(2009) 05 AHC CK 0645

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 36852 of 2006

Vijay Kumar Misra APPELLANT

Vs

General Manager, Indian Telephone Industries, Naini & Anr. RESPONDENT

Date of Decision : 08-05-2009

Acts Referred:

Sick Industrial Companies (Special Provisions) Act, 1985 — Section 3(1)(0)

Citation : (2009) 05 AHC CK 0645

Hon'ble Judges : Dilip Gupta, J

Final Decision : Dismissed

Judgement

Dilip Gupta, J.

The petitioner who retired on 10th September, 2002 after attaining the age of superannuation from the post of Technical nonoperative Channel VI in the Indian Telephone Industries, Allahabad has sought a direction upon the respondents to pay the arrears shown in the chart enclosed with the petition along with interest @ 10%.

It is the contention of the petitioner that at the time of retirement, he was not paid arrears of wages arising out of Wage Revision for a period of 39 months from 1st January, 1997 to 31st March, 2000. The petitioner had submitted a representation dated 4th April, 2006 demanding such arrears but by the communication dated 24th April, 2006 the petitioner was intimated as follows:

"This has the reference to your letter dated 04042006 regarding payment of wage revision arrears.

In this context we would like to recall that ITI Limited has revised the scales of pay from 01.01.97 and implemented the same w.e.f. 01.04.2000.

The Govt. of India, while conveying it''s approval for implementation of revised pay scales and allowances of officers/non officers in the company, clearly indicated that payment of arrears for the period from 01.01.1997 to 31.03.2000 should be paid later, in a phased manner, on the improvement of the profitability position of the company, generation and availability of funds.

In view of the above would like to request to kindly bear with us for the delay in settling the arrears.

The company is fully aware of the expectations of the employees who have left the company after 01.01.1997 either on superannuation, VRS or for other reason and payments due to them will be made to them as and when it is paid to the employees on the rolls of the company."

The petitioner who has appeared in person contended that he cannot be permitted to wait indefinitely for payment of such arrears and in support of his contention he has relied upon the decision of the Supreme Court in Vijay L. Mehrotra Vs. State of U.P. & Ors., JT 2000 (5) SC 171 and of this Court in Kunwar Singh Kannaujiya Vs. State of U.P. & Ors., 2007 (3) ADJ 101.

Sri Gopal Mishra learned counsel for the respondents on the other hand has relied upon paragraphs 7 and 8 of the counter affidavit and submitted that the payment of arrears will be paid in a phased manner after improvement of the profitability position of the company, generation of profit and availability of funds. Paragraphs 7 and 8 of the counter affidavit are reproduced below:

"7. The agreement on wage and related matters entered into on 24th day of February, 2001 between the management of the respondent company and recognized union representing the employees of Naini Unit before the Deputy Labour Commissioner at Allahabad. As per agreement, the revision as well as payment of arrears is to be given effect from 1.1.1997 for a period of 10 years. The arrears from 1.1.1997 to 31.3.2000 are to be paid in phased manner after improvement of the profitability position of the company, generation and availability of funds.

8. The settlement entered into between management and workmen of ITI Naini Unit a clause has been incorporated that they shall be paid the arrears subject to generation of profit and performance of the company which is reproduced as below:

16.1 Payment of Arrears:

(i) Keeping in view the financial position of the company, it is agreed that the arrears as applicable, for the period from 1.1.1997 to 31.3.2000 will be paid in a phased manner based on the improvement of profitability position of the company, generation of profit and availability of funds."

Learned counsel for the respondents also submitted that the company has been declared a ''sick company'' in terms of the Section 3(1)(0) of the Sick Industrial Companies (Special Provisions) Act, 1985 and in similar circumstances, Writ Petition No. 35112 of 2005 (Anil Kumar Kulshreshtha Vs. Chairman cum M.D. ITI Ltd., and another) was dismissed by a Division Bench of this Court on 9th

September, 2005.

I have carefully considered the submissions advanced by learned counsel for the parties.

The judgment of this Court in Writ Petition No. 35112 of 2005 has been annexed as AnnexureCA3 to the counter affidavit. A perusal of the same shows that it is in respect of a claim for arrears of revised payscale from 1st January, 1997 to 31st March, 2000. This is what has been claimed by the petitioner in the present writ petition. The Court dismissed the petition holding that:

"It appears to this Court that the petitioner made a claim for arrears of revised pay scale from 01.01.1997 to 31.3.2000. In an earlier writ petition a Division Bench of this Court by an order dated 22nd December, 2004 directed the authority to consider the same. It is an admitted position that the petitioner has received salary and revised pay scale with effect from 1.4.2000 and retiral benefits excepting the dues as aforesaid. The authority concerned thoroughly considered the matter and in paragraph 6 of order of consideration stated that at no stage any assurance/promise was given to the incumbent and on the contrary it was made abundantly clear that the pay revision will be effective from 01.04.2000 and that the arrears of pay revision from 01.01.1997 to 31.03.2000 will be paid later in a phased manner depending upon profitability and financial position of the company. On an enquiry, we have come to know that no other person received any such amount as yet. From such order of consideration it appears that the Company has faced huge losses and it had no other alternative but to register with BIFR during September 2004 as Case No. 504/2004. From the annexure3 being the revision of pay scales of Board and below Board level executives with effect from 01.01.1997 in ITI Ltd. being dated 21st July, 2000 we find no budgetary support was provided to the Company by the Govt. to meet the additional liability of pay revision. The resources for meeting the increased obligation for salaries and wages must be internally generated and must come from the improved performance in terms of productivity and profitability. Payment of revised salary will be made with effect from 01.04.2000 and the arrears from 01.01.1997 to 31.03.2000 will be paid later in a phased manner on the improvement of the profitability position of the Company, generation and availability of funds.

From the counter affidavit we have come to know some funds were provided by the Central Government as regards V.R.S. Scheme and capital expenditure for the year 200304 and 200405. No allocation of fund as regards the claim alike petitioner or others has been provided. That apart the pay revision cannot be equated with non payment of salary or retiral benefits. Since the company has not deprived the petitioner discriminating from any other employees as yet any affirmative order in favour of the petitioner at this stage will create havoc situation. Although we are sympathetic but we cannot pass any favourable order except, however, if the Company revive the petitioner will be entitled to raise his claim on the basis of policy decision taken by the Company itself as regards revision of pay scale.

Thus, the writ petition stands dismissed. No order is passed as to costs."

In my opinion the judgment of the Division Bench squarely covers the controversy involved in the present petition.

The judgments relied upon by the petitioner who has appeared in person are of no benefit to the petitioner as they relate to payment of post retiral benefits which cannot be equated with payment of arrears of wages on account of wage revision.

There is, therefore, no merit in this petition. It is, accordingly, dismissed.

