HIGH COURT OF GUJARAT

R A POTNIS

Versus

NATIONAL TEXTILE CORPORATION (GUJARAT) LIMITED

Date of Decision: 21 June 2001

Citation: 2001 LawSuit(Guj) 357

Hon'ble Judges: Kundan Singh

Eq. Citations: 2001 3 CLR 508, 2002 2 GLH 484

Case Type: Special Civil Application

Case No: 3127 of 1985

Acts Referred:
Constitution Of India Art 16, Art 226, Art 14

Final Decision: Petition dismissed

Advocates: N R Sahani, D G Shukla, Nanavati Associates

Cases Cited in (+): 1

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[1] By means of this petition, the petitioner sought for quashing and setting aside the impugned order dated 22-5-1985 reverting the petitioner from the post of General Manager, Rajkot Textile Mills, Rajkot to the post of Production Manager on a lower salary of Rs.2,150/p.m. and the petitioner was also suspended on the reverted post during the inquiry contemplated against him. The petitioner also sought for a direction to the respondents to allow the petitioner to discharge his duties as General Manager, Rajkot Textile Mills, Rajkot and pay his salary accordingly as if the said order has not been passed at all and for further direction to the respondents to pay to the petitioner the difference in salary by granting him all the increments from the date they became due during the period between 1983 and 1985.

[2] The petitioner made an amendment in the prayer and sought for a direction to the respondents to release usual increments during the pendency of this petition and to give consequential benefits in the revision of 3rd Pay Commission with effect from 1-5-1990 after considering all the aspects and also to pay revision with effect from 1.1.1991 and further directing them to revise all his terminal benefits like difference of

wages, gratuity, leave encashment, P.F. etc. on the above basis and pay these arrears within a period of one month of the order.

[3] The petitioner was appointed as a Sr. Assistant Weaving Master in Himadri Mills by the respondent by its order dated 24-1-1972. His work was found satisfactory and efficient and hence he was confirmed on that post in due course and thereafter he was promoted to the post of Weaving Master with effect from 1-5-1976 by the order dated 14-5-1976. Finding his good performance, the petitioner was appointed as Production Manager by the order dated 20-10-1979 and he was confirmed on the said post. The petitioner was promoted to the post of General Manager, Rajkot Textile Mills, at Rajkot by the order dated 15-1-1983 and his appointment was on probation for a period of six months. The petitioner took the charge of the said post of General Manager on 19-1-1983. His basic pay was fixed at Rs.2300.00 p.m. in the pay scale of Rs.2150-75-2600-EB-100-3000-EB-125-3500. During the probation period, the petitioner was not given any memo or show cause notice nor any complaint was received against him regarding his conduct and work. The petitioner was not given any order extending the period of probation or reverting him to the lower post. The petitioner will be deemed to have been confirmed on the said post of General Manager after expiry of probation period neither order extending probation period nor confirming the petitioner on the said post was passed after completion of the probation period. Hence, the petitioner will be deemed to have been confirmed on the said post. The petitioner was also working as General Secretary of the Gujarat Textile Corporation, Gujarat Technicians and Officers Staff Union and some conflict came into existence between the petitioner and Shri Sandhu. The petitioner discussed problems of the members of the said union with Shri Sandhu but Shri Sandhu was transferred to Delhi and he came back on transfer to Ahmedabad as the Chairman-cum-Managing Director. The respondent passed the order dated 21/23-2-1984 extending the probation period till 19-7-1984. There was some conflict between the Chairman-cum-Managing Director and the petitioner regarding down fall in the production of textiles. The petitioner also filed the reply in that respect to the Chairman-cum-Managing Director. The probation of the petitioner was further extended till 18-7-1985. The petitioner was entitled to receive the normal increments from the date of appointment on the post of General Manager but the same was not granted at all. The petitioner made a representation on 14-2-1983 in that respect but no response was given. The respondents have not granted him any increment till the date of filing of this petition. It is also stated that the petitioner was entitled to his due increment and difference in salary on that basis from the date of his initial appointment as a General Manager. The petitioner came to Ahmedabad 22-5-1985 to see his ailing parents where he fell ill and therefore he sent a telegram to the respondent no. 2 informing him that he was sick and requesting to grant him leave for a week. In absence of the petitioner, some persons reached at the

residence of the petitioner and affixed some papers on the door of the petitioner's residence whereby the petitioner was reverted to the substantive post of Production Manager with immediate effect and salary was reduced from Rs.2300.00 to Rs.2150.00 p.m. The petitioner was also placed under suspension and on the charges that the petitioner was indulging in serious irregularities and malpractices and the inquiry was contemplated therefor. The petitioner has been awarded two punishments at one time reverting him to a lower post and suspending him during pendency of the inquiry without affording any opportunity of being heard to the petitioner and it was an act of victimization on the part of the respondents. According to the National Textile Corporation (Gujarat) Ltd. Service Rules, the probation has been provided only for the persons appointed by direct recruitment. The Rules do not provide for probation in the case of promotion. Rule 13 provides that promotion shall be made on the basis of the seniority, merits, confidential report and suitability of the candidate. While direct appointments are provided under Rule 15 which stipulates that such promotions shall be made on the basis of selection by the competent authority. Rule 16 provides for six months probation. Rule 19 provides confirmation after completion of probation period, if not confirmed, the probation period to stand extended automatically. In case of promotion, the employee is already confirmed in the lower cadre and there is enough material on record for adjusting the petitioner's suitability for promotion. Such promotion does not require any probation and the probation is provided only in the case of direct recruitment or direct appointment. The authorities have acted erroneously in treating the petitioner as appointed on probation in the promotional post.

[4] It is not disputed in the present case that the petitioner was reverted by the order dated 22-5-1985 and he was also suspended on the reverted post as Production Manager by one and the same order, for indulging into serious irregularities, malpractices and the inquiry was contemplated and during that period the petitioner was directed to be placed under suspension. The departmental inquiry was entrusted with and conducted by Shri Vyas, Retired Judicial Officer. The Inquiry Officer submitted his report dated 21-2-1986 wherein the petitioner was exonerated from all the charges levelled against him and the petitioner was recommended to assume charge of the post of General Manager with immediate effect vide order dated 1-9-1986 and it was also directed that the petitioner will continue to be on probation till further orders by that order. It is also not disputed that the petitioner has been paid the entire salary for the period in which the petitioner was placed under suspension.

[5] Now, the question remains only regarding the amount of increments and consequential benefits after getting benefit of revised pay-scales for which the petitioner has prayed for in the present petition.

[6] It is stated that the salary was paid on the basis of revised 3rd Pay Commission with effect from 1-5-1990. But the petitioner was not given the increments on the basis of the revision of pay scale and terminal benefits on the basis of revision of pay scale of 3rd Pay Commission.

[7] Now, the question remains for consideration as to whether the petitioner is entitled for the increments for the period in which the petitioner worked on probation from the date of appointment of 19-1-1983 till the period of probation continued.

[8] Learned counsel for the petitioner contended that the petitioner is entitled to the increments from the date of appointment as no probation is provided under the aforesaid Rules for the post on promotion. According to Rule 13, promotion of an employee to a grade-cadre, will ordinarily be made on the basis of seniority, merit, confidential reports and suitability for the of post of candidates. Rule 14 provides requires the Personal Committee for preparation of the list of candidates selected for the employment or promotion. According to Rule 15, appointments to the various posts are required to be made on the basis of selection made by the Managing Director or any Officer with whom the power was delegated by the Board, the Personnel Committee or the Managing Director from time to time. According to Rule 16 first appointment to a post shall be made on probation for a period of six months and that period of probation can be extended by the appointing authority from time to time as may be considered necessary. Rule 19 says that on satisfactory completion of probation period, the appointing authority may confirm an employee in the service of the Corporation if a post is vacant substantively provided that if he is not so confirmed, his probationary period shall automatically stand extended. He relied on the Law Officer's circular dated 3-5-1983 Annexure-J to the petition wherein mode of increment has been provided that since newly appointed candidates are allowed comparable salary at the time of appointment they would be entitled for their normal annual increment on completion of one year service from the date of appointment under normal circumstances. Leave without pay and absence without leave shall be excluded for computation of one year. In other words the employees would be eligible to draw their normal annual increments on competition of one year service from the date of their original appointment and not on completion of one year's service from the date of either confirmation or date of fixation of the basic pay in the prescribed scale.

[9] Learned counsel for the petitioner also relied on the case of P.K. Desai Vs. Bank of Baroda, Bombay & Others reported in 1987 (2) GLR 1121, wherein it is observed as under : "Stoppage of increments which has the effect of postponing future increments is one of the penalties enumerated in Rule 8.3. which can be imposed on an officer who has been found guilty of misconduct. Stoppage of increments otherwise than at E.B. can only be by way of penalty. According to Rule 4.3 the officer is eligible for his annual

increment on completion of one year from the date of his appointment in case of person appointed directly. The officer earns increment every year in the pay scale till he reaches the E.B. In other words, the officer is entitled to yearly increments as a matter of course and as a matter or right unless and until he reaches the E.B. such yearly increments cannot be stopped."

[10] It is also submitted that the petitioner's probation cannot be continued for a period of 8 years or 9 years continuously without any annual review or reasonable cause therefor. As such, the petitioner is entitled to the annual increment from the date of completion of one year. The action of the respondents in not allowing the increments to the petitioner is arbitrary, unreasonable and null and void.

[11] I have fully considered the contentions of the learned counsel for the parties and perused the relevant papers on record.

[12] So far as the probation period of the petitioner is concerned, Rule 13 to 19 of the aforesaid Rules referred to provide procedure for making appointment and giving promotion to the employees of the respondent Corporation. Rule 14 says that Personnel Committee shall prepare lists of candidates selected for employment or promotion in order of merit. Rule 19 provides that on satisfactory completion of probation period, the competent appointing authority may confirm an employee in the service of the Corporation if a post is vacant substantively provided that if he is not so confirmed, his probationary period shall automatically stand extended. The argument of the learned counsel for the petitioner that a candidate can be appointed on probation and promotion is not attracted with the probation, has no substance in view of the fact that Rules provide for probation for direct appointment as well as promotion. It cannot be said that once any person is promoted to higher post, the authority cannot pass an order of promotion on probation period and after satisfactory completion of probation period candidate can be confirmed on that post. Having regard to satisfactory performance of the candidate or person concerned during probation period, he will not be deemed to have confirmed on that post automatically unless and until, Rules require that person to be automatically confirmed after completion of specified period of probation. otherwise probation period will continue. As such, I do not find any force in the argument of the learned counsel for the petitioner that probation would not be attracted to the promotion and that can only be attracted to direct appointment or selection.

[13] The next question arises as to whether the petitioner is entitled to annual increments during the probation period. The petitioner was appointed on the post of General Manager vide order dated 19-1-1983 and he continued on that post till September 1986 (1-9-1986). When he was reverted to the post of Production Manager

probation period of the petitioner can be directed to continue till further orders. According to the learned counsel for the petitioner, the petitioner is entitled to the increments for a period of probation till he remains in service. Learned counsel for the petitioner submitted that on the basis of the circular dated 3-5-83, the petitioner was entitled for annual increments after appointment or promotion on the post of General Manager and on the basis of the proposition laid down by this Court in the case of P.K. Desai (supra) increment cannot be withheld by the department concerned and that would amount to penalty provided under the Rules. So far as the proposition laid down by this Court in the case of P.K. Desai (supra) is concerned, the facts of the said case are entirely different. In that case, the increments were withheld without holding any inquiry. In the present case, it is not a case of withholding of increments amounting to penalty provided under the aforesaid Rules. The contention of the learned counsel for the petitioner is that during the period of probation the petitioner is entitled to annual increments till he continued on that post. The proposition laid down in the case of P.K. Desai (supra) is of general nature and that does not attracts the facts of the present case. So far as the Circular dated 3-5-1983 is concerned, no doubt it is a circular which has been issued by the letter of the Law Officer to all the Mills for awarding normal annual increments after completion of one year since from the date of their original appointment and not on completion of one year's service from the date of confirmation or date of fixing the date of basic pay in the prescribed scale. In my opinion, it is only the instruction of the Law Officer and it cannot form a law to be given effect to in respect of the employees of the Mills as it has no statutory enforcement and hence that circular issued by some Law Officer of the respondent Corporation cannot be enforced.

[14] Learned counsel for the respondent contended that unless there is any Rule prescribing maximum of probation of the petitioner, the petitioner cannot be deemed to be confirmed and he will be deemed to be on the probation period till he is confirmed and he relied on the decision of the Supreme Court in the case of Kadar Nath Bahl Vs. The State of Punjab and others reported in AIR 1972 SC 873 and in the case of Popatlal Vasudev Vyas Vs. Gujarat Water Supply & Sewerage Board and others reported in 1988 (2) G.L.H. 82, wherein it has been held as under : "The decision of the Supreme Court reported in Kadarnath V. State of Punjab, A.I.R. 1972 SC 873, lays down that where a person is appointed as a probationer in any post and a period of probation is specified, it does not follow that at the end of the said specified period of probation he obtains confirmation automatically even if no order is passed in that behalf. It has been laid down by the Supreme Court further that unless the terms of appointment clearly indicate that confirmation would automatically follow at the end of specified period or, there is a specific service rules to the effect, the expiration of the probationary period does not necessarily lead to confirmation. The Supreme Court further laid down that at the end of the period of probation an order confirming the

officer is required to be passed and if no such order is passed and he is not reverted to his substantive post, the result merely is that he continues in his post as a probation. In that case, it appears that the petitioner was promoted on a higher post and appointed on probation and the said temporary post having not been continued further, the petitioner was reverted and his petition was dismissed in the light of the above observations made by the Supreme Court. The ratio of this decision of the Supreme Court is applicable on all fours in the present case. There are no rules of recruitment for English Stenographer as stated earlier. Even the Rules framed by the Government upon which the petitioner relies do not advance the case of the petitioner because the said Rules do not provide that the period of probation cannot be extended or that the employee cannot be kept on probation beyond a particular period. The said Rules do not prohibit extension of probation. So far as the order of appointment is concerned, it only says that the petitioner was appointed on probation for the one year. It does not indicate the maximum period of probation. It does not indicate either expressly or by necessary implication that the period of probation will not be extended or that on the expiry of the period of one year, the petitioner will automatically be confirmed. In view of this, the ratio of the decision of the Supreme Court in the above case applies on all fours and hence the grievance of the petitioner that the period of probation could not have been extended is without any merit and it deserves to be rejected."

[15] It is not in dispute that at the relevant time, there was no rule for the annual increment during the probation period nor the learned advocate for the petitioner could be able to show any rule contrary to this aspect. On the other hand, learned counsel for the respondent submitted that if the petitioner has not been confirmed on the post, he would not be entitled to any benefits including the annual increment. However, the learned counsel for the respondent brought to the notice of this Court the National Textile Corporation (Gujarat) Ltd. Recruitment and Promotion Rules, 1989. Rule 25.11 of the said Rules, reads as under : "Annual increment in the relevant pay scale shall be sanctioned to the employee only after successful completion of the probation period. However, in such cases where probationary period has been extended, the date of increment shall be notionally deemed to be the date on which the employee completed one year's service in the scale. An employee would be entitled to claim payment of first increment only after successful completion of the probation period."

[16] Learned counsel for the petitioner pointed out that there was settlement regarding 3rd Pay Commission between the Union of the Mills Technicians and Officers Staff (Gujarat) in Special Civil Application No. 3552/81. Revision of Pay was accepted by the petitioner on 21-9-1990 and by the office order dated 21-9-90 it was made clear that the petitioner would be entitled for next increment on 4-5-1991 and he has produced the photo-state copy of the settlement as well as the office order dated 21-9-

1990. Learned counsel for the petitioner also stated that the petitioner has been given increment from 4-5-1991. While learned counsel for the respondent contended that from the office order dated 21-9-1990 that the petitioner has waived annual increment claimed in this petition. But in the facts and circumstances of this case, I am of the view that the dispute is in respect of increment from the order dated 11-1-1983 till the probation period continues. If the petitioner has waived due increments under the order dated 21-9-1990, he is not entitled for the same. Learned counsel for the respondent also contended that the petitioner could be entitled to the increment if he completes the probation period successfully and in the present case the petitioner could not succeed the probation period satisfactorily. Rule 25.11 of the aforesaid Rules says that notionally annual increment can be given to the employee concerned. Due to unsatisfactory probation period the petitioner can not be given or granted the notional increment.

[17] If the petitioner has been granted due increments by the order dated 21-11-1990 then the petitioner is entitled to the increments from the date 22-5-1985 till 4-5-1991 that has to be determined by this Court. On going through the material on record I am of the opinion that the learned counsel could not point out any rule or regulation that the petitioner is entitled to annual increments during the period of probation. In absence of any rule or regulation and in view of the aforesaid Rules of 1989, it is abundantly clear that the increments cannot be granted to the petitioner unless and until probation period was successfully completed by him.

[18] Learned counsel for the respondent Corporation raised an other question for nonentitlement of increments and submitted that the respondent Corporation has been declared as "sick industrial undertaking" and in view of suspension all legal proceedings and under provisions of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985. the petitioner is not entitled to get any relief from the respondent Corporation. Section 22 of the said Act, 1985 reads as under : "22 - Suspension of legal proceedings, contract etc. (1) Where in respect of an industrial company, an inquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under Section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or the memorandum of articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof (and no

suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loan or advance granted to the industrial company) shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority."

[19] On the contrary, the learned counsel for the petitioner submitted that the wages to the workmen are not covered u/s 20 of the Act, 1985 and he upreported decision of this Court delivered in Letters Patent Appeal No. 1603/99 on 30-12-1999 filed in Spl. C.A. No. 8351/99 which has been decide don 26-10-1999.

[20] He has further relied on the unreported decision of Division Bench of this Court whereby decision of the learned Single Judge delivered on 26-10-1989 in Special Civil Application No. 8351 of 1991 in L.P.A.. No. 1603 of 1999 and the Division Bench of this Court directed the BIFR to decide the application of the petitioner as expeditiously as possible preferably within one month from the date of receipt of writ.

[21] Regarding suspension and payment to any employee of a sick company learned counsel for the petitioner submitted that the provisions of Section 22 of the Act are not applicable to the payment of salary to be made to the employee and he has referred to the judgment of this Court dated 1-10-197 delivered in Special Civil Application No. 12043/93, wherein it was directed that difference in salary by way of arrears should be paid within three months and the order was complied with. He has also relied on the decision of the Board for Industrial and Financial Reconstruction in Ref. No. 501/94, Bench consisting three members presided by the Chairman of BIFR decided principally that in such cases, pay revision or orders of the Court payment of back wages should be given effect. In that case, 6% employees of the subsidiaries were directed to be given Industrial Dearness Allowance pattern along with arrears. The copy of the order of the Bench of BIFR is annexed with the affidavit. In the aforesaid Reference it has been held that there was no embargo from BIFR on releasing the IDA benefit to the concerned employees provided the Government has otherwise satisfied about the merits of their claim. The matter was being decided in principle which would be applicable to any other such cases pending with BIFR. The Government has the BIFR clearance to pay them the revised wages if they were entitled to the same. However, it was clarified that in principle stand of BIFR had been indicated on the date of the order. The MOT should, therefore, decide the matter on their own in view of the fact that there was no embargo from BIFR.

[22] Learned counsel for the petitioner also invited the attention of this Court to the decision of the Karnataka High Court in the case of Indian Plywood Manufacturing Co. Ltd. Vs. Commissioner of Labour & Others, reported in 1999 (1) LLJ 41, wherein it has been held that Notice of recovery certificate cannot termed as recovery of money by

suit. Nor is it distress which bars workmen from recovering wages payable to them under I.D. Act cannot be controlled by Section 22 of sick Industrial Companies (Special Provisions) Act, 1985.

[23] Leaned counsel for the petitioner has also relied the decision of this Court in the case of Rajnagar Textiles Mills No. 1, Ahmedabad Vs. Textile Labour Association, Ahmedabad reported in 1998 (2) G.L.R. 173, wherein it has been held as under :

> "On the basis of the provisions of Section 22 of the Act as aforesaid, the impugned orders cannot be quashed and set aside and the embargo u/s 22 does not apply to the cases where the claim is with regard to the wages. Embargo u/s 22 is no an impediment against the claim of the recovery of the wages as the cases with regard to the recovery of wages stand on."

[24] On the other hand learned counsel for the respondent contended that the company has been declared to be sick and reference is pending before BIFR u/s 22 (1) of the Act, and no order for recovery of money can be passed by any court of law unless consent of BIFR is obtained from the Board or appellate authority. The petitioner cannot be allowed for recovery of any amount as no permission has been obtained from BIFR nor any order has been passed in this respect in connection with sick company. He relied on the decision of the Supreme Court in the case of Maharashtra Tubes Ltd. Vs. State Industrial & Investment Corporation of Maharashtra Ltd. and Another, reported in 1993 (2) SCC 144, wherein it has been observed as under :

> "Section 22 (1) Where in respect of an industrial company, an inquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation or consideration or sanctioned scheme is under implementation or where an appeal under Section 25 relating to an industrial company is pending, then, notwithstanding anything contained in any other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial or for appointment of a Receiver in respect thereof shall lie or be proceeded with further, except with the consent of the BIFR or, as the case may be, the appellate authority. The purpose and object of this provision is clearly to await the outcome of the reference made to the BIFR for the revival and rehabilitation of the sick industrial company. The words 'or the like' which follow the words 'execution' and 'distress' are clearly intended to convey that the properties of the sick industrial company shall not be made the subject matter of coercive action of similar quality and characteristic till the BIFR finally dispose of the reference made under Section 15 of the said enactment. The Legislature has advisedly used an omnibus expression 'the like' as it could not have conceived of all possible coercive measures that may be taken against a sick undertaking. xxx xxx

xxx xxx We are, therefore, of the opinion that the word 'proceedings' in Section 22 (1) cannot be given a narrow meaning would run counter to the scheme of the law and frustrate the very objection and purpose of Section 22 (1) of the 1985 Act."

[25] In the case of Tata Davi Ltd. etc. Vs. State of Orissa & Others, reported in JT 1997 (7) SC 216, wherein it has been held as under :

"Holding following Gram Panchayat and Another Vs. Ballabh Glass Works Ltd. and Another reported in JT 1990 (1) 438 that the arrears of tax and light dues from the sick industrial companies satisfying the conditions of Section 22 (1) of the B.I.F.R. Act, cannot be recovered by coercive process unless the said Board (BIFR) gives its consent. If the consent of BIFR is not secured and recovery deferred, the deferment is excluded under Section 22 (5) for limitation."

[26] He has also relied on the decision of the Division Bench of this Court in the case of Abad Dairy Vs. Manjibhai Dhanjibhai reported in 2000 (3) G.L.H. 409, wherein it has been held as follows :

"We find that learned Judge has failed to considered several important legal and factual aspects including as substitutes. The Unit has been declared "sick" and is now under the Board for Industrial and Financial Reconstruction . It has now governed by the provisions of the Sick industrial Companies (Special Provisions) Act, 1985. Because of steep fall in its business there is no sufficient work with the employer. the Unit is under a grinding financial strain and unable to sustain the burden of employment of large number of Badli workers as regular employees hence wages and monetary benefits from retrospective dates could not have been awarded in their favour. These circumstances, in our considered opinion are very much relevant for which the relief of regularisation and back wages claimed by the workmen in these petitions, should have been refused."

Xxx xxx xxx xxx

No employer whose unit has been declared sick and is under the Sick Industrial and Financial Reconstruction can be directed to regularise substitute or casual and pay them back wages."

[27] I have considered the entire legal position as contended by the learned counsel for the parties. The Division Bench of this Court has decided 12 L.P.As. (a group of L.P.As.) by common judgment and in the order dated 27-5-2000 in the case of Abad Dairy (supra) after considering the legal position in the several decisions of the Supreme Court and this Court and settled legal proposition that the reliefs of regularisation and back wages claimed by the workmen in those petitions should have

been refused. The word "back wages" includes employment and hence on the basis of the decision of the Division Bench of this Court the petitioner cannot be allowed to raise this question unless the BIFR has permitted. In the present case, the company is declared as sick and in view of the legal position discussed above, the wages include increments as claimed by the petitioner cannot allowed unless the BIFR has permitted the petitioner to raise the same.

[28] In view of the above discussion, this petition fails. Accordingly, this petition is dismissed. Rule is discharged with no order as to costs.