

(2014) 09 BOM CK 0007

In the Bombay High Court

Case No : Writ Petition No. 1191 of 2007

Madura Coats Limited

APPELLANT

Vs

Madura Coats Employees" Union

RESPONDENT

Date of Decision : 18-09-2014

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(2), 9A

Citation : (2015) 4 ABR 785 : (2015) 1 BomCR 322 : (2015) LabIC 3329

Hon'ble Judges : M.S. Sonak, J

Bench : Single Bench

Advocate : Sudhir Talsania, Shailesh More i/b. M.S. Naik and S.M. Naik,
Advocate for the Appellant; V.A. Pai and P.N. Kode, Advocate for the Respondent

Final Decision : Dismissed

Judgement

M.S. Sonak, J.—Rule, with consent, Rule is made returnable forthwith.

2. This petition has been filed by the petitioner-employer to question the award dated 22 March 2007 (impugned award) made by the Industrial Tribunal granting the employees increase in existing rate of Variable Dearness Allowance (VDA) i.e. from 3%, 1 1/2% and 3/4% to 5%, 2 1/2 and 1 1/4 on the first slab of Rs. 100/-, second slab of Rs. 100/- and 3rd slab of Rs. 201/- and above respectively, retrospectively i.e. with effect from the date of the reference which was 28 September 1983 and further rejecting the employer's demands, which were also the subject matter of adjudication before the Industrial Tribunal.

3. The dispute has a chequered history and some reference to the same is necessary for appreciating the challenge to the impugned award.

4. The petitioner - employer, in its present form constitutes an amalgam of three companies J & P Coats India Pvt. Ltd., A & F Harvey Ltd. and Madura Mills Co. Ltd. effected on 1 July 1974. The employer was engaged in manufacture of yarns, industrial textiles and clothes. The present dispute however is restricted to the sales office of the employer, which was earlier a constituent of J & P Coats

(India) Pvt. Ltd.

5. In respect of the sales office, there existed a settlement dated 15 October 1971 between J & P. Coats (India) Pvt. Ltd. and its employees governing their working conditions. Clause 8 thereof, which dealt with the issue of dearness allowance, reads thus:

(8). The Dearness Allowance of the employees mentioned in para 1 of the Settlement is revised as follows with effect from 1.1.1971:-

6. On 22 January 1980, a fresh settlement was arrived at between the employer and employees. The relevant clause concerning dearness allowance, reads thus:

Dearness Allowance:

a) Upto 1630 of the Consumer Price Index Number for the working class in Bombay (i.e. upto the 1620-1630 bracket) D.A. will continue to be calculated and adjusted as provided for in paras 8 and 9 of the Memorandum of Settlement dated 15.10.1971 between the Company and the Union.

b) The rate of D.A. payable to the employees covered by this settlement when the CPI number for the working class in Bombay is in the 1621-1630 bracket shall be as under:-

c) Upto 1630 of the CPI number for the working class in Bombay (i.e. upto 1621-1630 bracket) variation in the rate of D.A. Each 10-point rise or fall of the index shall be as follows:-

d) Should the CPI number for the working class in Bombay rise and fluctuate beyond 1630, variation in the rate of D.A. for each 10-point rise or fall of the index shall be as under:

7. The respondent-union, on 13 November 1982 terminated the aforesaid settlement dated 22 January 1980 and raised a charter of demands, comprising in all 28 demands including inter alia the demand for restoration of DA structure, consistent with the settlement dated 15 October 1971. This was resisted by the employer.

8. On 6 April 1983, the employer gave notice of change u/s 9A of the Industrial Disputes Act, 1947 (said Act), inter alia to change the then existing slab system of DA, by a scheme in which the rate of variable dearness allowance was linked with only the Consumer Price Index (CPI) but not to the basic wages.

9. As no amicable solution with regard to the union's charter of demands and the employer's notice of change seemed in sight, the appropriate Government, on 28 September 1983 made a reference u/s 10(2) of the said Act to the Industrial Tribunal. Exhibit "A", appended to the reference order lists out the demands of the union. Exhibit "B" lists out the changes proposed by the employer.

10. In the context of dearness allowance, the union's demand No. 4, reads thus:

Demand No. 4 : Dearness Allowance

The Company shall introduce the following scheme of dearness allowance with effect from January 1, 1983:

11. The change as proposed by the employer and indicated in Exhibit "B" to the order of reference, reads thus:-

"3. Dearness Allowance:- The present scheme of Dearness Allowances will be replaced by the following with effect from 1st January, 1983.

The CPI (Simla Series) base 1960 equal to 100 as applicable to Bombay City for calculation of Dearness Allowance for the month of January, 1983 was 510 points. The Dearness Allowance applicable to CPI 510 will be Rs. 410 for all employees irrespective of their salary scales. For the rise in CPI over 510 points. Dearness Allowance will be paid at the rate of Rs. 1.20 per point rise. Should there be a fall in CPI below 510 points the Dearness Allowance will be decreased @ Rs. 1.00 per point.

Maximum Dearness Allowance payable will be Rs. 650 per month."

12. In the reference proceedings before the Industrial Tribunal, the union filed its claim statement on 30 January 1984 and the employer filed its written statement on 15 June 1984. On 10 January 1989, the employer applied for amendment on the issue of maintainability of the union's demand for revision of basic wages which was allowed by the Industrial Tribunal on 16 February 1989. Evidence was led by both parties and ultimately Industrial Tribunal made award on 10 June 1996 inter alia rejecting the union's as well as employer's demands with regard to dearness allowance.

13. In March 1996, the union preferred Writ Petition No. 462 of 1997 to challenge the award dated 10 June 1996. Paragraph 11(d) of the memo of Writ Petition No. 462 of 1997, reads thus :

"(d) The Petitioner is limiting their challenge in this petition to the rejection of the demands of (i) wage-scales; (ii) Leave Travel Allowance, (iii) Gratuity, (iv) Retirement Age, (v) Working Hours, (vi) Retrospective effect, and, they, are not pressing the demands of classification, D.A., leave, HRS, Medical allowance, Provident Fund, Interest-free Loans, Uniforms, Festival Advance, Uniform overtime allowance, Welfare Fund, Recruitment procedure, permanency and working hours for drivers. The Petitioner is also not pressing the demands of Education Allowance, Conveyance Allowance for Car Drivers and Upcountry Allowance, which have been partly given, if the demands which are challenged are to be remanded back for fresh adjudication at the time of admission."

14. The employer, on 20 August 1997 also preferred Writ Petition No. 1338 of 1997 to question the award dated 10 June 1996 to the extent it granted some of the union's demands and rejected some of the employer's proposed changes.

15. By judgment and order dated 8 March 2000, the union's Writ Petition No.

462 of 1997 was partly allowed. The award dated 10 June 1996 was partly set aside and the matter was remanded to the Industrial Tribunal for adjudication in respect of certain specified demands. This included demand No. 4 in the context of dearness allowance. The relevant portions of the operative order, reads thus:

"17. Considering the above, the following order and directions:-

The Award dated 10th June, 1996 to the extent as stated herein below is quashed and set aside and remanded back to the Tribunal for a fresh consideration:-

(i) The Demand Nos. 1, 2, 3 and 4.

(ii)

(iii)

(iv)

(v)

(vi)

(vii) The Tribunal to consider the demands from the date of the reference, as the petitioners cannot be faulted if it took 13 years to adjudicate their demands.

(viii)

(ix) The Tribunal to consider the grant of benefit to those employees who have retired during the pendency of the reference."

[Emphasis supplied]

16. By a separate judgment and order dated 8 March 2000 itself, employer's Writ Petition No. 1338 of 1997 was dismissed.

17. The employer appealed against the judgment and order dated 8 March 2000 to the Division Bench of this Court. The appeal no. 604 of 2000 arising out of union's Writ Petition No. 462 of 1997 was dismissed as "does not survive", though some observations were made in the context of paragraph 11 clause (d) of the union's petition before the learned Single Judge. The order dated 1 August 2000 in appeal no. 604 of 2000 arising out of Writ Petition No. 462 of 1997, reads thus:

"P.C:

1. We have gone through the matter and we have found that the challenge to the classification by the Appellant/Original Respondent No. 2 is not justified because that part of the demands has already been given up in the Petition before the Ld. Single Judge, at page 11, Clause (d), and on examination, the same is not found to be remanded to the Industrial Tribunal.

2. The appeal therefore does not survive. Appeal is dismissed accordingly."

18. The employer's appeal no. 479 of 2000 arising out of Writ Petition No. 1338 of 1997 was also disposed of by making the following order on 1 August 2000:

"P.C:

1. Admit.

2. Respondents waive Service.

3. By consent of the parties, the appeal is taken up for hearing and final disposal. Heard learned counsel for the parties.

4. After hearing the parties at length, we are of the view that when the Ld. Single Judge has remanded the matter by passing an order in the Petition filed by the employee and the remand order covers a question of Basic Scales of Pay as also Dearness Allowance having no material on record at length, item Nos. 1 and 3 of the notice of change at page 36 also ought to be reconsidered by the Industrial Tribunal and to that extent only the appeal needs to be allowed. We are deliberately refraining ourselves from making observation on merits of the case as the matter is now to be dealt with by the Industrial Tribunal. At the same time, we would like to make it clear that while considering the aforesaid two items, the Industrial Tribunal will not accept the case of the Company to the extent of reducing the wages that are being paid as on the date and more particularly the payment of Dearness Allowance as per CPI August, 2000 shall be maintained subject, of course, to the revision by an agreement between the parties or on account of the operation of law. The appeal accordingly stands disposed of.

5. On remand, the Industrial Tribunal shall dispose of both the matter as early as possible and in no case later than four months from today.

6. The Industrial Court to act on an ordinary copy of this order duly authenticate by the Associate of this Court."

[Emphasis supplied]

19. Upon remand in terms of judgment and order dated 8 March 2000 in Writ Petition No. 462 of 1997 and order dated 1 August 2000 in Appeal No. 604 of 2000, the Industrial Tribunal made an award dated 17 April 2003. On the aspect of dearness allowance, the Tribunal held against the Union and allowed the employer's demand in the notice of change for replacing the existing slab system of D.A. by the proposed D.A. scheme alongwith basic wages scale in which the rate of VDA was to be linked with CPI only and not dual linkage with basic wages.

20. The Union, aggrieved by the aforesaid award dated 17 April 2003, preferred Writ Petition No. 3125 of 2003, inter alia, to the extent the Union's demand in respect of DA/VDA was not accepted and the notice of change, proposed by the employer, approved.

21. The aforesaid Writ Petition No. 3125 of 2003 was disposed of by learned

Single Judge of this Court, by observing that the Tribunal's award dated 17 April 2003 revealed manifest errors apparent on face of record. The evidentiary material on record, position in law was ignored by the Tribunal and the findings recorded, suffer from legal perversity. After observing that the issues of basic wages and Dearness Allowance were intrinsically interlinked and could not be isolated, remanded the matter to the Industrial Tribunal for fresh adjudication. The interim order made on 1 August 2000 by the Division Bench during the pendency of Writ Petition No. 3125 of 2003, was continued until the disposal of the reference by the Tribunal.

22. Upon remand as aforesaid, the Tribunal has made the impugned award restoring and/or awarding increased in existing rate of VDA i.e., from 3%, 1 1/2% and 3/4% to 5%, 2 1/2% and 1 1/4%, on the first slab of Rs. 100/-, second slab of Rs. 100/- and 3rd slab of Rs. 201/- and above respectively, retrospectively, i.e., with effect from the date of reference which was 28 September 1983 and further rejecting the employer's demand, which were also the subject matter of the adjudication before the Tribunal.

23. Mr. Talsania, learned senior advocate for the employer, made the following submissions in support of this petition:

(a) The Tribunal, by its award dated 10 June 1996 had rejected the Union's as well as employer's demands with regard to DA/VDA. The Union, in its Writ Petition No. 462 of 1997 to question the award dated 10 June 1996, vide paragraph 11 (d) of the memo of writ petition, had specifically waived challenge in respect of DA. This position was duly recognized and taken cognizance of by the Division Bench in its order dated 1 August 2000 in Appeal No. 604 of 2000 arising out of the order dated 8 March 2000 made in Writ Petition No. 462 of 1997. Inasmuch as, the impugned award has now granted relief to the Union in the matter of DA/VDA, there constitutes an error apparent on face of record. Consequent to the acceptance of Tribunal's earlier award dated 10 June 1996 in relation to DA, which is evident from the averments in paragraph 11(d) of the memo of Writ Petition No. 462 of 1997, it was impermissible for the Union to re-agitate the issue of DA/VDA and in any case the Tribunal lacked jurisdiction to make any award in respect of the same;

(b) Without prejudice, the impugned award ignores settled principles of law in matters of adjudication of demands for revision of wages and DA/VDA. In particular, the principle of industry-cum-region has been totally lost sight of. The material evidence on record which would establish that the employer's service conditions, particularly in matters of wages and DA/VDA, were commensurate with other similarly placed industries in the region, has been completely overlooked. This constitutes legal perversity, thereby warranting interference with the impugned award;

(c) Further, without prejudice, the Tribunal in making the impugned award has proceeded on an erroneous assumption that the number of employees concerned

in the reference were hardly 30 (thirty), when in fact, the material on record indicates that they were at least 95 (ninety five). As held by the Supreme Court, ascertainment of financial burden that would be imposed upon the employer, is an essential facet of adjudication into demands of wage fixation. On account of patently erroneous assumption, the Tribunal has virtually failed or in any rate quite erroneously adjudicated upon this essential facet. The resultant impugned award, is therefore, clearly vulnerable;

(d) Finally, there was no justification in grant of relief from a retrospective date, i.e., from the date of reference which was made on 28 September 1983. The impact of financial burden arising there from, was a vital consideration, but has been ignored by the Tribunal in making the impugned award.

24. Mr. V.A. Pai, learned counsel for the respondent-Union defended the impugned award by submitting that the issue of DA/VDA was never waived by the Union. In any case, the remand by judgment and order dated 8 March 2000 in Writ Petition No. 462 of 1997 was open ended. The ambiguity, if any, vanished by reference to the judgment and order dated 30 March 2005 in Writ Petition 3125 of 2003, wherein this Court unambiguously expressed that the issue of basic wages and DA/VDA is interlinked and both the issues were remanded for fresh adjudication by the Tribunal. On merits, the Tribunal in making the impugned award has recorded findings of fact by application of correct legal principles. The findings so recorded are by no means perverse. In the exercise of powers of judicial review, which are in no sense appellate powers, this Court ought not to interfere with findings of fact and the well reasoned conclusions drawn therefrom in the impugned award.

25. The rival contentions, now fall for my determination.

26. Mr. Talsania, the learned senior counsel for the petitioner laid greatest emphasis upon the averments in paragraph 11(d) in the memo of Writ Petition No. 462 of 1997 wherein, the Union whilst questioning the Tribunal's award dated 10 June 1996 had stated that it

"is limiting their challenge in this petition to the rejection of demands of (i) wage-scales; (ii) Leave Travel Allowance, (iii) Gratuity, (iv) Retirement Age, (v) Working Hours, (vi) Retrospective effect, and they, are not pressing the demands of classification, D.A., leave, HRs, Medical Allowance, Provident Fund, Interest-free Loans, Uniforms, Festival Advance".

(Emphasis supplied)

27. Mr. Talsania submitted that once the Union failed to press its demand in respect of DA, there was no justification in either the Union re-agitating the very same issue or for that matter the Tribunal, adjudicating and finally awarding reliefs in respect of the same. The entire exercise, leading to grant of reliefs in respect of DA/VDA, is an exercise, in excess of jurisdiction and consequently, unsustainable.

28. There are several reasons, why Mr. Talsania's contention deserves rejection. In the first place, there is no scope to read the averments in paragraph 11(d) as aforesaid, in isolation. Secondly, notwithstanding the averments, on two occasions this Court has expressed that the issues of wage revision and DA/VDA are intrinsically interlinked and cannot be adjudicated in isolation. Admittedly, even going by the averments in paragraph 11(d) as aforesaid, the Union had at no stage given up the challenge, inter alia, to the fixation of wage scale. If then, there was to be any fresh adjudication on the issue of wage scale, then the same could never have been divorced from the issue of DA/VDA. The remand, in terms of the order dated 8 March 2000 in Writ Petition No. 462 of 1997 was not restricted to the issue of wage scales alone but also covered the issue of DA/VDA. The order dated 1 August 2000 in Appeal No. 604 of 2000 arising out of the order dated 8 March 2000 in Writ Petition No. 462 of 1997 merely deleted challenge to "classification" on the ground that part of the demand was given up by the Union in terms of paragraph 11(d) of the memo of writ petition and further, upon examination, it was noted that the same has not been remanded to the Industrial Tribunal. Thus, the remand in respect of DA/VDA was made by the learned Single Judge in its order dated 8 March 2000 in Writ Petition No. 462 of 1997 and further such remand was not interfered with by the appeal Court in its order dated 1 August 2000.

29. In the memo of Appeal No. 604 of 2000 to question the judgment and order dated 8 March 2000 in Writ Petition No. 462 of 1997, whereby the issue of wage scales as also DA/VDA came to be remanded to the Industrial Tribunal, the employer had raised the following specific ground:

"(y) The Learned Single Judge has exceeded his jurisdiction in interfering with the award rejecting the unions demand for DA which is not only not challenged in the Petition but also not pressed, as specifically stated in the petition and further has also failed to appreciate that the prevailing DA Scheme linked with basic wage and CPI 1938 series provided neutralisation beyond 100% and that the CPI 1938 Series is not compiled independently but arrived at by conversion factor and as such Appellant's Scheme of DA linked with CPI 1960 series is more realistic with the merged DA into basic wage, resulting in an emoluments which has relation to job value"

30. Notwithstanding the same, the appeal Court in its order dated 1 August 2000, declined to interfere with the remand on the issue of DA/VDA as directed by the learned Single Judge in its order dated 8 March 2000 in Writ Petition No. 462 of 1997. The same position emerges, upon reference to order dated 1 August 2000 made by the appeal court in Appeal No. 479 of 2000 arising out of the employer's Writ Petition No. 1338 of 1997. Therein, the appeal court after noting that the learned Single judge had remanded the matter to the Tribunal and the scope of remand covered the twin issues of basic wages and dearness allowance, directed that item Nos. 1 to 3 of the employer's notice of change, should also be remanded to the Tribunal. The item no. (3), as noted earlier,

relates again to the issue of DA/VDA. The employer's appeal was consequently allowed, to the said extent only. Accordingly, it is clear that the order of remand, inter alia, on the issue of adjudication as to DA/VDA attained finality and therefore, it is now too late in the day for the employer to contend that the Tribunal could never have gone into the issue of DA/VDA on account of the averments in paragraph 11 (d) of the memo of petition in Writ Petition No. 462 of 1997. In fact, even after the orders in Writ Petition No. 462 of 1997 and Appeal No. 604 of 2000, further developments have taken place, which would completely demolish, Mr. Talsania's first contention as to the jurisdiction of the Tribunal to go into the issue of DA/VDA.

31. In consequence of remand in terms of order dated 8 March 2000 in Writ Petition No. 462 of 1997, the Tribunal not only addressed itself to the issue of DA/VDA, but further made an award dated 17 April 2003 rejecting the Union's demand and accepting the employer's demand as reflected in the notice of change on the aspect of DA/VDA. Clearly, therefore, even the employer acquiesced into the remand on the issue of adjudication into the aspects of DA/VDA. Not that the employer had much option in this regard, particularly in the light of orders dated 8 March 2000 and 1 August 2000, which had made/upheld the remand. The two orders had attained finality and therefore, the employer rightly participated in the remand and in the consequent adjudication on the issue of DA/VDA. In fact, the employer also succeeded in obtaining an award in its own favour inter alia on the aspect of DA/VDA.

32. The Tribunal's award dated 17 April 2003 was questioned by the Union in Writ Petition No. 3125 of 2003. As noted earlier, the learned Single Judge of this Court (D.Y. Chandrachud, J., as he then was) by judgment and order dated 30 March 2005 upset the award dated 17 April 2003 by observing that it was vitiated by manifest errors apparent on face of record. The evidentiary material on record and the position in law, was ignored by the Tribunal and the findings suffer from legal perversity. After observing that the issues of basic wages and Dearness Allowance were intrinsically interlinked and could not be isolated, remanded the matter to the Industrial Tribunal for fresh adjudication. The relevant observations, which in fact afford a complete answer to Mr. Talsania's first contention, read thus:

"21. That leaves the Court to consider the relief which is to be granted in this petition. A case for the remand of proceedings to the Industrial Tribunal has, in my view, been made out. The proposal which was made by the management in respect of the basic wages was linked to the proposal in regard to the scheme of Dearness Allowance. Both are intrinsic parts of the offer and cannot be isolated. Since this Court has come to the conclusion that the management failed to establish a case in law for abolition of the existing scheme of Dearness Allowance based on dual linkage, it would not be proper to hold the management to that part of the offer which related to basic wages alone. The issue of basic wages cannot be divorced from the question of Dearness Allowance since the overall

impact on the wage packet and the financial impact for the employer have to be considered. Hence, it is only appropriate and proper that the Industrial Tribunal upon remand should consider both the question of the appropriate structure of basic wages together with the demand which has been raised by the Union in regard to the revision of Dearness Allowance. However, the Industrial Tribunal, it is clarified, would be at liberty to consider whether the rates of variation that are prescribed in the slab system of Dearness Allowance based on dual linkage, warrant any modification in the light of the facts which have come on the record before it. Accordingly, this petition is allowed in part. The award of the Industrial Tribunal in regard to basic wages and Dearness Allowance is quashed and set aside. The proceedings shall stand remitted back to the Industrial Tribunal for fresh determination in the light of the observations contained in this judgment."

[Emphasis supplied]

33. Admittedly, the aforesaid judgment and order dated 30 March 2005 in Writ Petition No. 3125 of 2003 was not appealed against and consequently, attained finality. Therefore, the ambiguity as attempted to be projected by Mr. Talsania, in the context of averments in paragraph 11(d) of the memo of Writ Petition No. 462 of 1997, certainly did not persist after the judgment and order dated 30 March 2005 in Writ Petition No. 3125 of 2003. In the later judgment and order, very consciously and equally unambiguously, this Court remanded for adjudication, the twin issues of basic wages and DA/VDA to the Tribunal. In such circumstances, it cannot be said that the Union was barred from agitating the issue of DA/VDA or for that matter that the Tribunal exceeded its jurisdiction in adjudicating upon the same. There is accordingly, no merit in Mr. Talsania's first contention.

34. In order to appreciate Mr. Talsania's second contention on the merits of the impugned award, it is necessary to outline the scope of judicial review, when findings of fact, recorded by a Tribunal are in issue. It is settled position in law that a finding of fact is open to attack as erroneous in law only if it is not supported by "any evidence" or if it is unreasonable and perverse. But where there is evidence to consider, the finding of fact recorded is normally immune from interference even where the writ court might, if it was the court of first instance, have come to a different conclusion. In regard to findings of fact a writ of certiorari can be issued only if it is shown that in recording the authority or tribunal has erroneously refused to admit material evidence or has erroneously relied upon inadmissible evidence which has influenced the impugned finding. Similarly if a finding of fact is based on "no evidence" or is contrary to "weight of evidence" or is patently unreasonable and perverse, that would be regarded as an error of law capable of being corrected by a writ of certiorari. When findings of fact are in issue the writ court can only examine "reasonableness" of the findings. If the finding is found to be recorded reasonably based upon some evidence, in the sense that relevant material has been taken into account and no irrelevant material has influenced the decision, then judicial review is exhausted

even though the finding may not necessarily be what the writ court would have come to, if trying the case in the first instance.

35. Applying the aforesaid principles, there is no scope to interfere with the findings of fact recorded by the Tribunal in the impugned award. It is to be noted that in the settlement dated 15 October 1971, the DA scheme was based on dual linkage with basic wages and CPI. Under the said settlement, the rate of VDA was 5%, 2 1/2%, 1 1/4% on the first slab of Rs. 100/- second slab of Rs. 100/- and remainder. The same position continued, at least substantially, in the subsequent settlement dated 22 January 1980. On 6 April 1983, the employer gave a notice of change u/s 9A of the said Act, proposing to replace the then existing slab system of DA, by a scheme in which the rate of variable DA was linked only to the CPI but not to the basic wages. This means that, the employer intended to do away with the dual linkage system. This was resisted by the Union, giving rise to the dispute. Similar situations have been the subject matter of legal precedents emanating from the Supreme Court as well as this Court and therefore, reference to the same would be appropriate.

36. In the case of Monthly Rated Workmen at the Wadala Factory of the Indian Hume Pipe Co. Ltd. Vs. Indian Hume Pipe Co. Ltd., Bombay, the Management gave notice of change to do away with the slab system of DA, which had been in vogue for about eighteen years and upon resistance by the employees/union, reference was made for adjudication to the Tribunal, which found in favour of the Management. Reversing the Tribunal, the Supreme Court held thus:

"These are all assumptions without necessary materials and this is the second error committed by the tribunal. It is not uncommon that even in prestigious institution recently employed officers get emoluments less than the subordinate staff. On this plea, the benefits that the workmen were enjoying till then should not be denied to them. To say that the system had become "unscientific" and "improper" because the workmen were getting fantastic amount of dearness allowance was again without necessary material. The Tribunal then proceeded to say that change in the slab system was necessary in the "larger interest of the country", in the interest of social justice", "in the interest of justice and fair play", "to avoid industrial unrest", "general interest of the company and in the larger interest of the nation" These are empty verbiage without any basis on the facts of the case. The discussion in the award that continuation of the dearness allowance would bring about neutralization above 100 per cent is also not supported by sufficient materials. The Tribunal has devoted some discussion in support of the highly placed officers and went to their rescue with the plea that they were subject to taxation rendering their salaries modest. We wish to state that all these statements could have been avoided in a matter where the Tribunal had only to consider whether the management was justified in trying to upset a scheme that had worked satisfactorily for a period of 18 years. We do not propose to make further comments upon the award of the tribunal. Suffice it to say that the whole approach is erroneous and the conclusions were arrived at on

assumptions without acceptable evidence. The management had not produced before the Tribunal sufficient evidence to persuade it to change the existing system. It may be that the slab system did not find favour with some other Tribunals. But that is no reason why a system that had existed for a long period of time should be stopped to the detriment of the workmen without compelling reasons."

[Emphasis supplied]

37. By reference to the aforesaid decision, this Court in its judgment and order dated 30 March 2005 in Writ Petition No. 3125 of 2003, by which the issue of revision of basic wages and DA/VDA was remanded to the Tribunal for adjudication, had observed thus:

"These observations of the Supreme Court must in my view apply to the facts of the present case as well. As in the case before the Supreme Court, the submission of the management that the slab system of Dearness Allowance results in a neutralization above hundred percent has not been supported in the evidence. On the contrary, the evidence of the sole witness for the management is completely destructive of that case. As before the Supreme Court, the finding which has been arrived at is not on the basis of any acceptable evidence. As held by the Supreme Court, there was no reason why a scheme for Dearness Allowance which had held the field for a long period of time should be abolished to the detriment of the workmen without compelling reasons. Compelling reasons must be demonstrated to exist by the management, something which is lacking in the present case."

38. In the case of The Workmen represented by Secretary Vs. The Management of Reptakos Brett and Co. Ltd. and another, the question involved was the entitlement of Management to restructure the scheme of DA by abolishing the slab system of DA which was linked both with cost of living index, as well as basic wage and replacing the same with some other system, on the ground that the existing system had resulted in "over neutralization". The Supreme Court, by adverting to the principles laid down by it in the case Ahmedabad Mills Owners' Association vs. The Textiles Labour Association, 1966 1 SCR 382, ruled that it was for the Management to prove to the satisfaction of the Tribunal that the wage structure in the industry concerned was well above the minimum level and that the Management was not in a position to bear the burden of the existing wage structure and that the DA scheme which had stood the test of time could not be unjustifiably abolished.

39. The Division Bench of this Court in the case of Mazgaon Dock Limited Vs. Association of Engineering and Others, has held that before an existing scheme of DA based on slab system having dual linkage, that is, with basic wages and CPI is replaced with another which is less beneficial to the employees, the Tribunal has to be satisfied that there are compelling reasons to do so. The Court noted that the existing system may result in anomalies in certain cases.

However, the same were so marginal as to require no serious consideration at least for replacing the scheme by the new scheme. Similarly, yet another Division Bench of this Court in the case of Hindustan Lever Mazdoor Sabha Vs. Hindustan Lever Limited and Others, as held that in a case where the Tribunal is called upon to introduce or permit the introduction of a system of DA, not for the first time but to replace the existing system with a new system, the Tribunal should not normally substitute or abolish the existing system by one which is less beneficial to the employees.

40. In the context of the present case itself, learned Single Judge of this Court in its judgment and order dated 30 March 2005 in Writ Petition No. 3125 of 2003, upon analyzing the aforesaid precedents and applying the same to the material on record, observed that the financial condition of the employer was sound and the existing slab system of DA, based upon dual linkage has remained in operation for over three decades. If therefore, the employer desires change in this system, the burden is upon the employer to establish compelling necessity to do so. There is no evidence of "over neutralization" as a result of the operation of existing system. Under the garb of introduction of "uniformity" the system which is in existence for a long time cannot be replaced, in the absence of some compelling necessity.

41. Perusal of the impugned award, by no means indicates that findings recorded therein suffer from any perversity. In fact, relevant material on record has been duly adverted to and the correct principles, as enunciated by the learned Single Judge of this Court in judgment and order dated 30 March 2005 in Writ Petition No. 3125 of 2003, by which the issue came to be remanded to the Tribunal, have been applied. There is no substance in Mr. Talsania's contention that the Tribunal has ignored the industry-cum-region principle. In the first place, the evidence on behalf of the employer, on this aspect, is quite sketchy. In any case, such evidence has been taken into consideration. At paragraph 27 of the impugned award, the Tribunal has noted that the wage structure and DA schemes in respect of concerns like Duphar Interfran Ltd. B.A.S.F., C.A.F.I. Colget Palmolive India Ltd. are not comparable. Only, Kamala Mills Limited may constitute some comparable instance. The material on record indicates that even in Kamala Mills Limited, the DA scheme had a dual linkage and the VDA was based upon slabs of 5%, 2 1/2% and 1 1/4%. The Tribunal, has also adverted to the financial status of the employer and addressed itself to the question of possible financial impact, should the proposed change be declined. The Tribunal, by reference to the annual reports of the employers as also other financial statements has recorded findings of fact that the employer has from time to time declared dividends. The reserves and surpluses of the employer have increased from Rs. 24936 Lacs in 1992-1993 to Rs. 476000 Lacs in 2000. The Tribunal has noted that there is no "over neutralization" and even if the Union's demands are accepted, the increase will be below 100% neutralization. Clearly therefore, there is no substance in Mr. Talsania's criticism that the findings in the impugned award are vitiated by perversity or that relevant material on record has been ignored and incorrect

tests applied.

42. Mr. Talsania then contended that the impugned award proceeds upon the erroneous assumption that the number of employees concerned in the reference were hardly 30 (thirty), when in fact, the material on record indicates that they were at least 95 (ninety five). In support, Mr. Talsania made a reference to the discussion in paragraphs 9 and 28 of the impugned award, where reference is made to about 60 (sixty) workmen employed in Sales Office at Bombay and thereafter to about 30 (thirty) employees, who remained in service, after retirement or resignation of the others.

43. Again, there is no merit in the submission of Mr. Talsania. In the first place, the margin of the number of employees, i.e., 60 (sixty) as referred to in paragraph 9 and 95 (ninety five) or 104 (one hundred four), as it turns out in the final tally is not so large. Secondly, there is no inaccuracy in the submission that about 30 (thirty) employees continue in employment, as on the date when the impugned award was made. However, this is not the only basis for determination of financial impact. The circumstance that some employees retire or resign during the pendency of an industrial dispute, is no ground to deny them benefits for the period of their service. If the impugned award is considered in its totality, then the findings of fact on the aspect of employer's financial status or for that matter the impact which the relief might have on such financial status, is not based almost entirely upon the premise that only 30 (thirty) employees are concerned with the issue of DA/VDA. Therefore, to say that the Tribunal has proceeded on basis of an erroneous premise, is by no means justifiable. Ultimately, as noted earlier, this Court does not exercise any appellate jurisdiction in the matter of review of findings of fact recorded by the Tribunal. Accordingly, there is no merit in Mr. Talsania's third contention as well.

44. Mr. Talsania, then contended that the benefits ought not to have been granted from retrospective date, i.e., the date of reference which is 28 September 1983. The financial impact of such an award shall be great and this aspect has not been adverted to by the Tribunal.

45. The grant of benefits from the date of reference, does not, per se mean and imply grant from retrospective date, as such. Besides, it is not as if the employer was unaware of the demand for grant of benefits, even from dates anterior to the reference order. Evidence was led by both parties upon such premise. The Tribunal was also alive to the position of financial impact. The award from the date of reference, is therefore, not a result of non-application of mind, as was made out to be. In any case, one significant circumstance is that this Court in its judgment and order dated 8 March 2000 in Writ Petition No. 462 of 1997 had already deliberated upon this issue and directed the Tribunal, to consider upon remand, the demands from the date of reference, as the employees "cannot be faulted if it took 13 years to adjudicate their demands". Similarly, in the same judgment and order dated 8 March 2000, specific directions were issued to the Tribunal to consider grant of benefit to those employees who have retired during

the pendency of the reference. As noted earlier, the judgment and order dated 8 March 2000 was appealed against. However, the directions as aforesaid, were not interfered with by the appeal Court in its order dated 1 August 2000 made in Appeal No. 604 of 2000. In such circumstances, no fault, much less any error of jurisdiction can be attributed to the Tribunal, in granting benefits from the date of the award.

46. The direction of this Court in Writ Petition No. 462 of 1997, is quite consistent with the decision of the Supreme Court in the case of Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) and Others, where, in the context of award of back-wages and delay in adjudication of claims, the Supreme Court observed thus:

"In a number of cases, the superior courts have interfered with the award of the primary adjudicatory authority on the premise that finalisation of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-a-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer i.e. the employee or workman, who can ill-afford the luxury of spending money on a lawyer with certain amount of fame."

47. Therefore, upon consideration of the totality of the circumstances, in my judgment, no case has been made out for interference with the impugned award. The petition is, therefore, liable to be dismissed and is accordingly dismissed.

48. In pursuance of interim orders, the petitioner-employer has deposited certain amounts in this Court. The Registry is directed to effect payment of such amounts to the respondent-Union, which shall be responsible for ensuring payments to the employees in accord with their entitlement. The respondent-Union, is directed to file necessary compliance report in this regard, before the Industrial Tribunal within six months. The Industrial Tribunal, to verify and ensure that the employees have obtained amounts as per their dues and entitlement. This shall be, without prejudice to the Union's/employees' rights to recover any balance or further amounts from the employer, in terms of the impugned award, which is now upheld by this Court.

49. Rule is discharged. Interim orders stand vacated. In the facts and circumstances of the present case, it is only appropriate that the petitioner pays the costs of this petition quantified at Rs. 25,000/- to the respondent-Union.

50. After pronouncement of this judgment and order, Mr. Sailesh More, learned counsel for the petitioner seeks a stay on the implementation of this judgment

and order for a period of twelve weeks. Mr. V.A. Pai, learned counsel for the respondent-union opposes the motion for stay by urging that the dispute has been pending for almost three decades.

51. In my judgment, however, the interests of justice would be met, if the implementation of this judgment and order is stayed for a period of eight weeks from today.