
(2010) 12 AHC CK 0007

In the Allahabad High Court

Case No : Special Appeal No's. 1483 and 1730 of 2007

Govind Bhawan Karyalaya

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 23-12-2010

Acts Referred:

Minimum Wages Act, 1948 — Section 2, 3, 3(1), 3(2), 4

Citation : (2011) 2 ADJ 357 : (2011) 2 LLJ 769 : (2011) 1 UPLBEC 403

Hon'ble Judges : Sunil Ambwani, J; Kashi Nath Pandey, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The question of law, that requires consideration in these two Special Appeals, is as to whether the "Variable Dearness Allowance" (VDA) in the notification dated 31.1.1992 issued u/s 4 of the Minimum of Wages Act, 1948 (in short, the Act) is linked up with the basic rate of wages.

2. The Govind Bhawan Karyalaya with its registered office at 151 M.G. Road, Kolkata is a Society registered under the Societies Registration Act engaged in religious and charitable works including publication of religious books. The Society carries on various activities including running a printing press at Gorakhpur known as "Geeta Press". The books printed and published are sold at nominal prices at various places in the country. The press is the major source of affordable religious books in the country.

3. The Society employs unskilled, semi-skilled, skilled and highly skilled staff. They are paid wages in accordance with the notifications issued from time to time by the State Government under the Act.

4. Learned Single Judge has dismissed both the writ petitions challenging the notification dated 31.1.1992 issued u/s 4 of the Act for the reasons:

A. The consumer items have got varying prices dependant upon its quality. In the

consumer basket the most essential items are foodgrains and cloth. The price of foodgrains and cloth varies on their quality. The persons, having different incomes including pay package, consuming a particular commodity, choose quality of that commodity in accordance with their income. If the increase of different qualities of the commodities are not afforded, then the people using different qualities of the same commodities are not affected by the increase flatly or uniformly. They are affected in proportion to the effect of that commodity. The VDA with the basic pay is more rational and logical than flat VDA.

B. In certain cases the formula provided under the notification results in more than 100% neutralisation. This argument is dependent upon the presumption that all classes of workers, likely to be affected by the notification, use same quality of commodities having same price. This presumption is not correct. The same principle will apply to services also. The increase is likely to be percentage-wise and not flat.

C. The challenge to the impugned notification, that the notification divides the clerical staff into two cadres, is not correct. The notification has not bifurcated the cadres of the clerical staff. The clerical staff has been classified into two groups only for the purposes of payment of dearness allowance. The classification is on the basis of length of service, in the particular establishment, i.e. one group consists of those, who have completed five years in the establishment, and others, who have not completed five years in the establishment. The classification is quite rational.

5. Before considering the submission raised by Shri Navin Sinha, Senior Advocate appearing for the Appellant, and Shri R.N. Singh appearing for the workmen Respondents, it will be appropriate to refer to the notifications issued prior to the impugned notification, and the legal position, as on date.

6. It is admitted to both the parties, that Section 4 of the Act provides for fixation of minimum wages for the employees of private printing press. Section 2(d) of the Act defines cost of living index number; Section 3(1)(b) provides for review of the minimum rates of wages and Section 4(1) provides for the minimum rates of wages. These provisions relevant for the purpose of deciding the appeals are quoted as below:

Section 2(d) of the Act defines cost of living index number as follows:

Cost of living index number", in relation to employees in any scheduled employment in respect of which minimum rates of wages have been fixed, means the index number ascertained and declared by the competent authority by notification in the Official Gazette to be the cost of having index number applicable to employees in such employment.

Section 3(1)(b) of the Act provides for review of the minimum rates of wages, which is being quoted hereunder:

(1) The appropriate Government shall in the matter hereinafter provided;

(b) review at such intervals as it may think fit, such intervals not exceeding five years, the minimum rates of wages so fixed and revise the minimum rates if necessary;

Provided that where for any reason the appropriate Government has not reviewed the minimum rates of wages fixed by it in respect of any scheduled employment within any interval of five years, nothing contained in this clause shall be deemed to prevent it from reviewing the minimum rates after the expiry of the said period of five years and revising them, if necessary, and until they are so revised the minimum rates in force immediately before the expiry of the said period of five years shall continue in force.

Section 4(1) of the Act which provides for the minimum rates of wages is being quoted hereunder:

(1) Any minimum rate of wages fixed or revised by the appropriate Government in respect of scheduled employments u/s 3 may consist of

(i) a basic rate of wages and a special allowance at a rate to be adjusted at such intervals and in such manner as the appropriate Government may direct to accord as nearly as practicable with the variation in the cost of living index number applicable to such workers (hereinafter referred to as the "cost of living allowance");

(ii) a basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concession rates, where so authorised; or (iii) an all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

7. The State Government had earlier issued a notification dated 12.1.1983, fixing VDA irrespective of the basic pay in the impugned notification dated 31.1.1992 issued by the State Government in exercise of powers under Clause (b) of Sub-section (1) and Clause (c) of Sub-section (2) of Section 3 read with Clause (i) of Sub-section (1) of Section 4 of the Act in supercession of the earlier notification dated 20.6.1986 and after consulting Advisory Board and after having considered the objections and suggestions received in respect of the proposals published on 31.7.1991, the minimum rates of wages were revised in respect of the employees of the private printing press as follows:

Minimum rates of wages in respect of employees employed in the employment in Private Printing Presses in Uttar Pradesh.

(1) The minimum time-rates payable to adult employees for different classes of work on 167 points of All India Consumer Price Index Number (1982 = 100) shall be as follows:

Sl. No.

Category of workers

Minimum rates of
wages for adult
employees Rs.

Annual
increments

Rs.

1.

Unskilled

750.00

5.00

2.

Semi- Skilled

880.00

8.00

3.

Skilled- II

1011.00

12.00

4.

Skilled- I

1066.00

14.00

5.

Clerical staff

(A) Clerk Grade - II

(B) Clerk Grade - I

1066.00

1229.00

14.00

17.00

Note: Classification of above mentioned employees is shown in the Appendix.

(2) Cost of Living Allowance: For rise in the Consumer Price Index Number over 167 points of All India Consumer Price Index Number (1982 = 100) the dearness shall be neutralised 100 per cent and Cost of Living Allowance shall be payable provided that adjustment shall be made in April and October each year on the basis of the average of the Price Index Number for the July to December of the preceding year and January to June of the year in question respectively.

Illustration-Suppose the average of Consumer Price Index Number for January, 1991 to June, 1991 is 203 points, the increase in the cost of Living Allowance payable per month with effect from October 1, 1991 or since the date of notification for an un-skilled employee shall be as follows:

$203 - 167 \times \frac{750}{36} \times \frac{750}{750} = \text{Rs. } 161.68$ _____ 167

167 (ii) The employee shall earn increment after one year from the date of enforcement of this notification. Therefore, the employees in the respective categories shall be entitled to Cost of Living Allowance after adding the said increment to their basic wages. For example, if the average of Consumer Price Index Number for July to October, 1991, works out to 217 points the Cost of Living Allowance admissible after first increment to an un-skilled employee shall be as follows:

$(217 - 167) \times \frac{755}{50} \times \frac{755}{755} = \text{Rs. } 226.05$ 167
167 (3) to 11 ----not relevant.

APPENDIX CLASSIFICATION OF WORKERS (a) to (c) not relevant

(d) Clerical Staff:

Grade-1

Minimum educational qualification High School and must have an experience of five years work in the establishment:

1. Head Cashier
2. head Accountant
3. Stenographer
4. Senior Salesman
5. head Clerk
6. Employees doing similar nature of work by whatever name called

Grade-II

Minimum educational qualification High School and one who has not completed five years in the establishment:

1. Cashier

2. Accountant
3. Munim
4. Typist-Clerk
5. Storekeeper
6. Timekeeper
7. Salesman
8. Employees doing similar nature of work by whatever name called.

8. In *Hindustan Lever Limited Vs. B.N. Dongre and Others*, it was held that the concept of dearness allowance was introduced during the second world war to set off the increase in the cost of living caused by inflation. It was either linked to the cost of living index or was given by way of flat increases. In case of former, it was granted to all the income groups at a flat rate or was graded on a scale admissible to different income groups diminishing with rise in income. The object was to protect real wages and to provide cent per cent neutralisation. The National Commission on Labour, 1969 recommended 95% neutralisation for minimum wage earners but it was reluctant to recommend the same rate for workers in higher wage groups for fear that it may spark off inflationary trends and would cause distortion to the wage structure because employees in different pay scales are not given dearness allowance at a uniform rate but at a tapering rate. The persons getting higher pay have a cushion to absorb the rising prices. Further in order to continue to pay the difference in the pay packets which may tend to meet at the same level, if 100% neutralisation is allowed. The National Commission on Labour recommended that the neutralisation should not exceed 100% and that the wage differentials should not be so distorted as to make promotion officers' levels unattractive. The Supreme Court held that the Company's case for neutralisation exceeding 100% was not correct. The employer should not be allowed to impose control or ceiling on the dearness allowance on the ground that it distorts the vertical relativity. The clerks receive the emolument exceeding what is paid to Junior Executives and or it is inclined to accept promotion. The workers' constitute a class by themselves and their wage determination is under the provision of the ID Act. The Junior Executives do not belong to that class. They enjoy certain status and perquisites which the workers do not receive. The better rate to overcome the difficulty is to make junior executive grade more attractive rather than denying the workers what they have been receiving for longer.

9. The challenge to the notification by the Petitioners-Appellant was initially dismissed by learned Single Judge on 16.10.1997. In Special Appeal No. 928 of 1997, a Division Bench of this Court set aside the judgment of learned Single Judge, and remanded the matter for reconsideration. The Division Bench was of the opinion, that learned Single Judge has not given any reasoning as to why the dearness allowance is linked to the cost of living index. Since he had not

considered this aspect of the case and had not given reasons, learned Single Judge was required to consider whether dearness allowance is linked to the cost of living index, or to the rate of basic wage and further to consider the question whether 100% neutralisation of dearness allowance and the classification of the workmen was valid. It was made open to the parties to argue all the aspects of the case.

10. The Division Bench, in allowing the Special Appeal, observed in its judgment dated August 24, 2004, as follows:

The impugned notification gives a formula for calculating the cost of living allowance which is also known as dearness allowance. The formula shown is as under:

$$(203 - 167) \times 750 \div 36 \times 750 \text{ -----} = \text{Rs. } 161.88$$

167 167
The figure 750 is nothing else but the minimum rate of wages for an unskilled workman as would be clear from a perusal of the said Notification. The illustration in the notification shows that Rs. 161.68 would be the dearness allowance when the price index number rises from 167 to 203. Therefore, prima facie we find substance in the contention raised by the learned Counsel for the Appellant, namely, that the calculation of dearness allowance is linked with the basic rate of wages and is not linked with the variation in the cost of living index.

11. Shri Navin Sinha, learned Counsel for Appellant submits that learned Single Judge has ignored the observations of the Division Bench deciding the Special Appeal and has also ignored the arguments of the Petitioner-Appellant. The State Government does not have jurisdiction to fix wages other than minimum wages under the Act. The observation of learned Single Judge, that the persons having different incomes including pay package, consuming a particular commodity choose quality of that commodity in accordance with their income, is erroneous and misconceived. Such a consideration is not in consonance with the fixation of dearness allowance under the Act. The minimum wages deal with minimum rates of wages, which fulfill bare needs of person, and not fair wages. Shri Sinha submits that the special allowance has to be fixed as dearness allowance in relation to the increase in cost of living index rate of per point increase. It has to be less than or equal to 100% neutralisation but it cannot be more. Under the impugned notification dated 31.7.1992, the effective rate of per point increase in cost of living index is more than 100%. He further submits that under the Act, the State Government cannot provide any conditions of service of promotion, which are fixed under the Industrial Employment (Standing Orders) Act, 1946, which is a special law for service conditions of the employment. The bifurcation of the clerks in two different classes based on their educational qualification and experience in the notification is wholly without jurisdiction. The State Government does not possess such power to fix service conditions under the Act.

12. Shri Sinha has relied upon Ahmedabad Mill Owners' Association Etc. Vs. The

Textile Labour Association, and The Workmen represented by Secretary Vs. The Management of Reptakos Brett and Co. Ltd. and another, . He submits that in Ahmedabad Millowners' Association's case (supra) the Supreme Court, while confining its decision to the facts of the case, held that the consumer price index number measures nothing but changes in prices. These are distinct from a cost of living index number. The Government, therefore, changed the name to consumer price index numbers to cost of living index numbers in accordance with international recommendations and growing practice in other countries. This index number is meant to show over a period of time the average percentage change in the prices paid by the consumers belonging to the population group proposed to be covered by the index for a fixed list of goods and services consumed by them. The average percentage change, measured by the index, is calculated month after month with reference to a fixed period, which is known as the "base-period" of the index. The object is to measure the effect of price-changes only to be determined with reference to a fixed list of goods and services of consumption, which is known as a fixed "basket" of goods and services. The index does not purport to measure the absolute level of prices but only the average percentage change in the prices of a fixed basket of goods and services at different periods of time. There are some preliminary considerations relevant in the construction of consumer price index numbers. The first one is the purpose, which includes the definition of the group of consumers to which the index is intended to relate and then to determine the consumption level and pattern of the population group at a period of time, which generally becomes the base period of the index numbers. Usually the list of commodities include food, fuel and light, clothing and others; items of services, such as barber charges, bus fare, doctor's fee, etc. It is the combined total of the items of commodities and services, which constitutes the basket. Thereafter a description of the quality of each commodity and service have to be measured. Generally, one quality consumed by the population group is selected for each commodity and service. Having determined the consumption level and the pattern of the population group, the next task to attempt is to arrange for the regular collection of price data for the various qualities of commodities and services, which enter the basket has to be determined and with this material the consumer price index has to be compiled from month to month. Each item in the index is given a weight to represent the relative importance of the price changes recorded for that item. This weight means nothing more than the percentage of expenditure on each item of goods. The main basis, for determining the weights of respective commodities and services, is the investigation of the family budget. As only a sample of items from each group is included in the index, the other items are also weighed so that the total expenditure of the average budget is fully taken into consideration.

13. In paragraph 70 onwards the Supreme Court held that the claim of employees for a fair and higher wage is based on the concept of social justice. Better wages are paid to allow the employees to live in fair comfort and to

discharge their obligation to the members of their families in a reasonable way. The dearness allowance is provided for adequate neutralisation against the ever-increasing rise in the cost of living. The construction of wage structure must be tackled on the basis that such wage structure should not be changed from time to time. The financial position of the employer has also to be carefully examined including the profits, which the industry is making and the prospect of the industry in future. Unusual profit made by the industry for a single year as a result of adventitious circumstances, or unusual loss incurred by it for similar reasons, should not be allowed to play a major role in the calculations, which industrial adjudication would make in regard to the construction of a wage structure. The rise in price may be taken into consideration, which may result from the fixation of wage structure and the reasonableness of the additional burden, which may be imposed upon the consumer. The fair pay structure is constructed by the industrial adjudication with a proper care to revise the wage structure as employees are reluctant to face a reduction in future. The conflicting claims of labour and capital must be harmonized on a reasonable basis.

14. In *The Workmen Represented by Secretary v. The Management of Reptakos Brett and Co. Ltd.* (supra) the Supreme Court observed that the concept of minimum wage is no longer the same as it was in 1936. A worker's wage is no longer a contract between an employer and an employee. It has the force of collective bargaining under the labour laws. Each category of the wage structure has to be tested at the anvil of social justice, which is the live-fibre of our society. The Supreme Court held that in the case examined by them the company had provided its own slab system of dearness allowance linked to the cost of living index as well as the basic wage. This double linked dearness allowance scheme was included in various settlements between the company and the workmen for 30 years. The company sought to abolish the existing slab system of dearness allowance and for linking the dearness allowance in the company only to the cost of living index. It failed to prove that the present wage structure was above minimum wage and that financially it was not in a position to pay dearness allowance as per existing scheme. There was no material on record to show that what is being paid by the Company is higher than what would be required by the concept of need based minimum wage. The company was not allowed to restructure the DA Scheme by abolishing the slab system, which had stood the test of time on the ground that it resulted in over-neutralisation thereby landing the workmen in the high-wage island.

15. Shri Navin Sinha submits that notification travels beyond the scope of the Act under which it has been issued by bifurcating the employees, clerical staff into Grade-I and Grade-II based upon their minimum qualification and experience. The Minimum Wage Act provides for fixing minimum wage and not the conditions of service subject to the contract between the parties under the Industrial Employment (Standing Orders) Act, 1946.

16. Shri Navin Sinha submits that the order staying the notification was

operative upto 16.10.1997. Thereafter on 1.1.1998 there was a settlement between the employer and the workmen under which the workmen were paid as per subsequent notification dated 23.1.2006. The Society is paying more than the wages calculated in accordance with the notification, and thus there is no dispute with regard to the payment of wages and VDA after 1.1.1998. The promotional scales, however, have not been paid and that the dispute in the present case is confined to the calculation of VDA provided in the notification with basic wages, and not the cost of living index, calculated in accordance with the illustration given in the notification from the date of notification i.e. 31.1.1992 to 1.1.1998 and the bifurcation of the posts of clerical staff. The subsequent notification dated 23.1.2006 is not under challenge.

17. Shri R.N. Singh appearing for the Respondent-workmen had defended the judgment of learned Single Judge. He submits that firstly the question of minimum wage and VDA is the matter of industrial adjudication, and that the High Court should not, in the absence of relevant facts, enter into the field of calculation of dearness allowance and its linkages to the wages or costing of living index. He submits that the VDA has to be linked to a constant factor. In order to calculate the VDA, there cannot be two variable. The mathematics is not only adding but also coordination. There has to be a constant factor to calculate the VDA as a component of minimum wage, and that the constant factor is the basic wage. The VDA has to be linked to the basic wages and not to cost of living index, which is a variable factor. The neutralisation in this case is not more than 100% and that the classification is not bad nor the notification suffers from unreasonableness to interfere with it in writ jurisdiction. Shri Singh has relied upon *Airfreight Ltd. Vs. State of Karnataka and Others*, in which the Supreme Court explained the purpose of Section 4 of the Act in paras 20 and 21, as follows:

20. As stated above minimum wage must provide not merely for the bare subsistence of life but for the preservation of the efficiency of the worker and so it must also provide for some measure of education, medical requirements and amenities of himself and his family. While fixing the minimum wages, the capacity of the employer to pay is treated as irrelevant and the Act contemplates that rates of minimum wages should be fixed in schedule industries with a dual object of providing sustenance and maintenance of the worker and his family and preserving his efficiency as a worker. So it is required to take into consideration cost of bare subsistence of life and preservation of efficiency of the worker and for some measure of education, medical requirements and amenities. This cost is likely to vary depending upon the cost prevailing in the market of various items. If there are inflationary conditions prevailing in the country, then minimum wages fixed at a particular point of time would not serve the purpose. Therefore, Section 4 contemplates that minimum wages fixed at a particular point of time should be revised from time to time. Section 4 postulates that minimum wages fixed or revised by the appropriate Government u/s 3 may consist of basic rates of wages and special allowance at a rate to be adjusted at such intervals in such

manner as the appropriate Government may direct to accord as nearly as practicable with a variation in the cost of living index number applicable to such workers; alternatively, it permits the fixation of basic rate of wages with or without cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concessional rates where so authorised; or in the alternative it permits an all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of concessions, if any. The purpose of Section 4 is to see that minimum wages can be linked with increase in cost of living so that increase in cost of living can be neutralised or all inclusive rates of minimum wages can be fixed. But, from the aforesaid Sections 3 and 4, it is apparent that what is fixed is total remuneration which should be paid to the employees covered by the schedule and not for payment of costs of different components which are taken into consideration for fixation of minimum rates of wages. It is thus clear that the concept of minimum wages does take in the factor of prevailing cost of essential commodities whenever such minimum wage is to be fixed. The idea of fixing such wage in the light of cost of living at a particular juncture of time and of neutralising the prices of essential commodities by linking up scales of minimum wages with the cost of living index is provided for in Section 4 but V.D.A. is part and parcel of wages. Once rates of minimum wages are prescribed under the Act, whether as all inclusive u/s 4(1)(iii) or by combining basic plus dearness allowance u/s 4(1)(i) are not amenable to split up. It is one pay package. Neither the scheme nor any provision of the Act provides that the rates of minimum wages are to be split up on the basis of the cost of each necessities taken into consideration for fixing the same. Hence, in cases where employer is paying total sum which is higher than minimum rates of wages fixed under the Act including the cost of living index (VDA), he is not required to pay VDA separately. However, that higher wages should be calculated as defined in Section 2(h) of the Act. Section 2(h) specifically provides that value of the following items is not required to be computed for finding out whether employer pays minimum wages as prescribed under the Act:

- (i) the value of any house, accommodation, supply of light, water, medical care, or any other amenity or any service excluded by general or special order of the appropriate Government
- (ii) any pension fund or provident fund or under any scheme of social insurance
- (iii) any travelling allowance or the value of any travelling concession
- (iv) any sum paid to any person employed to defray special expenses curtailed on him by the nature of his employment or
- (v) any gratuities payable on discharge.

21. But while deciding the question of payment of minimum wages, the competent authority is not required to bifurcate each component of the costs of each item taken into consideration for fixing minimum wages, as lump sum amount is determined for providing adequate remuneration of the workman so

that he can sustain and maintain himself and his family and also preserve his efficiency as a worker. Dearness Allowance is part and parcel or cost of necessities. In cases where the minimum rate of wages is linked up with V.D.A., it would not mean that it is a separate component which is required to be paid separately where the employer pays a total pay package which is more than the prescribed minimum rate of wages.

18. Shri R.N. Singh submits that the minimum wages fixed by the impugned notification consists of basic rate of wages and VDA which is to be worked out as a special allowance with reference to the cost of living index number, with an idea of neutralisation to rising process of the essential commodities. Once rates of minimum wages are prescribed under the Act, whether all inclusive or by combining basic wage plus dearness allowance, it becomes one pay package. Where an employer is paying a total sum, which is higher than the minimum wages fixed under the Act, the VDA is not required to be paid separately. The competent authority, however, while deciding the question of payment of minimum wages, is required to bifurcate each component of the costs of each item. The dearness allowance is part and parcel of the cost of necessities. In cases where minimum rates of wages are linked up with the VDA, it would not mean that it is a separate component, which is required to be paid separately, where the employer pays a total pay package which is more than prescribed rate of wages.

19. Shri R.N. Singh submits that the Act also delegates powers to the State Government to prescribe the manner to work out the dearness allowance. In Chalatham's case the dispute, which travelled up to the Supreme Court arising out of the demand of the workers of the five Cooperative Sugar Factories of Gujarat for payment of revised U.P. Government scale for Sugar factories regarding pay, DA and other benefits, crystalized into issue as to what percentage of neutralisation of price rise can be made by providing DA. There was no dispute with regard to the manner of working out DA. The Supreme court held that the neutralisation cannot increase more than 100%. Since thereafter from time to time the base year of the price index number has changed. The old price base year cannot be applied as it is sustainable. It is necessary that the old method should continue to go on. Even the old manner of point wise was increased applicable for longer time, and it was also changed from time to time. The judgment in Airfreight's case is more nearer to the point considering the scope of Section 4 of the Act. The Supreme Court held in para-20 as above that the purpose of Section 4 is to see that the minimum wage can be linked with the increase in cost of living so that the increase in cost of living can be neutralised.

20. Shri R.N. Singh submits that the old manner of fixation of pay was discriminatory as same DA was payable to different class of workers, although, the incidence of price rise on them was different. In the latter half of 80s of the last century after considering the discrimination the Government provided the alternate method for ascertaining DA not only in the printing industry but also in

other industry and all subsequent notifications provide for same method. The change was affected after considering all suggestions/objections, in respect to the workmen, and different classes of clerical cadres have been provided, Shri R.N. Singh submits that the amendment in the Industrial Employment (Standing Orders) Act, 1947 in U.P. provides that the appropriate Government may provide for matters in the standing orders in respect to recruitment and conditions of promotion of workmen and thus the amendment has been made, and since the definition of appropriate Government in the Act and in the Minimum Wage Act is same. Therefore the power to provide qualifications in the notification is clearly referable to the powers delegated by the law.

21. Dr. Y.K. Srivastava has relied upon the judgments in Ahmedabad Mill Owners' Association Etc. Vs. The Textile Labour Association, ; Management of Shri Chalthan Vibhag Khand Udyog Sahakari Mandli Ltd. Vs. G.S. Barot, Member, Industrial Court and Another, ; Raja Bahadur Motilal Poona Mills Ltd. Vs. Girni Kamgar Sanghathana, Poona, ; Workmen Employed by Indian Oxygen Ltd. Vs. Indian Oxygen Ltd., ; Hindustan Lever Limited v. B.N. Dongre and Ors.(pars 11 and 14); Hindustan Lever Ltd. Vs. Ashok Vishnu Kate and others, ; Harjinder Singh Vs. Punjab State Warehousing Corporation, .

22. Dr. Srivastava submits that the dearness allowance is provided for adequate neutralisation against the rise in the cost of living. The wage structure cannot be changed to mitigate the cost of living. Every time prices increase, the rise in price has to be taken into consideration, for fixing the wage structure, both to neutralise the rising cost of living and the financial burden that such rise in dearness allowance will cause to the employer. The conflicting claim of labour and capital are required to be harmonized on a reasonable basis. The concept of minimum wage has undergone change. A worker's wage is no longer a contract between an employer and an employee. It has the force of collective bargaining under the labour laws. The Supreme Court observed in The Workmen Represented by Secretary v. The Management of Reptakos Brett and Co. Ltd. (supra) that each category of the wage structure has to be tested at the anvil of social justice which is the live-fibre of our society. The company was not allowed to restructure the dearness allowance scheme by abolishing the slab system which had stood the test of time on the ground that it resulted in over-neutralisation thereby landing the workmen in the high-wage island.

23. In the present case we are concerned with the calculation of wage in accordance with the notification dated 31.1.1992, upto 1.1.1998. The subsequent notification dated 23.1.2006 is not under challenge.

24. We find substance in the reasoning adopted by Shri R.N. Singh appearing for the workmen, which is different than the reasoning adopted by learned Single Judge in support the impugned notification. He submits that the question of minimum wage and VDA is a matter of industrial adjudication and in any case the variable dearness allowance has its linkage to the wage and cost of living index. There has to be a constant factor to calculate VDA and that constant

factor is basic wage. The variable dearness allowance has to be linked to basic wage and not to the cost of living index which is itself a variable factor. He submits that in the present case the neutralisation is not more than 100%. He has relied upon *Airfreight Ltd. v. State of Karnataka* (supra) in which it was provided that the competent authority is not required to bifurcate each component of the costs of each item for fixing minimum wages. The lump sum amount of minimum wages is determined for providing adequate remuneration of the workman so that he can sustain and maintain himself. The dearness allowance is part and parcel or cost of necessities. In cases where the minimum rate of wage is linked up with VDA, it would not mean that it is a separate component which is required to be paid separately, where the employer pays a total pay package which is more than the prescribed minimum rate of wages.

25. In the present case Shri Navin Sinha has not demonstrated that the neutralisation by the formula of fixing variable dearness allowance with basic wage results into more than 100% neutralisation. The minimum wages are projected under the Act. It becomes one pay package whether the minimum wage is all inclusive or combines basic wage with dearness allowance. Where employer pays a total amount which is higher than the minimum wage fixed under the Act, the VDA is not required to be paid separately. The competent authority, however, while deciding the question of payment of minimum wage, is required to bifurcate each component of the costs of each item. The dearness allowance is part and parcel or cost of necessities. The minimum wages, in the present case, linked up with variable dearness allowance, do not make the variable dearness allowance as a separate component which is required to be paid separately. It is part of total pay package.

26. In the matter of working out the variable dearness allowance on the basis of increase of cost of living index which is the cost calculated to neutralise the increased cost of items selected to be placed in a basket, the Court is not required to go into the mechanics unless the neutralisation increases more than 100% of the basic wage. The all inclusive rates of minimum wages can be fixed as total remuneration, which should be paid to the employees and not for payment of costs of different components which are taken into consideration for fixation of minimum rates of wages. Even if the variable dearness allowance is fixed taking into consideration the basic wage, if the purpose is to neutralise the rising cost of living and the variable dearness allowance does not result into more than 100% neutralisation, the end result of method of calculation cannot be faulted for fixing the minimum wages. If the employer is paying total sum which is higher than the minimum rates of wages fixed under the Act including the cost of living index, he is not required to pay VDA separately. Section 2(h) of the Minimum Wages Act prohibits certain items to be computed to find out whether employer pays minimum wages such as value of the house accommodation etc.; pension fund or provident fund; travelling allowance or travelling concessions. Any amount paid to defray special expenses by the nature of employment or any gratuitous payable on discharge excluding these amounts as is paid as minimum

wage, is not required to be bifurcated into components of cost of each items for fixing such minimum wages. The lump sum is determined for providing adequate remuneration so that the workman can sustain and maintain himself and his family. The dearness allowance is part and parcel of cost of necessities. In cases where the minimum wage is linked up with VDA, it would not mean that it is a separate component which is required to be paid separately.

27. For the aforesaid reasons, we do not find that the calculation of the variable dearness allowance with reference to minimum rate of wage is not permissible. We, therefore, for a reason different than the reason given by learned Single Judge, come to the same conclusion in holding that the applicability of the formula, for fixing the variable dearness allowance taking into account and with reference to the minimum rate of wages, does not vitiate the calculation of the variable dearness allowance so, long as the object is to neutralise the cost of living which is not more than 100%.

28. The classification of categories of clerks in the impugned notification into Grade-I and Grade-II based upon their minimum qualification and experience is for the purpose of fixing minimum wage and not for changing the conditions of service of the employees. The difference in grade and experience is subject to contract between the parties under the Industrial Employment (Standing) Orders Act, 1946, it is only where the employer has bifurcated the clerical staff into two groups, based upon their minimum qualification and experience. The minimum wages payable to them will be in accordance with the notification and not otherwise.

29. Both the Special Appeals are consequently dismissed.