A UNION OF INDIA AND ORS.

v.

SCIENTIFIC WORKERS ASSOCIATION (REGD.) KANPUR AND ORS.

MARCH 18, 1994

B [KULDIP SINGH AND J.S. VERMA, JJ.]

Constitution of India, 1950 :

C *Articles 14, 16(i) the Joint Consultative Machinery and Compulsory Arbitration for Central Government Employees (JCM Scheme), Cl. 21—Power of the Parliament to alter date of implementation of award after the judgment of the Tribunal attained finality—Held, Tribunal's judgment could only mean that the Government of India was bound to implement the award subject to power to have it modified in terms of Clause 21 of the JCM* D *Scheme*

Articles 136, 141—The Administrative Tribunals Act, 1985, S. 28 read with The Central Administrative Tribunal (Procedure) Rules, 1987, Rule 17—When Appeal against main judgment of Tribunal dismissed in default E *whether appeal against dismissal of Review Petition competent—Held, the issue in the present appeal not considered by the Tribunal earlier or subject matter of the earlier Appeal which in any case was dismissed for non-prosecution—Res judicata—Code of Civil Procedure, 1908, S. 11.*

The Central Administrative Tribunal (Procedure) Rules—Rule F *17—After Tribunal's judgment attained finality Parliament altering date of implementation of award—Held, valid ground for review.*

Administrative Law—Natural Justice—Whether Parliament should hear the employees before modifying the date of implementation of award—Held, G *not a requirement of Clause 21 of the JCM Scheme formulated in consultation with employees.*

The Board of Arbitration constituted under the Joint consultative Machinery for Central Government employees (JCM Scheme) gave an award granting higher pay scale to Senior Scientific Assistants in the H **Department of Defence Production, Government of India with effect from**

September 22, 1982. During the pendency of an application by the Respondent before the Central Administrative Tribunal for a direction to the Government to implement the award, the Government decided to implement the award with effect from January 1, 1988. The Tribunal held that the government could modify the date of implementation of the award only after Parliament gives its approval to such modification as per the procedure laid down in Clause 21 of the JCM Scheme. That not having been done, the award had to be implemented with effect from September 22, 1982.

Thereafter the Parliament adopted a resolution modifying the date of implementation of the award from September 22, 1982 to January 1, 1988. The Government then filed a Review Petition before the Tribunal which was dismissed on the ground that the resolution adopted by Parliament could not have the effect of modifying the judgment of the Tribunal.

After its appeal against the Tribunal's main judgment was dismissed by this Court in default the Government filed the present appeal against the Tribunal's order dismissing its Review Petition. The Respondents raised a preliminary objection that in view of the earlier judgment of the Tribunal having attained finality, the present appeal where the same question was being agitated was not competent.

Allowing the appeal, this Court

HELD : 1.1. In the present case the award given by the Board had not achieved finality in the sense that it was open to the Government of India to have invoked the procedure envisaged under Clause 21 of the JCM Scheme. The judgment of the Tribunal directing implementation of the award could only mean that the Government of India was bound to implement the award subject to its power to have it modified in terms of Clause 21 of the JCM Scheme. [132-D-E]

1.2. It cannot be said that the Parliament had no power to modify the terms of the reference after the judgment of the Court. [133-B]

Madan Mohan Pathak, [1978] SCC (L & S) 103; *L.I.C.* v. *D.J. Bahadur,* [1981] SCC (L & S) 111 and *A.V. Nachane* v. *Union of India,* [1982] SCC (L & S) 53, distinguished.

1.3. The two Houses of Parliament having passed the Resolutions the

A **award stood modified in terms of the Resolution and as such can be implemented with effect from January 1, 1988 as resolved and not from Septemebr 22, 1982, the date of Courts award. [133-D-E]**

2. Even if it is assumed that the judgment of the Tribunal in OA 952/86 has achieved finality it is of no consequence because the issue before
B **us was not before the Tribunal at that stage. The question for consideration is whether the procedure under Clause 21 of the JCM Scheme has been legally followed, if so, with what effect. This question could not been and was not the subject matter of Civil Appeal No. 3769/90. In any case, the said appeal was not decided by this Court on merits. [131-A-B]**

C **3. The adoption of the resolutions by the Parliament was certainly a valid ground for filing the review petition. the Tribunal fell into patent error in dismissing the review petition. [130-E]**

4. The affording of an opportunity to the respondents by the Parlia-
D **ment does not appear to be a requirement of Clause 21 of the JCM Scheme. [134-C-D]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3954 of 1990.

From the Judgment and Order dated 10.4.90 of the Central Ad-
E ministrative Tribunal, Principal Bench at New Delhi in R.A. No. 30 of 1990 in O.A. No. 952 of 1986.

V.R. Reddy, Addl. Solicitor General C.B. Babu, CVS Rao, Sushma Suri & S.N. Terdal for the Appellants.

F S.K. Dholakia, R.P. Oberoi and B.S. Gupta for the Respondent.

The Judgment of the Court was delivered by

KULDIP SINGH, J. The demand, by the Senior Scientific Assistants
G working in the Department of Defence Production, Government of India, for revision of pay-scale, was referred to the Board of Arbitration (the Board) constituted under the scheme called Joint Consultative Mahinery and Compulsory Arbitration for Central Government Employees (JCM Scheme). The Board gave its award on August 12, 1985 granting higher pay-scale to the Senior Scientific Assistants with effect from September 22,
H 1982. Scientific Workers Association, respondent in the appeal herein, filed

OA 952/86 before the Central Administrative Tribunal, Principal Bench, New Delhi (Tribunal) seeking a direction to the Government of India to implement the award. During the pendency of the application Government of India, on November 11, 1988 decided to implement the award with effect from January 1, 1988. A

The question before the Tribunal was whether the Government of India could modify the award so as to alter the date of its implementation from September 22, 1982 to January 1, 1988. The Tribunal answered the question in the negative, allowed OA 952/86 and directed the Government of India to implement the award with effect from Septemer 22, 1982. B

The Government of India placed the matter before the Cabinet which took a decision on August 23, 1989 to move a resolution before the Parliament under Clause 21 of the JCM Scheme for modification of the date of implementation of the award from September 22, 1982 to January 1, 1988. Lok Sabha adopted the resolution on October 13, 1989 approving the modification of the date of implementation of the award and similar resolution was passed by the Rajya Sabha on December 29, 1989. C D

Union of India, meanwhile filed special leave petition No. 14911/89 on November 9, 1989 against the judgment of the Tribunal which was granted on August 3, 1990 giving rise to civil appeal No. 3769 of 1990. E

After the adoption of resolutions by the two Houses of Parliament the Union of India filed a review petition before the Tribunal which was dismissed on April 10, 1990 on the ground that the resolutions adopted by the two Houses of Parliament could not have the effect of modifying the judgment of the Tribunal dated August 10, 1989. F

It would be relevant to mention that Civil Appeal 3769 of 1990 was dismissed by this Court in default.

This appeal by the Union of India is against the judgment of the Tribunal dated August 10, 1989 in OA 952/86 and also against the order of the Tribunal dated April 10, 1990 rejecting the review application filed by the Union of India. G

At this stage it would be useful to have a look at the relevant provisions of the JCM Scheme. The Scheme - on the pattern of the Whitely Machinery in the U.K. - was recommended by the Second Pay Commission. H

A After working out the details in consultation with the leaders of the employees, the Scheme was introduced in the year 1966. At that time it broadly covered 2.5 out of 2.6 millon regular civil employees of the Central Government. The Scheme is a voluntary one and the Government as well as the Staff Associations/Unions participating in the Scheme are required to subscribe a Declartion of Joint Intent which, *inter alia,* provides for abjuration of agitational methods by the staff Union/Association for redressal of their grievances. Clauses 16 to 21 of the JCM Scheme which provide for the Machinery of Arbitration are reproduced hereunder :

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"Arbitration :

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16. Compulsory arbitration shall be limited to :

(i) pay and allowances.

(ii) weekly hours of work, and

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(iii) leave

of a class or grade of employees.

17. Cases of individuals shall not be subject to compulsory arbitration.

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18. A dispute shall not be referred to arbitration unless it has been considered by the National Council or the appropriate Departmental Council, as the case may be, and final disagreement between the two sides has been recorded. If there is a dispute relating to an arbitrable matter in a lower council it will be placed before the Departmental Council concerned.

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19. On a final disagreement being recorded as mentioned in clause 18, the Government shall appoint a Board of Arbitration as soon as possible. The Board will consist of 3 members, one drawn from a panel of 5 names submitted by the official side, one from a similar panel submitted by the staff side of the National Council, and a chairman who will be an independent person. The members and the Chairman will be selected by the Minister of Labour.

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20. (i) In determining a dispute the Board of Arbitration shall

examine the merits of the case presented by both the official and staff sides, and take into account all other relevant factors including the principles enunciated in any recent report of a Commission of enquiry etc.

(ii) Matters, determined by the Government in accordance with the recommendations of a Commission will not be subject to arbitration for a period of 5 years from the date of the recommendations, after which they will become arbitrable with reference, as far as possible, to the factors referred to in (i) above.

21. Subject to the overriding authority of Parliament, recommendations of the Board of Arbitration will be binding on both sides.

If, for reasons to be recorded in writing, the Central government is of opinion that all or any of the recommendations of Board of Arbitration should on grounds affecting national economy or social justice be modified, the Central Government shall, as soon as may be, lay before each House of Parliament the report of the Board containing such recommendations together with the modifications proposed and the reasons, therefore, and thereupon Parliament may make such modifications in the recommendations as it may deem fit. Modification may extend to the rejection of a recommendation."

Mr S.K. Dholakia, learned counsel for the respondents has raised a preliminary objection. According to him Civil Appeal No. 3769 of 1990, having been dismissed by this Court, the present appeal was not competent. The precise contention is that the judgment of the Tribunal in OA 952/86, directing the Government of India to implement the award with effect from September 22, 1982 having been upheld by this Court - by dismissing CA 3769/90 - it has achieved finality and as such the same question cannot be agitated in the present appeal. We do not agree with the contention of the learned counsel. The Tribunal delivered its judgment in OA 952/86 on August 10, 1989 whereas the two Houses of Parliament approved the modification of the award on October 13, 1989 and December 29, 1989 respectively. The action of the Parliament was not the subject matter of controversy before the Tribunal. It would be useful to quote, hereunder, two paragraphs from the judgment of the Tribunal :-

A "15. An award could be modified only by the Central Government laying before such House of Parliament the report of the Board containing recommendations together with the modifications proposed and the reasons therefor and after Parliament gives its approval to the modifications sought. Where it is proposed to reject or modify an Award, the department concerned should first consult the Department of Personnel and Training and seek the approval of the Cabinet to take suitable steps to obtain Parliament's specific directions on the suggested modifications.

16. Giving effect to the Award from 1.1.1988 and not from 22.9.1982 amounts to modification of the recommendation made by the Board of Arbitration. There is no indication in the records that the Award in the instant case was sought to be modified by the Government in accordance with the procedure envisaged in Clause 21 of the J.C.M. Scheme or that the Parliament gave its approval to the modification of the Award so as to give effect to it only from 1.1.1988 and not from 22.9.1982, as stipulated in the Award. In the facts and circumstances, we are of the opinion that the applicants are entitled to the benefit conferred by the Award w.e.f. 22nd September, 1982 and not from 1.1.1988."

We are of the view that after the adoption of the resolutions by the two Houses of Parliament a new situation had arisen. It is no doubt correct that the passing of the resolutions by itself, could not have the effect of modifying the judgment of the Tribunal but it was certainly a valid ground for filing the review petition. The Tribunal directed the enforcement of the award with effect from September 22, 1982 because by that date the procedure envisaged under Clause 21 of the JCM Scheme had not been followed. The Tribunal did not and could not have restrained the Government of India from invoking the said procedure. The Government of India, ordinarily, is bound by the award given by the Board unless the same is modified or rejected by the Parliament. As stated above, immediatedly after the judgment of the Tribunal, the Cabinet took a decision on August 23, 1989 and the two Houses of Parliament passed the resolutions modifying the award. The situation which emerged as a result of the resolutions passed by the two Houses of Parliament was not before the Tribunal in OA 952/86. That was brought before the Tribunal by the Union of India by filing the Review Petiton. It is, therefore, the judgment of the Tribunal

in the Review Petiton which dealt with the question before us. Even if it is assumed that the judgment of the Tribunal in OA 952/86 has achieved finality it is of no consequence because the issue before us was not before the Tribunal at that stage. The question for our consideration is whether the procedure under Clause 21 of the JCM Scheme has been legally followed, if so, with what effect. This question could not have been and was not the subject-matter of civil appeal No. 3769/90. In any case, the said appeal was not decided by this Court on merits. It was dismissed for non-prosecution and in defualt. There is no adjudication by this Court on the merits of the controversy involved in the said appeal. We, therefore, see no force in the preliminary contention of the learned counsel and, as such, we reject the same.

The Tribunal - despite its finding that the Parliament was competent to modify the award - dismissed the Review Petition on the following reasoning :-

> "On the merits, it was argued by the learned counsel for the petitioners that Parliament is supreme and that under JCM scheme, Parliament is competent to modify the Award given by Board of Arbitration. To that extent, the position stated by him is unexceptionable. However, there is nothing in the Resolution adopted by the Lok Sabha and the Rajya Sabha to indicate that the directions issued to the petitioners by the judgment of this Tribunal dated 10.8.1989 in OA 952/86 have been sought to be modified by Parliament. The question arises whether the directions of this Tribunal in its judgment dated 10.8.1989 that the Union of India shall implement the Award of the Board of Arbitration with effect from 22.9.1982 and not with effect from 1.1.1988 and that they should pay the arrears of pay and allowances to the Senior Scientific Assistants on the said basis, together with interest at the rate of 10% per annum from 2.9.1982 to the date of payment, can be Mullified or set at naught by subsequent legislative action taken by Parliament. ..... The ratio of the decisions of the Supreme Court in Pathak's case, Bahadur's case and Nachane's case is that a writ issued by the High Court cannot be overridden or nullified retrospectively even by legislation. In our opinion, having regard to the ratio in the aforesaid decisions, the modification of the Award given by the Board of Arbitration in the instant case which

A is sought to be made by the Resolutions adopted by the Lok Sabha on 13th October, 1989 and by the Rajya Sabha on 29th December, 1989 cannot nullify or render nugatory the directions issued by this Tribunal in its judgment dated 10.8.1989. The directions issued by the Tribunal cannot be set at naught retrospectively by such legis-
B lation ..... In our opinion, the Resolutions adopted by both Houses of Parliament do not have the effect of modifying the judgment of this Tribunal dated 10.8.1989. Therefore, the respondents are bound to comply with the directions contained in the said judgment. In the conspectus of the facts and circumstances of the case, we find no merit in the present review petition and
C the same is rejected."

We are of the view that the reliance by the Tribunal on the judgments of this Court in *Madan Mohan Pathak* v. *Union of India,* [1978] SCC (L & S) 103, *L.I.C.* v. *D.J. Bahadur,* [1981] SCC (L & S) 111 and *A.V. Nachane*
D v. *Union of India,* [1982] SCC (L & S) 53, is wholly misplaced. These judgments have no relevance whatsoever to the facts of the present case.

In the present case the award given by the Board had not achieved finality in the sense that it was open to the Government of India to have invoked the procedure envisaged under Clause 21 of the JCM Scheme. The
E judgment of the Tribunal directing the implementation of the award could only mean that the Government of India was bound to implement the award subject to its power to have it modified in terms of Clause 21 of the JCM Scheme. The judgment of the Tribunal could not be read to mean that the Government of India was precluded from proceeding under Clause
F 21 of the JCM Scheme.

The matter can be examined from another angle. Government of India took a decision on November 11, 1988 to implement the award with effect from January 1, 1988. That decision was taken by the Government of India without invoking the procedure under Clause 21 of the JCM
G Scheme. Till August 10, 1989 when the Tribunal decided OA 952/86 the decision of the Government of India was sub-judice before the Tribunal. While interpreting the provisions of the JCM Scheme, the Tribunal came to the conslusion that without resorting to the provisions of Clause 21 of the JCM Scheme the Government of India was bound to implement the
H award as given by the Board and the Government of India had no power

to alter the date of implementation of the award to the detriment of the respondents. In pith and substance, the question before the Tribunal was whether the Government of India without resorting to the provisions of Clause 21 of the JCM Scheme could have changed the terms of the award to the disadvantage of the respondents. The Tribunal answered the question in the negative. Immediately thereafter the Government of India in accord with the judgment of the Tribunal placed the matter before the Cabinet which took the decision on August 23, 1989 to the effect that a resolution be moved in the Parliament under Clause 21 of the JCM Scheme for implementing the award with effect from January 1, 1988. In this view of the matter it is wholly futile to say that the Parliament had no power to modify the terms of the reference after the judgment of the Court. We are of the view that the Tribunal fell into patent error in dismissing the review petition on the basis of the misplaced - reliance on the three judgments of this Court (supra).

Clause 21 of the JCM Scheme clearly lays down that the Central Government in the interests of national economy or social justice can lay the award before each House of Parliament for the modifications of the recommendations of Board. There is no material on the record to show that the exercise of power by the Central Government under Clause 21 of the JCM Scheme is vitiated in any manner. The two Houses of Parliament having passed the Resolutions the award stood modified in terms of the Resolution and as such can be implemented with effect from January 1, 1988 and not from September 22, 1982.

Mr. Dholakia, learned counsel for the respondents has invited our attention to the office memorandum issued by the Government of India, Department of Personnel and Training dated January 20, 1988. Learned counsel for the appellants has also placed before us the Memorandum dated June 10, 1988 issued by the same authority. Both these memorandums lay down time schedule for the implementation of the award. These memorandums were issued in the year 1988 whereas the award in this case was given in the year 1985. The respondents filed the application before the Central Administrative Tribunal in the year 1986 which was decided on August 10, 1989. May be because the matter was sub-judice, the Government of India did not take any decision under Clause 21 of the JCM Scheme. As mentioned above immediately after the judgment the Cabinet,

A on August 23, 1989, took the decision to lay the award before the Parliament for modification. In the facts and circumstances of this case, we see no delay on the part of the Government of India in placing the award before the Parliament for modification. We are, however, of the view that the Government of India should, ordinarily, follow the time schedule B prescribed in the above mentioned memorandums. The decision as to whether the provisions of clause 21 of the JCM Scheme are to be invoked in a given case should be taken within a reasonable time.

The argument of Mr. Dholakia that before passing the Resolution the Parliament should have given an opportunity of hearing to the respon- C dents, has been noticed to be rejected. The JCM Scheme has been formulated in consultation with the representatives of the employees. The parties have by consent left the residuary power to modify or reject the award with the Parliament. In any case the affording of an opportunity to the respondents by the Parliament does not appear to be a requirement of Clause 21 D of the JCM Scheme.

We allow the appeal, set aside the judgment of the Tribunal dated August 10, 1989 and also set aside the judgment of the Tribunal dated April 10,1990. Review Petition 30/90 in OA 952/86 is allowed and OA 952/86 filed by the respondent before the Tribunal is dismissed. We leave the parties E to bear own costs.

CIVIL APPEAL NO. 2130 OF 1994.

(Arising out of SLP (C) No. 5957/94, CC No. 21832/93.)

F ORDER

Delay condoned.

Special leave granted.

G In view of our judgment in Civil Appeal No. 3954 of 1990 titled *Union of India & Ors.* v. *Scientific Workers Association (Regd.) Kanpur & Ors.*, we allow the appeal set aside the impugned judgment of the Central Administrative Tribunal, Jabalpur, dated September 1, 1989 and dismiss the Original Application No. 49 of 1987 filed by the respondents before the H Tribunal. No costs.

CIVIL APPEAL NO. 1883 OF 1994. A

(Arising out of SLP (C) No. 14920/92.)

ORDER

Special leave granted. B

In view of our judgment in Civil Appeal No. 3954 of 1990 titled *Union of India & Ors.* v. *Scientific Workers Association (Regd.) Kanpur & Ors.,* we allow the appeal, set aside the impugned judgment of the Central Administrative Tribunal, Madras Bench, dated April 30, 1992 and dismiss the Original Application No. 249 of 1989 filed by the respondents before the C Tribunal. No costs.

S.M. Appeal allowed.
Original Application Nos. 49/87 & 249/89 dismissed.