

(2017) 03 MAD CK 0073

In the Madras High Court

Case No : Writ Appeal No.780 of 2016

The General Manager, Sri Bharathi Mills, Cuddalore Road,
Mudaliarpet, Puducherry Coram

APPELLANT

Vs

N. Karthikeyan

RESPONDENT

Date of Decision : 17-03-2017

Acts Referred:

Industrial Disputes Act, 1947 — Section 33-C(2)

Citation : (2017) 2 LLJ 358 : (2017) 2 LLN 261

Hon'ble Judges : Mr. Nooty Ramamohana Rao and Mr. S.M. Subramaniam, JJ.

Bench : Division Bench

Advocate : Ms. N. Mala, Advocate, for the Appellant in all the WAs; Mr. S. Venkataraman, Advocate, for the Respondent No. 1 in all the WAs

Final Decision : Disposed Off

Judgement

Nooty Ramamohana Rao, J—All these in-house appeals under Clause 15 of the Letters Patent are directed against a common order passed on 29.2.2016 by a learned Single Judge, making the interim order granted in the writ petitions on 22.4.2014 absolute subject to the condition that the petitioner - management pays to each of the employees in the writ petitions, a sum of Rs.75,000/-.

2. We notice that the respective writ petitions are directed against the orders passed by the Labour Court, Puducherry on 30.8.2012 in C.P.Nos.13 to 16 of 2012, filed by the workmen under Section 33C(2) of the Industrial Disputes Act claiming arrears of wages pursuant to the revision.

3. Sri Bharathi Mills and Swadeshi Cotton Mills, Puducherry had a long history. For the present purposes, it is sufficient for us to note that Sri Bharathi Mills and Swadeshi Cotton Mills have been taken over and some financial assistance was provided by the Government of Puducherry. For the purpose of ensuring that the mills would be able to survive and sustain, in the year 2007, the Government of Puducherry appointed M/s.South India Textile Research Association, Coimbatore

for undertaking a techno-economic viability study of Swadeshee-Bharathee Textile Mills Limited, Puducherry. It was also one of the assigned tasks to the aforementioned Association to identify the causes for poor performance and suggest measures for improvement. After undertaking the techno-economic viability study, the aforementioned Association submitted its recommendations in April 2007. Since the textile mills have been incurring continuous losses over several years, as a measure to keep them floating and continue to function as effectively as is possible, a Special Voluntary Retirement scheme known as Swadeshee Bharathee Textile Mills Limited Voluntary Retirement Scheme (henceforth referred to as the VRS 2010) to the employees of Swadeshi Cotton Mills and Sri Bharathi Mills was contemplated and provided for.

4. The said VRS 2010 has been notified by the Government of Puducherry through their G.O.Ms.No.1/2010-Ind.B, Department of Industrial Development (Industries and Commerce) dated 4.6.2010. The entire contours of the scheme containing the relevant conditions applicable thereto have also been made part of the aforementioned Government Order.

5. Paragraph 3 of the VRS 2010 dealt with "eligibility". All employees such as regular, permanent, badli, substitute, temporary and casual workers, who have completed 10 years of service, as such, have all been rendered eligible to opt for the VRS 2010, by tendering resignation from the post held in the mills concerned. The normal age of superannuation was stipulated as 60 years. The right to refuse or accept the offer to retire voluntarily by submitting resignation has been retained in the hands of the mills. Paragraph 5 of the VRS 2010 holds out the benefits afforded to those, who opt under the scheme. First of these benefits relates to payment of ex-gratia. It has two components. Ex-gratia equivalent to 35 days of wages/salary for every completed year of service or 25 days wages/salary for the balance of service left for superannuation, whichever is less, was offered.

6. There is also a further cap on it fixed at Rs.4 lakhs. In other words, ex-gratia, calculated at the rate of 35 days of wages/salary for each completed year of service or 25 days of wages/salary for every month remaining for completing the service upto superannuation age of 60 years, whichever is higher, subject to a ceiling of Rs.4 lakhs, was offered to be paid.

Apart from this ex-gratia, the other usual terminal benefits such as provident fund, encashment of accumulated earned leave/privilege leave, gratuity were also offered for payment. However, one of the most important clauses in paragraph 5 of the scheme namely Clause (iii) talks of the following :

"Arrears of wages/salary paid due to revision of wages/salary etc., will be included in computing the eligible amount and difference would be paid."

7. Though very imprecise language is used, but, nonetheless, this clause clearly conveys that arrears of wages/salary payable due to revision of wages/salary would be paid and the other benefits payable such as ex-gratia, gratuity, earned

leave encashment would be worked out based upon the revised pay scale and the difference amount would be paid. When it talks of payment of "difference amount", it is very clear that all the benefits as per the VRS 2010 will be settled first as per the existing wage/salary structure and upon revision of the wages, the benefits will be recalculated going by the revised wage and differential amount in between the two will be paid too.

8. After protracted negotiations and various efforts, at long last a settlement has been worked out under Section 12(3) of the Industrial Disputes Act by and between the management and the workmen unions on 24.2.2011 with regard to wage revision. Paragraph 14 of the said settlement has set out that the agreement will come into effect from 01.10.2010 and the whole question is as to whether the workmen, who have opted for the VRS 2010, are entitled for payment of arrears of wage revision or/and the benefits such as ex-gratia, gratuity, earned leave encashment upon recalculation of the said amounts taking into account the revised pay structure. This question has been answered by the Labour Court in favour of the workmen. That is hence the management preferred the writ petitions.

9. While the VRS 2010 has undoubtedly held out a promise that the benefits arising from out of wage revision would be extended even to those, who have opted for resignation as a part of the VRS 2010 benefit package, but, in reality, the management seeks to confine now the payment of the VRS 2010 benefits with those wages prevailing then, which have been worked out and settled without the benefit of wage revision being extended to those employees.

10. Hence, the only question, which requires to be answered, is as to whether the VRS 2010 benefits are liable to be recomputed keeping in mind and view the revised wage/salary structure pursuant to the settlement arrived at on 24.2.2011 by and between the management and the workmen unions.

11. We are conscious of the fact that wage revision would be undertaken periodically, essentially for the purpose of neutralizing the inflationary trends and also with a view to provide a fair wage structure to the workmen. But, however, there are a host of other factors also, which play a decisive role in either undertaking wage revision at regular periodical intervals or confine any such wage revision to a certain extent of financial outlet. There cannot be a rigid formula for purpose of drawing or comparing the wage revision undertaken, even in similar industrial undertakings.

12. In the instant case, the VRS 2010 itself has been ushered in as a part of thinning the establishment costs to the extent possible and also with a view to optimize the productivity of the mills concerned so as to enable and allow the mills to survive and compete in the market with others. Those, who have accepted the VRS 2010 package, have, undoubtedly, opted upon a proper appreciation of the components of the benefits that are offered as a package. Payment of ex-gratia is a beneficial package. It is a kind of win-win situation for

both the management and the workmen.

13. From the workmen point of view, if they are going to be compensated by offering the wages at the rate of 25 days for the balance left over service, it is almost as good as paying the wages for their balance tenure of service left for getting superannuated eventually, but of course, they will not be seeing through the prospects of further revisions of wages. But, at the same time, they are also not required to toil day in and day out to earn wages. With a little financial discipline, if that amount is kept away in a fixed deposit with any of the scheduled banks, they will be earning interest thereon till they ultimately reach the age of superannuation of 60 years itself. Thus, from the standpoint view of the workmen, it would not be completely a raw deal for them resist the temptation to bite at the offer under the VRS 2010.

14. From the point of view of the management, if they can prune the size of the establishment considerably, by making one time capital investment in the form of payment of ex-gratia and other terminal benefits, which are even otherwise liable to be paid eventually, the industry can look forward to turn a new leaf around. Thus, the VRS 2010 has to be understood in the matter of its implementation strictly within the confines or limits prescribed for its application.

15. As we have pointed out, paragraph 5(iii) of the VRS 2010 no doubt held out a promise with regard to the revised wage/salary structure playing a dicey role, being taken into account and consideration for purpose of working out the benefits under the VRS 2010. If the wage revision were to take place beyond the point of time, when the jural relationship of the employee and the employer gets snapped, can it still be worked out for settling the benefits of the VRS 2010 ?

16. The fundamental reciprocal obligations between the employees and the employers will become enforceable so long as the relationship of employer and employee subsists. Once that relationship comes to an end, no further obligations other than those that are thrust by a Statute can be enforced. There are various methods, by which, the relationship of employer and employee can be successfully brought to an end

(i) by way of retirement on attaining the age of superannuation;

(ii) by resignation;

(iii) by voluntarily retiring even prior to attaining the age of superannuation, including on grounds of unsuitability on medical grounds;

(iv) by suffering a punishment of termination; and

(v) by way of a special package in the form of voluntary retirement scheme offered by the employer.

17. So long as the employee-employer jural relationship is subsisting, the employees will have to contribute to the productivity of the organization by contributing their services, for which, they should get remunerated by way of fair

wages/salary. Once the relationship comes to an end, this obligation to pay fair wages/salary ceases automatically, as the employee no longer renders services to the organization. When a special voluntary retirement package is offered, the terms contained therein stand out. They are distinct and separate lot. They virtually stand as a substitute for the other/normal conditions of service applicable to the industrial undertaking concerned.

18. In the instant case, the special voluntary retirement package offered on 04.6.2010 has been kept in operation for a period of two months only from the date of issue of the said Notification on 04.6.2010, as is clear from paragraph 11 of the Government Order referred to supra. All such workmen, who have exercised their option under this VRS 2010, have been relieved on the afternoon of 30.9.2010. Thus, the relationship of employee and employer has been snapped on and from the afternoon of 30.9.2010. Whereas the settlement under Section 12(3) has been arrived at on 24.2.2011 and in paragraph 14, it specifically brought the revised wage/ salary structure into force with effect from 01.10.2010, which date is subsequent to 30.9.2010.

19. In other words, such of those employees, who are on the rolls of the mills as on 01.10.2010 alone are entitled to the benefit of the wage/salary restructure, but not those, who have ceased to be the employees of the mills on any date prior thereto. Thus, we are of the opinion that the revised wage/ salary restructuring having not taken place any time prior to 30.9.2010, the benefit held out in paragraph 5(iii) of the VRS 2010 does not get attracted and consequently, no claim for additional voluntary retirement benefits can be laid, on the basis of revised wages. When the revised wage structure itself is not applicable, no claim can be successfully laid at all.

20. We are supported in our view by the judgment of the Supreme Court in the case of A.K. Bindal v. Union of India [reported in AIR 2003 SC 2189] in the following lines :

"18. We are unable to accept the contention of Shri Venkataramani that on account of nonrevision of pay scales of the petitioners in the year 1992, there has been any violation of their fundamental rights guaranteed under Article 21 of the Constitution. Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. The scope and content of this Article has been expanded by judicial decisions. Right to life enshrined in this Article means something more than survival or animal existence. It would include the right to live with human dignity. Payment of very small subsistence allowance to an employee under suspension which would be wholly insufficient to sustain his living, was held to be violative of Article 21 of the Constitution in State of Maharashtra v. Chandrabhan AIR 1983 SC 803. Similarly, unfair conditions of labour in People's Union for Civil Liberties v. Union of India AIR 1982 SC 1473. It has been held to embrace within its field the right to livelihood by means which are not illegal, immoral or opposed to public policy in Olga Tellis v. Bombay Municipal Corporation AIR 1987 SC 108. But to hold that

mere non-revision of pay scale would also amount to a violation of the fundamental right guaranteed under Article 21 would be stretching it too far and cannot be countenanced. Even under the Industrial law, the view is that the workmen should get a minimum wage or a fair wage but not that his wages must be revised and enhanced periodically. It is true that on account of inflation there has been a general price rise but by that fact alone it is not possible to draw an inference that the salary currently being paid to them is wholly inadequate to lead a life with human dignity. What should be the salary structure to lead a "life with human dignity" is a difficult exercise and cannot be measured in absolute terms. It will depend upon nature of duty and responsibility of the post, the requisite qualification and experience, working condition and a host of other factors. The salary structure of similarly placed persons working in other Public Sector Undertakings may also be relevant. The petitioners have not placed any material on record to show that the salary which is currently being paid to them is so low that they are not able to maintain their living having regard to the post which they are holding. The observations made in paragraphs 276 and 277 in *Delhi Transport Corporation v. D.T.C. Mazdoor Congress* (supra), strongly relied upon by learned counsel for the petitioners, should not be read out of its context. In the said case the Court was called upon to consider the constitutional validity of Regulation 9 of Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952, which gave power to terminate the services of an employee after giving one month's notice or pay in lieu thereof. The termination of services of some of the employees on the ground that they are inefficient in their work by giving one month's notice was set aside by the High Court as in its opinion Regulation 9(b) gave absolute unbridled and arbitrary powers to the management to terminate the service of any permanent or temporary employee and, therefore, the same was violative of Article 14 of the Constitution. It was in this context that the aforesaid observations were made by one Hon'ble Judge in his separate opinion. The issue involved was not of revision of pay scale but that of termination of service which has an altogether different impact on an employee.

19. The contention that economic viability of the industrial unit or the financial capacity of the employer cannot be taken into consideration in the matter of revision of pay scales of the employees, does not appeal to us. The question of revision of wages of workmen was examined by a Constitution Bench in *Express Newspapers Ltd. & Ors. v. Union of India & Ors.* AIR 1958 SC 578 having regard to the provisions of Industrial Disputes Act and Minimum Wages Act and the following principles for fixation of rates of wages were laid down :

(1) that in the fixation of rates of wages which include within its compass the fixation of scales of wages also, the capacity of the industry to pay is one of the essential circumstance to be taken into consideration except in cases of bare subsistence or minimum wage where the employer is bound to pay the same irrespective of such capacity;

(2) that the capacity of the industry to pay is to be considered on an industry-cum-region basis after taking a fair cross section of the industry; and

(3) that the proper measure for gauging the capacity of the industry to pay should take into account the elasticity of demand for the product, the possibility of tightening up the organisation so that the industry could pay higher wages without difficulty and the possibility of increase in the efficiency of the lowest paid workers resulting in increase in production considered in conjunction with the elasticity of demand for the product - no doubt against the ultimate background that the burden of the increased rate should not be such as to drive the employer out of business."

21. We are also supported in our view by another judgment of the Supreme Court in the case of *Officers and Supervisors of IDPL v. Chairman & Managing Director, IDPL* [reported in AIR 2003 SC 2870] in the following lines :

"In our view, the economic capability of the employers also plays a crucial part in it, as also its capacity to expand business or earn more profits. The contention of Mr.Sanghi, if accepted, that granting higher remuneration and emoluments and revision of pay to workers in other governmental undertakings and, therefore, the petitioners are also entitled for the grant of pay revision may, in our opinion, only lead to undesirable results. Enough material was placed on record before us by the respondents which clearly show that the first respondent had been suffering heavy losses for the last many years. In such a situation the petitioners, in our opinion, cannot legitimately claim that their pay-scales should necessarily be revised and enhanced even though the organization in which they are working are making continuous losses and are deeply in the red. As could be seen from the counter affidavit, the first respondent company which is engaged in the manufacture of medicines became sick industrial company for various reasons and was declared as such by the BIFR and the revival package which was formulated and later approved by the BIFR for implementation could not also be given effect to and that the modifications recommended by the Government of India to the BIFR in the existing revival package was ordered to be examined by an operating agency and, in fact, IDBI was appointed as an operating agency under Section 17(3) of SICA. It is also not in dispute that the production activities had to be stopped in the major two units of the company at Rishikesh and Hyderabad w.e.f. October, 1996 and the losses and liabilities are increasing every month and that the payment of three instalments of interim relief could not also be made due to the threat of industrial unrest and the wage revision in respect of other employees is also due w.e.f. 1992 which has also not been sanctioned by the Government of India."

22. Subsequently, the Supreme Court had entertained a doubt as to whether the decision rendered by it in *A.K. Bindal* has laid down the principle correctly or not. Hence, in the case of *A.Satyanarayana Reddy & Others v. Presiding Officer, Labour Court, Guntur & Others* [reported in 2008 (5) SCC 280], the Supreme Court had referred the issue to a Larger Bench. Thereafter, the matter was

considered in detail by a Three Judges Bench on 30.9.2016 in the decision reported in AIR 2016 SC 4556. Justice Deepak Misra, speaking for the Court, has concluded the issue, in paragraph 16, in the following words :

"Therefore, the controversy that arose in Pritam Singh Gill (supra) and the dispute that emanated in A.K. Bindal (supra) are quite different. Hence, we are disposed to think that there exists no conflict between Pritam Singh Gill (supra) and A.K. Bindal (supra). We think it appropriate to say that though there is cessation of relationship between the employee and the employer in VRS but if it does not cover the past dues like lay-off compensation, subsistence allowance, etc., the workmen would be entitled to approach the Labour Court under Section 33C(2) of the Act. If it is specifically covered, or the language of VRS would show that it covers the claim under the scheme, no forum will have any jurisdiction."

23. From this, it becomes clear that in Pritam Singh Gill, the principle enunciated that for making a claim arising from out of an existing right can be laid under Section 33C(2), is not in conflict with the principle enunciated in A.K. Bindal. In A.K. Bindal, as noticed by us supra, the principle that any claim with regard to enhancement of pay scale for the earlier period, prior to the workmen proceeding on voluntary retirement, does not lie, is equally good.

24. In this view of settled legal principle, it clearly emerges that for making a claim under Section 33C(2) of the Industrial Disputes Act or to sustain the same, there must be an existing legal right as on the date the jural relationship of employer - employee was snapped. For enforcing such a pre-existing legal right, a claim under Section 33C(2) can be maintained even after the date of the relationship of employee - employer coming to an end.

25. In the instant case, the claim made under Section 33C(2) by the workmen is not for enforcing any of the existing rights as on 04.6.2010 or even 30.9.2010. But, it is rested upon enforcing the wage revision brought into force with effect from 01.10.2010. A right, which has accrued on or after 01.10.2010, cannot be enforced by the employees, who have retired under the VRS 2010 and were relieved on 30.9.2010. Such a claim, which is beyond the period of subsistence of jural relationship of employer - employee, is clearly unsustainable. But, in case there is any other claim, which the workmen have and which is existing prior to 30.9.2010, the same becomes sustainable and the present order shall not be understood as curtailing any such enforceable rights in the hands of the workmen.

26. Hence, we are of the opinion that the orders passed by the Labour Court entertaining the claim petitions under Section 33C(2) of the Industrial Disputes Act on the basis and strength of revised wage structure, are contrary to law and are, hence, unsustainable.

27. Mr. S. Venkataraman, learned counsel appearing for the workmen has made a strenuous effort to convince us that we should not upset the orders passed by the Labour Court, particularly when the management has not raised the plea in

so many words.

28. But, however, the present proceedings are grounded upon a misconception of the right in the hands of the workmen and when the Labour Court passed orders, which are contrary to the principles enunciated by the Supreme Court, which principles bind every court in this country under Article 141 of our Constitution, the orders of the Labour Court cannot be allowed to sustain any longer. The orders passed by the Labour Court in the teeth of the principles enunciated by the Supreme Court are clearly unsustainable, as the very foundation or base, upon which, they are rested, is wrong.

29. Hence, we allow the writ appeals and set aside the orders passed by the Labour Court in the claim petitions lodged under Section 33C(2) by the workmen. Consequently, the writ petitions stand disposed of as having become infructuous. The monies deposited so far shall appropriately be refunded to the depositor under proper acknowledgement. No costs.

30. Consequently, all connected pending CMPs are closed.