

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Rai Chattopadhyay

WPA 2112 of 2020

**Burn Standard Ex-Employees' Welfare Association & Anr.
Vs.
Union of India & Ors.**

With

WPA 8437 of 2024

**Sri Puran Chand Prasad
Vs.
Union of India & Ors.**

For the Petitioners	: Mr. Siddhartha Banerjee : Ms. Saheli Sen : Mr. Rajib Mullick : Ms. Ayantika Saha (...in WPA 2112 of 2020) : Mr. Sandipto Bose : Ms. Anchita Sarkar (...in WPA 8437 of 2024)
For the respondents	: Mr. Shiv Chandra Prasad : Ms. Sarda Sha
For the UOI	: Mr. Ranjan Kr. Sinha : Ms. Smita Das De
Judgment on	: 18.03.2026

Rai Chattopadhyay, J. :-

(1) The issues arise for determination in these writ petitions are:

(i) whether the employees/labourers of the respondent/Burn Standard Company Limited, represented by the writ petitioner/employees' Union or self, who have voluntarily retired [claimed to have been compelled to accept the voluntary retirement Scheme] in the year 2002 and accepted retiral benefits in terms of the Scheme, are entitled to be further granted with the benefits revised and calculated in terms of the revised pay scale of 1997;

(ii) whether stand of the respondent that the pay scale of 1997 would only be implemented prospectively with effect from **October 1, 2010**, and not from the date of its coming into effect that is, **January 1, 1997**, in terms of the settlement between the company and Union of the existing employees, is bad in law;

(iii) whether in terms of the statutory provisions in the Industrial Disputes Act, 1947, a settlement between the company and Union of the existing employees can or not bind the erstwhile employees under the petitioner/Union, who have already retired in the year 2002;

(iv) whether the respondents' action is discriminatory and in violation of Article 14 of the Constitution of

India in so far as benefit in terms of revised pay scale of 1997 has been extended to the officers of the company, who had accepted voluntary retirement in the year 2002, from the fund of Rs.417 Crores, but the employees who had accepted the same Scheme, in the same year, have been left out of consideration and grant of similar benefit;

- (2) These cases have checkered background, which may be mentioned in a concise manner for the benefit of discussion. As stated earlier, the writ petitioner Unions represent the employees/labourers of the respondent company, all of whom have worked therein, continuously and satisfactorily, for a considerable period of time. However, due to the respondent/company having lost its net worth, it was referred to Board for Industrial and Financial Reconstruction [BIFR], on **January 20, 1995** and ultimately was declared a sick industrial company. A *Scheme for Rehabilitation* was sanctioned by the BIFR in the year 1999. Vide the office memorandum dated **June 25, 1999**, issued by the Government of India, Ministry of Heavy Industries, revision of pay scale in the public sector undertakings was implemented, with effect from **January 1, 1997**.
- (3) In the year 2000, the officers' association filed a writ petition [W.P.No. 372 (w) of 2000] seeking relief of implementation of the revised pay scale with effect from **January 1, 1997**. The said matter travelled to the Division Bench and vide the order dated August 1, 2001, the Division Bench of this Court directed that the employees

are entitled to the benefit of revised pay scale; therefore, for implementation of those, the management should approach the BIFR for modification of the *Scheme for Rehabilitation* so as to facilitate the employees with the benefit of revised wages and pay scales. Subsequently however, the *Scheme for Rehabilitation* was declared as failed by the BIFR, on **September 14, 2001**.

- (4) Thereafter in **2002**, the company introduced the *Voluntary Retirement Scheme*. Allegedly the employees were compelled to accept the same, due to illegal stoppage of salary for months, curtailment of minimum basic facilities and constant threat of closure of the units.
- (5) In **August 2010**, another revival plan was approved and the company came under the administrative control of the Ministry of Railways, from that under the Ministry of Heavy Industries and Public Enterprises. As regards the question of granting benefits as per revised pay scale of 1997, though the company expressed its consent in hearing before the BIFR, ultimately rescinded from its stand. Its letter dated August 18, 2014 is worth mentioning, which says that, on the basis of the letter of the government dated **August 6, 2010** and the BIFR's order dated **October 26, 2010** and the Board's permission allowing the management to negotiate with the then workers' Union, a memorandum of settlement was arrived at bipartite level with the Union, which was later on approved by the Board. That, according to the same, pay revision of 1997 would be implemented prospectively with effect from **October 1, 2010**, and would be applicable to those employees only

who are on the company's roll on the said date, that is, **October 1, 2010**. It has further been informed in the company's letter dated **March 27, 2015**, that letter dated **August 6, 2010** was issued by following the Presidential Directive issued vide letter dated **June 20, 2011**, for implementation of the pay scale of 1997, with effect from **October 1, 2010**. Though in a reply dated January 13, 2016, to the petitioners' application under the Right to Information Act, 2005, it has been informed that there is no Presidential Directive, which was followed in the process of negotiation.

- (6) In the year 2017, after repeal of the Sick Industrial Companies Act, the respondent/company has filed its application before the National Company Law Tribunal, Kolkata Bench, under section 10 of the Insolvency and Bankruptcy Code, 2016. The petitioners had also filed their claim before the Resolution Professional. The matter ultimately travelled to the Supreme Court, in which vide order dated **September 7, 2018**, the Supreme Court had directed for disbursement of Rs. 417 Crores, at the risk of the company. The National Company Law Appellate Tribunal [NCLAT] had also passed a judgment on May 13, 2019, approving the Resolution Plan, excepting the part which related with closure of the Corporate Debtor/Corporate Applicant. This judgment was challenged and set aside by the Supreme Court and liberty was granted to the workmen and ex-employees as well, to resort to such remedies as available under the law.

- (7) Hence, these writ petitions have been filed to seek the relief that the revised pay scale of 1997, with effect from the date of its coming into force, that is January 1, 1997, be directed to be implemented immediately for the ex-employees who have retired under the Scheme in the year 2002; and the arrear amount be directed to be disbursed immediately.
- (8) Mr. Siddhartha Banerjee, learned advocate has appeared on behalf of the writ petitioners. With reference to the *Wage Policies and Related Matters* as enumerated under Chapter IV of the revised pay scale of 1997, he has submitted that firstly that the same is stipulated to be applicable to the board level and the bellow board level posts alike, with effect from January 1, 1997. He says that the Chapter IV itself has provided for the sick enterprises referred to the BIFR, such revision of pay scales would be strictly in accordance with the rehabilitation packages approved and after providing for all additional expenditure on account of pay revision in these packages [as per clause – 14(6) Chapter IV & clause (c) of Annexure-VI thereof]. Also, that the notification itself has stipulated that there should not be any notional revision of pay but only in actual terms, for the purpose of determining VRS in sick enterprises [as per clause – 14(14) Chapter IV]. Hence, he argues that the notification dated June 25, 1999, revising the pay scale from January 1, 1997, has itself stipulated grant of benefit of the revised pay scale to the bellow board level employees who have accepted the VRS scheme. Therefore, by not allowing them such benefit, the respondents have arbitrarily and unreasonably violated the

terms of notification as well as the vital rights of the writ petitioners.

- (9) Mr. Banerjee has further referred to the *VRS Guidelines*, to submit that arrear of ex-gratia has been stipulated therein to be recalculated and paid, in the event of pay revision being sanctioned subsequent to voluntary retirement [as per No.3]. Also, that provident fund, leave encashment, gratuity, notice pay, leave travel concessions would be payable as per the relevant statutory provision or service conditions and in case of voluntary retirement, outside the computation of ex-gratia [as per No.8]. Mr. Banerjee has referred to the other guidelines issued in this regard dated **MAY 5, 2000**, to submit that arrears of salary due to revision of pay have been kept out of the calculated ex-gratia amount and in case of pay revision with effect from a later date, ex-gratia would be recalculated on the basis of the revised scale of pay.
- (10) He has submitted that pursuant to the judgment of the Division Bench of this Court, dated August 1, 2001, the Court has duly upheld the petitioners' entitlement as to the revision of their pay scales in terms of 1997 notification. Only that the mode of disbursement of the benefit has been varied by the Division Bench than that was directed by the Single Bench earlier. He says that before BIFR in various meetings, the employer has expressed willingness to allow revised pay scale of 1999, to the ex-employee represented by the petitioners, who have retired under the voluntary retirement scheme, though has not stuck to the same subsequently. He says that the ex-employees represented

by the petitioner Union thus has been subjected to gross arbitrariness and violation of their rights due to the inaction and intentional latches of the respondents.

- (11)** He has submitted further that the ex-employees represented by the petitioner Union has also been subjected to gross discrimination, that in violation of their rights guaranteed under Article 14 of the Constitution of India, in so far as the ex-officers who have retired voluntarily in 2002, as per the same scheme, which applied to the officers and non-officer/employees alike, have already been granted with the benefit of revised pay scale with effect from January 1, 1997. That since the benefit was applicable to both the categories, therefore, treating the ex-employees differently than the officers in case of granting the same benefit allowable to them both, amounts to discriminating them without any rationale, which stands against the Constitutional guarantee of equality and equal treatment in the eye of law, Mr. Banerjee, has submitted. He has further stated that neither financial instability of the company, if any, is a good ground under the law to defeat the right of the said ex-employees nor it is a fact in this case that the respondent company is facing any shortage of fund, particularly for the purpose of disbursement of this benefit, in so far as, by dint of the order of the Supreme Court, the company has now been granted the corpus of Rs. 417 Crores, with the direction that arrear salary after implementation of the revised pay scale with effect from January 1, 1997, be disbursed from the same. Hence, Mr. Banerjee has insisted that the instant writ petitions be

allowed with the direction that arrear in terms of revised pay scale may immediately be disbursed to the ex-employee members of the writ petitioner Union.

(12) In support of his argument Mr. Banerjee, has referred to the following judgments: -

i) Municipal Council, Ratlam Vs. Shri Vardichan and Ors. reported at **(1980) 4 SCC 162**

ii) Anz Grindlays Bank Ltd. (Now known as Standard Chartered Grindlays Bank Ltd.) Vs. Union of India & Ors. reported at **(2005) 12 SCC 738**

iii) Braithwaite Burn & Jessop Construction Co. Ltd. Staff Workers' Union & Anr. Vs. Union of India & Ors. reported at **(2002) SCC OnLine Cal 809**

(13) The respondents here are represented by Mr. Shiv Chandra Prasad. According to the respondents, M/s Burn Standard Company Limited [BSCL] under the Ministry of Railways have been closed with effect from September 26, 2022. Mr. Prasad has submitted that the Government of India approved closure of the company on April 4, 2018 and one-time financial grant was sanctioned for settlement of account of the employees who accepts the voluntary

retirement scheme and also the other outstanding liabilities of the company. He says that admittedly all the benefits allowable under the VRS scheme have been duly disbursed in favour of the retirees. According to him, the company does not exist anymore after handing over all the movable and immovable assets to the eastern and the West-Central Railways, as per directions of the Railway Board.

(14) Mr. Prasad says that accounts of all 453 employees of the company, who have obtained voluntary retirement, have been duly settled and they can have no further claim, after accepting their dues under the scheme, that too, without any protest. He says that bank account of the company has been closed on April 23, 2021 and the amount kept therein till that date has been refunded to the Railway Board. Subsequent to that, an application under section 248(2) of the Companies Act, 2013, for removing the name of the company from the Register of Companies, was filed before the Registrar of Companies, Kolkata. That the same was allowed on September 26, 2022 and the company has been dissolved.

(15) The respondents say that now after dissolution of the company, the Railway Board has undertaken to indemnify as follows:

“i) the claimants or all lawful claims against the company arising in future after the striking off the name of the company.

ii) any person or any losses that may arise pursuant to striking off the name of the company.

iii) the claimants for all lawful claims and liabilities, which have not come to notice upto this stage, and if any claim arises or observed even after the name of the company has been struck off in terms of section 248 of the Companies Act, 2013.”

- (16)** Mr. Prasad has submitted that the company is no more a living and operating entity and has ceased to exist. Hence, no claim against the same as well as this writ petition stand maintainable against the company now dissolved, though has been erroneously made a party in this writ petition.
- (17)** He has further submitted that the writ petitioners cannot claim parity with the officers of the said company, as evidently, they, being employees and not on the same footing with the officers, may be treated differently, which, according to him, does not offend any Constitutional right of the present petitioners, as alleged. So far as the contention of the writ petitioners that the alleged inaction of the respondents is violative of Article 14 of the Constitution, Mr. Prasad, has raised strong objection to the same and has submitted that the same is untenable.
- (18)** He has lastly submitted that the present writ petitions, involve various disputed questions of fact, which is not fit to be decided in a writ Court. According to him, the best course the petitioners should have taken resort to, is the alternative efficacious remedy available under the law, instead of this Court of equity, where their writ petition stands as not maintainable. For all the reasons, as above, Mr. Prasad has insisted that the instant writ petitions be dismissed in limini.

- (19)** It is well settled in service jurisprudence that where a pay revision is made effective from a date when an employee was still in service, the financial benefits flowing from such revision constitute an accrued or vested right in respect of the period during which the employee actually served the establishment. Retirement, including retirement under a Voluntary Retirement Scheme, merely brings the jural relationship of employer and employee to an end prospectively and does not operate to divest the employee of benefits which relate to the service already rendered. Consequently, if the revised pay structure is given retrospective effect from a date prior to the employee's retirement, the employee becomes entitled to have his pay for the relevant period refixed in accordance with the revised scale and to receive all consequential benefits including recalculation of terminal dues and pension.
- (20)** The policy for revision of pay of the employees which was undertaken in 1997 directly relates to the service conditions of the employees on the roll as on that date. In service jurisprudence, the vested or accrued right of a retired employee to the benefit of pay revision depends primarily on the effective date of the revision and whether the employee was in service during the period to which the revision relates. If the revision is made retrospectively from a date when the employee was still in service, the financial benefits flowing from that revision constitute an accrued service right and cannot be denied merely because the employee subsequently retired or accepted VRS. Where a pay revision is made effective from a date prior to the employee's retirement, the employee acquires a vested right

to have his salary for the period of service re-fixed in terms of the revised scale, and consequently the retiral benefits and pension must also be recomputed on that basis. The rationale is that pay revision relates to the service already rendered, not to future employment. Accrued benefits for service already rendered cannot be denied after retirement. Retirement or retirement on any VR scheme, does not extinguish accrued service benefits. Voluntary retirement only terminates the employment relationship prospectively; it does not extinguish rights relating to the period when the employee was actually in service. The Supreme Court in the case of ***State of Kerala versus M. Padmanabhan Nair (1985) 1 SCC 429***, has upheld the principle that benefits connected with service, including recalculated dues arising from pay revision, cannot be denied once the right accrues.

- (21) Also, in ***Union of India versus K.V. Jankiraman (1991) 4 SCC 109***, the Supreme Court finds that financial benefits must follow once the underlying service right accrues, even if the benefit is implemented later. The Court clarified that once an employee becomes entitled to a benefit relating to service conditions, the consequential monetary advantages must follow, unless specifically barred by law; that that implementation of benefits at a later date does not extinguish the employee's entitlement arising from an earlier service period. Therefore the legal principle is now well settled that employees who served during the period for which a pay revision is retrospectively made effective retain a vested right to its benefits even if they retired or accepted VRS later.

(22) In this regard, reference may also be made to ***A.K. Bindal v. Union of India, reported in (2003) 5 SCC 163***, wherein the Supreme Court explained the legal nature of a Voluntary Retirement Scheme and observed that although a VRS ordinarily operates as a package settlement between the employer and the employee, the acceptance of such scheme does not automatically extinguish rights which arise independently from statutory provisions or governmental policies governing service conditions. Therefore, where a financial benefit such as pay revision relates to the period of service already rendered by the employee, the claim for consequential recalculation of dues cannot be rejected solely on the ground that the employee had opted for voluntary retirement. The principles laid down by the Supreme Court there are three fold, firstly as regards nature of VRS (the Court held that a VRS is essentially a package deal between the employer and the employee whereby the employee voluntarily severs the relationship in return for certain financial benefits); secondly, that rights not forming part of the VRS package may still survive (while the Court observed that employees who accept VRS generally cannot reopen the terms of the scheme to claim additional benefits, it also clarified that benefits which arise independently from statutory rules, governmental policies, or accrued service rights cannot be automatically treated as waived unless the scheme expressly provides so); and thirdly, that service based benefits already earned cannot be ignored (the Court emphasized that entitlements relatable to the period of service already rendered must be examined independently

of the VRS package, particularly where such benefits flow from a government policy or statutory framework).

(23) Having heard the learned advocates appearing for the respective parties and upon consideration of the materials placed on record, this Court proceeds to examine the issues formulated earlier.

(24) At the outset, the undisputed factual background requires notice. The petitioners were employees of Burn Standard Company Limited who served the establishment for long periods. During the period when the company had already been declared a sick industrial company and proceedings before the BIFR were pending, the Government of India issued the Office Memorandum dated June 25, 1999 implementing revision of pay scales in Public Sector Undertakings with effect from January 1, 1997. The said policy, particularly the provisions under “Chapter IV” relating to wage policies and related matters, specifically contemplated its applicability not only to board level officers but also to employees below board level. Let certain relevant portions thereof be quoted here:

“14.

Board level posts and below Board level posts including non-unionised supervisors in Public Enterprises – Revision of scales of pay w.e.f. 1.1.1997.

The last revision of scale of pay of non-unionised supervisors, below Board level executives and executives holding Board

level posts in Central Public Sector Undertakings was made effective from 1.1.1992 for a period of five years. As the next pay revision fell due from 1.1.1997, the Government had set up a high level Committee under the Chairmanship of Justice S. Mohan, Retd. Supreme Court Judge, to recommend revision of pay and allowances for these executives following IDA pay scales. Based on the recommendations of the Committee, the Government have decided that the scale of pay attached to these Board level posts and below Board level posts would stand revised w.e.f. 1.1.1997 as indicated in Annexure-I.”

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“6. In respect of sick enterprises referred to the BIFR, revision of pay scales would be strictly in accordance with rehabilitation packages approved or to be approved by the BIFR and after providing for the additional expenditure on account of pay revision in these packages.

7. Presidential directives would be issued by all the administrative Ministries/Departments indicating these scales as a ceiling, as the actual payments would depend on the capacity to pay of the enterprises. The resources for meeting the increased obligation for salaries and wages must be internally generated and must come from improved performance in terms of productivity and profitability and not from Government subvention. The Presidential directives would also cover guidelines relating to dearness allowance and ceilings on perquisites. A format of the Presidential directive is suggested in Annexure-IV.”

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14. There should be no notional revision of pay for the purpose of determining of VRS in sick enterprises.”

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“PROCEDURE FOR APPROVAL AND ADOPTION OF NEW SCALES OF PAY ON IDA PATTERN BY PSEs

(c) In respect of sick enterprises referred to BIFR, revision of pay scales for all employees following IDA pattern would be strictly in accordance with the rehabilitation packages approved or to be approved by the BIFR and after providing for the additional expenditure on account of pay revision in these packages.”

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“Subject:- Voluntary Retirement Scheme/Voluntary Separation Scheme for the employees of Public Enterprises.

... ..

3. Whether any arrears of ex-gratia are to be paid in the event of pay revision being sanctioned subsequent to voluntary separation?

4. Ex-gratia will be re-calculated on the basis of revised pay scale and the difference be paid.

.....

5. Under the Gujarat pattern will be compensation for the balance service be enhanced @ 25 days for every year of service left?

Compensation under VRS modeled on the Gujarat pattern will consist of salary of 25 days for every year of service completed and 25 days for every year of service left until superannuation.”

.....

8. Whether PF, leave encashment, gratuity, notice pay, LTC are payable to employees in case of voluntary retirement?

These are to be paid to the employees opting for VRS as per the provisions of the relevant statutes and the service conditions. These are outside the computation of ex-gratia on voluntary retirement.

.....

15. Whether it is mandatory to introduce new VR Scheme or continue with the existing scheme?

The new scheme has been introduced in supersession of the old schemes.

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“VRS Guidelines

... ..

6. Whether the payments made as ex-gratia (with 50% increase), gratuity, leave encashment and pay arrears are recalculated in case pay revision would be allowed at later date w.e.f. 1.1.97?

Ex-gratia will be recalculated on the basis of revised scales of pay in case the revised scales of pay are made effective subsequently (actually with effect from 1.1.1997). The increased ex-gratia (50%) paid would also be adjusted. The other elements like gratuity, leave encashment etc. are to be paid as per the provisions of the relevant statutes and service conditions. These are outside the computation of ex-gratia on voluntary retirement.”

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“Subject: Introduction of a revised Voluntary Retirement Scheme (VRS)

... ..

3. Enterprises that make marginal profits or loss-making enterprises may adopt the revised scheme of VRS which is modeled on the Scheme that exists in the State of Gujarat. The details of the scheme are set out hereunder:

(i) The compensation will consist of salary of 35 days for every completed year of service and 25 days for the balance of service left until superannuation. The compensation will be subject to a minimum of Rs. 25,000/- or 250 days salary whichever is higher. However, this compensation shall not exceed the sum of the salary that the employee would draw

at the prevailing level for the balance of the period left before superannuation.

(ii) Salary for purpose of VRS will consist of basic pay and DA only.

(iii) Arrears of wages due to revision etc. will not be included in computing the eligible amount.

(iv) Payment of bonus should conform to the provisions in the Bonus Act; Casual Leave may be encashed in proportionate measure upto the date of VRS.

... ..

6. The compensation under VRS/VSS will be in addition to terminal benefits.

... ..

14. This O.M. supersedes O.M. No. 2(36)/86-BPE(WC) dated 5th October, 1988 and subsequent circulars issued on the subject.”

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“Subject: Further modification in the revised Voluntary Retirement Scheme

... ..

2. All other provisions of the DPE guidelines dated 5.5.2000 are to continue.”

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“Subject: Further modification in the revised Voluntary Retirement Scheme (VRS)

... ..

Payment of ex-gratia amount under Voluntary Retirement Scheme in respect of employees in CPSEs following Central Dearness Allowance (CDA) pattern of pay scales at 1.1.1986 level computed on their existing pay scales in accordance with the extant scheme or VRS shall be increased by 50%.

2. All other provisions of the DPE guidelines dated 5.5.2000 and 6.11.2001 shall continue to be operative.”

- (25)** The said policy further made a special provision for sick industrial companies referred to the BIFR. It clearly stipulated that revision of pay scales in such enterprises would be implemented in accordance with the rehabilitation package and the additional financial burden on account of such revision would be provided for in the rehabilitation scheme itself. Therefore, the very scheme of the policy demonstrates that employees of sick companies were never intended to be excluded from the benefit of the 1997 pay revision. Rather, the policy created a mechanism for accommodating the financial implications within the rehabilitation framework.
- (26)** It is further significant that the same policy expressly provided that, for sick enterprises, voluntary retirement benefits should be determined on the basis of the actual

revised pay and not on a notional basis. Such stipulation unmistakably indicates that the Government itself contemplated that employees who would opt for voluntary retirement during the relevant period would nevertheless remain entitled to have their retiral benefits computed on the basis of the revised pay scale once such revision became operative.

- (27)** In the present case, the petitioners accepted the Voluntary Retirement Scheme in the year 2002. The materials on record indicate that the scheme was introduced at a time when the company had stopped payment of salaries for long periods and basic facilities were curtailed. Though the respondents dispute the element of compulsion, the surrounding circumstances clearly reveal that the employees had little practical option but to accept the scheme in order to secure at least some terminal benefits.
- (28)** More importantly, acceptance of voluntary retirement under such scheme cannot be construed as a waiver of statutory or policy-based entitlements which had already accrued or which were intended to accrue to the employees under the Government's pay revision policy. The VRS guidelines themselves support this proposition. The guidelines specifically provide that in the event of pay revision being sanctioned subsequent to voluntary retirement, the ex-gratia amount is liable to be recalculated on the basis of the revised scale of pay. Further, statutory dues such as provident fund, leave encashment, gratuity, notice pay and other benefits are to be determined in accordance with the relevant service conditions and statutory provisions.

- (29)** Therefore, the scheme itself preserves the right of employees to receive recalculated benefits once the pay revision is implemented. The respondents' contention that all claims stood extinguished once the petitioners accepted VRS benefits cannot therefore be sustained.
- (30)** Another important aspect arises from the earlier adjudication of this Court. The Division Bench of this Court, by order dated August 1, 2001, had already recognized the entitlement of the employees to the benefit of the revised pay scale and had directed the management to approach the BIFR for appropriate modification of the rehabilitation scheme so that such benefit could be implemented. Thus, the entitlement of the employees to the 1997 pay revision had already received judicial recognition. What remained was only the manner and mechanism of its implementation within the framework of the rehabilitation proceedings.
- (31)** The subsequent conduct of the respondents, however, reveals that despite expressing willingness before the BIFR to extend the benefit of the revised pay scale, they ultimately restricted its implementation prospectively with effect from October 1, 2010 pursuant to a bipartite settlement with the then existing workers' union. Such settlement limited the benefit only to those employees who were on the rolls of the company on the said date.
- (32)** This Court is unable to accept that such settlement can take away the rights of those employees who had already retired earlier. Under the provisions of the Industrial Disputes Act, 1947, a settlement arrived at between the

employer and the union representing existing employees may bind the parties to the dispute and the workmen presently employed. However, such settlement cannot operate to the detriment of employees who had already severed their relationship with the establishment prior to the settlement and who were not represented in the negotiation process. To hold otherwise would enable the employer and the present union, to extinguish vested or accrued rights of a distinct class of employees who had no participation in the settlement.

- (33)** In this context, it is pertinent to also mention that the claim of the respondents regarding the Presidential Directive to be the process of the negotiation between the Employees' Union and the respondents appears, to be unsubstantiated, in view of the letter issued by the company dated January 13, 2016 in response to the petitioners' application under the Right to Information Act, 2005. By filing an application dated December 15, 2015, the petitioners sought to receive a copy of the Presidential Directive, which was followed in the process of negotiation made. By dint of the said letter, the company has replied that, *"There is no such presidential Directive which was followed in the process of negotiation."* The date of implementation has been specified in the scheme itself, and it cannot be changed based on a mutual agreement among the stakeholders unless a legitimate and efficient method is used to make the necessary changes to the scheme.
- (34)** The issue of discrimination raised by the petitioners also merits serious consideration. It has been specifically

pleaded that officers of the same company who had also accepted voluntary retirement in the year 2002 were granted the benefit of the revised pay scale with effect from January 1, 1997 from the corpus of Rs.417 Crores made available pursuant to orders of the Supreme Court. The respondents have not been able to furnish any convincing explanation for extending such benefit to the officers while denying the same to the employees who had retired under the very same scheme.

- (35)** The respondents' argument that officers and workmen constitute different classes cannot by itself justify such differential treatment. The principle of classification under Article 14 of the Constitution requires that the classification must be founded on an intelligible differentia and such differentia must have a rational nexus with the object sought to be achieved. In the present case, both officers and employees accepted voluntary retirement under the same scheme in the same year and their retiral benefits were to be determined on the basis of the applicable pay structure. The object of implementing the 1997 pay revision was to bring parity with the revised public sector pay structure with effect from January 1, 1997. Denial of the benefit only to the workmen while extending it to officers bears no rational nexus with that object and therefore amounts to arbitrary discrimination.
- (36)** The plea of financial incapacity also does not persuade this Court. Firstly, financial difficulty cannot be a ground to deny lawful dues which have already accrued to employees under governmental policy and service conditions. Secondly, it appears from the record that a substantial

fund amounting to Rs.417 Crores was made available pursuant to orders of the Supreme Court for settlement of liabilities including arrear salary after implementation of the revised pay scale. The respondents themselves have utilized the said fund for payment to another category of employees. In such circumstances, selective denial of the same benefit to the petitioners is wholly arbitrary.

- (37) In this context, reference may be made to the decision of the Supreme Court in ***Shri Vardichan & Ors (supra)***, wherein it was emphatically held that a statutory authority cannot avoid its legal obligations on the plea of financial inability. The Supreme Court observed that once a duty is cast upon a public authority under law, the same must be performed irrespective of financial constraints. The principle laid down therein clearly applies to the present case, inasmuch as the respondents cannot defeat the petitioners' lawful entitlement arising from the Government's pay revision policy merely by referring to the financial condition of the company or its subsequent closure.
- (38) Similarly, in ***Anz Grindlays Bank Ltd. (now known as Standard Chartered Grindlays Bank Ltd.) (supra)***, the Supreme Court emphasized that service benefits flowing from statutory provisions, settlements or governing schemes must be interpreted in a manner that advances fairness and protects the legitimate expectations of employees. The Court cautioned against adopting a narrow or technical construction which defeats the very object of the scheme. In the present case, the VRS guidelines themselves contemplate recalculation of ex-gratia and

related benefits in the event of subsequent pay revision. Consequently, the restrictive interpretation sought to be placed by the respondents, namely that the petitioners forfeited their entitlement upon acceptance of voluntary retirement, runs contrary to the object and spirit of the scheme.

- (39) Further support is found in the decision of this Court in ***Braithwaite Burn & Jessop Construction Co. Ltd. Staff Workers' Union & Anr (supra)***, wherein it was observed that employees of public sector undertakings undergoing financial distress cannot be arbitrarily deprived of service benefits legitimately due to them. The Court recognized that financial restructuring or administrative changes affecting the enterprise cannot operate to extinguish accrued rights of employees who had already rendered their services to the establishment. The principle enunciated therein reinforces the proposition that the petitioners, who had served the company and accepted voluntary retirement under the prevailing policy framework, cannot be deprived of the benefits arising from the Government's pay revision policy.
- (40) The respondents have also raised an objection regarding maintainability on the ground that the company has since been dissolved and struck off from the register of companies. However, it is evident from the undertaking placed on record that the Railway Board has assumed responsibility to indemnify all lawful claims against the company even after its dissolution. Once the Government itself has undertaken to satisfy lawful claims arising in the future, the dissolution of the company cannot be used as a

shield to defeat legitimate claims of former employees. The liability, in effect, survives against the authority which has assumed such indemnification.

- (41)** The contention that disputed questions of fact are involved also cannot be accepted in the facts of the present case. The essential facts—namely the issuance of the 1997 pay revision policy, the acceptance of VRS by the petitioners in 2002, the subsequent settlement of 2010, and the extension of the benefit to officers—are not in serious dispute. The controversy essentially concerns the legal consequences flowing from these admitted facts. Such questions fall well within the jurisdiction of this Court under Article 226 of the Constitution.
- (42)** For the reasons discussed above, this Court is of the considered view that the petitioners, who had accepted voluntary retirement in the year 2002, cannot be deprived of the benefit of the revised pay scale of 1997 with effect from January 1, 1997. The respondents' decision to implement the revision only prospectively from October 1, 2010 and to confine it to employees who were on the rolls on that date is arbitrary, contrary to the governing policy, inconsistent with the VRS guidelines and violative of the constitutional guarantee of equality under Article 14.
- (43)** Consequently, the petitioners are entitled to have their pay and all consequential retiral benefits recalculated on the basis of the revised pay scale of 1997 with effect from January 1, 1997, and to receive the arrears arising therefrom.

(44) Hence, the writ petitions WPA 2112 of 2020 (Burn Standard Ex-Employees' Welfare Association & Another Vs. Union of India & Ors.) and WPA 8437 of 2024 (Sri Puran Chand Prasad Vs. Union of India & Ors.) are allowed with the following directions: -

(i) the respondents No.1 to 3 are directed to refix the pay of the petitioners in accordance with the revised pay scale of 1997 with effect from January 1, 1997 and to recompute all consequential retiral and terminal benefits payable to them, including ex-gratia under the Voluntary Retirement Scheme, gratuity, leave encashment and other admissible dues, on the basis of such revised pay;

(ii) the said respondents shall further calculate and disburse the arrears arising out of such refixation to the eligible petitioners within a period of four months from the date of communication of this judgment.

(45) It is made clear that the Court's order as above shall be complied with by the Union of India/Ministry of Railways in terms of the undertaking given with regard to satisfaction of lawful claims of the erstwhile employees of Burn Standard Company Limited, notwithstanding the subsequent dissolution of the said company.

(46) The writ petitions being WPA 2112 of 2020 (Burn Standard Ex-Employees' Welfare Association & Another Vs. Union of India & Ors.) and WPA 8437 of 2024 (Sri Puran Chand Prasad Vs. Union of India & Ors.), along with pending

applications, if any, are accordingly allowed in the above terms.

- (47)** Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)