

A CHAIRMAN-CUM-MANAGING DIRECTOR, NATIONAL
TEXTILES CORPORATION LTD. AND ORS.

v.

N.T.C. (W.B.A.B. &.O) LTD. EMPLOYEES UNION AND ORS.

B OCTOBER 14, 2003

[BRIJESH KUMAR AND ARUN KUMAR, JJ.]

SERVICE LAW :

C *Sick Textile Undertakings (Nationalisation) Act, 1974—Section
5(2)(c)—Sick textile mills taken over by Central Government under the
Act—Staff working in mills seeking parity in pay scales with staff working
in corporate offices—Claim of—National Industrial Tribunal and a
Committee, appointed for the purpose, holding that there is no equal work
D between two categories of staff—Disparity widening during the period
under litigation—Plea of additional financial burden since rehabilitation
schemes already pending before BIFR—Held, on facts, the claim of equal
pay for equal work not tenable on the basis of the findings of the two fact
finding bodies—However, there is no justification in discrimination by
E Central Government between two categories of staff—Since both the
categories belong to one parent company, the financial burden should be
shared by both—Central Government has to discharge its responsibility
de hors the BIFR schemes—Central Government to work out the extent of
relief to staff working in mills within four months and to implement it within
two months thereafter—Constitution of India, Articles 14 and 39(d)—
F Equal pay for equal work.*

The Central Government took over various sick textile mills in
different parts of the country under the Sick Textile Undertakings
(Nationalisation) Act, 1974 and transferred them to National Textile
Corporation Ltd. (NTC). The staff/sub staff working in the mills
G claimed parity with the pay scales given to the staff working in the
corporate offices of NTC and its subsidiaries on the basis of 'equal pay
equal work'. They claimed that the nature of work performed by them
is the same as those working in the corporate offices. Some associations
filed petitions before various High Courts seeking revision of pay scales
H on the plea of 'equal pay for equal work'. This Court directed the cases

to be transferred to itself from different High Courts. In 1989, this Court, with a view to find an amicable settlement, directed the National Industrial Tribunal to look into and resolve the controversies. The Tribunal submitted a Report in 1996 finding that there is no equal work between the two categories of staff. The Tribunal, however, failed to resolve the controversies. In the mean time, during the pendency of the matter, the management refused to revise the pay scales of the staff working in the mills on the plea that the matter was subjudice. This resulted in widening the disparity in pay scales between the two groups from 159% in 1987 to 642% in 2000.

On the direction of this Court, the Central Government in 1999 appointed a one man Committee (Sathyam Committee) to look into the grievances of the staff and sub staff of the NTC mill regarding their pay structure. The Committee gave a report in October 2000 stating that the two categories of employees are not performing equal work and that they are not entitled for equal pay. The Committee, however, recommended some 'special relief' to the staff working in the mills on account of delay in settlement of the dispute.

The Union of India contended that the recommendations of the Sathyam Committee have been implemented in full and nothing survives; that various mills were declared sick under the Sick Industries Companies (Special Provisions) Act, 1985 (SICA) and that the proceedings before the Board of Industrial and Financial Reconstruction (BIFR) for rehabilitation are pending; that for some sick mills, the BIFR had already formulated and sanctioned schemes and are being implemented; that any grant of further relief to the workers will put additional financial burden and would upset the rehabilitation; and that there is disparity since the staff of corporate offices is on the Central Dearness Allowance (CDA) pattern while the staff working in the mills is on the variable Industrial Dearness Allowance (IDA) pattern governed by region-cum-industry awards.

The respondent-Associations contended that there is equality and parity in the work and the working conditions between the two categories and hence are entitled for equal pay.

Disposing of the matters, the Court

A HELD : 1.1. The National Industrial Tribunal found against the staff of the Mills. The finding of the Tribunal was endorsed by the Sathyam Committee. In the face of the findings of the two fact finding bodies, this Court is unable to take a different view of the issue. This Court has no reason to differ with the finding of fact on this issue arrived at by the two independent bodies. Hence the claim of the staff based on the principle of equal pay for equal work is not tenable. When the work is not equal, the question of equal pay does not arise. [732-D-F]

C 1.2. The staff/sub staff working in the Mills have unfortunately received a step motherly treatment. They have not had a pay revision for years. The Sathyam Committee had noticed the sorry plight of the workers. The Committee gave some *ad hoc* relief to the workers which is not enough. The Sathyam Committee noticed disparity in the pay scales of the two categories of workers which is highly unjust and unfair. The staff working in the corporate offices of the Mills is also staff of the parent body. If the mill is incurring losses, the impact has to be on everyone connected with the mills in whatever capacity. There cannot be double standards. There will be financial burden even if the pay scales of the office staff are revised. There can be no case for total denial of revision of pay to the staff/sub staff working in the mills. The Government has a statutory liability for the wages, salaries and dues of the workers. The pay revision was being allowed in case of one category of workers within the same organisation, while it was being denied to another category of workers, giving rise to discrimination. [732-F-H, 733-A-C, 734-D]

F *A.K. Bindal & Anr. v. Union of India*, [2003] 5 SCC 163, referred to.

G 1.3. Discrimination between the two categories of staff cannot be justified on the basis of applicability of the CDA pattern and the IDA pattern to the respective categories of staff. The IDA pattern cannot be taken to debar any revision of pay scales. The Central Government has to act as a model employer and such specious pleas on its part are highly improper and unjustified. [733-D]

H 1.4. A case for relief to the staff/sub staff working in the Mills is definitely made out. The workers deserve some relief though not parity

of pay scales with staff/sub-staff working in corporate offices but certainly on account of revision of pay scales/increase of D.A. or emoluments from time to time as and when fell due during the period of nearly three decades since when, no revision of their pay scale has been made. [733-E] A

1.5. This Court is ill-equipped to work out the extent of relief which can be granted to the workers in the mills. Therefore, the Central Government is directed to take appropriate steps which if so required may include appointment of an expert to work out the extent of relief which ought to be granted to the workers in the mills. Some considerations may be had about the financial constraints, if any, but it cannot be to the extent of virtual denial of any benefit. Before taking a final decision in the matter, an opportunity of hearing be allowed to the management as well as to the workers to enable them to place their respective stands before the decision making authority. The decision should be taken within four months from the date of this judgment and the same should be implemented within two months thereafter. [733G-H, 734-A-B] B C D

1.6. The proceedings before BIFR has been pending since 1993 i.e. for more than ten years. The management was all along fully aware of the demand of the workers of the mills in this behalf. Their cases have been pending in courts since much before the rehabilitation schemes were conceived of. In the various deliberations with the workers it has been noted that rehabilitation schemes are independent of any orders that may be passed by this Court. Therefore, pendency of the rehabilitation schemes before BIFR is not a sufficient ground to deny relief to the staff/sub staff working in the mills. As per the provisions of sections 5(2)(c) of the Sick Textile Undertakings (Nationalisation) Act, 1974, the wages, salaries and other dues of the employees of the sick textile undertakings after the takeover of their managements by the Central Government are the responsibility of the Central Government. It has failed to discharge its responsibility for all these years by raising such specious pleas. [734-F-H, 735-A] E F G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 14572 of 1996. H

A From the Judgment and Order dated 7.10.88 of the Calcutta High Court in W.P. No. Nil of 1988..

WITH

B W.P (C) No. 34/88, 1073, 1074/89 T.P. (C) No. 289/88, W.P. (C) Nos. 152/88, 214/89, 218, 44, 134, 211/88, 161/87, 579/89, T.P.(C) No. 290 of 1988.

C Altaf Ahmad, Additional Solicitor General, T.C.R. Ray, N.N Goswami, P.P. Singh, H.K. Puri, Ujjwal Banerjee, S.K. Puri, B.S. Banthia, Hemant Sharma, S. Wasim A. Quadri, Ms. Sunita Sharma, Ajay Sharma, D.S. Mahra, P. Parmeswaran, B.V. Niren, M. Veerappa, Naresh Kaushik, Ms. Shilpa Chohan, Mrs. Lalitha Kaushik, Mrs. Urmila Sirur, Narender Kaushik, Pankaj Kaushik, Ashok Kumar Sharma, Charan Lal Sahu, Ms. Homa Sahu, D.P. Mukherjee, Ms. Nandini Mukherjee and P.K. Mullick for the Appearing parties.

D The Judgment of the Court was delivered by

E **ARUN KUMAR, J.** : Various textile mills in the country came to be vested in the Central Government by virtue of the provisions under Section 3 (1) of the Sick Textile Undertakings (Nationalization) Act, 1974. The Central Government transferred all such mills to the National Textile Corporation Ltd. (hereinafter referred to as 'NTC') which was brought into existence for this purpose. Under Section 5 of the said Act the liability towards wages, salaries and other dues of workers of such mills after the takeover of management by the Central Government, is that of the Central Government.

G The issue involved in these cases is regarding the claim of the staff/sub staff engaged by the various textile mills under the NTC for 'equal pay for equal work'. The staff working in the mills is claiming pay equal to or in parity with the pay scales prevailing for the staff working in the corporate offices of the mills. It is not in dispute that the office staff/sub staff is on the Central Dearness Allowance pattern (for short CDA) while the staff/sub staff working in the mills is on the variable Industrial Dearness Allowance pattern (for short IDA) governed by region: cum : Industry awards. It is to be noted that there has never been any parity in the pay

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scales between the staff working in the corporate offices of the NTC and its subsidiaries and the staff working in the mills. However, over the years the disparity between the pay scales of the staff working in the corporate offices and staff working in the mills has become highly disproportionate. It has been noticed by the Sathyam Committee, to which reference will be made in detail subsequently, that as against 159% increase in the emoluments of the staff working in the corporate offices over the staff working in the mills in the year 1987, the proportion has increased by the year 2000 to 642%. It is this disproportion between the pay scales of the staff working in the corporate offices and the staff working in the mills which has led to tremendous discontent amongst the staff working in the mills and it is this discontentment which is the root cause of this entire litigation. The problem is further aggravated by the fact that the NTC as well as most of its subsidiaries have been constantly incurring losses and majority of them are sick companies facing proceeding under the Sick Industrial Companies (Special Provision) Act, 1985 (in short 'SICA').

In support of their plea of "equal pay for equal work" the staff working in the mills claimed that the nature of work performed by them is the same as the staff working in the corporate offices. They have gone to the extent of saying that there is interchangeability between the staff working at the two places. The subsidiaries of the NTC are spread over in different parts of the country. The staff working in some of the subsidiaries through their associations approached the respective High Courts in the country for relief regarding revision of pay scales raising the plea of "equal pay for equal work". Ultimately these cases stood transferred to this Court and were bunched together. The matter has been pending in this Court for quite some time. The effort of the Court has been to find an amicable settlement of the problem. In fact, by an order dated 29th September, 1989, by consent of all the counsel appearing for the parties, reference was made to the National Industrial Tribunal in a bid to resolve the controversy. The Tribunal deliberated on the issues involved over a long period of time. It ultimately submitted its report on 17th July, 1996. This report did not succeed in resolving the issues. The report found that the "workmen in the mills are getting lesser emoluments than those comparable categories of employees serving in the corporate offices. The workmen have succeeded in showing that there are some similarities in the work done by two sets of employees but they have failed to show

A satisfactorily that employees working in the mills discharge similar functions when judged on the yardstick of reliability, quality, responsibility, confidentiality etc." The finding of the Tribunal regarding absence of equality or parity on working between the staff working in the corporate offices and the other working in the mills has an important bearing on the claim of the staff working in the mills. The long time that elapsed during the pendency of the matter in this Court and before the National Industrial Tribunal resulted in further prejudice to the claim of the staff in the mills because the management refused to entertain any request for pay revision during this period on the plea of matter being subjudice. While the claim for revision of the pay scale for the staff working in the mills remained pending, the pay scales of the staff working in the corporate offices continued to be revised from time to time which resulted in the situation as noticed earlier that is, from a disparity in pay scales of the two categories being 159% in the year 1987, it became 642% in the year 2000.

D The fond hope of this Court that the matter will be settled equitably before the National Industrial Tribunal did not fructify. This Court continued its effort to see that some amicable settlement to the issue is found. The Central Government was persuaded to make positive efforts in this direction. As a result by a notification dated 27th October, 1999 the Government of India appointed a one man Committee of Shri S.R. Sathyam, a retired IAS officer and a former Secretary in the Ministry of Textile to look into the grievances of the staff and sub staff of the NTC mills regarding their pay structure. As per the notification the findings of the Committee were to be of a recommendatory nature. The Committee was expected to keep in view:

- I. The capacity of NTC to pay wages and salaries;
- II. The pay structure of other employees in the mills;
- III. The pay structure of NTC Headquarters;
- IV. The pay structure of similarly placed private mills;
- V. The observations of the National Industrial Tribunal and of this Court.

The Sathyam Committee gave its report on 31st October, 2000. The Committee found that the different identity of workers working in the corporate offices and workers working in the mills has always been maintained. The pay structures in the two cadres had been different. The pay scales for the staff in the corporate offices were substantially better as compared to the pay scales of the staff working in the mills. Most importantly the Sathyam Committee endorsed the finding of the National Industrial Tribunal that the two categories of employees were not performing equal work. When there was no equal work, there was no question of equal pay. However, the Committee found that the staff working in the mills cannot be legitimately denied some relief on account of delay in settlement of the dispute. Some of the recommendations of the Committee are as under:

- “23.10 The relief to be provided can be called ‘special relief’. It must count for all pay-related benefits although it can formally be merged with pay only at the time of the next pay revision [Paragraph 15.4] D
- 23.11 The ‘special relief’ must also count for VRS. The Guidelines issued by the DPE for implementation of the VRS may be amended to accommodate this provision [Paragraph 16.1] E
- 23.12 The VRS itself will have to be implemented in a time-bound manner. Otherwise, the purpose of counting the ‘special relief’ for VRS so as to make it more attractive may not be (fully) realized. [Paragraph 16.2.1] F
- 23.13 For purposes of computation of VRS benefits, the Gujarat model may be adopted. [Paragraph 16.2.2.]
- 23.14 In the context of voluntary retirements, it will be a thoughtful gesture to allow some flexibility regarding transfer of Staff/sub-Staff between ‘closure’ and ‘revival’ mills. [Paragraph 16.2.3.] G
- 23.15 For the purpose of providing ‘special relief’, the mills of the NTC may be divided into two categories: H

- A (i) 'Revival Mills' i.e., sick mills identified by the BIFR to be revivable.
- (ii) 'Closure Mills' i.e., sick mills ordered by the BIFR to be closed. [Paragraph 17.1]
- B 23.16 The approach towards providing 'special relief' in respect of these three categories can be as follows:
- (i) For 'Good Mill', payment shall made with immediate effect with reference to a 'cut-off date'
- C (ii) (a) For 'Revival Mills', the benefit of the 'special relief' shall be available immediately for purposes of VRS.
- (b) If the Staff/sub-Staff chooses to stay with the Mill, then, the 'special relief' will be available with effect from the 'cut-off date', but only after the Mill is revived.
- D (c) In case, the rehabilitation plan fails and the Mill cannot be revived, the staff/sub-staff can, at that stage, opt for VRS and claim the benefit of the special relief. Only, there can not be any claim for arrears.
- E (iii) For 'Closure Mills', the benefit of the 'special relief' shall be available immediately to staff/sub-staff opting for VRS. The benefit shall not be available to staff not proceeding on VRS. [Paragraph 17.2]
- F 23.17 It will be necessary to define the 'cut-off date' without any ambiguity. It will be reasonable to identify the date of the meeting in the Ministry of Textiles in which an *ad hoc* relief was proposed as the 'cut-off date'. [Paragraph 18.1. and 18.2]
- G 23.18 It will be more convenient to exclude the retired employees from the scope of the benefit proposed. [Paragraph 19.1]
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23.19 The 'benefit order' must incorporate revised work norms. A
[Paragraph 19.2]

23.20 The 'special relief' to be given can only partially neutralize
the gap in emoluments. [Paragraph 20.1]

23.21 The prescription of partial neutralization need not B
necessarily apply equally at all levels. It will be more
equitable to apply the 'special relief' in a graded manner.
Towards this end, the staff/sub-staff in Mills can be
divided into four categories. [Paragraphs 20.2.1., 20.2.2,
and 20.2.3.] C

23.22 The graded relief to be provided can be as follows:

(i) Rs.1,500 per month for category (i);

(ii) Rs.1,250 per month-for category (ii); D

(iii) Rs.1,000 per month for category (iii); and

(iv) Rs.750 per month for category (v).

[Paragraph 20.2.4.]” E

The learned counsel for the Union of India submitted that the
recommendations of the Sathyam Committee have been implemented and
nothing further survives. The learned counsel appearing for the Union of
India further pointed out that various sick mills were declared as sick under
the SICA and proceedings before the Board of Industrial and Financial F
Reconstruction (hereinafter referred to as 'BIFR') for rehabilitation of the
concerned mills are pending. In fact, it appears that the BIFR has already
formulated and sanctioned schemes in relation to some of the sick mills
and the sanctioned schemes are being implemented. In view of this, the
submission is that any financial burden placed on the management by G
virtue of any financial relief granted to the workers at this stage would
upset the rehabilitation scheme. Further financial burden which is not
under consideration of the rehabilitation package cannot be foisted on the
mills. Such a burden would result in, the entire scheme falling through.
For this reason it is contended that this Court should not grant any relief H

A to the workers.

B The plea of discrimination in the matter of revision of pay scales between staff working in the corporate offices/headquarters and the staff working in the Mills is sought to be met by contending that office staff is governed by the CDA pattern while Mills staff is governed by the IDA pattern.

C On the other hand, the argument on behalf of the staff/sub staff of the Mills is that great injustice has been done to the workers working in the Mills. While their counterparts working in the corporate offices have been getting pay revisions in normal course as and when it is allowed to other Government servants, the staff working in the mills has been deprived of the said benefit. As a result of this, it is submitted that during the last two decades while the cost of living has gone up several times the salary and allowances of the workers working in the Mills have remained constant. The emphasis on behalf of the workers has been that there is equality and parity in the work and working conditions of the workers of the corporate offices and the workers working in the Mills. Therefore, it is a case for equal pay. On this aspect however, as noticed earlier, the National Industrial Tribunal found against staff of the Mills. The finding of the Tribunal was endorsed by the Sathyam Committee. In the face of the findings of the two fact finding bodies we find ourselves unable to take a different view on this issue. Neither necessary facts have been placed before us nor we would like to go into such a question of fact. We have no reason to differ with the finding of fact on this issue arrived at by the two independent bodies. So far as the claim of the staff based on the principle of equal pay for equal work is concerned, it is therefore, not tenable. When the work is not equal, the question of equal pay does not arise. But we cannot ignore the fact that the staff/sub staff working in the Mills has unfortunately received a step motherly treatment. They have not had a pay revision for years. The litigation has been pending for more than a decade. They have been told that the matter is subjudice. The Sathyam Committee noticed this sorry plight of the workers. The Committee gave some ad hoc relief to the workers. But that is not enough. The Sathyam Committee noticed disparity in the pay scales of the two categories of workers which was 159% in 1987 and had risen to 642% in the year 2000. H This is highly unjust and unfair. So far as the staff working in the mills

is concerned we are told that all the mills are incurring losses and that does not justify any increase in the pay package of the workers. But the staff working in the corporate offices of the Mills is also staff of the parent body. If the mill is incurring losses the impact has to be on everyone connected with the mill, in whatever capacity. You cannot have double standards. When you give revised pay scales to office staff is there no financial burden?

In view of the fact that the nature of duties of the staff in the two categories has been found to be not at par, parity in pay scales may not be possible. Yet there can be no case for total denial of revision of pay to the staff/sub staff working in the mills.

Discrimination between the two categories of staff cannot be justified on the basis of applicability of the CDA pattern and the IDA pattern to the respective categories of staff. The IDA pattern cannot be taken to debar any revision of pay scales. The Central Government has to act as a model employer and such specious pleas on its part are highly improper and unjustified.

In our view, a case for relief to the staff/sub staff working in the Mills is definitely made out. The workers deserve some relief though not parity of pay scales with staff/sub-staff working in corporate offices, but certainly on account of revision of pay scales/increase of D.A. or emoluments from time to time as and when fell due during period of nearly three decades since when, no revision of their pay scale has been made.

Relief to what extent is the next question? Nothing has been placed before us nor has been brought to our notice which may enable us to spell out the extent of relief. Even on behalf of the workers the emphasis has been on the fact that they are entitled to revision of pay scales as in the case of staff in the headquarters or corporate offices. Nothing more has been urged. Even otherwise we feel we are ill-equipped to work out the extent of relief which can be granted to the workers in the mills. Therefore, we direct the Central Government to take appropriate steps which if so required may include appointment of an expert to work out the extent of relief which ought to be granted to the workers in the mills. Some consideration may be had about the financial constraints, if any, but it

A cannot be to the extent of virtual denial of any benefit. Before taking a final decision in the matter, an opportunity of hearing be allowed to the management as well as to the workers to enable them to place their respective stands before the decision making authority. The decision should be taken within four months from the date of this judgment and the same should be implemented within two months thereafter.

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E The learned counsel for the Union of India relied on a recent judgment of this Court in *A.K. Bindal and Another v. Union of India*, [2003] 5 SCC 163 in support of his contention that pay revision should not be allowed. This was a case of public sector company employees seeking revision of their pay scales. It was held that employees could not claim such a right and such additional financial burden could not be placed on the Government in the absence of material placed before Court justifying the same. This case pertains to public sector undertaking namely Fertilizer Corporation of India. This case is not attracted in the facts of the present case. First, here the Government has a statutory liability for the wages, salaries and dues of the workers. Second, pay revision was being allowed in case of one category of workers within the same organisation, while it was being denied to another category of workers, giving rise to discrimination. Therefore, *Bindal's* case has no relevance so far as the present case is concerned.

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H So far as the argument regarding no relief being admissible to the workers in the Mills in view of rehabilitation schemes being worked out before the BIFR, we have to note that the proceedings have been pending since 1993, i.e. for more than ten years. The management was all along fully aware of the demand of the workers of the Mills in this behalf. Their cases have been pending in courts since much before the rehabilitation schemes were conceived of. How long shall the concerned workers be continued to be denied their legitimate claims? In the various deliberations with the workers it has been noted that rehabilitation schemes are independent of any orders that may be passed by this Court. Therefore, pendency of the rehabilitation schemes before the BIFR is not a sufficient ground for us to deny relief to the staff/sub staff working in the Mills. As per the provisions of Section 5 (2) (c) of the Sick Textile Undertakings (Nationalisation) Act, 1974, the wages, salaries and other dues of the employees of the sick textile undertakings after the takeover of their

managements by the Central Government are the responsibility of the Central Government. The Central Government has failed to discharge its responsibility for all these years by raising such specious pleas. The Central Government has to discharge its responsibility *de hors* the BIFR schemes. The argument therefore, is rejected. **A**

The appeal as well as the various writ petitions and transfer petitions are disposed of in above terms. **B**

B.S.

Matters disposed of.