IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF FEBRUARY, 2025

BEFORE

THE HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

WRIT PETITION NO. 41944 OF 2014 (L-RES)

BETWEEN:

KARNATAKA SILK INDUSTRIES CORPORATION LTD.,
(A GOVERNMENT OF KARNATAKA UNDERTAKING),
3RD & 4TH FLOORS, PUBLIC UTILITY BUILDING,
MAHATMA GANDHI ROAD, BANGALORE - 560 001,
REPRSENTED BY ITS COMPANY SECRETARY.

...PETITIONER

(BY SRI MURALIDHAR H M, ADVOCATE)

AND:

1. SRI PUTTANNAIAH,
S/O PUTTAIAH,
AGED ABOUT 58 YEARS,
NO.1590, 6TH CROSS,
ASHOKAPURAM, MYSORE, 570008.

2. SRI GOVINDA,
S/O GIRIYAPPA,
AGED ABOUT 62 YEARS,
NO.C.H44, 11TH CROSS,
ASHOKAPURAM, MYSORE-570008.

3. SRI DEVARAJ,
S/O LATE JAVARAIAH,
AGED ABOUT YEARS,
NO.30, 20TH CROSS,
JAYANAGAR, MYSORE-570008.

4. SRI T V SRIKANTA SHARMA,
S/O LATE VENKATACHALAIAH,
AGED ABOUT 57 YEARS,
NO.1329, 2ND MAIN, 10TH CROSS,

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VIVEKANANDANGAR,
MYSORE-570023.

5. SRI KASTURI RANGA,
S/O LATE SEEYAPPA,
AGED ABOUT 63 YEARS,
NO.12, "A" POSTAL COLONY,
VISHVESHWARANAGAR 1ST STAGE,
INDUSTRIAL SUBURB,
MYSORE-570008.

6. SMT SOWPAHARINI,
W/O OADNABABGA ACHARYA,
AGED ABOUT 59 YEARS,
NO.31, 1ST MAIN, 4TH CROSS,
ARVINDANAGAR, MYSORE.

7. SMT N SUNDARAMMA,
W/O D.SUDENDRA RAO,
AGED ABOUT 60 YEARS,
APARTMENT MAHAVEER VILLOW,
FLAT NO.469, 3RD FLOOR,
VALAGEREHALLI,
KENGERI SATELLITE TOWN,
NEAR CHURBH, BANGALORE-560060.

8. SMT HARINI KAPPOR,
W/O G.A.NATARAJ,
AGED ABOUT 60 YEARS,
NO.983, VASISHTA, 14TH MAIN,
4TH STAGE, T.K.LAYOUT,
MYSORE-570009.

9. SRI DEVARAPRASAD,
S/O JAYALATHAN,
AGED ABOUT 57 YEARS,
NO.2378/C, SHAM STUDIO,
K.G.KOPPAL, MYSORE - 570009.

10. SRI M S SUBRAMANYA,
S/O SUBBAJETTAPPA,

AGED ABOUT YEARS,
NO.102, G.BLOCK, 4TH CROSS,
RAMAKRISHNA NAGAR,
MYSORE - 570009.

11. SRI M S KRISHNA MURTHY,
S/O SHANKARANARAYANA,
AGED ABOUT 59 YEARS,
NO.4021/B, G.BLOCK, 12TH CROSS,
RAMAKRISHNA NAGAR,
MYSORE - 570009.

12. SRI K KARUNANIDHI,
S/O KRISHNA MUDALIYAR,
AGED ABOUT 62 YEARS,
NO.328, NEAR S.B.M.,
VISHVESHARANAGAR,
MYSORE-570008.

13. SRI RACHAIAH,
S/O LATE RACHAIAH,
AGED ABOUT 55 YEARS,
NO.50, MUNESHWARA NAGAR,
OOTY ROAD, MYSORE-570025.

14. SRI YESUDAS,
S/O SABASTEEN,
AGED ABOUT 54 YEARS,
NO.1851, 8TH CROSS,
K.R.VANAM, MYSORE-570008.

15. SRI R CHIKKABUDDI,
S/O R.RACHAIAH,
SINCE DEAD BY LRS,

(a) SMT VIJAYAMMA,
W/O LATE R.CHIKKABUDDI,
AGED ABOUT 54 YEARS,

(b) SRI SIDDARAJU,
S/O LATE R.CHIKKABUDDI,

AGED ABOUT 31 YEARS,

(c) SMT PUSHPAVATHI
D/O LATE R.CHIKKABUDDI,
AGED ABOUT 30 YEARS,

(d) SRI VIJAYAKUMAR
S/O LATE R.CHIKKABUDDI,
AGED ABOUT 28 YEARS,

(e) SRI CHETAN
S/O LATE R.CHIKKABUDDI,
AGED ABOUT 24 YEARS,

ALL ARE RESIDING AT NO.1808,
9TH CROSS, ASHOKAPURAM,
MYSORE-570008.

16. SRI MAHADEVA RAO,
S/O LATE REVANNA RAO,
AGED ABOUT 59 YEARS,
NO.1143/39, MILK CENTER ROAD,
7TH MAIN, VIDYARANYAPURAM,
MYSORE-570008.

…RESPONDENTS

(BY SRI RAGHAVENDRA G GAYATHRI, ADV. FOR R1 TO R15 (A, B & D) R16
R15(C) AND R-15(E) ARE SERVED AND UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE RECORDS ON THE FILE OF THE LABOUR COURT, MYSORE IN APPLICATION NO.2/2010 PERUSE THE SAME, ALLOW THE W.P. QUASH THE IMPUGNED ORDER DATED 30.12.2013 PASSED IN APPLICATION NO.2/2010 BY THE PRESIDING OFFICER, LABOUR COURT, MYSORE VIDE ANN-A, DISMISS THE APPLICATION WITH COSTS THROUGHOUT.

THIS PETITION, COMING ON FOR FURTHER HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

ORAL ORDER

1. This petition is filed assailing the order dated 30.12.2013 in Application No.02/2010 on the file of Labour Court, Mysore.

2. In terms of the said order, the Labour Court invoking Section 33C(2) of the Industrial Disputes Act, 1947 had adjudicated the claim. The Labour Court has held that the applicants before it are entitled to relief claimed.

3. Further, the Labour Court quantified the amount payable to the petitioners at Rs.4,55,146/- towards claim of applicants No.1 to 16, taking into account 10% interim relief granted by the Government pursuant to 5th Pay Commission recommendation.

4. Two months time was granted to pay the amount, and in the event of default, the Labour Court also awarded interest at 12% per annum.

5. Certain facts are not in dispute. The respondents were the employees of the petitioner establishment. The respondents opted for Voluntary Retirement Scheme. When

the respondents were still in employment i.e., before their voluntary retirement, 5th Pay Commission recommended hike in the salary of the employees. Though the recommendation was made in the year 2006, it was not immediately implemented. In the meantime, before the final decision taken relating to the implementation of 5th Pay Commission recommendation and before finalising the actual date of its implementation, the Government vide its order dated 28.03.2006 directed to sanction interim relief at the rate of 10% of the basic pay subject to a minimum of Rs.300/- per month and maximum of Rs.1,000/- per month to the full time State Government employees who are on regular time scale of pay with effect from 01.01.2006.

6. Paragraph No.4 of the said order would reveal that the benefit of the interim relief or special allowances sanctioned by the order, shall also applied to the five categories of employees who are on regular time scale.

7. Learned Counsel for the petitioner raised a contention that the petition under Section 33C(2) is not

maintainable, on the premise that there is no pre existing right to make a claim under Section 33C(2) of Act, 1947.

8. Learned counsel for the respondents referring to the said settlement arrived between the Management and the employees, would contend that since Section 3C(2) also refers to the settlement in addition to the award, the Labour Court is justified in granting the relief.

9. The relevant portion of the said settlement arrived at between the petitioner and the respondents reads as under;-

"Implementation of 5th Pay Commission.	*It is agreed by the Management to extend the interim relief as per the government order wef 01.04.2006 as per the order No.FD 8 SRP 2006 dated 29.03.2006."*

10. Though it is urged that Section 33C(2) application is not tenable on the premise that the claim is not based on the pre-existing right, this contention is not available to the petitioner in view of the settlement between the applicants and the petitioner establishment. Section 33C(2), in addition to claim based on award also recognises claim based on

settlement. The settlement referred to above is not in dispute. The dispute is regarding the interpretation of the terms of the settlement. Hence the contention relating maintainability of the petitioner under Section 33C (2), raised by the writ petitioner is not tenable.

11. Learned counsel appearing for the petitioner would contend that the Government Order dated 29.03.2006 does not come to the aid of the respondents inasmuch as in paragraph 6 of the said Government Order it is specified that 10% interim relief granted should be kept as a separate element and has to be adjusted after the full implementation of the 5th pay commission.

12. Learned counsel for the petitioner would also contend that the service benefits are to be calculated from the last drawn salary and the pay slip would indicate that 10% interim relief granted by the Government is not merged with basic pay. The basic pay of the respondents cannot be taken into consideration by adding 10% interim relief is the submission. Learned Counsel would also refer to the pay slips issued to the respondent employees to contend that the

interim relief granted is kept in a separate component and that was never merged with the basic pay as such, the respondent Corporation are not entitled to the additional benefit claimed

13. Learned counsel for the petitioner would also refer to Annexure R.2 - the Government notification wherein it is stated that the compensation would be paid by taking into account the last drawn salary and would refer to column No.22 of the Voluntary Retirement Scheme wherein it is stated that the management has agreed to extend the voluntary retirement benefits as per the KSBPE Regulations to be revised from time to time. Referring to the guidelines in Annexure R.2 he would contend that the Voluntary Retirement Scheme did not extend the benefit of the Government order to the respondents.

14. It is also his further submission that the respondents raised a grievance three years after the retirement, as such the claim is hit by delay and laches. He

would rely upon the decision of the Apex Court in the case of ***A.P.JINDAL vs UNION OF INDIA AND OTHERS***[1].

15. Learned counsel for the respondents would submit that 10% of the interim relief granted by the Government is in respect of the basic pay and same is not kept separate. It is submitted that 10% hike of basic pay for all practical purposes is to be treated as increase of basic pay by 10% to the original basic pay. He would further submit that within three years from the date of retirement, representation is given for which the endorsement was issued in the year 2012, and writ petition is filed in 2014 is not hit by delay and laches.

16. Replying to the submission based on the ground of delay and laches the learned counsel for the respondents would contend that the ratio in ***A.P.JINDAL*** is over-ruled in terms of the law laid down in ***A SATYANARAYANA REDDY AND OTHERS vs PRESIDING OFFICER, LABOUR COURT AND OTHERS***[2].

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[1] 2003(5) SCC 163
[2] 2016(9) SCC 462

17. It is necessary to refer to the Government Order dated 29.03.2006 which is the trump card for both the parties.

18. Paragraphs No.2 & 3 of the Government Order reads as under:

> *"2. After careful examination of the Interim Report of the 5th State Pay Commission, Government have accepted its recommendations with modification that these recommendations be implemented with effect from 1-4-2006 and accordingly, the following orders are issued.*
>
> *3. Government are pleased to sanction Interim Relief at the rate of 10% of basic pay subject to a minimum of Rs.300/- per month and maximum of Rs.1500/- per month to full time State Government employees who are on regular time scale of pay with effect from 1st April 2006. Government are also pleased to sanction Special Allowance of Rs.200/- per month to the Primary School Teachers including Primary School Teachers of aided educational institutions with effect from 1st April 2006."*

19. On a reading of paragraph No.3 it is noticed that Government has taken a decision to sanction interim relief @ 10% of basic pay subject to a minimum of Rs.300/- per month and maximum of Rs.1500/- per month.

Paragraph No.6 of the said order reads as under:

> *"The amount of interim/special allowance sanctioned by this*

> *Order shall be shown as distinct element of remuneration and shall be adjusted against the increase in pay to be recommended by the Pay Commission in this final Report".*
>
> (emphasis supplied)

20. Above extracted paragraph No.6 makes it clear that the interim relief sanctioned by the Government shall be shown as distinct element of remuneration. Further, it is stated that same shall be adjusted against the increase in pay to be recommended by the Pay Commission in its Final Report.

21. Though learned counsel for the petitioner contends that the direction to keep 10% hike as a distinct element of remuneration would indicate that same is not treated as 10% hike in the basic pay, the object of keeping the said amount as a distinct element of remuneration appears to be to adjust the same on final implementation of the recommendation made by the Pay Commission. Thus, the conclusion that can be drawn is that the Government wanted to meet the contingency of not implementing the 5th

Pay Commission recommendation or implementing the same with less than the benefit granted by the interim measure.

22. The paragraph No.7 of the Government order is also relevant which reads as under:-

> *"For the purpose of calculation of interim relief the term basic pay means pay drawn by the Government servant in the scale of pay applicable to the post held by him or in the selection time scale of pay granted under the Karnataka Civil Services (Time Bound Advancement) Rules, 1983 or in the senior scale of pay granted under the Karnataka Civil Services (Automatic Grant of Special Promotion to Senior Scale of Pay) Rules, 1991 and includes....."*

23. The basic pay has been explained with sufficient clarity in the said Government order. Merely because in paragraph No.6 the order granting interim relief it is ordered to be shown as a separate element that does not take away the essence of the 10% basic hike granted to the basic pay. That is evident from the expression *"shall be adjusted against the increase in pay to be recommended by the Pay Commission in its final report".* If the contention of the petitioner is accepted, the aforementioned expression shall become redundant.

24. Thus by reading paragraphs No.3, 6 and 7 it is readily noticed that the 10% hike granted by the Government which is adopted by the petitioner management provided for merger of basic pay by 10%.

25. This being the position, the employer was under obligation to pay the service benefits by merging 10% interim relief granted by the Government with the basic pay of the employee and thereafter, the service benefits should have been calculated. Unfortunately, said procedure is not followed.

26. In addition to that paragraph No.6 cannot be read in isolation. It has to be read in conjunction with paragraphs No.2 and 3 which indicate that the interim recommendation by the Commission is accepted by the Government and same was to be implemented with effect from 01.04.2006. Paragraphs No.2 and 3 are already noticed and discussed.

27. Before the Labour Court, the evidence was led on behalf of both sides. Manner in which the petitioner establishment understood the Government order and settlement is elicited in the cross examination of witness

examined on behalf of the petitioner establishment. Said evidence would clearly establish that the petitioner intended to give benefit that was granted to the other employees vide order dated 29.03.2006.

28. The voluntary retirement scheme also confers the benefits payable to the employee based on the last drawn salary as well as the dearness allowance that was payable to the employee. Thus, the contention that 10% interim relief granted is kept under the separate head holds no water. The rights of the employees is to be determined with reference to the Government Order which is made part of the settlement.

29. Learned Counsel for the petitioner would also contend that once there is a voluntary retirement scheme between the employer and employee, relationship of employer and employee would come to an end and the employee was opted for voluntary retirement scheme is not entitled to make a claim for higher benefit, then what is agreed upon in the voluntary retirement scheme to substantiate his contention he relied on the judgement of the Hon'ble Apex Court in the case of ***A.K Bindal vs Union of***

India[3]***.*** Referring to the said judgment, it is urged that the relationship between the employer and employee has severed in the year 2006 and they cannot make a claim in the year 2010. Thus, he would urge to set-aside the impugned order. He would also urge that having accepted the calculation made by the employer and having accepted the money, the respondents are not eligible to make a further claim for higher monetary benefit.

30. Answering to the contention based on delay and laches it is urged that after accepting the money the respondents made a claim for granting the relief by taking into consideration the 10% basic hike provided by the management and representation was submitted in the year 2008 and in the year 2009 there was an endorsement and endorsement was challenged in the year 2010 as such, he would contend that the petition is filed within a reasonable time.

31. As far as the judgement of the Hon'ble Apex Court in the case of a ***A.P.JINDAL***, supra, it is relevant to note that in the said judgement there was no hike in the

[3] ***(2003) 5 SCC 163***

basic pay when the employees were working in the establishment. The employees opted for voluntary retirement scheme. Thereafter, the revision was hiked. Later, the employees made an application to give benefit of retirement scheme by giving retrospective effect to the hike in the salary. That is not the case here. In the instant case, when the employees were still working in the petitioner establishment, there was a hike in the salary by way of interim measure with effect from 01.04.2006 and the respondents opted for voluntary retirement scheme in the month of August, 2006 and in the agreement was entered into in July, 2006. Thus, the when the agreement was entered into, the hike in basic pay had come into operation. Thus the ratio laid down in the case of ***A.P.JINDAL,*** supra, does not apply to the present case.

32. As far as the contention that after having accepted the benefit granted it is not open for the respondents to make a claim is concerned, it is to be noticed that the settlement arrived at between the petitioner and the respondent employees has to be given effect to. The

settlement binds the petitioner as well as the respondents. Merely because the respondents have accepted a lesser amount, that does not mean that the right under the settlement is waived. Accordingly, the respondents made a representation for giving effect to the terms of the settlement in its letter and spirit. The same was not accepted by the petitioner management, it was rejected and thereafter a representation is filed. Under these circumstances, this Court is of the view that there is no delay and laches on the part of the respondents.

33. However, it is to be noticed that the benefit granted by the Labour Court by invoking section 33C(2) is available only to the present respondents who have moved the Court. In so far as the other employees who have not sought the relief which the respondents have claimed, this order should not be treated as a precedent to confer similar benefits to the other employees. If others file an application, same has to be considered in accordance with law with reference to the principle of delay and laches.

34. The order passed by the Labour Court shall be complied within a period of two months from the date of the receipt of the copy of the order.

35. Writ petition is *dismissed.*

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

CHS
List No.: 1 Sl No.: 25