

(1998) 10 SC CK 0047

In the Supreme Court Of India

Case No : Civil Appeal No. 5456 of 1998, Arising out of SPL (C) No. 3207 of 1998

Anand Transport and Printers

APPELLANT

Vs

Senior Labour Inspector and Another

RESPONDENT

Date of Decision : 09-10-1998

Acts Referred:

Citation : (2001) 10 SCC 452

Hon'ble Judges : S. Saghir Ahmad, J; A. P. Misra, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Leave granted.

2. This appeal is directed against the judgment and order dated 26-6-1997 passed by a Division Bench of the High Court by which the judgment and order dated 18-9-1995 passed by the Single Judge has been upheld and the writ petition filed by the appellant has been dismissed. The writ petition was filed against the notice issued to the appellant by the Labour Inspector requiring the appellant to pay the cost of living allowance and dearness allowance to its employees belonging to the categories of printers, feeders, cleaners and helpers.

3. It was indicated in the writ petition, inter alia, as under:

"A The petitioner is a partnership firm engaged in the business of transport and printing at Mysore. In the printing press, it has employed about 71 employees. There are four categories of workmen. They are (1) printers; (2) feeders; (3) cleaners; (4) helpers. The minimum wages paid to the workmen are as follows:

Basic pay DA HRA Total

Printers Rs 450 Rs 336 Rs 77 Rs 863

Feeders Rs 200 Rs 336 Rs 77 Rs 613

Cleaners Rs 145 Rs 310 Rs 77 Rs 582

Helpers Rs 115 Rs 310 Rs 77 Rs 502

2. The printing industry has been treated as a schedule industry under the provisions of the Minimum Wages Act, 1948. The Government of Karnataka has fixed the minimum wages for the workmen employed in the printing industry vide Notification No. SWL 75 1 NW 83 dated 25-5-1984 and variable dearness allowances as per Notification No. SWL 72 LMV 85 dated 17-2-1986. They are as follows:

Categories Basic VDA Total

Printers Rs 416 Rs 162 (approx.) Rs 578

Feeders Rs 377 Rs 135 (approx.) Rs 512

Cleaners Rs 285 Rs 108 (approx.) Rs 393

Helpers Rs 285 Rs 100 (approx.) Rs 393

3. Some of the printing industries challenged the notification relating to VDA before this Hon'ble Court and the same came to be disposed of recently. This Hon'ble Court has been pleased to direct the employers to pay the variable dearness allowance with effect from 1-4-1985 and that the arrears shall be paid in four equal installments commencing 1-6-1986.

4. The Senior Labour Inspector who inspected the registers maintained by the firm on 29-5-1986 made observation in the inspection book a photocopy of which is produced at Annexure 'C' which reads as follows:

'Visited and inspected M/s. Anand Transport and Printers, Printing Section, Vinoba Road, Mysore. 71 workers are employed. Registers are maintained and produced. The following observation is made for immediate rectification and report:

(1) The Minimum Wages Act, 1948 and Rules thereunder The employer shall pay the revised rates at variable dearness allowance with effect from 1-4-1985. The arrears shall be paid in four equal installments (monthly) commencing from 1-6-1986 (for the period from 1-4-1985 to 31-3-1986). From 1-4-1986, it shall be paid in the monthly wage bill.'

5. The petitioner immediately furnished his reply dated 5-6-1986, a copy of which is herewith produced at Annexure 'D' inter alia contending that they are not liable to pay the arrears of VDA as well as the VDA from 1-4-1986. Since the provisions of the Minimum Wages Act and the notifications issued thereunder are not applicable to them, as they are paying higher than the minimum wages fixed by the Government. The 1st respondent even without considering the plea raised by the petitioners, has issued the show-cause notice dated 6-6-1986 vide Annexure 'A' calling upon the petitioner as to why they should not be prosecuted in a competent court of law for the alleged violation of the provisions of the Minimum Wages Act, 1948."

The Division Bench of the High Court disposed of the appeal before it stating thus:

"Thus, it is clear that under the notification the State has fixed 2 separate categories of minimum rates of wages to be paid to the employees -- one basic and the other 'other allowance' i.e. DA. It is to be noted that the appellants have not challenged the validity of these notifications and as such the notifications have been accepted by them. As such, the mandatory requirement of the Act is that the appellants must pay under the two different categories. The argument of the appellant that they are paying to the employees a gross pay packet which incidentally is higher than the minimum rate of wages fixed by the State and, hence, they are not liable to pay the cost of living allowance, may not be a sound proposition. Merely because the appellants are able to pay higher rate of wages it does not absolve them from paying separately the 'cost of living allowance'. As Sub-clause (3) of Clause (II) of the notification clearly indicates, even if the appellants are paying higher rate of wages, they shall continue to pay. In other words, they have to continue to pay the 'wages' now being paid and in addition to that the minimum rate of 'cost of living allowance' is to be paid by them separately as per the notification."

4. It was contended by the counsel of the appellant that the details set out in para 1 of the writ petition as also those indicated in the registers maintained by them which were also inspected by the Labour Inspector have not been considered by the High Court which has proceeded on the assumption that it was a fixed amount which was paid to the employees as DA at a fixed rate all the time. It is contended that the DA or VDA did not comprise of a fixed amount but the amount has been varying with the cost of living index so as to neutralise the cost of living.

5. In our opinion, the matter has not been examined in its true perspective by the Single Judge or by the Division Bench of the High Court inasmuch as no investigation was made to find out whether it was a fixed amount which was paid to the employee by way of DA or that the amount of DA was a variable amount which varied with the cost of living index. This investigation could have been conveniently done on the basis of the records maintained by the petitioner. The salary bills or the details thereof entered in the relevant register could also have been inspected to find out whether it was a fixed or a varying amount which was being paid to the employee by way of DA.

6. The appeal is consequently allowed. The judgment and order dated 18-9-1995 passed by the Single Judge and the judgment and order dated 26-6-1997 passed by the Division Bench are set aside and the case is remitted back to the Single Judge to decide it afresh in the light of the observations made above. The parties shall have liberty to file such additional documents and affidavits as they may wish to file. The High Court is requested to dispose of the writ petition on an early date.