

(1968) 05 BOM CK 0001

In the Bombay High Court

Case No : Application (I.T.) No. 177 of 1968 in Reference (I.T.) No. 216 of 1965 and Reference (I.T.) No. 235 of 1963

Dadajee Dhackjee and Co. (Private) Ltd., Bombay

APPELLANT

Vs

Its Workmen

RESPONDENT

Date of Decision : 27-05-1968

Acts Referred:

Industrial Disputes Act, 1947 — Section 33, 33(1)

Citation : (1968) 2 LLJ 561

Hon'ble Judges : F.H. Lala, J

Bench : Single Bench

Judgement

1. This is an application under S. 33(1)(a) of the Industrial Disputes Act, 1947, seeking permission for a charge in the conditions of service pertaining to the dearness allowance payable to the above workmen. The industrial dispute relating to the dearness allowance of the workshop employees and sub-ordinate staff is pending adjudication in Reference (I.T.) No. 216 of 1965. Another Reference (I.T.) No. 235 of 1963 is also pending before this tribunal and is between the same parties. The applicant-company is paying dearness allowance to the workmen concerned at the revised textile scale of dearness allowance as per the award of the industrial tribunal of Sri J. A. Baxi. The company alleges that it has found it inevitable to continue its existence unless the dearness allowance payable to the workmen is reduced by at least 40 per cent. Reduction of the allowance would amount to a change in the conditions of service to their prejudice and hence the express permission of this tribunal has been sought.

2. The Engineering Mazdoor Sabha, Bombay, filed a written statement and raised the following contentions. The present application made by the company is not maintainable in law. The dispute regarding the revision of dearness allowance scheme raised by the sabha has been referred to this tribunal for adjudication and it is pending in Reference (I.T.) No. 216 of 1965. By this application made during the pendency of the reference, the company seeks to reduce the dearness

allowance. The application is, therefore, illegal and mala fide. The applications under S. 33 concern interim relief and they cannot deal with substantial matters such as reduction in the dearness allowance. The object of the section is to maintain the status quo between the parties and the object would be defeated if the application is permitted or granted. The change in the dearness allowance awarded by the tribunal of Sri J. A. Baxi can only be made by another contract which can be imposed upon the parties by the award or by an agreement.

3. The order made in miscellaneous application cannot revise the statutory contract.

4. The question that is raised before me is whether the application for permission to reduce the dearness allowance made under S. 33(1) of the Industrial Disputes Act is maintainable in view of the pendency of the reference sponsored by the sabha for upward revision of the dearness allowance scheme, namely, Reference (I.T) No. 216 of 1965. I find that the application is in law maintainable but it is not proper and just to hear and dispose it of before the disposal of the main Reference (I.T) No. 216 of 1965.

REASONS :

5. The dispute of the workmen with respect to the dearness allowance was sponsored by the sabha and it was adjudicated by the tribunal of Sri J. A. Baxi in Reference (I.T.) No. 411 of 1958. The sabha has now demanded upward revision of the dearness allowance scheme and Reference (I.T.) No. 216 of 1965 relates to the demand. By this application the company requests permission to change the conditions of service by permitting reduction of the dearness allowance by 40 per cent or a lesser percentage with effect from 1 October, 1967 or other suitable date. It is, no doubt, true that dearness allowance forms a part of wages and is, therefore, one of the conditions of service. The question, however, is whether the dearness allowance already awarded by the industrial tribunal can be permitted to be reduced in this application during the pendency of the dispute for its upward revision which is pending before me. Section 83(1) of the Industrial Disputes Act provides for prejudicial alteration of the condition of service applicable to the workmen with the express permission in writing of the tribunal before which some other or the same dispute is pending. Under this provision the tribunal can grant or refuse permission to the employer to effect the change. The effect of the permission is to remove the ban imposed by S. 83. The permission does not validate the change in service conditions and it would not stop the workmen from challenging the change permitted. In this case the dispute raised by the workmen is with respect to the inadequacy of the dearness allowance and it is pending in Reference (I.T) No. 216 of 1965. To deal with the said matter in the other way and in the result, to reduce the dearness allowance by removing the ban imposed on the rights of the employer would create complications. The object of S. 33(1) is to permit a change in the conditions of service of the workmen on prima facie evidence by way of interim relief. The application for permission is for a relief of an interim nature and its disposal would not conclude

the matters particularly when the substantial dispute is pending before me in Reference (I.T) No. 216 of 1965. The hearing of the application and passing orders in favour of the company to the effect that the ban is removed, would unnecessarily complicate the issue regarding the adequacy or inadequacy of the present dearness allowance rate. I think that the application for reduction of dearness allowance scheme is tenable but it is not fair and just to decide it by itself.

6. In the result, I direct that the application should be heard with the main reference.