

Bharat Process and Mechanical Engineers Ltd. Assistants, Apprentices and ors. Vs. Bharat Process and Mechanical Engineers Ltd. and ors.

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Court : Kolkata

Decided On : Feb-05-1987

Reported in : (1987)IILLJ404Cal

Judge : Umesh Chandra Banerjee, J.

Appellant : Bharat Process and Mechanical Engineers Ltd. Assistants, Apprentices and ors.

Respondent : Bharat Process and Mechanical Engineers Ltd. and ors.

Judgement :

Umesh Chandra Banerjee, J.

1. In terms of the provisions of Bird & Co. Ltd. (Acquisition & Transfer of Undertakings & Other Properties) Act, 1980 (Act No. 67 of 1980), the undertakings of the Bird & Co. and the right, title and interest of the Company in relation to its undertakings stood transferred to and vested in the Central Government on and since 25th October, 1980. In this writ petition, the petitioners challenge the revision and rationalization of pay scales of the Officers of Bharat Process Mechanical Engineers & Waybird India Ltd. (henceforth to be referred to as the 'said Company').

2. Section 11(1) of the Act of 1980 noted above provides that every employee of the Company employed in connection with any undertaking owned by it, shall, on and from the appointed day, become an employee of the Central Government and where such undertaking is vested in a Government Company under the Act, become on and from the date of such vesting in such Government Company, an employee thereof and shall hold office or service under the Central Government, or the Government Company, as the case may be, with same rights and privileges as to pension, gratuity and other matters as would have been admissible to him, if there had been no such vesting and shall continue to be so unless and until his employment under the Central Government or the Government Company, as the case may be, is duly, terminated or until his remuneration and other conditions of service are duly altered by the Central Government or the Government Company, as the case may be.

3. The petitioner No. 1 is an organization of the officer-employees of the then Bird & Co. Prior to 1980, all the officer-employees except the Chief Executive of the Company were designated as Assistants irrespective of the nature of work carried out by them. Each of the Officer-employees were appointed on the basis of letters of appointment containing certain standard terms and conditions and the petitioners contended that it was a condition of service of officer-employees of the Company that annual increment would be made available to the officer-employees. The documents relied upon by the petitioners corroborate such state of affairs that there was in fact an annual increment of about Rs. 100/- to every Officer-employee of the then Bird & Co. Ltd.

4. In May 1976, the Management of the Company was taken over under Section 408 of the Companies Act and

six Directors were appointed by the Central Government for the purpose of management of the then Bird & Co. Ltd. Subsequently, with the taking over of the Management, no annual increment was granted to officer-employees of the Company for the period from January, 1976 to July, 1977 and 1978 onwards. Annual increment was, however, granted to the officer-employees for the period between August, 1977 and December, 1977. The petitioners, as it appears, protested against the non-payment of the annual increment, but the new Management by a letter dated 1st November, 1978 in no uncertain terms declared the claim for increment as legitimate but also pointed out the financial constraints and in fine intimated:

I would, therefore, assure you that the matter is receiving our consideration and that we would like to take an early decision in this respect.

Yours faithfully,

J.J. Kumarmangalam,

Managing Director.

Subsequently, however, for the years 1979 and 1980 annual increments were duly granted to the officers of the Company.

5. By reason of the provisions of the Act of 1980, being Act No. 67 of 1980, the officer-employees filed their claims on account of the annual increment due to them for the period from January, 1976 to July, 1977 and for the year 1978 before the Commissioner of Payments. Whilst a discussion and representations were held between the Management and the employees, the respondent No. 2 took over charge as the New Managing Director of the Company and immediately after his appointment the impasse has started and the request and protest has taken a definite shape, the principal grievance of the petitioners being that unauthorized and arbitrary appointments are being made with new selection grade and the dearness allowance as per the new rules, whereas the employees who were continuing to serve the undertaking have been deprived of their legitimate benefits.

6. The petitioners contended that on 21st July, 1981, an order was passed by the Bureau of Public Enterprises directing payment of dearness allowance to all Public Sector Undertakings according to the standard industrial dearness allowance pattern from the very inception and as such the petitioners and the other officers of the respondent No. 1 became entitled to the same dearness allowance and be at par with the other Public Undertakings from 25th October, 1980. But there was a total failure on the part of the Company in regard thereto and it is at that juncture that the new recruits by the respondent No. 2 were allowed dearness allowance at the new rate specified by the Bureau of Public Enterprises, without however dealing with the issue of the scale of pay or payment of the annual increment or dearness allowance to the officer-employees of the then Bird & Co who, however, continued to remain in employment with the new undertaking as noted above.

7. The petitioners herein, however, said to be aggrieved by an arbitrary and malafide method of administration, filed a writ petition under Article 226 of the Constitution challenging, inter alia, the failure of the management of the respondent No. 1 to offer fixed scales of pay, to pay annual increment and to pay dearness allowance to the officer-employees. In that application, an interim order was granted by Dhastagir, J. to the extent that no recruitment would be made by the respondent without duly considering the case of the petitioners in accordance with law. The petitioners alleged that inspite of the order dated 23rd April, 1984, the respondent No. 2 did appoint two persons as the Management Trainees, Protests were lodged and the matter was further taken to the Court and Dhastagir, J. on 26th July, 1984 passed an order of injunction from making any further recruitment during the pendency of the writ application. On 1st September, 1984, however, each of the officer-employees received letters dated 29th August, 1984 containing the terms and conditions of the service of each of the officers. By the said letters, the pay scales of the officers were sought to have been fixed on nine grades with varying scales of pay. This fixation of nine grades with varying scales

of pay have been objected to as being arbitrary and without any application of mind. The petitioners contended that one M.M. Sen with School Final Certificate and a Draftsman Certificate who has a total experience of 23 years and was working as a Contract-Engineer for last 12 years has been graded as the Deputy Manager with a pay scale of Rs. 1800-2400. On the other hand, one M.G. Sutradhar with M. Teen. MIE (Chemical) and MISI Degrees, with a total experience of 26 years and working as Manager of the I.O.N. Exchange Resin Department, for the last 15 years has been graded as Assistant Manager with a pay scale of Rs. 1450-2240. Various other examples have also been cited wherefrom the petitioners contended that classifications have been made unduly and without any basis whatsoever at the ipse dixit of the respondent-authority and in particular respondent No. 2. The petitioners further contended that almost 80% of the existing officers have had their basic wages as obtained from them on the date of nationalization slashed with no reason whatsoever. As an example of such slashing, the petitioners cited the case of the petitioner No. 3 who has a B.Com. Degree with 16 years experience in the Organization and was working as Purchase Officer. As a matter of fact, the petitioner No. 3 was drawing a basic wage of Rs. 750/- per month, but by virtue of the letter dated 29th August, 1984, the petitioner has been downgraded as Officer Special Grade-I with a basic salary scale of Rs. 620-1085, and in order to have the same basic wage of Rs. 750/-, one must work in the grade for 15 years. The petitioners alleged that no consideration has been given to the period of service already rendered by the petitioners in the Organization.

8. The petitioners further contended that the basic salaries of the newly recruited officers have been increased by a margin ranging between Rs. 225-550, while the basic salaries of some of the existing Officers have been deducted upto Rs. 235/- per month, and, as an illustration, cited that one Narayan Gupta who joined the respondent No. 1 on 2nd April, 1984 in the post of Chief Manager (C) has been given Rs. 550/- increment in his basic salary, on the other hand, Sri S.R. Chowdhury who joined the Company in or about 1966 and has been serving as the Maintenance-in-Charge has suffered reduction of basic pay to the extent of Rs. 235/-per month. The petitioners contended that the fitment has been made without any regard for the qualification, seniority and position held by the officers, although in some cases some of the existing officers have been given higher benefits and better positions, whereas the members of the petitioner No. 1 have been given lower scales of pay and have been given fitment in such position by reason whereof each of them would suffer not only by a decrease in basic pay but also by loss of retiral benefits in future as also other benefits. As a matter of fact, petitioners contended that fitments have been made in such a way so as to create an artificial vacancy in order to enable the respondent No. 2 to favour the favoured person. Grievances have also been made in regard to the payment of dearness allowance, annual increment, conveyance, allowance, medical benefit and house rent allowance, as also provident fund and gratuity, since some of the officers were only allowed to continue to enjoy the superannuation fund benefit, while others have been allowed to obtain the benefit of the Contributory Provident Fund and Gratuity. On the whole, the petitioners contend that the respondent-authority, in particular, the respondent No. 2, have all along acted in a malafide, discriminatory and vindictive manner against the existing officers of the erstwhile company.

9. As a counter to the said allegations, respondent-company on the other hand, contended that there was no grade or scale of pay of the erstwhile Bird & Co. Ltd. and annual increment of the officers and Assistants used to be decided by the management of the Bird & Co. Ltd. at their sole discretion. The respondents, however, contended that since now the grade and scale of pay has been fixed by the Central Government so far as the officers of the respondent No. 1 are concerned, the dearness allowance on the basis of the Government of India Circular would be paid. In any event, it was contended on behalf of the respondent that the Officers and Assistants were not entitled to annual increments but advance payments and, since Industrial Dearness Allowance was not applicable until the fixation of grade and scale of pay, the respondent No. 1 was not authorized to make any payment on the basis of Industrial Dearness Allowance pattern. The respondents further contended that pursuant to and in terms of such order, the grade and scale of pay has been assigned and fixed by the respondent No. 1 in relation to each of its officers. The arbitrary conduct and random appointments without application of mind have been denied by the respondent with a positive case that the officers who have been recruited by the respondent No. 1 are fully qualified to serve the position and upon

due consideration of respective qualifications and experience of such persons. In the counter affidavit, the respondents contended that the respondent No. 1 has recruited officers after insertion of advertisements in the local Newspapers and after forming a Selection Committee and upon proper interview, the applicants were appointed after due consideration of the merits. As a matter of fact, upon completion of all the required formalities, the matters were referred to the Board and the Board of Directors approved the appointments. As regards the pay protection, the respondents contended that the pay in the relevant scale has been fixed at the minimum. In case, where fixation in the scale led to any reduction of the existing emoluments, viz, existing pay plus special allowance as compared to the revised pay plus revised dearness allowance, the existing emoluments have been protected by treating the difference as 'Personal Allowance'. Personal Allowance will be absorbed in future revision of scales of pay or promotion. The grade and scale of pay have been made on the basis of the letter dated 16th July, 1984 from the concerned Minister. The fitment has been made after observing all norms necessary in the matter and also after giving due consideration to the educational qualifications, experience and suitability of the officers in the respective posts.

10. The redeeming feature of the submissions of the respondent-authority is as is evidenced from paragraph 21 of the counter-affidavit filed by the respondent No. 2 the relevant extracts whereof are set out hereinbelow: I say that in accordance with the provisions of the said Act, the respondent No. 1 is not obliged to hear the persons allegedly affected by reason of fitment or change any condition of service effected by the respondent No. 11 further say that, by virtue of the said Act, the respondent-authorities have the right and authority to change the conditions of service of the employees and as to the violation of natural justice the reason therefor is frivolous and not maintainable in law or otherwise. None of the officer-employees has been in anyway affected by the fixation of grade and scale of pay. In fact, gross income of each officer-employee has been increased by virtue of the fixation of grade and scale of pay....

11. This aspect of the matter would be presently dealt with after detailing out the factual aspect.

12. As regards the specific case cited and as noted above in regard to Sri M.M. Sen and Sri M.G. Sutradhar, the respondent No. 2 contended that Sri M.M. Sen and Sri M.G. Sutradhar are both members of the petitioners' Organization. In view of his knowledge, experience and performance record, together with his initiative, the Management considered Sri M.M. Sen to be a fit person and appointed him as the Deputy Manager, though his educational qualification was not of a very high standard. Sri Sutradhar, it was contended, having good educational qualification was not found suitable for a higher post by reason of the fact that the Management was not satisfied with his knowledge, performance or initiative and as such, Sri Sutradhar was placed in the post of Assistant Manager. As regards the new recruits, it was contended that they were assigned appropriate designation and consolidated pay. After fixation of grade and scale, they have been allowed and were given the benefit of revised grade and scale considering their designation and terms of appointment. The respondent No. 2 further contended that fitment has been effected upon due consideration, experience, educational qualification and suitability. It was contended on behalf of the respondent that though the basic salary in respect of some officers has decreased, total gross salary of such officers and in fact most of the officers has gone up in comparison of the gross salary which they were getting prior to the introduction of the new grade and scale of pay. As a matter of fact, there has been substantial increases in the gross salary. It was contended that as per the order of the Central Government dated 16th July, 1984, the pay in the relevant scale has been fixed at the minimum and in cases where fixation in the scale has led to any reduction of existing emoluments, existing pay plus dearness allowance plus special allowance as compared to the revised pay plus revised dearness allowance, the existing emoluments have been protected by treating the difference as Personal Allowance. Such personal allowance, it was stated, would be absorbed in future revision of scales of pay and promotion. Admittedly, there is a reduction of basic salary of 49 persons out of a total number of 91 persons but it has been stated that there has not been any decrease in the gross salary and emoluments of any of the officer-employees of the respondent No. 1. There has neither been any demotion nor any arbitrary fixation of grade and scale of pay. As an illustration the respondents contended that Sri Swapan Kumar Ghosal, being the petitioner No. 3 herein, gets a higher pay packet in comparison with the pay packet

he was getting prior to the introduction of the new grade and scale of pay. In the counter affidavit, it has further been stated that, if any officer-employee feels that the existing pay and allowance and other terms are not beneficial to him, then he can opt for the same as was prevalent before the scales of pay. But in that event, he will not be entitled to any benefit under the revised scales of pay and other conditions of service. Another point which was noted with certain stress is that, it was not the intention of the respondent-authority to reduce the existing emoluments of an individual officer-employee. Whenever it was found that fixation in the scale would lead to a reduction of existing emoluments, the existing emoluments have been protected by treating the difference as personal allowance which is to be absorbed in future revision of scales of pay or promotion. The respondents further contended that since the writ petitioners had no grade or scale of pay or designation, the question of demotion or granting lower designations does not and cannot arise. The respondents contended that, if any individual officer reasonably and bona fide feels aggrieved about his fitment and placement, it is open to him to make representation before the Board of respondent No. 1 for redressed. It was stated that the earlier writ petition was filed by the writ petitioners for fixation of grade, scale of pay and designation of the officer-employees of the respondent No. 1 and during the pendency of the said writ petition, the Central Government by its order dated 16th July, 1984 fixed the grade, scale of pay and other benefits of the officer-employees of the respondent No. 1 and the respondent No. 1 in turn after giving careful thought and consideration have duly fixed the grade, scale of pay and designation to each of the officer-employees of the respondent No. 1.

13. It is on these state of facts, the issue therefore, arises as to whether the acts on the part of the respondent authorities in fixation of the scale of pay and the grades can be termed to be an arbitrary and whimsical act or upon consideration of all the facts and circumstances be termed as reasonable and fair.

14. Strong reliance was placed on the decision of S.C. Sen, J. in C.O. No. 14659 (W) of 1984 wherein this Court dealt with an allied issue. In that decision S.C. Sen, J. observed: I have also considered the individual cases that were specially-mentioned. I am unable to hold that there has been any discrimination. In order to run the office and also in order to introduce the scale and grade of pay, some alterations and adjustments become necessary. Care and pain were taken to see that no former employee becomes financially looser, because of the new arrangement. I am unable to accept the contention that the new recruits are being given special privileges in the matter of rank and pay. The respondents were entitled to alter the terms and conditions of the employees of the petitioners under the special provisions of the Act. The respondents have exercised that right and taken care to ensure that the petitioners do not suffer in any way financially. The rank has been fixed as stated by the respondents on the basis of experience, education and other factors and I am unable to hold that is unreasonable.

15. Strongly relying upon the decision of S.C. Sen, J. Mr. Biswarup Gupta contended that the matter in issue has been dealt with by another learned Single Judge of this Court, wherein the finding has been that the new recruits have not been given any special privilege in the matter of rank and pay and as such this Court also ought not to differ on that aspect of the matter.

16. It is true that a Single Bench decisions ought not to be differed with considering judicial comity and the same has turned out to be an indispensable requirement so as to provide some degree of certainty upon which individuals can rely in the conduct of their affairs as well as for an orderly development of legal rules, but too rigid an adherence to the same may not be warranted for the cause of justice. This view finds support from the speech of Gardener, L.C. as reported in 1966 (3) All ER 77:

Their Lordships nevertheless recognize that too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the proper development of the law. They proposed, therefore, to modify their present practice and, while treating the former decisions of this House as normally binding, to depart from a previous decision when it appears right to do so.

17. The same view was also expressed by Lord Denning, M.R. in Penn Texas Corporation v. Morat Anstalt and

Ors. reported in 1964 (2) All ER 594. The same issue was further examined by the Court of Appeal in England in the case of Davis v. Jonson reported in 1978 (1) All ER 841, wherein the Court of Appeal held that the Court of Appeal was bound by its own previous decisions as a rule of practice and not of law, and it should be modified to allow the Court to depart from an earlier decision if it was convinced that the earlier decision was wrong.

18. On the above enunciation of law as noted above in the United Kingdom, it is, therefore, seen that it cannot be termed to be a rigid law to follow the decisions in the previous case absolutely, though for the reasons as noted above, normally, the Court ought to follow its previous decisions. But where it is found apparently that the point was not urged in that great detail, would the Court be justified in refusing to entertain an application or to go into the merits of the matter simply because of the fact that another learned Judge has dealt with the matter and decided against the writ petitioner? In my view, interest of justice would not subserve in the event of such an absolute requirement. As the Court of Appeal has pointed out that it is not a rule of law but a matter of practice, in my view, that practice ought to be suitably modified as and when interest of justice needs the same. Law Courts exist for doing complete justice between the parties and in order to do justice, it must not shirk its responsibility simply because of the fact that another decision is against the contention as raised by the petitioner. S.C. Sen, J. held that no new recruits have been given a special privilege in the matter of rank and pay as compared to the old recruits. That aspect of the matter obviously has not been placed in detail before the learned Judge as it has been in the case under consideration. Let us now take the case of one Sri L.K. Parekh who joined in the year 1963 and the Grade offered at the time of fitment has been Rs. 1450/- to Rs. 2240/- and the new basic has been fixed at Rs. 1450/- being the minimum after deducting basic salary of Rs. 125/-. While it is true that, upon taking into consideration the total pay packet, the person concerned may not be suffering financially, but would that justify the conduct of the respondent-authority in the matter of putting a new incumbent on much higher scale viz., the case of Sri Prodyot Kumar Ghosh who joined on 16th March, 1984 with a scale of Rs. 1450/- to Rs. 2240/- in the same post of Assistant Manager but was offered 4 increments and the new basic was fixed at Rs. 1690/-. There are instances galore of this nature. Does it mean that the petitioners have been dealt with fairly and properly as against the new recruits. Does it mean that new recruits have not been given any special privilege in the matter of rank and pay or does that mean that the respondents in their bid to alter the terms and conditions of service can offer certain privilege to one section of the employees, whereas deny the same to other section? In my view, the answer ought to be in the negative. Obviously the matter was not placed in these details before the other learned Judge, as otherwise the learned Judge would have dealt with the matter and had these submissions been made, it would also be reflected into the judgment itself which does not appear from the judgment.

19. It may be stated that the better course would be to refer the matter to the Division Bench under the rules of this court. But, the judicial decorum, in my view, does not permit such an order, since the matter has been argued at a very great length for days together. As such, with humility, I am unable to agree with the finding of S.C. Sen, J. that there is no special privilege given to the new recruits in the matter of rank and pay for the reasons noted above. I am, however, not inclined to accept the contention that since the appeal is pending against the order of S.C. Sen, J., the order of S.C. Sen, J. ought not to be looked into. Mr. B.N. Sen appearing for the petitioner strongly contended that if a matter is pending appeal, the ratio decidedness of the case can be found in the Appeal Court judgment since the appeal is nothing but a continuation of the initial proceedings. In this context, reference may be made to the decision of the Privy Council in the case of Juscurm Boyd and Anr. v. Pritthi Chand Lal reported in 46 Indian Appeals 52 and Sir Lawren Jenkins categorically stated that the procedure of an original decree is not suspended by presentation of an appeal. The same view has also been expressed by this Court in the case of Chatter Singh v. Corporation of Calcutta reported in 0065/1984 : AIR1984Cal283 .

20. Coming back to the merits of the matter once again, it was strongly contended on behalf of the company that there was no annual increment as such, neither the same was recognized as a right of the officer-employees by the erstwhile management of Messrs Bird & Company. The Company contended that in terms

of tree provisions of Section 11 of the Act of 1980 Bird Company Limited (Acquisition & Transfer of Undertakings & Other Properties) Act No. 67 of 1980, the introduction of a rationalized scale cannot be termed to be arbitrary and Section 11 of the Act protects the same. The Company contended that in accordance with the provisions of the aforesaid legislation, the company is not obliged to hear the persons allegedly affected by reason of fitment or change of any condition of service effected by the company and the company has had right to change the conditions of service of the employees. While it is true that the company has had the right or authority to change the conditions of the service of the employees under Section 11 of the Act of 1980, and I am in agreement with the views expressed by S.C. Sen, J. that the respondent company is entitled to alter the terms and conditions of the employees under the special provisions of the Act. but the issue arises as to whether the same would mean and imply an arbitrary fixation or giving benefit to one section of the people while refusing to confer the benefit to the other section being the old employees of the erstwhile company. In my view, the answer is in the negative. Arbitrariness ought not to be the working condition of a Government or a Governmental organization. Fairness ought to be the most accepted methodology of a government action.

21. As regards fairness in a governmental action, it is now well-settled that governmental agencies must act fairly. In this context, the observations of the Supreme Court in the case of Maneka Gandhi v. Union of India reported in : [1978]2SCR621 seemed to be very apposite. The Supreme Court observed:

Natural justice is a great humanising principle intended to invest law with fairness and to secure justice, and over the years it has grown into a widely pervasive rule affecting large areas of administrative action....

Thus, the soul of natural justice is fair play in action and that is why it has received the widest recognition throughout the democratic world.

22. In the United States, United Kingdom as also in the Common-Wealth countries, fair play in action has been recognized to be the guiding principle in an administrative action. The Supreme Court of New South Wales in the case of Asmand v. Public Service Bond of New South Wales and Anr. reported in 1985 Law Reports of the Common-Wealth 1041, after noticing the American and English Law as also the development of the doctrine of natural justice in the other Common-Wealth countries including India, observed:

What cannot be doubted is that there has been a growing body of precedent and other support for the desirability of, and sometimes the obligations upon, Public Administrative Tribunal, at least, to state reasons for their decisions affecting seriously the interest of the person seeking those reasons. Sometimes this is expressed to be based on the requirements of natural justice and fairness. Sometimes it is articulated in terms of the inherent necessities of the proper operation of the judicial process, the duty of person exercising public power to justify that exercise by giving of reasons.

23. The general duty of fairness as regards the administrative action has also been accepted as a guiding principle by Megarry, J. in the case of Bates v. Lord Hailshan reported in 1972 (3) All ER 2019.

24. In the premises, therefore, fair play and fair treatment being the 'soul of natural justice' ought to be given a full play and a Governmental action ought to be judged from that aspect. Feudal attitude has ceased to exist any longer and in the event there being any, Law Courts exist to come in aid of a person who is deprived of his legitimate right accrued to him and seeks justice from the Court. To remedy such a wrong, is a plain exercise of judicial power and the Law Court would fail in its duties, if it does not extend its judicious hand to grant relief to those who have fallen a prey for reason of the ipse dixit of an administrative action. The change in the social structure and the socio-economic conditions ought not to be lost sight of in administering justice. It must keep pace with the time. The judicial approach in this country as well as the other parts of the Globe have recognized such an action by the Law Courts and the Law is so well-settled on that score that I need not dilate much on that issue. The employees of the erstwhile Bird & Company were asked to continue-by reason of which the employees continued, but there were also new recruits in the same position and same rank-but whereas the new recruits have been favoured with a much higher basic scale-the old employees have been

deprived of such an advantage-can it be said that there is fairness on the part of the Authority concerned? Statutory provisions under Section 11 have been taken recourse to so that there is authorization. to alter the terms and conditions of service of the employees of the erstwhile Company-but does that justify in treating the new recruits with an advantage over the old employees on. the same rank and file. New recruits have been given 3 or 4 increments at the initial stage, but the old employees, though on the same scale of pay, and similarly placed, and circumstances, have been asked to start with an initial amount of the scale-though both the new and the old employees work under the same designation. Can it be said to be fair, reasonable and in consonance with the true intent of the Legislature?-in my view, the answer upon perusal of the entire set of records would invariably be 'no'. Protection of pay or total emoluments cannot, in my view, be a curing factor in the matter of deprivation of one section of the employees as regards the pecuniary benefits than another section of the employees. Question of there being a new recruit or old recruit would not arise at all. The submission that the new recruits have been brought from an outside agency and the salaries ought to be protected, that by itself would not, in my view, justify deprivation of a section of employees in favour of another. It is now well-settled that equal pay for equal work and as such the submissions as regards the new recruits from outside agencies does not stand to reason. Once they join the Company, they all become employees of the Company and all ought to be treated alike on the same footing without any differentiation between the two sections of employees. In the event of there being any. Law Courts would not hesitate to strike down the same as contrary to the recognised principles of Law & Equity. Incidentally it is to be noted there is no grievance or complaint against the writ petitioners or the members of the petitioner No. 1 that there is any inefficiency or any adverse report against the petitioners and the other officers of the erstwhile Bird & Company Limited. In the absence of it, in my view, deprivation cannot be said to be justified.

25. The action must be fair, reasonable and in consonance with the concept of justice.

26. Arbitrariness cannot, and ought not to, be the basis of any Government action since arbitrariness embraces inequality in all force and that is what is forbidden in law. The facts herein disclose such a state of affairs.

27. In that view of the matter, the writ petition succeeds. The letter order dated July 16, 1984 being Annexure 'X' to the writ petition is set aside and cancelled. The Respondent-Company is directed to refix the pay and other allowances in accordance with law and in line and scale given to the new recruits in favour of the petitioner and the members of the petitioner No. 1. Arrears, if any, by reason of such reification, be paid with utmost expedition and preferably within a period of two months from the date of such refixation. There shall, however, be no order as to costs.

In view of the order passed herein, no further order need be passed in other writ petition being No. 427 of 1984 and the same as such is disposed of without any order as to costs.

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