

NATIONAL CONFEDERATION OF OFFICERS ASSN. OF
CENTRAL PUBLIC SECTOR UNDERTAKING AND ORS.

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v.
UNION OF INDIA AND ORS.

NOVEMBER 30, 2004

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[ASHOK BHAN AND DR. AR. LAKSHMANAN, JJ.]

Sick Industrial Companies Special Provisions Act, 1985 :

S.18—Sick Public Undertakings—Registered with BIFR—Implementation of revised IDA pay scales under O.M. dated 19.7.1995—Held, since revival proposal has been approved by BIFR, petitioners would be entitled to same benefits as given in NTC (IDA) Employees Association's case—Constitution of India—Article 32—Labour law—Revised IDA pay scale.

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The Central Government denied the benefits of revised IDA pay scales under O.M. dated 19.7.1995 to those sick public undertakings which were registered with the BIFR. Employees of British India Corporation, a Government Undertaking and its two units, represented by petitioner No. 1 — Association — all the three being sick undertakings and registered with the BIFR — filed the present writ petition contending that in Special Leave Petition No. 16732/97 in the case of National Textile Corporation and its subsidiaries, which were also sick undertakings, the Court by an interim order dated 7.5.1999 granted the benefits of O.M. dated 19.7.1995 with effect from 1.1.99 and, therefore, the petitioners were also entitled to similar relief. The stand of the respondents was that the interim order dated 7.5.99 was purely on *ad hoc* basis subject to ultimate decision and confined to the said case and therefore, the petitioner in the instant case were not entitled to the revised IDA pay scales.

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In the *National Textile Corporation's** case, while disposing of the special leave petition, the Court on 27.9.2002, observed that the BIFR had formulated schemes which stood approved by all concerned. The Court directed that the Scheme as sanctioned by the BIFR be implemented. In the instant case also, the government of India had given

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A approval for the revival proposal. The BIFR also approved the scheme to be circulated as sanctioned Scheme under Section 18 of the Sick Industrial Companies Special Provisions Act, 1985 and has approved the revival proposal.

B **Disposing of the writ petition, the Court**

HELD : In view of the fact that the revival proposal in the instant case has been approved by the BIFR, the petitioners would also be entitled for the same benefits as given to the N.T.C. employees Association in SLP (C) No. 16732 of 1997 by order dated 27.9.2002. It has been

C brought on record that the Scheme sanctioned by BIFR would be completed by March 2005 and further talks regarding fixation of pay would be held thereafter. In the circumstances, it is directed that the Scheme as sanctioned by BIFR be implemented so far as the petitioners are concerned. [495-D-F]

D **N.T.C. (IDA) Emp. Association v. Union of India and Ors.; SLP (C) No. 16732/97 decided by Supreme Court on 27.2.2002, relied on.*

CIVIL ORIGINAL JURISDICTION : Writ Petition (C) No. 427 of 1999.

E Under Article 32 of the Constitution of India.

Sanjiv Sen and B.S. Banthia for the Petitioners.

F N.N Goswami, Mrs. B. Sunita Rao, Sushil Kr. Pathak, Ms. Varuna Bhandari Gugnani and D.S. Mahra for the Respondents.

The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. : The present writ petition under Article 32 of the Constitution of India is concerning release of revised IDA pay scale in respect of the British India Corporation (a Government Undertaking) and its two units situated at Cawnpore Woollen Mills, Kanpur and New Egerton Woollen Mills, Dhariwal (Punjab). The employees of the Cawnpore Woollen Mills, Kanpur and New Egerton Woollen Mills, Dhariwal have authorised the National Confederation of Officers' Association of the Central Public

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-- Sector Undertaking to submit this petition on their behalf in this Court and, therefore, the petitioners are jointly submitting this petition. A

The brief controversy involved in this matter is that by order dated 19.7.1995, the Central Government has denied the benefit of revised IDA pay scale to those sick public sector undertakings which are registered with the BIFR. This Court on dated 7.5.1999 in S.L.P.(C) No. 16732/1997 ordered that the National Textile Corporation and its subsidiaries be given benefits under O.M. dated 19.7.1995, at least from 1.1.1999. The said order reads thus:

"S.L.P.(C)No.16732 of 1997 & I.A. Nos.1-9 in S.L.P.(C) No.16732 of 1997 C

We heard learned counsel for the parties. In our view till these matters are finally decided, interest of justice requires that the officers/employees of the N.T.C. and its subsidiaries whose cases have been cleared by the Board for Industrial and Financial Reconstruction by order dated 21/28th April, 1998 and which would cover 518 employees of the I.D.A. Pattern working in N.T.C. and its subsidiaries should be given without prejudice to the rights and contentions of all the contesting parties in these proceedings, and purely on ad hoc basis benefits under O.M. dated 19th July, 1995 at least from 1st January, 1999. D

All arrears on the basis of that O.M. will be worked out and paid over to the aforesaid employees only w.e.f. 1st January, 1999 and in future during the pendency of these proceedings the monthly payments will also be continued to be made on the enhanced rate till the final disposal of these proceedings. E

The aforesaid arrears shall be computed and paid w.e.f. 1st January, 1999 within eight weeks from today. F

It is made clear that the aforesaid order is passed subject to the ultimate decision in these proceedings and subject to the adjustment, if any, as directed by this Court ultimately and all such employees shall have no objection to such adjustment to be made from their future salaries or other retrial benefits, if any. G

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A For compliance of the aforesaid order, the Central Government will make available necessary funds to the N.T.C., if required.

The S.L.P. along with the other matters will stand over to 17th August, 1999. In the meantime, counter affidavit and the rejoinder affidavit, if any, are to be filed by the concerned parties are permitted to be filed."

The above order was passed in the petition filed by the N.T.C. (IDA) Employees Association.

C According to the petitioners, the British India Corporation and its two units referred to above are also sick undertakings and they are also entitled to the release of revised IDA pay pattern in compliance of the order dated 19.7.1995 and the benefits given by this Court in order dated 7.5.1999 in S.L.P.(C) 16732/1997 should also be given to the petitioners and the D employees of Cawnpore Woollen Mills and New Egerton Woollen Mills, Dhariwal and the employees of the British India Corporation. Thus petitioner Nos. 1 & 2 have submitted this writ petition in representative capacity for looking after the employees of the said units.

E Mr. Sanjiv Sen, learned counsel appearing for the petitioners, submitted that the revision of pay scales of IDA pattern to the petitioners is a clear violation of Art. 14 of the Constitution of India as the employees of other public sector undertakings including employees of British India Corporation should have been given the benefit of revised pay scales on IDA pattern, but the petitioners were denied. After the order dated 7.5.1999 passed by F this Court in S.L.P.(C) No. 16732 of 1997, the petitioners submitted a representation through their President on 31.5.1999 which is marked as Annexure P-4 in this writ petition on which the Chairman of British India Corporation Ltd. (respondent No.3). Suggested by letter dated 2.6.1999 marked as Annexure P-5 in this writ petition, to the Central government for granting the benefit of IDA pay pattern to the employees of British India Corporation Ltd. (respondent No.3) also but the Central Government has not accepted the representation of the petitioners and neither any reply has been given nor granted any relief to the petitioners. It is important to note that the Company was nationalised for securing proper management and for development of production, modernization of plant and machinery and to G protect thousands of employees for their employment. The company is at

present under the control of the Ministry of Textiles and is an undertaking of the Central Government and that the Company is a Government Company under the Companies Act. Since in an identical matter, this Court by order dated 7.5.1999, passed in S.L.P.(C) No.16732 of 1997 (NTC (IDA) Employees Association vs. Union of India), granted the benefit of revised pay scale to the N.T.C. and its subsidiaries, the petitioners are also claiming the same relief for the employees of the British India Corporation and for its employees working in the Cawnpore Woollen Mills and New Egerton Woollen Mills, Dhariwal.

It is pertinent to notice that in an identical matter when the employees of NTC (IDA pattern) Employees' Association, submitted a writ petition before the High Court of Bombay, registered as W.P.No. 43 of 1997, the High Court dismissed the petition observing that if the directions issued by this Court have not been complied with, remedy does not lie before the High Court. Aggrieved by that order, the said Association filed S.L.P.(C) No. 16732 of 1997 before this Court.

This Court by order dated 27.9.2002 passed the following order:

“Petition for Special Leave to appeal (Civil) No. 16732/1997 (From the judgment & order dated 24/06/1997 in WP 43/97 of the High Court of Bombay)

N.T.C. (IDA) Emp. Association Petitioner

v.

U.O.I. & Ors.

With T.P.(C) No. 409/1997, T.P.(C) No.490/1997

Date : 27/09/2002

These petitions were called on for hearing today

CORAM :

Hon'ble Mr. Justice U.C. Banerjee

Hon'ble Mr. Justice B.N. Agrawal

UPON hearing counsel the Court made the following

O R D E R

Intervention application is dismissed.

A We have been informed that BIFR has already formulated eight schemes which stand approved by all concerned and agencies. Let the scheme as sanctioned by BIFR be implemented. The special leave petition and the transfer petitions stand disposed of accordingly."

B The respective respondents filed their counter affidavits. According to them, the Department of Public Enterprises has, vide its order No. 2(50)/86-DPE(WC) dated 19.7.1995 denied the benefit of revised IDA pay scales to those Public Sector Undertakings, which are referred to BIFR. It was submitted that the British India Corporation Limited and its two units is a sick public sector undertaking and had been referred to BIFR and BIFR

C had issued winding-up of these units vide its order dated 31.10.1994. The appeal preferred by the Company in AAIFR was also dismissed and the AAIFR confirmed the order of winding-up of these units. It was, therefore, submitted that as per the Department of Public Enterprises order dated 19.7.1995, the petitioners are not entitled to the benefit of revised pay scales

D w.e.f. 1.1.1992.

E It was further argued that an interim order dated 7.5.1999 in S.L.P.(C) No. 16732 of 1997 was passed directing that the eight sick subsidiary Corporation of National Textile Corporation Ltd. be given the benefits under revised pay scales w.e.f. 1.1.1999, purely on *ad hoc* basis, subject to ultimate decision and adjustment, if any, as directed by the Court ultimately and all such employees shall have no objection to such adjustment to be made from their future salaries or other retrial benefits and this decision of the Court was applicable to only these eight subsidiary Corporations of NTC and not to British India Corporation, especially because British India

F Corporation was ordered to be wound up and its case was pending before the High Court of Allahabad for liquidation. At present, the case of British India Corporation has been remanded to BIFR for consideration of revival package, which also does not include any revision of pay scales. Hence, no revision of IDA pay scales is possible or admissible.

G We heard Mr. Sanjiv Sen, learned counsel appearing for the petitioners and Mr. N.N. Goswami, learned senior counsel appearing for the respondents. At the time of hearing, our attention was drawn to the order passed by the BIFR in Reconstruction Case No. 518/92 Re : British India Corporation Ltd. dated 18.6.2002. It is seen from the said order that the British India

H Corporation filed application with BIFR on January 24,2001 along with

revival proposal and Techno-Economic viability Plan of 1998. BIFR at its hearing held on 13.6.2001 appointed IDBI as the operating agency under Section 17(3) of the Act and directed the Company to submit a revival proposal within one month. The revival proposal was submitted by the BICL in July, 2001. The proposal envisaging onetime settlement of dues of institutions and SBI was discussed at a joint meeting of involved agencies on January 4, 2002. On 15.2.2002, IDBI (OA) submitted its final report along with rehabilitation scheme conveying consensus of all present in the joint meeting. On the basis of the aforesaid report received from the operating agency, a Draft Revival Scheme of the Company was circulated to all concerned for getting consent as required under Section 19(2) read with Section 19(1) of the Sick Industrial Companies (Special Provisions) Act, 1985. The matter was adjourned for hearing objections/suggestions at the subsequent hearing.

It is seen from the above proceedings that the Government of India had given approval for the revival proposal. After considering the representation of all concerned and the suggestions made in the Draft Revised Proposal, the BIFR approved the Scheme to be circulated as sanctioned Scheme under Section 18 of the Act. Now that the revival proposal has been approved by the BIFR, the petitioners in the present writ petition, in our opinion, would also be entitled for the same benefits as given to the N.T.C. (IDA) employees Association in S.L.P.(C) No.16732 of 1997 dated 27.9.2002.

We, therefore, dispose of the writ petition by directing the implementation of the Scheme as sanctioned Scheme by the BIFR in so far as the petitioners are concerned. We place on record the statement made by the respondents in their counter affidavits and the submission made by Mr. N.N. Goswami, learned senior counsel appearing for the respondents, that the scheme sanctioned by BIFR would be completed by March, 2005 and further talks regarding fixation of pay would be held thereafter. There shall be no order as to costs.

R.P.

Writ petition disposed of.