

(2012) 05 KAR CK 0021

In the Karnataka High Court

Case No : Writ Petition No. 18207 of 2011 (L-Res)

M/s. Sunrise Industries

APPELLANT

Vs

Sunrise Industrial Unit, AITUC, Tools Engineering and General
Workers Association

RESPONDENT

Date of Decision : 30-05-2012

Acts Referred:

Industrial Disputes Act, 1947 — Section 10 (1) (d), 2 (h), 3, 4

Citation : (2013) 136 FLR 488 : (2013) 1 KarLJ 119 : (2013) 1 LLJ 419 : (2013) LLR 60

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : K. Ramachandran, for Sri. M.R.C. Ravi, for the Appellant; M.C. Narasimhan For M.C. Narasimhan Associates, for the Respondent

Judgement

Aravind Kumar

1. Petitioner - management is seeking for quashing of the award dated 14.3.2011 passed by the Industrial Tribunal, Bangalore in ID No. 10/2001 Annexure-A, whereunder, it has been held that respondent Workers Association is justified in demanding Dearness Allowance to the workmen with effect from 1.4.2000 as per Dearness Allowance fixed by the State Government under the Minimum Wages Notification as applicable to the Engineering Industries. Heard Sri K. Ramachandran, learned counsel appearing for petitioner and Sri M.C. Narasimhan, learned Senior Counsel appearing for respondent - Workmen. Perused the records of Industrial Tribunal. Bangalore.

2. Petitioner - management is engaged in the manufacture of textile looms and it is an Engineering Industry. Respondent - Workers' Association submitted Charter of Demands to the management on 9.3.2000, pursuant to which conciliation proceedings took place and a settlement was arrived at regarding revision of wages and increase in production. The terms of settlement arrived at was to be in operation from 1.4.2000 to 31.3.2001. One of the demands of the Association

was for payment of Dearness Allowance as part of fair wages. On account of said issue remaining un-resolved, appropriate Government by order dated 2.2.2001 referred the said Dispute existing between workmen and management u/s 10(1) (d) of the Industrial Disputes Act, 1947 to adjudicate as to whether the workmen were justified in placing their demands before management to pay Dearness Allowance along with fair wages as fixed for the Engineering Industries. On service of notice by the Industrial Tribunal on both parties, they appeared and filed claim statement as well as counter statement. On behalf of workmen, one witness by name Sri N. Manjunath was examined as WW1 and 7 documents were marked as Exs. W1 to W7. On behalf of management, one witness by name Sri Sundareshan, was examined as MW1 and got marked the documents produced as Exs. M1, M2(1) to M2(10). Industrial Tribunal by its Award dated 14.3.2011, answered the reference in favour of the workmen. Aggrieved by the said Award, management preferred Writ Petition No. 16197/2005 (L-MW) before this court and same came to be allowed by this court by order dated 1.9.2010. This court was of the considered view that there was non consideration of the case of either parties in proper perspective and point formulated ought to have been answered with reference to the materials placed on record by both parties and since such reasons were not forthcoming from the award, this court set aside the award and remanded the matter back to Industrial Tribunal for adjudication afresh

3. On such remand being made, no additional evidence was tendered by both parties. Industrial Tribunal, after considering the arguments advanced by the respective learned advocates by its award dated 14.3.2011 answered the point of reference in Affirmative and consequently allowed the reference by holding that workmen are entitled to DA as fixed by Government to the Engineering Industry with effect from 1.4.2000. Hence, the management has preferred this Writ Petition being aggrieved by the said award.

4. Sri K Ramachandran, learned Counsel appearing for petitioner would contend that award passed by the Industrial Tribunal is erroneous and illegal as it has failed to consider the fact that since inception petitioner - management was paying consolidated wages to its workmen till 31.3.1998 and on account of the judgment rendered by this court in Airfreight India Ltd., Vs. State of Karnataka and others, petitioner split the basic wages and Dearness Allowance and started paying Dearness Allowance as per the Minimum Wages Notification, and said Dearness Allowance was culled out from the total consolidated wages offered to the workmen by way of settlement of increase in wages and there was no question of paying separate Dearness Allowance in addition to total consolidated wages when the consolidated wages paid was more than the total of basic wages and Dearness Allowance as per the minimum wage Notification issued by the Government of Karnataka. He would further elaborate his submission by contending that prior to 1.4.1998 petitioner was paying Dearness Allowance and it was not shown as a separate component of monthly wages in the Wage Register and only on account of the judgment of this court, Dearness Allowance was shown separately with effect from 1.4.1998 and petitioner - management

reverted to original system of payment of consolidated wages after the issue was clarified by Hon"ble Supreme Court in the case of Airfreight India Ltd., Vs. State of Karnataka and others reported in 1999 (II) LLJ 241 and as such question of paying DA separately as fixed under Minimum Wages does not arise since wages paid to workmen is more than what is prescribed under the Notification. He would further submit that Industrial Tribunal failed to consider the fact that petitioner -industry has been facing acute financial crisis and it was facing extreme difficulties to increase the wages and the management has been saddled with huge financial difficulties in the form of Dearness Allowance, on account of which, it would result in the closure of industry itself. He would further submit that Industrial Tribunal erred to consider the increase given in the year 2000 to various category of workmen @ Rs. 6/-, 7/-, and 8/- per day respectively, which was inclusive of Dearness Allowance and as per the settlement dated 28.7.2000 it was agreed that it should be added to the existing wages and not to basic wages. He would contend that question of paying Dearness Allowance separately does not arise and the impugned award directing payment of Dearness Allowance by Industrial Tribunal is over and above the fair wages and as such, it is illegal and liable to be quashed. In support of his submission, he has relied upon the following judgments:

(1) 2002 (3) LLN 1212

(2) 2002 - II LLJ 703

(3) 1999 - II LLJ 705

5. Per contra, Sri M.C. Narasimhan, learned Senior Counsel appearing for workmen would contend that in the conciliation proceedings. Association did not agree with regard to Dearness Allowance and same was kept open and as such he contends award of Industrial Tribunal is to be sustained. He would draw the attention of the court to the evidence of MW1 whereunder the Accountant has stated that Dearness Allowance payment issue was deferred and as such, he contends that Industrial Tribunal has rightly adjudicated the issue and directed payment. He would further submit that Charter of demands dated 9.3.2000 is not under Minimum Wages Act and Register extracts at Annexure-B and C produced alongwith Writ Petition would reflect only the names of 48 workmen and not of other workmen and the witness examined on behalf of Association WW1 has stated that only 50% of workers are paid more wages than what is stated in the Government Notification and 50% of the workers are paid lesser than minimum wages. He would further contend that the demand under Ex. WY was on the basis of fair wages and minimum wages has no nexus to production at all. He would contend that only error of law or perverse finding can be interfered and the award in question does not suffer from such errors. He would support the award passed by the Industrial Tribunal and prays for same be affirmed. In support of his submission he has relied upon the following judgments:

- (1) Standard Vacuum Refining Co. of India Vs. Its Workmen and Another,
- (2) 1961 - II LLJ 663
- (3) Jaydip Industries, Thana Vs. The Workmen,
- (4) The Workmen represented by Secretary Vs. The Management of Reptakos Brett and Co. Ltd. and another,
- (5) Aspinwal and Co. Ltd. and Others Vs. State of Karnataka and Others,

6. In reply Sri K. Ramachandran submits that fair or living wages has no relevance since the claim of the workman was under Minimum wages and in this regard he draws the attention of the court to the Charter of Demands raised on 9.3.2000 which was filed along with the memo dated 19.3.2012. He would also draw the attention of the court conciliation petition dated 12.10.2000 marked as Ex. W7 before the Industrial Tribunal, whereunder the Association claims that workmen are not precluded from demanding higher wages including higher rates of DA when the industry has the capacity to pay and is capable of bearing the higher wage burden and as such, he submits that Industrial Tribunal committed a serious error in passing the impugned Award.

7. Having heard the learned advocates appearing for parties I am of the considered view that following points would arise for my consideration:

- (1) Whether the Industrial Tribunal while answering the point of reference has travelled beyond the scope of reference.?
- (2) Whether petitioner - management is liable to pay Dearness Allowance even in case of the consolidated wages being higher than the minimum wages fixed by the Government of Karnataka.?
- (3) Whether the impugned order is to be affirmed or set aside. ?

BRIEF BACKGROUND OF THE CASE:

8. A Charter of Demand was placed by the Association before management under which several demands were raised and during the conciliation proceedings before the Assistant Labour Commissioner, Bangalore, the parties arrived at an amicable settlement on 24.7.2000, under which there was revision of wages agreed to be paid by the management to workmen by increasing the wages by Rs. 6/-, 7/- and 8/- under three categories. The said settlement was agreed to be in force for a period of one year from 1.4.2000 to 31.3.2001. One of the demands raised by the workmen was with regard to payment of Dearness Allowance. This issue remained unsettled in view of the judgment of the Hon'ble Apex Court in the case of Airfreight India Ltd., Vs. State of Karnataka and others reported in 1999 (II) LLJ 24. In the settlement arrived at, it was agreed between the management and the workmen on the issue of DA as follows:

The workmen agree that the dispute regarding wages and increment is settled. However, the issue of payment of Dearness Allowances remains unsettled and

open for conciliation/adjudication etc., in view of the different perception by the management and workmen, in view of the latest supreme court decision the case of Airfreight India. Hence, the Industrial dispute pertaining to Dearness Allowance subsists till the matter is finally decided.

The Association and the workmen hereby agree that they shall not raise any demand on the Management during the period of operation of this settlement. All the demands of the workmen raised in their letter dated 9.3.2000, except Dearness Allowance are deemed to have been settled/withdrawn by virtue of the settlement.

On account of non payment of DA to the workmen with effect from 1.4.2000 as per the DA fixed by the Government under the Minimum Wages Notification applicable to the Engineering Industry, the workmen raised a dispute and appropriate government referred the dispute for adjudication by the Industrial Tribunal.

REGARDING POINT NO: 1

9. Learned counsel for management has contended that Industrial Tribunal, Bangalore has traveled beyond the scope of reference and it should not have extended the scope of reference by proceeding to decide as to whether fair wages was being paid by the management and thereby enlarging the scope of reference. The law on this aspect is settled by catena of judgments and in the case of Pottery Mazdoor Panchayat Vs. Perfect Pottery Company Ltd., and another reported in 1979(1) LLN 336 it has been held that Industrial Tribunal has no jurisdiction to go beyond the terms of reference and to enquire into the question which is not involved in a reference. If the Tribunal travels beyond the terms of the reference, the award is nullity and would not confer any right upon the party. There cannot be any dispute with regard to this proposition of law. As to whether factually the Industrial Tribunal in the instant case has traveled beyond the scope of reference or not, is required to be examined by referring to the point of dispute referred to by the appropriate government to the industrial Tribunal for its adjudication and its finding thereon. The reference dated 2.2.2001 made by the appropriate Government reads as under:

10. The above point of reference would clearly go to show as to what is the reference required to be answered by Industrial Tribunal viz., whether the workers Association is justified in placing their demand for payment of Dearness Allowance along with fair wages as prescribed for "engineering industry". Though, in the claim petition, the Association has contended "Whether the demand placed by them before the second party/management for payment of Dearness Allowance as per the Minimum Wages Notification for engineering industry is fair and reasonable".? Industrial Tribunal has examined the rival contentions of the parties with reference to the Airfreight's case referred to supra to arrive at a conclusion that Association was justified in demanding Dearness Allowance with effect from 1.4.2000 as per the Dearness Allowance

fixed by State Government under the Minimum Wages Notification applicable to the engineering industry and has incidentally examined as to whether Dearness Allowance is part of fair wages or not. In that view of the matter, I am of considered view Industrial Tribunal has not travelled beyond the point of reference.

REGARDING POINT NO: 2 & 3

11. Before entering into discussion with regard to points 2 and 3 formulated hereinabove, certain facts relating to the period anterior to the disputed period is required to be stated. The workmen were undisputedly being paid consolidated wages by petitioner - management and this fact is evidenced from the Salary Register produced by the petitioner relating to the period April 1998 as per Annexure-B. On a judgment being rendered by this court to the effect that Dearness Allowance should be paid separately as per the Minimum Wages Notification, petitioner - management started paying wages to its workmen separately i.e., the Dearness Allowance component was split-up by culling out the said component from the consolidated wages that was being paid every month to the workmen as per Annexure-C. This mode of payment continued from the year 1998 till 2000 undisputedly. It was also agreed by the management that Dearness Allowance was paid in accordance with Minimum Wages Notification as applicable to Engineering Industry shall be paid with retrospective effect from 1.1.1999 and it shall be in force till 31.3.2000. The Hon''ble Supreme Court in Airfreight's case reversed the judgment of this court and held that consolidated wages paid by the employer, if it is more than the total of the basic wages which includes the Dearness Allowance component, the employer need not show separately the Dearness Allowance component and held that in cases where the minimum rates of wages is linked up with VDA it would not mean that it is a separate component which is required to be paid separately and when the employer pays a total pay package which is more than the prescribed minimum rates of wages then such employer need not pay Dearness Allowance separately. It has been held in Airfreight's case referred to supra by the Hon''ble Apex Court as under:

23. Section 3, inter-alia, provides that appropriate Government shall in the manner provided, fix the minimum rates of wages payable to the employees employed in any employment specified in Part I or in Part II of the Schedule and in an employment added to other party by the Notification u/s 27 and said minimum wages are required to be reviewed at such intervals as the appropriate Government may think fit, but it is required to be reviewed and revised within 5 years. Section 4 which provides that minimum wage may consist of basic rate of wages and special allowance reads as under:

4. Minimum rate of wages (1) Any minimum rate of wages fixed or revised by the appropriate government in respect of schedule 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"); or

(ii) a basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of suppliers of essential commodities at concession rates, where so authorized; 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.

(2) The cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concession rate shall be computed by the competent authority at such intervals and in accordance with such directions as may be specified or given by the appropriate government.

24. 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 wage 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 workers 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 authorized; 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 wage 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 & 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 rising 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 are 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.

In the above case, the employer sought for a declaration that notification dated 19.8.1987 issued by the state Government in exercise of its power u/s 27 of the Minimum Wages Act fixing the minimum rates of wages payable to the categories of employees as specified in the said notification for item No. 28, namely "Shops and Commercial Establishments" was not applicable to the appellant - Industry and for setting aside the order passed by the competent authority under the Minimum Wages Act. The employees of the company had claimed payment of Variable Dearness Allowance (VDA) as a separate component on the basis of the said notification. The authority as well as this court up held the claim of workmen. The Hon''ble Apex Court while reversing the finding of this court held the rates of Minimum wages mentioned in the notification were inclusive of the rates of Dearness Allowance and Hon''ble Apex Court also took the cost of living allowance into consideration and as such it held that, if an employer is paying total sum which is higher than minimum rates or wages fixed under the Act, including the cost of living index (VDA), such employer is not required to pay

VDA separately. It was further held that wages should be calculated as defined under s.2(h) of the Minimum Wages Act. In conclusion, it was held where the employer was paying wages at a higher rate than the minimum wages such employer would not be liable to pay Dearness Allowance in addition to the minimum wages prescribed under the notification.

12. In order to consider the arguments advanced by the learned advocates, it would be of benefit to give the following illustrations which would reflect some amount of light on the contentions, in the back drop of the law laid down by the Hon''ble Apex Court in Airfreight's case.

Illustration No. 1:

In case the minimum wage is Rs. 75/- and VDA fixed under the said notification (issued under the Minimum Wages Act) is Rs. 25/- the total component of wages would be Rs. 100/-. If a workmen say for example is paid Minimum wages @ Rs. 75/- as fixed under notification but VDA @ Rs. 15/- is only paid, the total component would be Rs. 90/- and in such circumstances workmen can claim the minimum VDA fixed under the notification which is Rs. 25/- to make the total component at Rs. 100/- since there is a shortfall in the component of VDA. In such circumstances, the workmen can contend that VDA paid to him is less and seek for payment of the balance amount of Rs. 10/- in accordance with the notification.

Illustration No. 2:

In case the minimum wage is Rs. 75/- and VDA is fixed under the said notification (issued under the Minimum Wages Act) is Rs. 25/- the total component would be Rs. 100/-. If a workmen say for example is paid Minimum wages @ Rs. 90/- as fixed under notification (much more than the amount fixed under the notification) and VDA @ Rs. 15/- is paid, the total component would be Rs. 105/- and as such, the workmen would be receiving more than Minimum Wages than fixed under the notification namely he would be receiving the Minimum Wages @ Rs. 105/- as against Rs. 100/- fixed under the notification. In such circumstances, the workmen cannot contend that VDA component fixed under the Minimum Wages Notification being Rs. 25/-the management is required to pay the balance amount of Rs. 10/-. In such circumstances, if the plea of the workmen is accepted, the total component would become Rs. 125/- which would be Rs. 25/-more than the Minimum wages fixed under the notification.

13. It is this anomaly which is explained by the Hon''ble Apex Court in Airfreight's case and it has been held that when employer pays minimum wages more than fixed under Notification such employer need not pay Dearness Allowance component separately since it is inbuilt in the component of Minimum Wages itself, to this background the facts on hand are required to be examined:

14. A perusal of the points of dispute referred for adjudication would go to show

that what came to be referred to Tribunal was whether the Union was justified in placing the demand for payment of Dearness Allowance as determined by the Government for "Engineering Industry" along with fair wages. At this juncture the Charter of Demand dated 9.3.2000 raised by the Union is required to be noticed which has been filed by the management in this Writ Petition along with a Memo on 19.3.2012 as document No. 2, whereunder it is claimed:

I. xxxx

II. DEARNESS ALLOWANCE: In addition to the basic wages we demand that Dearness Allowance be paid in accordance with the minimum wages notification as applicable to engineering Industry in Bangalore.

15. Earlier to the said Charter of Demands being raised, the management had by communication dated 12.3.1999, Ex. W2 informed the Association that Dearness Allowance would be paid in accordance with Minimum Wages Notification as applicable to the engineering industry. The salary Register extract for the month of April 1998 has been produced along with Writ Petition as Annexure-C which would reflect that a break up of wages and Dearness Allowance that was being paid. It is the specific stand of the management that by virtue of notification prescribing the minimum rates of basic wages and Dearness Allowance for the "engineering industry", management had agreed that Dearness Allowance shall be paid in accordance with the notification as applicable to the engineering industry from 1.1.1999 and total wages consisting of basic wages and Dearness Allowance infact was being paid to the workmen. In fact, the witness who has been examined on behalf of the Association Sri N. Manjunath as WW-1 in his cross examination dated 27.10.2003 at paragraphs 6 & 7 admits to the following effects:

6. It is true there was a settlement with effect from 1.1.1999 settling both the basic and Dearness Allowance. Xxx industries.

7. It is true the management had agreed to pay wages as per Government notification with effect from 1.1.1999. It is not true to suggest that management has paid more wages than what is stated in the Government notification. 50% of the workers are paid more wages than what is stated in the Government notification and 50% of the workers are paid less than that.

(Emphasis supplied by me)

16. The grievance of the workmen is that "Dearness Allowance in its entirety is to be paid as per the notification" irrespective of what Minimum Wages has been prescribed under the notification and contend that they are not demanding any separate payment of Variable Dearness Allowance. The workmen while justifying the Charter of Demands raised on 9.3.2000 have submitted a representation to the Assistant labour Commissioner on 12.10.2000 which came to be marked as Ex. W7 before the Industrial Tribunal In the words of the Workers Association, their demand for Dearness Allowance is as under:

(D) The workmen are not demanding any separate variable dearness but only asking payment of Dearness Allowance in its entirety as per the notification which the management had committed itself earlier.

(E) The supreme court has not precluded the workmen demanding higher wages including higher rates of Dearness Allowance where the Industry has the capacity to pay and already it has been shown that the wage level in Sunrise Industrials is low and it has the capacity to meet higher wage burden.

(F) By the misapplication of law, the management cannot deny the right full claim of the workmen and also it cannot go back on the very basis it has accepted. Hence, the management ought to enhance the D.A. with effect from 1.4.2000 as per the demand.

17. A combined reading of the Charter of Demands and subsequent representation dated 12.10.2000 would clearly go to show that workmen are claiming Dearness Allowance in addition to basic wages. As to what components would constitute minimum wages and what factors are to be taken into consideration to determine the minimum wages has been explained by the Hon'ble Apex Court in Airfreight's case referred to supra and it has been held that concept of minimum wages does take into consideration the factor of prevailing cost of essential commodities and when such minimum wages is to be fixed and idea of fixing such wage in the light of cost of living at a particular juncture of time is to neutralise the rising prices of essential commodities by linking up scales of minimum wages with the cost of living index as provided for in section 4, and VDA is part and parcel of the 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 be split up. It is one pay package. Hence, in case where employer is paying total sum which is higher than minimum rates of wages fixed under the Act by taking into consideration all factors including the cost of living index (VDA), employer is not required to pay VDA separately. Thus, it would emerge minimum rate of wages fixed under the Act is remuneration payable to the worker as one package and when the cost of living index is linked to the minimum wages the amount paid on the basis of Dearness Allowance cannot be construed as an independent component of the minimum wages. It is not the case of workmen in the instant case that there has been payment of less wages than prescribed under the notification issued under the Minimum Wages Act. The charter of demand and oral evidence is also not to this effect.

18. The petitioner - management along with a memo filed on 20.3.2012 has enclosed the notifications issued by the Government for different years whereunder, the minimum wages and VDA for the relevant period has been prescribed. In the instant case, respondent - Association has produced four pay covers marked as Exhibits W3 to W6 relating to workmen Sri G. Chandran. Exhibit W5 is the pay cover for the month of July 2000 and according to the said pay cover the wages that has been paid to the workmen is Rs. 61.45 and

Dearness Allowance Rs. 21.75 the sum total being Rs. 87.20. Since Ex. W5 and Ex. W6 relates to the period 2000 and 2003, the minimum wages fixed under notification and VDA fixed for the said period i.e. from 1.4.2000 to 31.3.2001 both as per actual pay and as per notification are extracted hereinbelow in the comparative statement:

For the year 2000

As per The Pay Cover

As per the notification

Wages @ Rs. 61.45

Wages @ Rs. 55.00

DA @ Rs.25.75

DA @ Rs. 29.86

Total: Rs.87.20

Total: Rs. 84.86

For the year 2003

As per The Pay Cover

As per the notification

Wages @ Rs. 73.45

Wages @ Rs. 55.00

DA@ Rs. 25.75

DA @ Rs. 39.49

Total: Rs. 99.20

Total: Rs. 94.49

The above pay cover relates to Sri S.Chandran, who is admittedly working as a Carpenter in petitioner establishment and he is discharging the work of a skilled worker. Undisputedly, in the Charter of Demands dated 9.3.2000 itself the Association has classified "Carpenter" as a skilled worker". Hence, the figures shown against the workmen working as skilled worker under the heading "class of employment" in the notification as published by the Government under the Minimum Wages Act is taken into consideration while arriving at the figures extracted in the comparative chart hereinabove.

19. For the year 2000 workman is getting wages of Rs. . 87.20 per day as against the wages fixed under the notification which is at Rs. . 84.86 (which is inclusive of DA) likewise for the year 2003 workman is getting wages Rs. . 99.20

per day as against the wages fixed under the notification which is at Rs. . 94.49 per day (which is inclusive of DA). Thus, it would emerge from the above figures that employer is paying total sum which is higher than minimum rates of wages fixed under the Minimum Wages Act which includes the DA calculated by taking into consideration cost of living index and as such the employer is not required to pay VDA separately. Since VDA forms part and parcel of the component of wages and same having been taken into consideration by the employer while paying wages question of paying VDA separately or as an independent component as prescribed under the notification does not arise at all in the instant case.

20. The Industrial Tribunal, Bangalore having noticed the evidence of MW-1, whereunder, it has been stated that the management is paying more wages than the one prescribed under the notification has conveniently over looked the dicta laid down by the Hon"ble Apex Court in Airfreight's case cited supra, as to what constitutes the total component of wages. Though, it has held that second party (management) has not produced any other document to show that payment shown in the Pay Register Ex. M2(1) to M2(10) is being paid to workman and it is paying more than minimum wages and Dearness Allowance, it conveniently over looked the admission of the witness examined on behalf of the workmen i.e. WW-1, who has admitted that 50% workers are paid more wages than what is prescribed under Minimum Wages notification and 50% of workers are paid less than that. Which means, 50% of workers are paid more wages than prescribed under the notification and if 50% were paid less, the burden was on the Association to prove this fact. Even otherwise, if wages paid to the workmen are less than prescribed under the notification, the remedy to the workers is elsewhere as prescribed under the Minimum Wages Act and seek for payment of the same. The only issue involved in this Writ Petition is relating to whether VDA is to be paid as a separate component as prescribed under the notification irrespective of the fact that total wage component though being higher or more than what is prescribed under the notification and not the issue as to whether members of respondent union are being paid less wages than prescribed under Minimum Wages notification.

21. The Industrial Tribunal committed a serious error in holding that Airfreight's case is not helpful to the management and holding point involved in the said case was totally different. The said perception of the Industrial Tribunal is diametrically opposite to the principles laid down therein and compared to the facts on hand. The only issue involved in the Airfreight's case was whether VDA would form as part of one component of minimum wages or otherwise and same came to be answered holding that it forms one component when minimum wages is calculated or arrived at by taking into consideration the factors as envisaged u/s 2(h) of the Minimum Wages Act. Further, the Industrial Tribunal has jumped to a conclusion that there has been stoppage of payment of Dearness Allowance on its own by the management. The reason to arrive at such conclusion is lacking, in as much as management has placed on record by way of Ex. M2(1] to M2(10) to demonstrate that payment of VDA had been merged with the wages and same

is being paid as one component to its workman. In fact, evidence of the witness examined on behalf of the workmen would itself go to show that 50% of the workers were paid as per the notification. In that view of the matter also, the conclusion arrived at by the Industrial Tribunal is contrary to facts and records and same cannot be sustained.

22. Hence, I am of the considered view that point No. 2 is to be answered by holding that in the instant case, the management is not liable to pay Dearness Allowance separately when the consolidated wages i.e. being paid to workmen is higher than what is prescribed under the notification. For the reasons aforesaid Point No. 3 has to be answered in favour of petitioner by setting aside the impugned award as being erroneous. In the result, I pass the following:

ORDER

(1) Writ Petition is hereby allowed.

(2) Impugned Award dated 14.3.2011 passed in ID No. 10/2001 at Annexure-A by Industrial Tribunal. Bangalore is hereby set aside and reference is answered in favour of petitioner management.

(3) No order as to costs.