

MINERAL EXPLORATION CORPORATION, LTD.

v.

ARVIND KUMAR DIXIT AND ANOTHER
(Civil Appeal No. 10697 of 2014 etc.)

DECEMBER 03, 2014

[VIKRAMAJIT SEN AND PRAFULLA C. PANT, JJ.]

Service law – Wage revision – Benefit of – Government letter that wage revision due from 01.01.1997, would be effective qua employees in service on 01.04.2003 – Challenge to, by respondents who voluntarily retired prior to 01.04.2003 but subsequent to 1997 since they were not covered for the purposes of wage revision – Tribunal holding that since the employees who retired on or after 01.04.2003 entitled to the actual benefits of the wage revision and employees who retired on or before 01.04.2003 to be given similar treatment by revision in notional pay – Upheld by the High Court – Held: On facts, cut-off date-01.04.2003 for granting wage revision, neither arbitrary nor violative of Art. 14 of the Constitution – Order of the High Court and the tribunal set aside.

Allowing the appeals, the Court

HELD: The Central Administrative Tribunal and the High Court erred in law in allowing the wage revision benefits to the employees, who were not covered either under communication dated 8.8.2006 issued by the Government of India or the consequential Office Order dated 25.8.2006 whereby the wage revision is implemented. The cut-off date, i.e., 1.4.2003 for granting wage revision, in the facts and circumstances of the instant case is neither arbitrary nor violative of Article 14 of the Constitution. The employees, who were superannuated or voluntarily retired prior to 01.04.2013

A from appellant-Corporation, are not entitled to notional wage revision as directed by the Central Administrative Tribunal, and the High Court. Therefore, the judgment of the High Court and that of the Central Administrative Tribunal are set aside. [Paras 15, 18, 19] [266-B-C; 267-E-G]

C *A.K. Bindal and another v. Union of India and others* 2003 (3) SCR 928:(2003) 5 SCC 163; *Officers & Supervisors of I.D.P.L. v. Chairman and & M.D., I.D.P.L. and others* 2003 (1) Suppl. SCR 720:(2003) 6 SCC 490; *State of Punjab and others v. Amar Nath Goyal and others* 2005 (2) Suppl. SCR 549:(2005) 6 SCC 754; *Sudhir Kumar Consul v. Allahabad Bank* 2011 (2) SCR 1119:(2011) 3 SCC 486 – referred to.

Case Law Reference:

D	2003 (3) SCR 928	Referred to	Para 13
	2003 (1) Suppl. SCR 720	Referred to	Para 14
	2005 (2) Suppl. SCR 549	Referred to	Para 16
E	2011 (2) SCR 1119	Referred to	Para 17

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10697 of 2014.

F From the Judgment & Order dated 30.03.2012 of the High Court of Judicature at Bombay, Nagpur Bench in Writ Petition No. 3116 of 2011.

WITH

G C.A. Nos. 10698, 10699, 10700, 10701, 10702, 10703, 10704 and 10705 of 2012.

Gourab Banerji, T.G. Narayanan Nair, K.N. Madhusoodhanan for the Appellant.

H P.D. Meghe, S.A. Desai, Anagha S. Desai, S. Kumar for the Respondents.

The Judgment of the Court was delivered by

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PRAFULLA C. PANT, J. 1. Leave granted.

2. These appeals, by way of special leave petitions, are directed against judgment and order dated 30.3.2012, passed by the High Court of Judicature at Bombay, Nagpur Bench, whereby writ petitions, challenging order dated 4.8.2010 delivered by Central Administrative Tribunal, Bombay, in Transferred Application Nos. 2001 of 2009, 2002 of 2009 and 2004 to 2035 of 2009, were disposed of. In said order the Tribunal has extended actual financial benefits to the applicants (present private respondents) by holding that they cannot be denied benefit of 'Wage Revision' by notional fixation and re-computation of their retiral dues (severance package).

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3. We have heard learned counsel for the parties at length.

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4. In the above appeals, following common question of law is raised: -

Whether wage revision implemented with effect from 1.4.2006 to employees of Mineral Exploration Corporation Limited, who were superannuated/ voluntarily retired from service on or after 1.4.2003, is also applicable to those employees of the Corporation who were superannuated/ voluntarily retired before said date (1.4.2003), particularly, when no benefit whatsoever is paid to any employee prior to the cut-off date, i.e., 1.4.2003. In other words, whether fixing cut-off date 1.4.2003 by the Corporation in the matter is arbitrary or irrational.

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5. Briefly stated the present appellant is a public sector undertaking registered under the Companies Act, 1956, wholly owned by the Government of India. It was established for various exploration activities of mineral resources throughout the country. The Corporation incurred losses since 1992 onwards till 2009. As such, due to the stringent financial

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A condition of the Corporation, it could not make any provision for capital investment and improvements, and the productivity went on deteriorating. In 1995, the Government of India constituted a High Power Committee which suggested various measures for revival of the Corporation. A Review Committee B for monitoring financial condition recommended drastic measures for revival of the Corporation downsizing the manpower through Voluntary Retirement Scheme. Some 2300 officers and members of the staff availed the benefit of the Scheme reducing the total manpower less than 50% of what C existed in 1991. With the implementation of the measures suggested by the High Power Committee, the appellant-Corporation reduced its loss from Rs.73.28 crores in 2005-06 to Rs.16.20 crores in 2006-07. Consequently, the workmen started pressing their demand of wage revision. The Ministry D of Mines, Government of India, considered the measures for financial restructuring and wage revision which was communicated by its letter No. 40(1)/2004-M.I. (Vol.III) dated 8.8.2006, and the appellant-Corporation was informed by the Government of India that by way of financial restructuring, it E would waive the interest, penal interest and outstanding loan of Rs.30.80 crores, and the same would be converted into equity. Similarly, non-plan loan of Rs.15 crores was agreed to be converted into equity, thereby raising the paid-up capital of the Corporation from Rs.73.75 crores to Rs.119.55 crores. The F Communication of the Government of India made it clear that the wage revision would be effective from 1.4.2003 but shall be implemented with effect from 1.4.2006. It was also provided that the arrears of the year 2005-06 be paid to the employees subject to achieving gross profit of Rs.15.64 crores in said year. G It was also stipulated that the Government would review physical and financial performance of the appellant-Corporation, and may allow permitting it to pay arrears for the years 2003-04 and 2004-05 in the year 2007-08. The Ministry of Mines, Government of India, vide its letter dated 17.8.2006, H instructed the appellant-Corporation to take action in pursuance

to the approval in terms of letter dated 8.8.2006. Consequently, the Corporation issued its Office Order dated 25.8.2006, stating therein that even though the wage revision was due from 1.1.1997, but it would be effective only from 1.4.2003, and would be implemented from 1.4.2006.

6. The contesting respondents are the persons, who opted for voluntary retirement before 1.4.2003 (but subsequent to 1997). They claimed wage revision by making representations to the appellant-Corporation, and filed various writ petitions. Said writ petitions were transferred to the Central Administrative Tribunal, Mumbai, which were registered as Transferred Applications, as mentioned in the first paragraph of this judgment. The Tribunal divided the applications into two categories – first, petitions of those employees who were superannuated or voluntarily retired prior to 1.4.2003 and second, petitions of those employees who retired on 1.4.2003 or afterwards but prior to the date of implementation (1.4.2006). By common judgment dated 4.8.2010, the Tribunal held that the employees who retired on or after 1.4.2003 shall be entitled to the actual benefits of the wage revision, and the employees who retired on or before 1.4.2003 would be given similar treatment by revision in notional pay (with actual pensionary benefits). The operative portion of the Tribunal's order reads as under: -

“In the conspectus of facts and circumstances of the case, we have no doubt in holding that the 30 applicants are entitled to actual benefits of arrears, etc., as per the order dated 25.08.2006 only from 01.04.2003 and not prior to that. They will not be entitled to actual financial benefits for the period from 01.01.1997, except grant of notional benefits which have been extended to all other similarly situated officials who are in service. Similarly, we hold that the nine applicants of the first category are entitled to notional benefits from 01.01.1997 till the date of their respective retirement either on superannuation or voluntary retirement, entitling them to actual upward revision of their

A retiral benefits, i.e., severance package, on their
 respective date of retirement. Accordingly, the respondents
 are directed to rework and pay the amounts payable to all
 the applicants within a period of four months from the date
 of receipt of a copy of this order.”

B 7. Aggrieved by the above order dated 4.8.2010, passed
 by the Tribunal, the Minerals Exploration Corporation Limited
 (present appellant) challenged the decision of the Tribunal
 before the Nagpur Bench of the Bombay High Court by filing
 C Writ Petition Nos. 3116 of 2001, 3117 of 2011, 3118 of 2011,
 3241 of 2011, 3253 of 2011, 3256 of 2011, 3276 of 2011,
 3278 of 2011 and 3281 of 2011, which were dismissed by a
 common judgment challenged before us.

D 8. Learned counsel for the appellant submitted before us
 that after the appellant, a public sector undertaking of
 Government of India, started incurring losses every year from
 1992, the Government of India constituted a High Power
 Committee in the year 1995 to suggest various measures in
 order to improve financial condition of the Corporation. A
 E Review Committee for monitoring financial condition of the
 Corporation recommended drastic measures, including cutting
 down size of manpower by floating Voluntary Retirement
 Scheme. Some 2300 officers and members of the staff availed
 the benefit of the Scheme. After reduction in the staff, loss of
 F Rs.73.28 crores in the year 2005-06 could be brought down to
 Rs.16.20 crores in the year 2006-07. This made employees’
 unions to press their demand of wage revision. As such, the
 Government of India, vide letter dated 8.8.2006, promised
 certain assistance by way of financial restructuring. It is pointed
 G out on behalf of the appellant that it was specifically
 communicated by the Government that wage revision would be
 effective from 1.4.2003, and would be implemented from
 1.4.2006. It is, therefore, argued on behalf of the appellant that
 the contesting respondent who voluntarily retired prior to

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1.4.2003 were not covered for the purposes of benefit of the wage revision. A

9. Before further discussion, we would like to reproduce letter dated 8.8.2006 (Annexure P-12), issued by the Government of India to the appellants, to understand as to what were the conditions for allowing wage revision. The letter is reproduced as under: - B

“GOVERNMENT OF INDIA
Ministry of Mines

No.40(1)/2004-M.I.(Vol.III) New Delhi, the 8.8.2006 C

To

The Chairman-cum-Managing Director,
Mineral Exploration Corporation Ltd.,
High Land Drive Road, Nagpur. D

Sub.: Financial Restructuring of Mineral Exploration Corporation Limited (MECL)

Sir, E

I am directed to convey the approval of the Government to the financial restructuring and wage revision proposal of MECL as detailed below: -

A. Financial Restructuring F

(i) Waiver of interest of Rs.51.56 crores and penal interest of Rs.7.28 crores as on 31.03,2005. Further no interest would be levied beyond the cut-off date of 31.03.2005. G

(ii) Conversion of outstanding Government loan of Rs.30.80 crores into equity effective from 31.03.2005 and also similar conversion of Non-Plan loan of Rs.15.00 crores into equity effective H

A from 31.03.2005, thus raising the paid up capital from Rs.73.75 crores to Rs.119.55 crores.

(iii) Increase of authorized capital of the Company from Rs.100.00 crores to Rs.125.00 crores.

B B. Wage Revision

(1) Wage Revision of employees to be effective from 01.04.2003 and to be implemented w.e.f. 01.04.2006.

C (2) The arrears of wage revision for 2005-06 will be paid in 2006-07 subject to achieving a gross profit (gross margin less depreciation and deferred revenue expenditure) of Rs.15.64 crores in 2005-06. With regard to the payment of arrears of wages revision for the balance period of 2003-04 and 2004-05. Government will review physical/financial performance of MECL as outlined in Para 13 of the recommendations of BRPSE and its fund flow position and may permit MECL to pay the same in 2007-08 from the internal resources, subject to achievement of physical/financial projections and availability of sufficient cash to meet the liability.

F (3) The increased obligation for salary and wages would be met through internal resources of the Company and no budgetary support will be provided for the same.

G You are requested to take necessary action to implement the above under intimation to this Ministry.

Sd/-

Yours faithfully,

(A.K. SINGH)
Director"

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10. From the above letter, it is clear that wage revision of the employees, effective only from 1.4.2003, was to be implemented w.e.f. 1.4.2006. In this connection, when the clarification is sought by the appellant-Corporation, the Government of India vide letter dated 17.8.2006 (Annexure P-13), clarified its stand on the recommendations of Board of Reconstruction of Public Sector Enterprises (BRPSE). Accordingly, Office Order dated 25.8.2006 was issued by the appellant-Corporation allowing wage revision to those who were on employment roll on 1.4.2003. The conjoint reading of the letters issued by the Government of India makes it amply clear that the wage revision was to be implemented with effect from 1.4.2006 allowing the employees who were superannuated/voluntarily retired with effect from 1.4.2003. As such, we find no difficulty in accepting the argument advanced on behalf of the appellant that only those employees are entitled to the wage revision who were on roll as on 1.4.2003 as mentioned in Office Order dated 25.8.2006 (Annexure P-14).

11. On behalf of the contesting respondents it is contended that the respondents are not claiming the actual benefits but only notional wage revision for the period between 1.1.1997 till their date of superannuation/voluntary retirement (prior to 1.4.2003) as such the Tribunal and the High Court have committed no error of law in allowing the same.

12. Mr. Gourab Banerji, learned senior counsel for the appellant, responded to the above contention stating that if such notional wage revision is permitted prior to 1.4.2003, the actual difference in computation of pension would practically take back the appellant-Corporation to the position where it was continuously running in to huge losses. It is vehemently argued that if the wage revision Office Order is interpreted to include all the employees who were superannuated/ voluntarily retired between 1.4.1997 to 1.4.2003, it would frustrate the measures taken, including the Voluntary Retirement Scheme, to improve the condition of public sector undertaking.

A 13. We have considered rival submissions of the parties. It is relevant to discuss here what is the law laid down by this Court in such matters. In ***A.K. Bindal and another v. Union of India and others***¹, this Court has observed as under: -

B “17. The legal position is that identity of the government
 C company remains distinct from the Government. The
 D government company is not identified with the Union but
 E has been placed under a special system of control and
 F conferred certain privileges by virtue of the provisions
 G contained in Sections 619 and 620 of the Companies Act. Merely because the entire shareholding is owned by the Central Government will not make the incorporated company as Central Government. It is also equally well settled that the employees of the government company are not civil servants and so are not entitled to the protection afforded by Article 311 of the Constitution (*Pyare Lal Sharma v. Managing Director*²). Since employees of government companies are not government servants, they have absolutely no legal right to claim that the Government should pay their salary or that the additional expenditure incurred on account of revision of their pay scale should be met by the Government. Being employees of the companies it is the responsibility of the companies to pay them salary and if the company is sustaining losses continuously over a period and does not have the financial capacity to revise or enhance the pay scale, the petitioners cannot claim any legal right to ask for a direction to the Central Government to meet the additional expenditure which may be incurred on account of revision of pay scales. It appears that prior to issuance of the office memorandum dated 12-4-1993 the Government had been providing the necessary funds for the management of public sector enterprises which had been incurring losses.

1. (2003) 5 SCC 163.

H 2. (1989)3SCC 448.

After the change in economic policy introduced in the early nineties, the Government took a decision that the public sector undertakings will have to generate their own resources to meet the additional expenditure incurred on account of increase in wages and that the Government will not provide any funds for the same. Such of the public sector enterprises (government companies) which had become sick and had been referred to BIFR, were obviously running on huge losses and did not have their own resources to meet the financial liability which would have been incurred by revision of pay scales. By the office memorandum dated 19-7-1995 the Government merely reiterated its earlier stand and issued a caution that till a decision was taken to revive the undertakings, no revision in pay scale should be allowed. We, therefore, do not find any infirmity, legal or constitutional in the two office memorandums which have been challenged in the writ petitions".

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14. In *Officers & Supervisors of I.D.P.L. v. Chairman and M.D., I.D.P.L. and others*³, this Court has held as under:-

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"In our view, the economic capability of the employer 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 to 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 shows 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

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3. (2003) 6 SCC 490 (para 11).

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A enhanced even though the organization in which they are working are making continuous losses and are deeply in the red.....”.

B 15. The above mentioned cases, in our opinion, substantiate the argument of the appellant. Therefore we are of the view that the Central Administrative Tribunal and the High Court have erred in law in allowing the wage revision benefits to the employees, who were not covered either under communication dated 8.8.2006 issued by the Government of India or the consequential Office Order dated 25.8.2006
C whereby the wage revision is implemented.

D 16. It is also contended on behalf of the respondents that cut off date, i.e., 1.4.2003 fixed in the above orders is arbitrary and irrational. As to the cut-off date fixed for the purposes of pensionary benefits to the employees, who have retired or died, in **State of Punjab and others v. Amar Nath Goyal and others**⁴ paragraphs 26 and 37 read as under: -

E 26. “It is difficult to accede to the argument on behalf of the employees that a decision of the Central Government/ State Governments to limit the benefits only to employees, who retire or die on or after 1-4-1995, after calculating the financial implications thereon, was either irrational or arbitrary. Financial and economic implications are very
F relevant and germane for any policy decision touching the administration of the Government, at the Centre or at the State level.

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G 37. In the instant case before us, the cut-off date has been fixed as 1-4-1995 on a very valid ground, namely, that of financial constraints. Consequently, we reject the contention that fixing of the cut-off date was arbitrary,

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 4. (2005) 6 SCC 754.

irrational or had no rational basis or that it offends Article 14". A

17. In ***Sudhir Kumar Consul v. Allahabad Bank***⁵, which also pertains to the question of fixing of cut-off date for granting retirement benefits, this Court has laid down, in paragraph 18, as under: - B

"18. Moreover, the fixing of the cut-off date for granting retirement benefits such as gratuity or pension under the different schemes incorporated in the subordinate legislation, thereby, creating two distinct and separate classes of employees is well within the ambit of Article 14 of the Constitution. The differential treatment of two sets of officers appointed prior to the notified date would not offend Article 14 of the Constitution. The cut-off date may be justified on the ground that additional outlay as involved or the fact that under the terms of appointment, the employee was not entitled to the benefit of pension or retirement". C D

18. In view of the above law laid down by this Court, we do not find that the cut-off date, i.e., 1.4.2003 for granting wage revision, in the facts and circumstances of the present case, is arbitrary nor we find it violative of Article 14 of the Constitution. E

19. For the reasons, as discussed above, we hold that the employees, who were superannuated or voluntarily retired prior to 01.04.2003 from appellant- Corporation, are not entitled to notional wage revision as directed by the Central Administrative Tribunal, and the High Court. Therefore, we allow these appeals, and the impugned judgment of the High Court and that of the Central Administrative Tribunal are hereby set aside. There shall be no order as to costs. F G

Nidhi Jain

Appeals allowed.

5. (2011) 3 SCC 486.