(2013) 05 MAN CK 0001

In the Manipur High Court

Case No : W.A. No. 75 of 2008

State of Manipur and Others — APPELLANT

Vs

State Transport Workers'' Union and Others — RESPONDENT

Date of Decision : 28-05-2013

Acts Referred:

Citation : (2013) 05 MAN CK 0001

Hon'ble Judges : Abhay Manohar Sapre, C.J;N. Kotiswar Singh, J

Bench : Division Bench

Advocate : S. Nepolean, G.A, for the Appellant; Babita Thoudam and Maipaksana Singh, for the Respondent

Final Decision : Allowed

Judgement

Abhay Manohar Sapre, C.J.—The decision rendered in this appeal shall also govern the disposal of other connected Writ Appeal Nos. 71 of 2008, Ref. WP (C) No. 539 of 2005 and Writ Appeal No. 74 of 2008, Ref. (WP (C)) No. 167 of 2003, since all these appeals involve identical points and arise out of common order. This is an appeal filed by the respondent of WP (C) No. 4 of 2005 under Chapter V-A of the Gauhati High Court Rules against the judgment and order dated 23.06.2008 passed in the aforesaid writ petition by the learned single Judge.

2. By impugned order, the learned single Judge allowed the writ petition filed by the Respondent No. 1 herein and quashed the order dated 29.7.2003 of Commissioner (TPT), Government of Manipur and in consequence issued a writ of mandamus to give benefit of the Revision of Pay Scale 1999 (in short hereinafter referred to as ROP 1999) to the members of the writ petitioner''s union, i.e. (employees of MSRTC) within four months.

3. So the question which arise for consideration in this writ appeal filed by the State of Manipur is whether learned single Judge was justified in allowing the writ petition and in consequence was justified in issuing a writ of mandamus as directed therein in Para 17 of the impugned order.

4. In order to appreciate the controversy involved in the writ petition out of which this intra-Court appeal arise and now which is carried in this appeal, it is necessary to take note of the relevant facts.

5. The pro forma Respondent No. 1/2 herein (Respondent No. 4/5 of the writ petition), is a Manipur State Road Transport Corporation (for short hereinafter for brevity called the "Corporation"). It was formed in the year 1976 to operate/run the public transport (Buses) for the public in the State of Manipur. After being in existence for around more than 30 years or so, it was noticed that due to myriad reasons, the Corporation continuously went on sustaining heavy financial losses so much so that it became commercially unviable. It was difficult for the Corporation to continue because its continuance would have resulted in causing further losses only.

6. The emergency meeting of the Board of Directors of the Corporation was accordingly convened on 1.12.1999 and 1.7.2000 to consider the issues relating to Corporation. In these two meetings, it was resolved to liquidate the Corporation by taking measures so far as employees working in the Corporation and its properties were concerned.

7. It may be pertinent to mention that some employees of the State Government were also working on deputation with the Corporation. They being the State employee were therefore enjoying the pay scale of the State Government. They, however, got the benefit of ROP made in the year 1990 and then in the year 1999. The question had therefore arisen before the Corporation as to whether the benefit of ROP 1999 be also extended to the employees of the Corporation or not. This issue was discussed at agenda No. 6 in the meeting held on 1.7.2000 but was deferred looking to the financial crunch of the Corporation. The agenda reads as under:

Adoption of R.O.P. 1999 to the MSRT employees. Decision:--Deferred in view of the present financial crunch of the Corporation.

8. The matter was then referred to finance department of the State. They also did not grant any approval to extend the benefit of ROP 1999 to the employees of the Corporation.

9. The Board of Directors then resolved on several issues and accordingly forwarded the matter to the State for further action in the matter.

10. The matter was accordingly taken up by the State in the meeting held on 2.3.2002 along with the cases of other ailing Corporations like the present Corporation. After intense deliberations, it was resolved to wind up the Corporation with the following recommendations:

1. The pay the employees were actually getting will be reckoned for calculating the requirement of funds. In respect of those companies which continue to follow the ROP, 90 pay shall be pay plus dearness allowance under ROP, 90 as on 1.1.1996 and dearness allowance of 38% over the above two as laid down in

ROP, 1999.

2. The gratuity shall be 15 days per completed years of service as per the Gratuity Act.

3. The ex gratia shall be 15 days per completed years of service for those companies being wound up as per the Industrial Disputes Act, while for those companies which will be retained it shall be 45 days per completed years of service as per the VRS circulated by the Bureau of Public Enterprises, Govt. of India.

4. The encashment of leave salaries shall be as per the rules in force of the companies but it shall not exceed 240 days.

5. The arrears of pay and allowances shall be calculated up to 31.3.2002.

6. For VRS, the employee has to complete 10 years of service or completed 40 years in age.

In addition to the above, the employees shall be entitled to the amount in the credit of their account in the GPF/EPF. The Board of the Companies shall adopt appropriate resolutions. For clarity a revised pro forma is enclosed.

11. The matter was accordingly placed before the Cabinet for approval, if considered proper. The Cabinet in its meeting held on 29.07.2003 gave approval for the liquidation of Corporation on following conditions:

UO No. 2671/2002-T(MSRTD) Pt: Imphal, 29.7.2003

As the Cabinet has approved liquidation of MSRTC and as approval of Govt. of India for the same has been sought for, please take up the following steps as discussed, before 31st July, 2003.

1. Issue of deployment order of erstwhile MST staff to look after all the works now being looked after by the MSRTC staff who are going to be retrenched. They should be responsible for safe keeping of existing properties, assets, equipments, buses, trucks etc.

2. Issue retrenchment notice for one month to each MSRTC employees to be retrenched giving the last date of one months'' notice as 31st August, 2003.

Copy of the Orders issued in connection with the above should be sent to me by special messenger latest by 31st July, 2003 during office hours.

It has come to our notice that the calculation submitted to the Govt. has been based on ROP 1999 which has not been approved by the Board of Directors of the MSRTC and not concurred to by the Finance Department, Govt. of Manipur. Accordingly the entitlements should be based on the existing ROP Rules, 1990. The estimates should be submitted along with individual bills of each and every employee to be retrenched. This should be done urgently latest by 01/8/03 so that we may pay the retrenching staff in time.

(Emphasis supplied)

Sd/- (H. Devasekhar Sharma) Commissioner (Tpt) Govt. of Manipur.

12. As would be clear from the cabinet decision, so far as grant of benefit of ROP of 1999 was concerned, it was not approved and instead it was resolved that the benefits to be given to employees of Corporation be calculated on the basis of ROP of 1990 as per Rules.

13. The matter was then sent to the Central Government for approval as required u/s 39 of the Road Transport Corporations Act 1950. The sanction was accordingly accorded on 29.10.2003 by the Central Government. The Corporation then by its order dated 31.10.2003 passed the liquidation order which came into force with effect from 31.10.2003. It reads as under:--

MANIPUR STATE ROAD TRANSPORT CORPORATION MANTRIPUKHRI: IMPHAL

ORDER

Imphal, the 31st October, 2003.

No. 1/807/2003-MSRTC(E)Pt.: Whereas vide this Corporation Notice of even No. dated 31.7.2003 all 223 workmen/employees of this Corporation were given notice for retrenchment from service by giving 3(three) months'' notice and permission was sought to that effect from the Labour Commissioner-cum-Secretary (Labour), Govt. of Manipur and 90 (ninety) days'' period has since elapsed as on date:--

2. And whereas, as per sub-section (4) of Section 25-N of the Industrial Dispute Act, 1947, it provides that after a period of 60 (sixty) days from the date of issue of the notice it shall be treated that the permission has been granted by the authority concerned.

3. And whereas, the Government of India, Ministry of Road Transport and Highways vide their letter No. Request - 17020/5/2003-T, dated 29.10.2003 has given approval to the liquidation of the Manipur State Road Transport Corporation as required u/s 39 of the Road Transport Corporations Act, 1950.

4. And whereas, the State Government has issued order for liquidation of the Manipur State Road Transport Corporation with effect from 01.11.2003 vide Notification issued under No. 11/2003-T(MSRTC), dated 30.10.2003, and therefore, the Manipur State Road Transport Corporation shall stand liquidated w.e.f. 01.11.2003;

5. Now, therefore, it is ordered that the services of the remaining 221 M.S.R.T.C. employees at Annexure-A stand terminated with effect from 31.10.2003 (AN). Their due salaries and retrenchment benefits will be released with immediate effect.

Sd/- (K. PANMKI) MANAGING DIRECTOR M.S.R.T.C.

14. The State Government then vide their order dated 16.7.2003 released a total sum of Rs. 12,80,10,000 so that all dues be paid to employees of Corporation in terms of their decision.

15. It is with this factual background, the employees of the Corporation through their Union felt aggrieved and filed the writ petition out of which this intra-Court appeal arises seeking to challenge the decision of Cabinet only insofar as it relates to granting benefit of ROP 1999 to them. According to them, the employees of the Corporation too should have been given the benefit of the ROP of 1999 by revising their pay scale for payment of their salary, emoluments and all other benefits while in service and thereafter. They complained that when the benefit of ROP of 1999 was extended to those State employees who were working in the Corporation on deputation then there was no reason as to why such benefit was not extended to them also. In other words, they claimed parity with the employees of the State Government who were working in the Corporation on deputation for claiming the same benefits.

16. The writ petition was contested by the Corporation and the State. While defending the decision of the State/Corporation, it was inter alia contended that firstly the employees of Corporation cannot claim parity with the State employees working with the Corporation on deputation, secondly, neither the Board of Directors of Corporation nor the State have granted sanction for extending benefit of ROP of 1999 to employees of Corporation and lastly, since the financial condition of the Corporation was bad which eventually resulted in its closure, it was not possible to extend the benefit of ROP of 1999 to their employees.

17. A learned single Judge, by impugned order did not accept the stand taken by the State/Corporation and allowed the writ petition. The learned single Judge quashed the decision of the Cabinet on this issue and directed to grant the benefit of ROP of 1999 to the employees of the Corporation (members of the writ petitioner''s Union), within 4 months by issuance of writ of mandamus. The impugned directions contained in the order dated 23.6.2008 reads as under:--

17. Accordingly, the impugned order dated 29.07.2003 is hereby set aside and quashed and the respondents shall allow the members of the petitioner-Union to enjoy the benefit under ROP 1999 out of the amount sanctioned under the order of the Government of Manipur dated 16.07.2001 (Annexure-A/10) to the writ petition as soon as possible but not later than 4 (four) months from the date of receipt of certified copy of this Judgment and Order. The writ petition is allowed accordingly.

18. It is against this order; the State has felt aggrieved and filed this intra-Court appeal.

19. Submission of the learned counsel for the appellant (State) while assailing the impugned order was that the writ Court did not properly appreciate the controversy and hence committed a legal error in quashing the impugned

decision insofar as the issue in question was concerned. Learned counsel contended that when the Corporation and State had taken a considered decision declining to accord sanction for extending the benefit of the ROP of 1999 to the employees of the Corporation, then there was no occasion for the writ Court to have issued a writ of mandamus by setting aside of the said decision and grant such benefit to the employees. Learned counsel maintained that the writ petitioners (employees of the Corporation) had no right to claim any parity with that of the employees of the State merely because they were working with the Corporation on deputation. Learned counsel placed reliance on the decision of Supreme Court, reported in

: 2004 (7) SCC 750 (AIR 2004 SC 4193)

in support of their contention.

20. In reply, learned counsel for the respondent supported the impugned order contending that the reasoning and the conclusion arrived at by the writ Court calls for no interference and being just and legal, the same deserves to be upheld by dismissing the appeal.

21. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal and while setting aside of the impugned order dismiss the writ petition.

22. In the case reported in

(2004) 7 SCC 750 (AIR 2004 SC 4193) (State of U.P. v. Dr. Om Prakash)

, one employee of Government owned Corporation (HORTICO) after its closure, claimed the benefit of revised pay scale of former employer (HORTICO) on joining the Government service. Their Lordship Negatived his claim on the ground that when the revised pay scale was never adopted by the Corporation and nor was it sanctioned by any authority, the employee concern was not legally entitled to claim any benefit of such revised pay scale after the closure of the Corporation. The Supreme Court therefore allowed the appeal filed by the State and dismissed the writ petition. This is what was held by the Supreme Court:

7. We find that both the Tribunal and the High Court have fallen in grave error by overlooking the basic fact that at no point of time HORTICO had adopted the revised scale of pay. Mere prescription of a revised scale of pay is really of no consequence unless adopted by the concerned employer. In the instant case as found by both the Tribunal and the High Court revised scale of pay was not adopted by the time the Corporation was closed. That being so, the claim of the respondent that he is entitled to the revised scale of pay is clearly untenable. The Tribunal seems to have proceeded on the basis that the basic pay of Rs. 1060/- as was given to the respondent is relatable to the revised scale of pay of Rs. 515-860. This is clearly erroneous. Unless the revised scale of pay was adopted the question of such presumptuous conclusion is indefensible. The High Court''s conclusion that mere closure of the Corporation would not deprive the

respondent of the revised scale of pay is equally unsustainable. It has to be noted that the respondent''s services were terminated on the closure of HORTICO. He was given compassionate appointment subsequently. When the Additional Inspector General (Jail), U.P. Lucknow brought to the notice of the U.P. Administration about the claim of respondent it was clearly indicated in reply that the revised pay scale was not applicable to the Corporation and, therefore, the question of salary fixation in the revised scale does not arise. It further appears from records that the pay scale of Deputy Jailor was revised from 25.11.1994 and the same was made Rs. 1400-2600. The respondent benefited from the fixation of pay scale and his salary was fixed at Rs. 2420/- w.e.f. 1.10.1995. In accordance with the recommendations of the subsequent Pay Commission the pay scale of Deputy Jailor stood revised to Rs. 5000-8000/- w.e.f. 1.1.1996 and consequently the pay of respondent was fixed at Rs. 7850/- w.e.f. 1.1.1997. The benefit of another pay enhancement w.e.f. 1.10.1998 was extended to the respondent and his basic pay was fixed at Rs. 8000/-. The respondent has thus been granted various benefits as available in law after his appointment as Deputy Jailor in the Jail Department of the State.

8. In the aforesaid background, the inevitable conclusion is that both the Tribunal and the High Court had not considered the controversy in the proper perspective and their conclusions cannot be sustained. The orders of the Tribunal and the High Court are set aside. The appeal is allowed with no order as to cost.

23. In our considered opinion, the aforesaid principle of law laid down in the case of State of U.P. supra applies to the facts of the case. In this case also we find that neither the Corporation nor the State granted any sanction for extending any benefit of ROP of 1999 to Corporation employee and on the other hand it was resolved that it was not possible to extend such benefit due to financial crunch faced by Corporation. It was not the case of the writ petitioner that despite adopting the ROP of 1999, its benefit was not being extended to the employees. In the light of this admitted position we are of the view that writ petitioners were not entitled to claim the benefit of ROP of 1999,

24. So far as the ground of parity pressed in service by the writ petitioner against the State/Corporation was concerned, in our opinion, it has no merit. There could be no parity between the employees of Corporation and that of the State employees working on deputation. The Corporation being an independent organization was free to adopt their own pay scale or adopt the State pay scale depending upon their financial status. If for any valid reasons, the Corporation decided not to adopt the revised pay scale of 1999 for their employees because it was undergoing in financial crises, then in such circumstances, no mandamus could be issued by the writ Court compelling the State/Corporation to extend such benefit to the Corporation''s employees on the ground of "parity" with the State Government employees.

25. The State had sanctioned a sum of Rs. 12,80,10,000/- to the Corporation to pay retrenchment compensation, arrears of salary and other monetary benefit

etc. to each employee of the Corporation on the basis of their existing last drawn pay scale based on ROP of 1990 in terms of their Cabinet decision. It was only to see that the Corporation is finally liquidated. Beyond this, the employees were not entitled to claim any monetary benefits.

26. It may be pertinent to mention that even for those State employees who were on deputation, the Government had granted them notional benefit of ROP 1999 only for the purpose of payment of pension and other retiral benefits as would be clear from the order dated 11.2.2003 issued in this behalf by the State and not beyond it.

27. In the light of foregoing discussion, we cannot concur with the reasoning and conclusion arrived at by the writ Court when he proceeded to allow the writ petition and while quashing the cabinet decision and issued a writ of mandamus for grant of benefit of ROP 1999 to the employees of the corporation. In our opinion, neither there was any basis nor any right whether contractual or legal in favour of the employees to claim such benefit from the Corporation or/and State.

28. In view of foregoing discussion, the appeal succeeds and is allowed. The impugned order is set aside and in consequence, the writ petition out of which this appeal arises is dismissed. Before parting with the case, we consider it apposite to state that the decision of cabinet be implemented by giving all benefits mentioned therein to the employees of the Corporation within three months, if not so far given to them.

No cost.