

(1989) 09 PAT CK 0034

In the Patna High Court

Case No : Latter Patent Appeal No's. 51 and 52 of 1988

Bihar State Electricity Board

APPELLANT

Vs

Chakradhar Prasad Singh and Others and Zulfikar Khan

RESPONDENT

Date of Decision : 14-09-1989

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Industrial Disputes Act, 1947 — Section 10, 33C, 36

Citation : (1990) 1 BLJR 238 : (1990) 1 PLJR 46

Hon'ble Judges : Uday Sinha, J; Binod Kumar Roy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Uday Sinha, J.—These two appeals in Letter Patent against the judgment of learned Single Judge of this Court rendered in two applications under Articles 226 and 227 of the Constitution of India L.P.A. 51 of 1988, arises out of C.W.J.C. 1370 of 1986 and L.P.A. 52 of 1988 arises out of C.W.J.C. No. 970 of 1986. The Bihar State Electricity Board, hereinafter called the Board, is the appellant in both the appeals. The sole respondent in L.P.A. 51 of 1988, is the Central Secretary of Bihar Rajya Vidyut Parishad Field Kamgar Union. The respondent No. 1 in L.P.A. 52 of 1988 claims to be the General Secretary of Bihar State Electricity Supply Workers Union and respondent No. 2 is a workman of the Board. Both writ applications were heard together as they covered common grounds. The two appeals, therefore, are being disposed of by this common judgment.

2. Two questions have been hotly contested at the bar in these appeals. The first is what was the award of the Industrial Tribunal in regard to payment of dearness allowance to the workman. The second question is whether this Court can grant in a writ application what was denied to several workmen by the Labour Court regularly in a proceeding u/s 33-C(2) of the Industrial Disputes Act, which had become final.

3. By notification dated 6th April, 1983, a reference was made to the Industrial Disputes Act. The matters referred for adjudications, were the following:

Whether the pay scales of the workman of the Bihar State Electricity Board should be revised?

If so, what should be the pay scales of the different categories of workman and from which date the same should be implemented?

3. Whether the workman of the Bihar State Electricity Board should be given dearness allowance at Central rates? If so, from which date?

2. Whether the workman of the Bihar State Electricity Board are entitled to get the pay and allowances admissible in accordance with the recommendation of the second Wage Board for the period from 1.4.1975 to 31.3.1979 as per item No. 5 of the tripartite settlement dated 14.6.1977? If so, what shall be the amount of the same?

In regard to the first question the Tribunal held that the pay scales of the workman should be revised and that it should be implemented with effect from 1.4.1983. In regard to the third question, the Tribunal held that the workmen were entitled to receive the arrears of pay and allowances in terms of the recommendation of the second Wage Board from 1.4.1975 to 31.3.1979. The award on the first and third points were never challenged by the Board nor they have been challenged in these appeals. The only controversial question is the dearness allowance awarded by the Tribunal.

4. At paragraph 52 the Tribunal recorded as follows:

It may be pointed out that all the employees of the Board including the Officers are equally hit by the rising trend in prices of commodities inasmuch as all of them have to face the same common market. If the Officers of the Board getting higher pay scales can be allowed D.A., at Central rates there seems to be no apparent reason why workmen getting much lower pay scales should not be allowed the same when actually they have to face the pinch of rising prices more than the officers do. If the officers can be allowed higher percentage of neutralisation there seems to be no earthly reason why the workmen should not be given the same percentage of neutralisation if not more.

At paragraph 64 it recorded as follows:

(ii) That the workman of the Bihar State Electricity Board should be given dearness allowance at the Central rates. Date of payment of D.A. at Central Rates shall be the same as fixed for implementation of revised pay scales i.e., 1.4.1983.

From the above two parts of the award question arises what did the Tribunal award. Did it award dearness allowance at Central rates as admissible to officers of the Board or it awarded only dearness allowance at Central rates to the workmen.

5. On the face of it there appears to be an apparent ambiguity. Every effort must be strained to clear off the cow-wcb of ambiguity if there be a point of reconciliation. Question is should one sentence in an award be read in isolation or should that sentence be understood in the context in which it has been used namely, whether the judgment must be read as a whole in order to appreciate its contents. In my view every document must be read as a whole together its contents. That in my view is a well established principle.

6. The stand of the workmen is that the Tribunal awarded dearness allowance at Central rates and that it had nothing to do with the rates of dearness allowance being given to the officers of the Board. The stand of the Board, on the other hand, is that the award directed payment of dearness allowance to the workmen at Central rates as were being paid to the officers of the Board. The interpretation of the entire award particularly two passage quoted above, will depend upon the meaning and content of the expression "Dearness allowance at Central rate." I shall presently demonstrate that the content of the expression dearness allowance at Central rate and the expression dearness allowance at Central rate as paid to the officers of the Board are the same. Both of them will bring the same dearness allowance packet to the workmen. The hotly contested controversy about the award of the Tribunal will be resolved if we get on the true meaning of the concept of dearness allowance at Central rates.

7. The Tribunal revised and recommended the following scales of pay for the workmen:

Category Existing pay scales Revised scales of pay

1. Unskilled Rs. 320-6-380-7-422-8-470 Rs. 550-7-620-8-684-9-720 2. Semi skilled "B" 3. Semi skilled "A" Rs. 340-8-420-9-510 Rs. 575-10-675-12-795 4. Skilled "D" Rs. 375-10-435-11-490-12- Rs. 615-14-755-15-830-16- 574 878 5. Skilled "C" Rs. 420-11-486-12-564-16- Rs. 665-16-777-18-867-20- 644 967 6. Skilled "B" Rs. 490-10-61242-744-20- Rs. 725-18-905-20-1005- 844 22-1115 7. Skilled "A" Rs. 570-18-714-20-864-23- Rs. 795-19-985-30-1125- 1015 21-1230 8. Highly/skilled Rs. 670-25-795-30-945-35- Rs. 900-30-1110-35-128- "B" and Super 1155 40-1445 visory "B" 9. Highly/skilled Rs. 625-25-825-30-1065- Rs. 900-32-1156-35-1444- "A" and super- 35-1275 42-1696 visory "A" There is no dispute about the award in regard to the wage/ scales. That has been faithfully followed by the Board. The controversy arises in regard to the implementation of the award in regard to the dearness allowance. Annexures-1 and 2 to the writ application (which will be hereinafter called as Annexures 1 and 2 for the purpose of these appeals) are the orders of the Board implementing the award. In regard to the dearness allowance, the implementation order reads as follows:

Dearness allowance.-Dearness Allowance of Rs. 211.35 per month and in addition Dearness Allowance at Central Rates, as admissible to Officers of the Bihar State Electricity Board in their revised scales of pay, for price increase from

1.4.1983 will be paid to the workmen.

Annexure-2, dated 18.10.1985, to the writ application represents the implementation of the order of the Board quoted above in regard to dearness allowance. It laid down that the dearness allowance of workmen was Rs. 211.35 per month plus amount calculated as per authenticated table annexed to Annexure-4. The table is as follows:

Date of C.D.A. For the workmen For the workmen drawing pay effective from drawing pay upto from 801 to 1000 per month Rs. 800/p.m.

1.1.1983 2% of pay (X) X 1.5.1983 2% of pay (minimum 1.7% of pay (minimum Rs. 16/ Rs. 7.8) maximum Rs. 30/) 1.7.1983 4% of pay (minimum 3.4% of pay (minimum Rs. 30/) Rs. 15.60) maximum Rs. 60/) 1.8.1983 6% of pay (minimum 5.1% of pay (minimum Rs. 48/ Rs. 23.40) maximum Rs. 90/) 1.10.1983 8% of pay (minimum 6.8% of pay (minimum Rs. 64/ Rs. 21.20) maximum Rs. 120/) 1.11.1983 10% of pay (minimum 8.5% of pay (minimum Rs. 80/ Rs. 39) maximum Rs. 150/) 1.1.1984 12% of pay (minimum 10.2% of pay (minimum Rs. 96/ Rs. 46.80 maximum Rs. 180/) 1.2.1984 14% of pay (minimum 11.9% of pay (minimum Rs. 112/ Rs. 54.60) maximum Rs. 210/) 1.4.1984 18% of pay (minimum 13.6% of pay minimum Rs. 123/ Rs. 62.40) maximum Rs. 240/) 1.6.1984 18% of pay (minimum 15-3% of pay (minimum Rs. 144/ Rs. 70.20) maximum Rs. 270/) 1.8.1984 20% of pay (minimum 17.0% of pay (minimum Rs. 160/ Rs. 78) maximum Rs. 300/) 1.11.1984 22% of pay (minimum 18.7% of pay (minimum Rs. 176/ Rs. 85.00) maximum Rs. 330/) 1.1.1985 24% of pay (minimum 20.4% of pay (minimum Rs. 922/ Rs. 93.60) maximum Rs. 360/) The above is the table of dearness allowance at Central rates payable to the workmen on the same principle as admissible to Officers of the Board. Annemre-2, according to the workmen, was not the proper implementation of the expression "dearness allowance at Central rate". Learned Counsel for the workmen submitted that there is a world of difference between grant of dearness allowance at Central rates and grant of dearness allowance at Central rates as admissible to Officers of the Board. It was submitted that the expression "dearness allowance at Central rates" has special connotation and significance. According to Mr. Aftab Alara, dearness allowance at Central rates had reference to the index number of consumer price on 1960 as the base year. According to him, the calculation of dearness allowance on the basis of rise in index number will start from 1960 and not from 1.4.1983.

8. The payment of Central dearness allowance was introduced by the State Government in 1973. The method of computation of the dearness allowance at Central rates where a workman was getting a basic pay up to Rs. 400/ per month is that he would be entitled to get dearness allowance at the rate of 4% of the basic pay for every increase of 8 point. Increase of index number by 8 point is called one slab. A workman getting basic pay between Rs. 401 to 1600 per month would be entitled to dearness allowance at the rate of 3% of their pay (up to maximum of Rs. 30), for every increase of 8 points (i.e., one slab) in

consumer price index. That is the import of the expression , "Dearness Allowance at Central rates." The index number on 1.4.1983 stood at 500/ Calculated on the basis of 1960 index number a workman drawing salary of Rs. 400 per month would be entitled to dearness allowance of 75.5% of the salary that would be Rs. 300 according to the workmen. On the basis of the formula laid down by the Board, as mentioned in Annexure-1, the employee would start off on 1.4.1983 at zero dearness allowance. The question is whether there is justification for calculation of dearness allowance on 2.4.1983, with reference to 1960 as the base year and whether the Tribunal meant to confer it.

9. If there has been neutralisation of pay at point 1.4.1983, would there be any justification for looking back to 1960 for the purpose of calculation of dearness allowance. In my view not. Question, therefore, is has there been neutralisation of consumer price index, and at what point.

10. Let us consider the verdict of the Tribunal in regard to neutralisation of rise in consumer price index. At paragraph 42 of the award the Tribunal has fixed Rs 550 per month for the lowest grade of workmen. It reads as follows:

Thus it would appear that the pay scale fixed above, i.e., Rs. 460 per month is substantially correct. Adding Rs. 90 (flat rate) minimum guarantee increase in the pay scale would come to Rs. 550. I think, this should be the pay scale of the lowest grade of workmen of the Bihar State Electricity Board.

11. The Tribunal having found that there was a case for revision of scales, embarked upon an enquiry to find out what should be the quantum of rise in wages. Various proposals had been put forward before the Tribunal by the different Unions of the workmen. The Tribunal observed as follows:

In my view any scale to be accepted should have a solid basis and a link with the price of the essential commodities. As I have said most of the Unions have not given the basis for the suggested pay scales. In absence of the basis, the pay scales suggested by them appear to me to be fanciful.... The pay scales as suggested by the other Union, excepting the Bihar State Electricity Employees Union have not given any basis on which the pay scales of the workmen may be determined. It is therefore difficult to accept their pay scales.

Even before us in our answer to a pointed question from the Bench as to the basis for suggested wage increase Mr. Garg for some of the workmen, evaded the issue and contended by stating that there was no basis for the wage revision and that wages were raised by revision just off the cuff I regret the answer of Mr. Garg is not satisfactory. Revision of wage is not done on fancy but always done on some sound basis. The Tribunal has proceeded on a sound basis.

12. The basis has been spelt out in paragraphs 41 and 42 of the award. The total expenditure of consumption on same items of food was calculated at Rs. 343 paise per day taking 3 as members of a family which was calculated as follows:

Total expenditure on 3 consumption units per month.-- $3.45 \times 3 \times 30 = 310,50$

Rs. 310.50 cost of 72 yards of clothes @ Rs. 12 per yard: Rs. 72/- $\times$ 72 = Rs. 264/-.

Thus the expenditure on clothing per month Rs. 264 + 72/ Rs. 72.00

_____ Rs. 382.50 Add 20% Miscellaneous of Rs. 76.50 the total Rs. 76.50
paise _____

Rs. 459.00 Final break up- Fooding Rs. 310.50 Clothing Rs. 72.00 Miscellaneous Rs. 76.50 _____ Rs. 459.00 The Tribunal added Rs. 90 (fiat rate). The minimum wage increase in the pay scale would come to Rs. 550 and that is how the Tribunal awarded Rs. 550 as the minimum wage for the lowest class of workmen. In this connection the observation of the Tribunal in paragraph 41 quoted below is rather sufficient:

On 1.4.1983 the index number was 500. If the pay scales is calculated on the basis of consumers price index number it comes to about Rs. 494. It may be stated here that hundred per cent neutralisation is not possible in the present circumstances.

From the above, that can be no doubt neutralisation of wages was the object in fixing the wages from 1.4.1983.

14. The first award in regard to wages in the Board came on 27.6.1964, effective from 1.4.1964, commonly known as Chaudhary Award. It fixed the scale of pay for the lowest grade of workmen at Rs. 45-16-60-2-80 per month. For the highest grade i.e. highly skilled "A" the scale of pay was fixed at Rs. 300-15-420-20-650. The rise in prices, thereby the rise in consumer index, had necessitated the reference to the Tribunal, Therefore, it is reasonable to presume that the pay scales recommended by the Chaudhary Award neutralised the erosion of wages. That was the first point of neutralisation. Then came a Central Wages Board for Electrical undertakings in the country in 1966. The recommendations of that Board were accepted by Government of India in 1970. The Board also accepted it but the workmen did not accept it, The workmen raised a dispute. The Board and the workmen arrived at an understanding that the wage structure of the Board be referred to a Committee. In terms of this settlement the State Government constituted a wage Board consisting of a Chairman and five members of the Board and five members of the workmen. Shri Sheo Chandra Prasad, a retired Judge of this Court was appointed Chairman of the Board. This Board submitted its report on 30.9.1972. The recommendations were accepted by the Government. The Government called upon the Board to implement the recommendations. The recommendations were accepted by the workmen also on 16.11.1972. They were made effective from 1.4.1971 and were to remain in force for a period of four years i.e. up to 31.3.1975. This was the second point of neutralisation of erosion in wages. After March, 1975, fresh agitations for revision of pay scales started. On 14.6.1977, a settlement was arrived at between the Board and its workmen to constitute a Second Wage Board. The recommendations of this Board were to be effective

from 1.4.1975. in pursuance of the tripartite agreement a Wage Board was constituted. This has been called as Second Wage Board presided over by Ramanand Singh, I.A.S. The representatives of the management and the unions were part of this Board. The Board was reconstituted on 23.9.1978 by including some other Unions of the Wage Board By Government order dated 26.2.1979, the Wage Board was directed to commence functioning. Before this Board the parties agreed to submit their recommendations in writing on the terms of the reference. No agreement was reached between the members and therefore the Chairman had to give his own views and recommendations for them. On 31.12.1979, the Chairman submitted his own recommendations to the Government with regard to the pay scales of different categories of workmen and suggestions made by the Electricity Board. On receipt of the recommendations the Board constituted a Committee of Officers on 15.4.1980 to work out the financial implication of the recommendations. The Tribunal has mentioned that there was nothing on the record to show what was the outcome of this committee but on 19.1.1980, the Chief Minister made an announcement on the floor of the Assembly with regard to Wage Board recommendations as suggested by the Chairman. The workmen protested to the unilateral announcement by the Chief Minister. The offer of the Chief Minister in regard to the wage rise may not be considered on neutralisation of the consumer price index but it cannot be doubted that the workmen drew their salary on the basis on the declaration of the Chief Minister. It thus did bring some relief in the erosion of the wages although under protest.

14. Dispute once again started from October, 1980 when on 6.10.1980, Jalkanpur Union placed a charter of demands before the Board, On 11.8.1981, another memorandum was placed before the Chairman of the Board with regard to the long pending demands. On 19.1.1982, the workers went on a one day token strike. To cut matters short, in April, 1983, the State Government referred the dispute to the Industrial Tribunal, Patna, in terms of Section 10(3) of the Industrial Dispute Act. That is the reference with which we are concerned.

15. While the reference was pending before the Tribunal the Board awarded an interim relief of Rs. 60 per month per workmen with effect from 1.4.1983, which was liable to be adjusted finally against the wage structure which would be revised ultimately. On 23.10.1984, the Board granted an additional interim relief of Rs. 80 per month per workmen. Thus 80 rupees interim relief was awarded which ultimately to be adjusted in accordance with the award. It will thus be seen that the real value of the wages at the time of the reference i.e. in 1983, was not the same as that in 1960, i.e. the base year of the consumer price index. As the price index has been rising the rigor of the erosion in the wages had been constantly monitored and countered. The neutralisation of erosion in wages was taking place from time to time, firstly in 1964, secondly in 1971 and thirdly in 1980 pursuant to the recommendation of the Ramanand Singh Award. I am not taking into account the interim relief of Rs. 80 per month granted to the workmen as that came to pass after the reference to the Tribunal but on three

occasions the erosion in wages had been checkmated. It is therefore, reasonable to presume that there was no occasion for the Tribunal to have granted dearness allowance, the purpose of which is to neutralise erosion in wages, from the base year of the index number. The erosion in wages till 1.4.1983 having been neutralised there could be no occasion for the Tribunal to award dearness allowance with reference to 1960 prices. The claim of the workmen to receive 75.5 per cent of the salary is dearness allowance in terms of dearness allowance at Central rates would be acceptable if there had been no neutralisation of wages since 1960. The neutralisation in the instant case having taken place on 1.4.1983, it would be ridiculous to harp on the rise in price since 1960.

16. Now let us see on that principle has the new pay scale been recommended by the Tribunal. In paragraph 15, the Tribunal observed that the pay scales of the workmen of the Bihar State Electricity Board was last revised by order dated 3.9.1981, on the basis of the report of Ramanand Singh, Chairman of the Second Wage Board. In 1975, the consumer price index number was 324 on 1.4.1983, the date of reference, it was 500 undisputedly. While the labour disputes were going on the pay scales of the officers of the Board had been revised on several occasions. That brought about neutralisation of the rise in wages for the officers. The workmen, therefore, agitated and demanded that their pay scales also should be revised as it had been done in the case of officers. In order to appreciate the point in controversy, one cannot ignore the attitude of the workmen. No judicial authority can and does grant more than what a party claims. The Tribunal has observed at page 115 that it had been submitted before it that since 1979 the wages of the officers of the Board had been revised twice, there was no reason why the pay scale of the workmen should not be revised from 1.4.1980. This was the stand of Chalcradhar Prasad Singh representing four hundred and seventeen workmen. They did not ask for dearness allowance from 1960 but they sought revision only from 1.4.1980 as in the case of officers. The Tribunal, therefore, held that there was a case for revision in wages and wanted the principle on which dearness allowance as being paid to Officers, the Tribunal considered from paragraph 34 what should be the scales of pay on the workmen. The Tribunal considered the wages of comparable Industries. It also considered the minimum needs of workmen. In that behalf it also considered the recommendations of Dr. Aykroyd. In regard to the stand of the Unions, Vidyut Mazdoor Union, affiliated to I.N.T.U.C. had suggested the lowest pay scale of Rs. 635-890 and the Vidyut Parishad Field Kamgar Union had suggested the lowest scale of Rs. 800-1200. These were rejected by the Tribunal as being fanciful (see paragraph 39). After rejecting the claims on the Union on the basis of needs, the Tribunal, for a family of three fixed Rs. 3.45 per day the Tribunal's calculation at paragraph 41 was as follows:

Total expenditure on 3 consumption units per month:- $3.45 \times 3 \times 30 = 310.50$ Rs.
 310.50 cost of 72 yards of clothes 12/- per yard: $12/- \times 72 = 264/-$

Thus the expenditure on clothing per month Rs. $264 - 12 =$ Rs. 72 Rs. 72.00

Rs. 382.50 Add 20% Miscellaneous of Rs. 76.50 the total Rs. 76.50 paise Rs. 459.00 Final break up- Rs. 310.50 Fooding Rs. 72.00 Clothing Rs. 76.50 Miscellaneous Rs. 459.00 In my view Rs. 460/- in round figure would be the proper pay scale of the lowest grades of the workmen per month Let us test its correctness by another method. Usually certain percentage of the V.D.A. and the amount of interim relief are added to the basic pay. Accordingly the pay scale would come to Rs. 320/- Rs. 80/- I.R. "Rs. 70/- of the V.D.A. It comes to Rs. 470/- let us test it from yet another angle. In 1974 when the All India Consumers Price Index number was 384 (1960 = 100 base year) the pay scale of the workmen of the lowest grade was Rs. 320/- on 1.4.1983 the price index number it comes to about Rs. 494/-. It may be stated here that hundred per cent neutralization is not possible in the present circumstances.

The above will show that the figure of Rs. 460/- was taken by the Tribunal as complete neutralisation-as far as possible. To the aforesaid figure of Rs. 460/- per month, the Tribunal added Rs. 90/- at a flat rate. The Tribunal, therefore, recommended the pay scale of Rs. 550/- for the lowest grade of workmen. The pay scale awarded thus brought about complete neutralisation of erosion in wages.

17. Mr. Garg, learned Counsel for the workmen evaded the question in regard to the principle on which the pay scale had been awarded by Tribunal. He stated that there was no basis for the pay scale suggested but it was just given of the cuff and that there was no principle behind it. I regret, evading a question cannot advance a case but I can appreciate the difficulty of learned Counsel for the workmen in not accepting that the suggested pay scale was intended to off-set the price rise and neutralisation of wage rise. This principle was enunciated clearly by the Tribunal at paragraph 50 of its award where it was laid down as follows:

The well recognised purpose of pay revision and granting dearness allowance to the employees is to neutralise the erosion in the wages of the workmen caused to the price spiral.

18. Let us examine the proposition enunciated on behalf of the workmen in regard to the content of the expression "Dearness Allowance at Central Rates" from another angle to realise the error of the workmen. The submission urged on behalf of the workmen is that once dearness allowance at central rates has been awarded the principle of slabs for payment of dearness allowance must relate back to 1960 and on that basis the workmen were entitled to 75.5% of the salary as dearness allowance on 1.4.1983. Assuming (though not accepted), this position as correct what will be the situation of wages/pay scales are once again revised in 1988 wherein the provision maybe made for D.A. at Central rate? Will the workmen be justified in once again claiming number of slabs reckoned from 1960 payable to workmen? In my humble view, it would be absolutely wrong. The neutralisation living taken place in 1983 as observed by the Tribunal, the

rise in dearness allowance in 1988 would be only to the extent of the rise in index number from April, 1983 to April, 1988. That is why I have brought out succinctly the various points of neutralisation. Neutralisation having taken place in 1983, the workmen would not be entitled to any dearness allowance on that date but they will be entitled to dearness allowance on account of future hike in prices.

19. The erosion in wages thus having been neutralised question arose about dearness allowance. Since the neutralisation of price rise had been brought about the question of dearness allowance would arise only in the eventuality of subsequent price rise in consumers price index. Supposing there was no price rise after 1.4.1983, could there be any claim for dearness allowance in my view, it is reasonable to presume that dearness allowance could be granted only for subsequent erosion in wages. That is the process of reasoning of the Tribunal. It then considered what should be the dearness allowance which should be paid to the workmen for subsequent rise in price. The Tribunal took note of the fact that the dearness allowance had been granted to the officers at Central rates from 1.3.1979. It is significant to note that the pay scale of the Junior Engineer had been revised with effect from 1.3.1979. They were, therefore, granted D.A. at Central rate from 1.3.1979. It is significant that they were given D.A. at Central rate from 1.3.1979 not from 1960. They were not granted D.A. at Central rate from 1960. This is a clear indication of the fact that D.A. at Central rate does not necessarily mean D.A. reckoned from 1960, the base year of Index number. One sentence at paragraph 43 in the order of the Tribunal is rather significant. It reads as follows:

I have fixed Rs. 550/- including Rs. 70/- out of the amount payable as V.D.A. and Rs 90/- minimum guarantee increase. The remaining amount of V.D.A., if any, shall go towards the payment of increased D.A., in the shape of D.A. at Central rate.

And again a few sentences later it observed as follows:

So, the Board should not grudge the modest increase in the pay scales and D.A. Workmen also should have no objection in accepting the revised scales in as much as in fixing the new scales rising trend of prices of the essential commodities has been taken into consideration and the new scales have the effect of utmost neutralization of erosion in wages. To guard against future price hike dearness allowance at central rate has been provided.

The above brings out in clear profile that dearness allowance was granted to the petitioners to guard against future price hike not against price hike which had taken place between 1960 and 1983. Why was it so done? That was awarded for the simple reason that the price rise between 1960 and 1983 had been taken care of by the various awards of the revised pay scale which brought about complete neutralisation of erosion in wages.

20. The workmen were getting dearness allowance prior to April, 1983, which

was known as variable dearness allowance. The V.D.A., was partly offsetting the erosion in wages. In contrast, thereto, the Tribunal awarded dearness allowance at central rate to the workmen. Thus all that the Tribunal did was that instead of variable dearness allowance it awarded dearness allowance at Central rates. There should be no difficulty in appreciating the expression why "dearness allowance at Central rate" was used That was in contra distinction to variable dearness allowance. Whereas in terms of the variable dearness allowance principle if the index number arose by ten or more points over 188 (base year 1960 equivalent to 100) the dearness allowance would rise for the succeeding half year by only 0.75 paise for each point. If the consumer price index number fell by ten or more points the variable dearness allowance would fall by 0-75 paise per point, but not below 188. This was variable dearness allowance (see paragraph 48 of the award). Ramand Singh, Chairman of the Second Wage Board fixed at Rs. 130 per point With this variation the variable dearness allowance continued. In terms of Central dearness allowance, the formula is that on the rise in price by 8 points one slab is allowed per month. This comes to roughly Rs. 3 88 per point. Thus whereas variable dearness allowance meant rise of 1.30 paise per point, the Central dearness allowance means 3,88 per point of a slab. This is what the Tribunal meant by awarding dearness allowance at Central Rate. It is obvious that the Tribunal did not award dearness allowance commencing from 1960. The Tribunal awarded dearness allowance from 1.4.1983. On what rate would be the dearness allowance paid? At Rs. 3.88 per point on the rise in price by one slab i.e. by 8 points. There should be no difficulty in understanding the word dearness allowance at Central rate was used to distinguish if from V.D.A. variable dearness allowance). The year 1960, the base year, had no relevance with it. In my view the submission urged on behalf of the workmen that the Tribunal awarded dearness allowance at Central rate calculated from 100 index number is eruditely untenable. If the Tribunal intended to make 1960 as starting point, there was no reason why the Tribunal should have observed at paragraph-43 (last sentence) that the future rise in price index would be taken care of by the dearness allowance. I would once more like to repeat the last sentence of paragraph-43 where the Tribunal directed that "to guard against future price hike dearness allowance at Central rate has been provided. "Thus, the dearness allowance at Central rate was to guard against future price hike not for the past. The future price hike would be the hall mark of the Central dearness allowance, not the price hike which took place between 1960-1983.

21. In my concluded opinion all that the Tribunal awarded was dearness allowance at Central rate which meant that dearness allowance would be paid to the workmen for every rise in price by 8 points for future rise in index number i.e., one slab would bring about rise of Rs. 3.88 per point, in contra distinction to the variable dearness allowance of point 1.30 for one slab of 10 points. This is the meaning of the award of the Tribunal. At Paragraph 64(2) the pay scale was to take effect from 1.4.1983 and the dearness allowance also was to take effect from the same date not from 1960. In future, rise in price, would mean payment

of dearness allowance of Rs. 3.88 per point by rise of one slab.

22. The quibble about "as paid to officers of the Board" is meaningless. The word "as admissible to officers of the Bihar State Electricity Board" was used only to highlight that the workmen were being treated in the same manner as officers of the Board had been treated. The grievance of the workmen was (hat whereas the wages of the officers had been revised and they had been given dearness allowance central rate. The workmen had been denied. To offset this comment and to mollify the workmen it was mentioned in Annexure-1 to the writ application that the same rate of clearness allowance would be paid to the workmen as was being paid to the officers. The Board was only trying to refute the charge, that it was viewing the interests of the workmen with Nelson's eyes. Dearness at Central rate only means that for every rise in price by one slab i.e., 8 points the dearness allowance will be granted for every point at the rate of Rs. 3.88. It does not imply that the deafness allowance would be paid as if it was being paid for the first time to offset the rise in price since 1960. Even if the word "as admissible to the officers of the Bihar State Electricity Board in the revised scale of pay had not been mentioned in Annexures 1 and 2 the effect would have been the same. The workmen were being paid the revised pay plus dearness allowance to offset any rise in price after 1.4.1983. At what rate the off-setting would take place? The answer is Rs. 3.88 per point, after one slab of rise in index number. I would not hesitate for a moment to strike down the words "as admissible to officers of the Bihar State Electricity Board" in the revised scales of pay, if it had meant any difference to the workmen. I have not the least doubt that striking down this expression will not mean any extra benefit to the workmen. I, therefore, refrain from striking down those words of Annexure-1 to the writ application.

23. Having mentioned above the content of the words "dearness allowance at central rate" it is not difficult to appreciate that on 1.4.1983 none of the workmen would receive anything as dearness allowance. On 1.5.1983, for workmen drawing up to Rs. 800 per month 2 per cent of the pay (minimum 7.82) and for workmen drawing from Rs. 801 to Rs. 1,000 would be entitled to 7 percent of the pay (minimum Rs. 16 and maximum Rs. 30). This would be so because the implementation order came on 18.10.1985, i.e., two and a half year from the effective date 1.4.1983. In the meantime there had been rise in price. Since the prices were rising constantly there was constant increase in the percentage of dearness allowance. In my view Annexure-2 showing the dearness allowance of Rs. 211.35 plus the amount us calculated in the authenticated table was complete implementation of the award. Annexure-2 is in terms of dearness allowance at central rates. I have purposely not used the words "as admissible to officers". It represents dearness allowance at Central rates to the workmen. I have considerable difficulty in accepting the connotation of the expression "D.A. or central rates" as suggested by Mr. Aftab Alam, learned Counsel for the workmen respondents in L.P.A. 52 of 1988.

24. I should like to make it clear here that Mr. Shyama Prasad Mukherji, learned Counsel for the workmen in L.P.A. 51 of 1938 did not endeavour to indicate the importance of the words "dearness allowance at Central rates". All that he submitted was that the Board had no jurisdiction to alter, amend or modify the award in any manner. There should be no controversy over this aspect of the proposition. An award having been rendered an Industrial Tribunal, the parties to the reference have no jurisdiction to alter or minify it. I would not for a moment suggest that the Board was entitled to alter the award nor did learned Advocate General appearing on behalf of the Board advanced any such suggestion. He was can did in conceding that the award is sacrosanct and that cannot be modified or altered by the Board nor can be enlarged by the workmen of this Court. Thus this Court was called upon to hold what was the award. I have not the least doubt that the award was to pay clearness allowance at Rs. 3.58 per point per month for every rise in one slab after 1.4.1983 The reckoning point for the workmen in regard to dearness allowance was 1.4.1983. It cannot be 1960 by any process of imagination. The neutralisation of erosion in wages having taken place in 1983, there was no case for dearness allowance by calculating from a date anterior to neutralisation. The Tribunal made this clear in unmistakable terms. I regret I have some difficulty in agreeing with the proposition propounded by learned Single Judge at Paragraph 8 of the judgment that there had been no denial by the Board in regard to the stand of the workmen that they would be entitled to 75 5 per cent as dearness allowance on a salary of Rs. 550 per month. It was specifically denied and put in issue. The Central Government employee would not get 75.5 per cent of a basic pay of Rs. 550 if there had been neutralization at any point after 1960, the reference to the base year is only for the purpose of calculating the amplitude of the rise in price indeed. That is not the quantum of the deafness allowance to which the workmen would be entitled. The Board has specifically denied that in terms of the award the workmen would be entitled to dearness allowance at 75.5 per cent of the basic pay on 1.4.1983. In fact that is the central point in the whole controversy. That is the only rub between the parties. The learned Single Judge was not fair in stating at Paragraph B that the assertion of facts had not been denied or disputed in the return filed by the Board. The whole controversy veers round the content of the words, "D.A. at Central rate". In my view, as I have said earlier, it only means 3.88 per point per month for every rise of one slab after 1.4.1983 and nothing else.

25. Mr. Shyama Prasad Mukherji contended that the Board was not paying dearness allowance on 1.4.1983, as shown in Annexure 2 to the writ application, and therefore, Annexure 2 is not a proper implementation of the award. In my view the submission is fallacious. The Tribunal ordered that the proper date of implementation of the award was 1.4.1983. Therefore, on that date the workmen would not be entitled to anything except Rs. 211.30.

26. The above would be enough to allow the appeals and set aside the judgment of the learned Single Judge but there is yet another aspect of the matter for which reason the judgment of the learned Single Judge is unsustainable. The

position is that after the award of the Tribunal and after issuance of Annexures-1 and 2 of the Board, several workmen moved the labour court u/s 33-C(2) of the Industrial Disputes Act, for computation and payment of salary and dearness allowance to them in terms of the award. In this behalf, they challenged the legality of Annexure-2 in respect of payment of dearness allowance. While that matter was pending consideration before the labour court, the petitioner in the two writ applications moved this Court. C.W.J.C. No. 1370 of 1986 was filed on 12.3.1986. It was admitted on 13.5.1986. The other writ application C.W.J.C. No. 790 of 1986 was filed on 12.2.1986. This application was admitted on 13.5.1986, by L.M. Sharuia and S.S. Hasan, JJ. In this order it was observed that during the pendency of the writ application it would be open to any workman of the Board to file any application u/s 33-C(2) of the Industrial Disputes Act. Before the writ application could be finally heard the labour court by judgment dated 28.4.1987 held that Annexure-2 to the writ application i.e., the implementation order was in accordance with the award. The application u/s 33-C(2) tiled by these several workmen were dismissed. The labour court held as follows:

So I come to the conclusion that the Board has released the same number of slab with the same percentage of D.A. as the officers of the Board are getting. I am of farmer opinion that the Board has fully implemented the award of the Tribunal in respect of D.A. at Central rate. In view of the above discussions made, there is no need of any computation.

Those workmen moved this Court by writ application challenging the judgment of the labour court in regard to the implementation of the award. That was C.W.J.C. No. 2201/87. That application, however, was withdrawn by the petitioners on 22.3.1988. Thus the verdict of the labour court in regard to the implementation of the award had become final when the writ application, which had given rise to the present L.P.A., came up for consideration. It was impressed upon the learned Single Judge that a duly constituted Tribunal in exercise of statutory powers u/s 33-C(2) having given its verdict this Court in its writ jurisdiction should not reconsider the same matter as there was apprehension of contradictory orders being passed. The learned Single Judge did not fully appreciate the stand of the leopard in regard to the effect of the order of the labour court. The submission was not that the writ application would be barred by the principles of resjudicata but that the principle of inconsistent decrees had to be considered. The Industrial Disputes Act is a complete Code in itself for resolving industrial disputes Order having become final in regard to some workmen that should be allowed to hold the field. Any other court would not be justified in taking a different view of the matter simply because the status of the other authority or court is higher than that of the authority, whose order has become final. In the instant case, the workmen who had moved the labour court u/s 33-C(2) cannot with any justification call upon the Board to pay a sum different from one directed by the labour court. The workmen who have moved this Court in writ jurisdiction would be entitled to a higher rate of dearness allowance if their claims succeeded. Obviously thus there would be inconsistent positions in regard to payment of

dearness allowance. This aspect of the matter deserved a more serious consideration. It was not a question of the status of the High Court vis-a-vis the officer presiding over the labour court but it was a question of law being followed. We have given to ourselves a democratic pattern which means that our society is a society of laws and not of men, The question is not whether a subordinate Judge is superior or a High Court Judge but the question is where the order of a subordinate Judge-which is the labour-court has become final whether it was entitled to respect or whether it should be ignored. In my humble opinion No. The order of the Tribunal if it has become final, is entitled to be obeyed and no other court high or low can ignore it.

27. In the present case, the writ application C.W.J.C. No. 2201 of 1987 having been withdrawn on 22.3.1988 that should have concluded matters. The learned Single Judge observed that it would be useless to push out the present petitioner to a proceeding u/s 33-C(2) as the labour court had already given its verdict against the workmen. The remedy thereto lay not in ignoring the order but in finding out any remedy available under the Industrial Disputes Act itself. Today, there are obviously two inconsistent orders one of the labour court which has become final and another of the learned Single Judge which may have become final. This Court should avoid passing any order which will amount to creating a hiatus. Even if there was merit in the case of the petitioners in the present writ application in regard to the implementation of the award yet a final order in terms of Section 33-C(2) having been passed this Court is not competent to come to a different conclusion. The least that can be said is that it would be inapt for this Court to create a legal confusion. That situation of inconsistent orders should have been avoided. A High Court should be the first authority to respect the final order of a duly constituted court or authority. I have already held that the award has been appropriately implemented. If the learned Single Judge was not satisfied about the correctness of the order in the proceeding u/s 33-C(2) the parties should have been directed to take recourse to Section 36 of the Industrial Disputes Act or by a fresh reference to a Tribunal. Some of the workmen having chosen to take recourse to a proceeding u/s 33-C(2), and that course not being illegal or unwarranted, that was the only course which should have been adopted by all the workmen. At any rate this Court would not be justified in creating a confusion situation.

28. Having given my utmost consideration to the submission urged on behalf of the counsel for the parties, I am of view that Annexures-1 and 2 are proper implementation of award of the Tribunal. I have failed to appreciate that the implementation orders represent retrograde revision. I have failed to appreciate in what manner the allowance has been lessened to the workmen. The pay scale had been raised to neutralize the erosion in wage. For future a sum of Rs. 2,11.30 is to be paid as dearness allowance plus dearness allowance at Central rate after 1.4.1983 at the rate of 3.88 per slab of 8 points per month. The justification for payment of Rupees 211,30 as resolved by the Board is based upon the principle enunciated in paragraph 43 where the Tribunal has observed

as follows:

At present the management is paying Rs. 320 to the lowest grade of workmen. It is paying Rs. 20 as interim relief. It is also paying Rs. 305 as V.D.A., to the workmen who are in the pay scales of Rs. 400. If the pay scales of workmen are fixed upto Rs. 795 there is no question of additional financial burden on the management of Bihar State Electricity Board. I have fixed Rs. 550 including Rs. 70 out of the amount payable as V.D.A., and Rs. 90 minimum guarantee increase. The remaining amount of V.D.A. if any, shall go towards the payment of increased D.A. in the shape of D.A. at Central rate.

29. In terms of the award literally i.e., payment of dearness allowance at Central rates, the view expressed by the Board in regard to offer to pay Rs. 211.30 was unwarranted. The Board has however read the observations at paragraph-43 of the award in a particular manner and awarded Rs. 211.30 to each workmen. The Board thus has not failed to implement the award of the Tribunal. Strictly speaking this would not have been payable but that is how the Board read it and has not resiled from that position. The order for payment of Rs. 211.30 paise, therefore, is invulnerable. The workmen cannot make any grievance of non-implementation of the award. In fact they have received from the Board more than the Award.

30. Mr. Jai Krishna appearing for respondent No. 5 contended that the workmen were entitled to dearness allowance at Central rate as well as additional dearness allowance. The submission was advanced on the footing that dearness allowance includes additional dearness allowance. I regret I am unable to see any substance in this submission. The Tribunal at no point of time granted additional dearness allowance to the workmen. The workmen, therefore, are not entitled to claim additional dearness allowance. The submission urged by Mr. Jai Krishna also lacks substance.

31. My conclusions therefore are as follows:

The Tribunal awarded dearness allowance at Central rates to the workmen. It was giving dearness allowance at Central rates to officers from 1979 which was the point of neutralisation for them. The point of neutralisation for the workmen was 1.4.1983. Therefore, the dearness allowance having been ordered to be paid to the workmen from that date it can well be said to be dearness allowance as paid to officers of the Board. There is no inconsistency between the two expressions both convey the same idea. There is no difference between allowance at Central rates and dearness allowance at Central rate as paid to officers of the Board. The Tribunal has expressed in unmistakable terms that dearness allowance was being awarded to oil set future rise in prices. The award of dearness allowance had no relevance to the past. The workmen themselves had demanded dearness allowance as was being paid to officers. The emphasis was on the dearness allowance at Central rates. The Tribunal said the workman shall also get dearness allowance at Central rates. The expression "as paid to

officers of the Board" was only meant to mollify the workmen and not to cut down the benefit. The conclusion is automatic if one appreciates the meaning of the expression "Dearness Allowance at Central rates." Dearness allowance at Central rates only means that dearness allowance will be paid at 3,88 per slab for increase in the price index. It does not mean that whenever dearness allowance is granted, the percentage of increase in the dearness allowance will be calculated from 1960 the base year.

33. My second conclusion is that Annexures-1 and 2 to C.W.J.C. No. 790 of 1986 represent proper implementation of the award. It is not a retro-gate revision of wages.

34. My third conclusion is that in view of the final orders passed u/s 33-C(2) of the Industrial Disputes Act, this Court should not have refrained from issuing any writ by interpreting the Award.

35. Relying upon the decision of the Supreme Court in Smt. Asha Devi v. Dukhi Sao and Anr. 1974 SC 3048, it was laid down that any Letters Patent Appeal against the decision of the Single Judge in a first appeal, there is no limitation that the Letters Patent Appeal Bench can hear only questions of law. It was laid down that whole matters-facts and law are open questions before the Letters Patent Appeal Bench. Bearing that in mind, we have considered the matters as an original court in all their ramification and have recorded findings accordingly.

36. For all the reasons stated above, I am of the view that the appeals must be allowed. The order of the learned Single Judge is set aside and the writ applications are dismissed accordingly. There will, however, be no order as to costs.