(2000) 05 AHC CK 0135

In the Allahabad High Court

Case No : C.M.W.P. No. 11454 of 1999

TSL Voluntary Retired Employee''s Welfare Association and another — APPELLANT

Vs

Triveni Structurals Ltd. and others — RESPONDENT

Date of Decision : 09-05-2000

Acts Referred:
Constitution of India, 1950 — Article 226
Sick Industrial Companies (Special Provisions) Act, 1985 — Section 22

Citation : (2000) 3 AWC 1923 : (2000) AWC 1923 : (2000) 85 FLR 942 : (2000) 2 UPLBEC 1503

Hon'ble Judges : M. Katju, J;D.R. Chaudhary, J

Bench : Division Bench

Advocate : Ashok Bhushan and T.P. Singh, for the Appellant; S.C. and P.K. Mukherjee, for the Respondent

Final Decision : Disposed Of

Judgement

M. Katju, J.—This writ petition has been filed praying for writ of mandamus directing the respondents to give the benefit of pay revision in accordance with the circular letter dated 30.5.1997 and the relevant agreement with the workers of Triveni Structurals Limited, Naini (which is a public sector undertaking) from 1.2.1992.

2. The petitioner claims to be a registered society for the welfare of voluntarily retired employees of Triveni Structurals Ltd., Naini, Allahabad. In para 2 of the petition, it is stated that a large number of employees have taken voluntary retirement from the company, which is alleged to be an instrumentality of the State. In para 11 of the petition, it is stated that with the object to streamline the public sectors, the Government of India took a decision to introduce a Voluntary Retirement Scheme in Triveni Structurals Ltd., Naini and other public sector undertakings throughout the country known as Voluntary Retirement Scheme. 1990. By the circular dated 7.10.1991 an amendment was made to the

Scheme vide Annexure-2 to the writ petition. In para 13 it is stated that the Government of India looking to the National Consumer index has been from time to time effecting revisions in the pay scales and other benefits to be given to the employees of the Company and the employees of other public sector undertakings. By a circular dated 5.1.1996 issued by the company it was clarified that benefit of pay revision will also be given to the persons accepting the retirement scheme. In para 17 it is stated that a large number of officers and workers being attracted by the aforesaid Scheme opted for the same and accepted their voluntary retirement from different dates from 1990 upto December, 1997. A circular dated 3.5.1997 Annexure-4 to the writ petition was issued in this connection and the petitioners are claiming the benefit of the aforesaid circular. Many employees made a representation to the company for giving the benefit of the circular and arrears of salary but to no avail, hence this writ petition.

3. Counter-affidavit and supplementary counter-affidavit have been filed. In para 24 of the main counter-affidavit, it is stated that the respondent company is still running at huge losses and has not been able to generate resources to pay the arrears of pay revision. In para 4 of the supplementary counter-affidavit, it is stated that the total accumulated loss of the company in 1998 is approximately Rs. 93 crores. Hence it is alleged that the company is not in a position to give the benefit in accordance with the circular.

4. A perusal of the circular dated 10.5.1997 Annexure-4 to the petition shows that clause (a) of the same mentions. "Payment of arrears shall be kept in abeyance till adequate generation of internal resources." On the basis of the aforesaid clause, it has been contended by Sri S. N. Verma learned counsel for respondent company that since the company is running at losses and it does not have the internal resources to pay the arrears, hence it is not liable to make the said payment.

5. Shri T.P. Singh learned counsel for petitioner has stated that the contention of the respondent company that the company does not have the internal resources to make the payment in question is incorrect.

6. Sri Verma learned counsel for respondent company has stated that the company has been declared sick under the Sick Industrial Companies Act, 1985, as stated in para 21 of the main counter-affidavit. He has relied on the decision of the Division Bench of this Court in. M/s. J. K. Cotton Spinning and Weaning Mills Company Ltd. v. Collector, Kanpur and others 1999 (82) FLR 709. In this decision, it has been held that a sick company is entitled to the protection of Section 22 of Act.

7. Shri T.P. Singh learned counsel for petitioner has relied on the decision of this Court in Kamla Kant Dubey v. Bharat Pumps and Compressors and others. Writ Petition No. 30036 of 1998 decided on 30.7. 1999. However, Sri S.N. Verma learned counsel for the respondent company stated that the aforesaid decision

was delivered ex parte and a restoration application has been moved, which is pending.

8. In our opinion, we cannot allow the claim of the petitioner in view of clause (a) of the circular dated 30.5.1997. If the petitioners so desire, they can move an application to the B.I.F.R. Obviously the respondent Company has become sick and has no resources to make the payments in question. Hence the petitioners can apply to the Board of Industrial and Financial Reconstruction or any other appropriate forum in respect of their grievance. No relief can be granted by this Court under Article 226 of the Constitution.

9. With these observations, the writ petition is disposed of. No order as to costs.