total of 181) will be getting Rs. 8 to 13 lakh, 7 to 12 lakh, 6 to 11 lakh, 6 to 11 lakh, 6 to 10 lakh, 4.5 to 7.5 lakh and 3 to 6 lakh (those placed in Code 5 to Code 11).

They have further stated that those Petitioners/Officers who have retired on 1.4.97 to 31.3.2002 (total 148) will be getting Rs. 3 to 5.8 lakh, 3 to 5.8 lakh, 2 to 5.8 lakh, 1.7 to 5.6 lakh, 1.8 to 5.3 lakh, 1.7 to 4.6 lakh, 1.5 to 4.5 lakh , 1 to 3 lakh, 0.5 to 2.5 lakh (those placed in Code 3 to Code 11).

Similarly for those who retired between 1.1.92 to 31.3.97 (total 212) will be getting Rs. 0.2. to 3 lakh, 0.18 to 1.3 lakh, 0.17 to 0.7 lakh, 0.17 to 0.6 lakh, 0.6 to 1.1lakh, 0.10 to 1.4 lakh, 1.3 to 1.4 lakh, 0.18 to 1.1.lakh and 0.2 to 1.1 lakh (those placed in Code 3 to Code 11).

On the basis of the aforementioned data, the Petitioners have attempted to point out that the suggestion of the learned Counsel for the alleged contemnor/opposite parties that each of the Petitioners would be getting around Rs. 50 to 60 lakh upon implementation of the composite package was an incorrect statement and therefore this Court should take judicial notice for the same.

They have further inter alia stated that from a perusal of the summary record of proceedings held before the BIFR, it will be evident that the alleged contemnor/opposite parties have made wrong statements before the BIFR also. They have further stated that the Union Cabinet in their meeting dated 25.11.2010 approved the grant of composite package of revision of pay scale (92-97) which will be paid from 01.04.2010 and arrears of 40% may be offered for full and final settlement of dues of the officers and executives in the light of the judgments of the Hon"ble High Court.

It has further been stated that the Union Cabinet mechanically approved the proposal of NJMC and in any case, the judgment passed by this Court is clear and unambiguous. Management has to authority for making any proposal for grant of arrears of 40% and consequently the alleged approval given the Union Cabinet is not bona fide. They have further stated that the alleged contemnor/opposite parties have acted with a contumacious behaviour in deciding the

implementation of revision of pay and scales of pay as a condition for accepting VRS under the composite VRS package. By floating a VRS package, the alleged contemnor/opposite parties have committed contempt.

They have further stated that the composite package for revision of pay scales (92/97) which is to be paid w.e.f. 1.4.2010 and arrears @ 40% will be totally unworkable as the Petitioners are members of the Employees Provident Fund and in order to be eligible for pension upon superannuation, a member under Rule 11 shall have to draw salary for a period of 12 months preceding the date of exit from the membership of the Employees Provident Fund. Under the composite package, no member will be entitled to draw any salary for a period of 12 months preceding that date. In view of the aforementioned facts and circumstances and other grounds, mentioned in the said affidavit-in-opposition, the Petitioners have criticised the composite package towards floating the VRS as an Act which is deliberate and is wilful violation of the Order passed by this Court on the following grounds:

i. The Hon"ble High Court by the judgment & order dated 27.08.2009 never directed payment of 40% arrears nor the expert committee recommended payment of 40% arrear. The act of picking up the quantum of 40% is a unique invention of the contemnors. In Para-5.6 (ii) of the note of the cabinet, the Ministry of Textiles (MoT) proposed that there should be a settlement with those officers to accept 40% arrear of Pay & allowances. In one breath the decision of paying 40% arrear has been taken and on the other it has been suggested that there should be a settlement with the officers to agree to 40% arrears and these two stands taken by the contemnors are not compatible to each other and cannot run parallel.

ii. In terms of the judgment & order dated 27.08.2009 the Petitioners have become entitled to get revision of pay & allowances. The composite package proposing payment of revision of Pay & Scales conditional is perceived illegal and inoperative in the eye law because:

(a) Under the Employee's Pension Scheme under the EPF Act 1952 to become eligible for Pension, a member must draw Salary for a period of 12 months preceding to the day of exit. Under the composite package, the day on which VRS will be accepted on the same day Revision of pay will be implemented. Therefore there is no scope for a member to draw salary for 12 months preceding to the date of exit in the revised scales of pay and consequently the Petitioners/members of EPS shall not be entitled to pension under the EPS. Pension under the EPS is a social welfare programme of the Government encapsulated by way of a statutory right. Such a right cannot be abridged, curtailed or encroached upon by the contemnors with out, however, due observance of the process of law. This hon"ble court will be pleased to take judicial notice of the fact that the Petitioners if being compelled to accept that composite package then they shall have to accept pension under the EPS based on rate of Salary in the unrevised scale of Pay. A Petitioner currently drawing

pensionable salary of Rs. 16000/- per month in the unrevised scale of pay shall be getting a pension of around Rs. 1200/-per month under the EPS. The same Petitioner if allowed to enjoy revision of pay for a period of 12 months before the day of exit the said Petitioner upon implementation of the revision of pay & scales will be getting pensionable salary of around Rs. 50000/- per month and consequently will be getting pension of Rs. 12500/- per month under the EPS. (Quoted)

In order to hold as to whether the alleged contemnor/opposite parties have committed contempt or not, it is necessary to revert to the operative portion of the Order passed on 27.8.2009. The operative portion of the said Order can be interpreted and read in the following manner:

SI

ORDER

SI Order

1

The Respondent authorities are hereby directed to form a team of expert with sufficient experience in dealing with

Direction No. 1

matters relating to rationalisation of the pay structure and of course, including Representatives of the present Petitioners.

2

Such a body must be formed within a period of three months from the date of communication of this order.

Direction No. 2

3

The said body may, thereafter, consider the grievances of the Writ Petitioner, as ventilated in the two Applications and take appropriate action and submit their reports.

Direction No. 3

4

This must be done within a further period of four months from the date of formation of the said Committee.

Direction No. 4

5

The Respondent authorities must immediately thereafter take appropriate steps

towards fixation of pay scales and payment of arrear amount to the Petitioners.

Direction No. 5

21. Upon a perusal of the facts stated above, it is evident that the judgment was delivered on 27.8.2009. The Order was communicated on 29.9.2009 and the expert Committee was constituted on 1.12.2009. Therefore the 2nd Direction stood substantially complied with.

22. Thereafter, the Expert Committee submitted its recommendation being in the nature of pay package of the Officers of NJMC dated 31.3.2010. Therefore the 1st Direction read with Direction No. 3, in the opinion of this Court, have been complied with because after forming the Committee, they have dealt with the matter and have, after considering the grievances on the basis of detailed deliberations, have taken appropriate action and have submitted their report. In other words, Direction Nos. 1, 3 and 4 have been substantially complied with.

23. Now so far as direction No. 5 is concerned, one must take into consideration the statements made by the alleged contemnor/opposite party No. 1 in her affidavit in opposition dated 18.11.2010 wherein she has stated as follows:

(e) National Jute Manufacturers Corporation Limited is a sick company and presently there is no production and consequently there is no revenue generation. National Jute Manufacturers Corporation Limited is totally dependent on the financial support from the Government of India. The draft revival plan has been submitted before the Board for Industrial & Financial Reconstruction which was discussed in the last hearing of BIFR held on 13th September, 2010. BIFR has fixed next date of hearing tentatively on 6th January, 2011.

(f) National Jute Manufacturers Corporation Limited has settled the claims of all the secured creditors and all its employees who have opted for the Voluntary Retirement Scheme as per the approval of Union Cabinet, 2005. The Officers have not opted for VRS, therefore, their case is pending.

(g) Making a grant to National Jute Manufacturers Corporation Limited or permitting it to use the funds allotted to it for other purposes to implement the recommendations of the Expert Committee will require the approval of the Union Cabinet.

(h) Sri Bhupendra Singh, the then Joint Secretary, was the Chairman of the Expert Committee. On completion of his tenure, he was relieved from the Ministry and then joined back in the Government of Uttar Pradesh on April 1, 2010.

(i) The final minutes of the recommendations of the Expert Committee were signed by all the members and issued on May 19, 2010.

(j) The recommendations so made by the Expert Committee were studied by the offices of the Ministry and, thereafter, processed in file vide note dated June 4, 2010 and were further processed through proper channel and submitted to the

Minister.

(k) The Minister, in its note dated July 8, 2010, observed that since the instant proposition was being made in variation to the earlier approval of the Cabinet in the subject matter. Thereafter it requires prior approval of the Cabinet for compliance of Expert Committee recommendation.

(l) The funds required for compliance of the Report of the Expert Committee have included in the Draft Cabinet Note for which Cabinet approval is necessary. The proposal for settlement of officers' issues has been incorporated in the Draft Cabinet Note submitted for approval of the Union Cabinet.

(m) The Draft Cabinet Note was approved by the Minister on August 11, 2010.

(n) Be it mentioned here that as per the extant procedure, the Draft Cabinet was circulated on August 13, 2010 to the Prime Minister's Office; Corporate Affairs, Labour & Employment Department; Department of Public Enterprises, Department of Expenditure, Department of Revenue and Ministry of Law.

(o) The comments of Department of Expenditure received on 20th September, 2010, Department of Revenue on 28th September, 2010, Ministry of Labour and Employment, Corporate affairs received on 30th September, 2010, Ministry of Law on 1st October, 2010 and subsequent to above from Ministry of Finance on 28th October, 2010.

(p) The finalized cabinet proposal, incorporating all the comments have been forwarded to cabinet secretariat on 3rd November, 2010.

(q) The comments of DPE have also been received (subsequent to forwarding proposal to Cabinet secretariat).

(r) The matter will be considered before the Cabinet during the next meeting. The placement of proposal in the Cabinet meeting are regulated by Cabinet Secretariat.

(s) The comments from all the Ministries were received and the Draft Cabinet Note has been finally submitted for approval of the Union Cabinet.

(t) For the reasons as stated hereinbefore, the recommendations of the Expert Committee have not yet been implemented.

(u) It will be evident from the facts as stated hereinbefore that there is no intention on my part or on the part of the Ministry of Textiles to deliberately defy this order of the Hon''ble Court. On the other hand, the Ministry is actively pursuing all the concerned authorities for implementation of the order passed by this Hon''ble Court.

(v) The Ministry of Textiles is making all out efforts for compliance of the order of this Hon''ble High Court in time, but there are procedural formalities required to be complied with for obtaining approval of the Union Cabinet because of policy matter and budget provision required in the matter. In the process delay has

been caused in complying with the order of this Hon"ble Court.

(Quoted)

24. It appears now from reading the affidavit in reply filed by the Petitioners being in the nature of an affidavit in reply to the affidavit of the alleged contemnor/opposite parties dated 7.6.2011 that the Petitioners have a grievance as stated in para-9 therein that the composite package will be totally unworkable for the reasons stated therein.

Let it be recorded that Direction No. 5, in the background of Direction Nos. 1, 2 and 3 must be construed to mean that the Respondents were to have taken appropriate steps only pursuant to compliance of the Committee considering the grievances and taking appropriate action and submitting their reports. The Respondents have considered every aspect of the matter and have ultimately given their offer in the shape of a composite package which has also been referred to by the alleged contemnor/opposite party No. 2 in his affidavit dated 7.6.2011 and specially in paras- 3 to 13 thereof. If it is the case of the Petitioners that the offer of VRS is a deviation from the Order, then in that event, a contempt proceeding cannot be initiated for purpose of giving vent to such a grievance.

Moreover, having complied with Direction Nos. 1 to 4, the Respondents have given sufficient explanations in their various affidavits which are found to be acceptable to this Court considering the "sickness" of the Company. One cannot also ignore the fact that due to non operation of the mills for the last 7-8 years and consequent upon the voluntary retirement scheme of all workers and staff, the mills are in a dilapidated condition. All the buildings, factory shed, godown, high tension electrical cables are damaged. Restoration of electricity, water supply, sewerage both in the mill premises as well as staff quarters, mazdoor line quarters were required for starting the operations of the mills. One cannot also ignore that fact that NJMC is a "sick company" and a Scheme framed by the BIFR, in terms of the Sick Industrial Companies (Special Provisions) Act, 1985 is in operation in respect of the said company. The said Company is dependent on the grants from the Govt. of India to pay its employees and implement the recommendations of the Expert Committee.

In the background of the aforesaid, this Court is satisfied that the learned Counsel for the alleged Contemnor/Opposite Party did not make any false or incorrect statement by saying that each of the Petitioner shall get Rs. 50-60 lacks because his statement, taken in totality will go to show that even the Petitioners, in their Affidavit-in-opposition dated 17.6.2011 referred to above, have disclosed the amounts that the Officers would get and they include Rs. 53.55 lakh, 49.64 lakh, 45.34 lakh, 40.03 lakh and 32.08 lakh. Other amounts in relation to other Officers have also specifically been given and therefore in totality, it cannot be said that he had made any false or incorrect statement.

Under the circumstances this Court finds that the alleged contemnor/opposite

parties have taken appropriate steps towards payment and if, in the background of their financial crunch, they have adopted a Scheme, then a Court of law, following the universal Rule of *lex non cogit ad impossibilia*, would not compel them to perform an impossibility. An Order of Court therefore, in the nature of compelling the Contemnor/Opposite parties to perform an impossibility, would run counter to the concept of *actus curiae neminem gravavit* (an act of Court shall prejudice none).

For the foregoing reasons, this Court is satisfied that the alleged Contemnor/opposite parties have not committed any contempt.

The Contempt Applications are accordingly Dismissed. There shall however, be no Order as to costs. Rules Discharged.

Upon appropriate Application(s) being made, urgent Certified copy of this Judgment, may be given/issued expeditiously subject to usual terms and conditions.