

(1994) 01 SHI CK 0014
In the High Court Of Himachal Pradesh
Case No : Civil W.P. No. 716 of 1993

Peter(s) India Pvt. Ltd.

APPELLANT

Vs

Peter(s) India Employees" Union and Another

RESPONDENT

Date of Decision : 11-01-1994

Acts Referred:

Constitution of India, 1950 — Article 136, 226, 227, 43

Citation : (1994) 2 ShimLC 55

Hon'ble Judges : L.S. Panta, J;Devinder Gupta, J

Bench : Division Bench

Advocate : S.S. Kanwar, for the Appellant; Dhani Ram, Authorised Representative and Special Attorney On Behalf of Respondent No. 1, for the Respondent

Judgement

Devinder Gupta, J.—The award, Annexure P-5, made on 22nd April, 1993 by the Presiding Officer of the Labour Court-cum-Industrial Tribunal, Himachal Pradesh, Shimla in favour of Respondent No. 1 Workers" Union (hereinafter referred to as "the Workmen) in reference No. 1/90 is under challenge in this petition filed under Article 226 read with Article 227 of the Constitution of India on behalf of the Petitioner (hereinafter referred to as "the Management").

2. The background, in which the instant petition came to be filed may be noticed. One of the demands of the workmen, enumerated in the Charter of demands, related to dearness allowance as per the price index. On failure of the workmen and Management to come to any settlement, the workmen approached the State Government. The following reference was made, by the State Government through Notification, for adjudication by the Industrial Tribunal:

Whether the demand relating to the enhancement of pay andallowances of Peter(s) India Employees" Union (Affiliated to AITUC and INTUC) is justified and in order ? If not, what pay scales and allowances, they are entitled to ?

3. During the pendency of the proceedings before the Industrial Tribunal, the

workmen gave up rest of the claims but confined their claim only with respect to the payment of dearness allowance, which according to the representative of the workmen was in reality the amount of additional dearness allowance.

4. On 6th September, 1991, the Industrial Tribunal made an award in favour of the workmen against the Management holding the workmen to be entitled to dearness allowance on the basis of price index 1982-199, on the wages last drawn by them, considering the minimum wages drawn by the workmen as their minimum pay scale. The workmen were held entitled to the grant of dearness allowance w.e.f. 1st December, 1989.

5. Feeling aggrieved, the Management challenged the award by filing Civil Writ Petition 793/91 in this Court. The said writ petition was decided on 15th July, 1992. All grounds put forth by the Management, challenging the legality and validity of the award, were negatived and it was held that the view taken by the Tribunal was not such which can be characterised as suffering from any apparent error of law. However, it was found that the relief granted to the workmen was not in consonance with law since the Industrial Tribunal had neither specified the extent, nor the basis of the financial redress granted to the workmen. Award was found to be not indicating either in its body or its operative portion as to how the dearness allowance payable to 57 workmen, from December 1989 to September 1990 was to be worked out.

6. While upholding the legality and validity of the award, the same was remitted to the Industrial Tribunal with directions to specify as to the extent of dearness allowance payable to workmen for the period in question as also the rates or basis for calculating the amount. The Tribunal was also directed to take a decision after notice to the parties. The operative part of the decision in this Court is in the following words:

We refrain from making any further observation in regard to the actual quantum of dearness allowance which may be found payable to the workmen for which, we feel, the matter should be gone into afresh by the Tribunal in accordance with law. While upholding the award only in respect of those submissions made on behalf of the employer which have been negatived by us in this judgment, we quash it in part and direct the matter relating to the extent of dearness allowance payable to the workmen for the aforesaid period and the rate or basis for calculating the amount to be reconsidered by the Tribunal after notice to the parties. The Tribunal will take a decision about it expeditiously, as far as possible within two months from the date on which any of the parties approaches it with a copy of this judgment. The Tribunal will ensure that there remains no ambiguity in its award about the matter so that the workmen do not remain deprived of the amount of dearness allowance payable to them and are not dragged into unnecessary litigation.

7. The Industrial Tribunal has on 22nd April, 1993 again made an award specifying therein the extent of dearness allowance payable to the workmen, as

also the period. Copy of the award is annexed as Annexure P-5 to the writ petition. It is this award, which is under challenge at the behest of the Petitioner-Management. Number of grounds have been put-forth in challenging the award in question. Primary amongst them being that while making award, the settled principles of law, which are required to be taken into consideration, at the time of revision of dearness allowance, have been ignored from consideration. Additional dearness allowance has been allowed on the basis of grant of dearness allowance by the Government to its employees. The Tribunal has failed to take into consideration the financial capacity of the Management, the extent of the business carried out by it, capital invested by it and profits made by it. It has been alleged that the Industry-cum-region formula had to be applied for fixing the wages and since there was no evidence produced on record to this aspect, the award itself is vitiated. Earlier, the case of workmen had been that they were entitled to increased dearness allowance at the rate of 1.50 per point of the increase in the price index as was being paid by the Associated Cement Corporation Gaggal (Barmana) and Associated Cement Corporation of India Rajban to its workmen. There was no evidence adduced on record to this part of the claim laid, but it was on the basis of the case, which was not at all pleaded that the Tribunal has proceeded to make the award. It is also alleged that the award is without any application of mind and is arbitrary since there is not evidence on record that the Government had increased the dearness allowance during the relevant period to 34%, 38% and 43%, respectively.

8. Respondent-workmen have contested the petition by filing their reply on the affidavit of Mr. Dhani Ram, their authorized representative. Besides taking up legal objection as to the maintainability of the writ petition questioning the merits of the award and interference with the points, which had become final by the decision rendered in CWP No. 793 of 1991, it is alleged that there is no error apparent on the face of record and, as such, there is no lawful justification in setting aside and quashing the award. It is pleaded that after the decision was rendered by this Court and the Industrial Tribunal was directed to give a fresh award, specifying the extent of dearness allowance allowed, evidence was led by the workmen, but no evidence was led on behalf of the Management. It is on the basis of the evidence led by workmen that the Tribunal has rightly allowed an increase to the extent of 34% for the period from 1-12-1989 to 31-12-1989, at the rate of 38% from 1-1-1990 to 30-6-1990 and at the rate of 43% from 1-7-1990 to 30-9-1990 of the minimum wages last drawn by the workmen.

9. We heard Mr. S.S. Kanwar, learned Counsel for the Petitioner and Mr. Dhani Ram, the authorised representative of the Respondent- workmen and have also gone through the entire record.

10. At the very outset, we may observe that the questions, which have become final and conclusive, by virtue of the decision rendered in C.W.P. No. 793/91, cannot be reopened and reagitated by the Petitioner- Management since the said decision has remained unchallenged. For this reason alone, we have not

permitted Mr. S.S. Kanwar to address arguments to that extent.

11. It is well settled that it will not be permissible for us, in exercise of our jurisdiction under Articles 226 and 227 of the Constitution to interfere with the award of the Industrial Tribunal unless there is an error apparent on the face of record. We are not sitting as a Court of appeal on the adjudication made by the Industrial Tribunal. Scope of interference will be within the well settled principles of law and there cannot be any interference with the Tribunal's award until substantial ground is made out showing unreasonable exercise of power on its part.

12. As noticed above, specific direction was made by this Court at the time of deciding the earlier writ petition No. 793 of 1991, namely, to take a decision as regards the matter relating to the extent of dearness allowance payable to the workmen for the period in question and the rate or basis for calculating the amount. This direction had to be made since the Bench deciding the matter, of which one of us (Justice L.S. Panta) was a member, had noticed that except for the recital of claim of the workmen in the opening para of award dated 6th September, 1991, there was no discussion about the rate at which the claim of the workmen was being accepted. Earlier award was upheld in so far as the entitlement of the Petitioners to increased dearness allowance is concerned. The manner of working out the dearness allowance or about the rate at which the same was to be allowed was directed to be re-considered in the fresh award to be made. In the fresh award, which has now been made, the Industrial Tribunal, after noticing the claim of the workmen and the stand taken by their authorised representative that the workmen would be satisfied if dearness allowance is paid to them on the basis of All India Average Consumer Index for Industrial Workers 1960-100, as admissible to the Government and Ors. employees, considering their minimum wages last drawn by the workers as their basic pay for the purpose, has simply observed that workers cannot be made to starve and atleast they deserve to be paid in such a manner so as to have a fair wage, since the goal under Article 43 of the Constitution of India is to achieve a living wage, which is still a far off dream for industrial workers. The Tribunal also observed that since the Government had, off and on and its instrumentalities, revised dearness allowance for their employees therefore, the workmen in the instant case are also entitled to the same dearness allowance as under:

1. Dearness allowance w.e.f. 1-12-1989 to 31-12-1989 of the minimum wages last drawn by the workers. = 34% 2. Dearness allowance w.e.f. 1-1-1990 to 30-6-1990 of the minimum wages last drawn by the workers. = 38% 3. Dearness allowance w.e.f. 1-7-1990 to 30-9-1990 of the minimum wages last drawn by the workers. = 43%

13. According to the Tribunal, the rates have been awarded, namely, 34%, 38% and 43% for different periods, as specified above, since the same were based on percentage of dearness allowance allowed to the Government and Ors. employees on the basis of All India Average Consumer Price Index for the

Industrial Workers (1960-100).

14. We have been taken through the entire record of the Industrial Tribunal. After the Tribunal had been directed to take a fresh decision, the matter was taken by it for the first time on 29th September, 1992* when the authorised representative of workmen submitted the basis of dearness allowance based upon All India Price Index for the year 1982. The Management was asked to file its reply. On 22nd October, 1992 Management filed its reply. On 2nd December, 1992 following issues were framed:

1. At what rate/basis, the applicants are entitled for dearness allowance ? OPA
2. To what amount the applicants are entitled and from what period ? OPA
3. Relief.

15. Part of the statement of Hira Lal, President of the Workers' Union was recorded on 2nd December, 1992, which was concluded on 2nd January, 1993, on which date statement of Dhani Ram, authorised representative was also recorded and evidence was closed on behalf of the workmen. Statement of Shri M.P. Kanojia, Assistant Director, Labour Bureau, Shimla was recorded on 4th February, 1993 and that of the representative of the Management was also recorded on that day and it was stated that no more evidence is to be led. After hearing arguments, the award was made, without stating therein the principles or basis in arriving at the rates awarded.

We may now notice some of the decisions on which reliance was placed by Mr. S.S. Kanwar.

16. In Hindustan Antibiotics Ltd. Vs. The Workmen and Others, , a question had arisen about the manner of increase in the wage structure. It was held that the modern trend of opinion in respect of wage structure is that the labour of a nationalised industry should get a fair deal in the same manner as their counterpart get in private industries, and wages should normally be fixed on region-cum-industry basis. After noticing various provisions of the labour laws, it was further observed that the constitutional, legislative, executive and opinion trends indicate that the same principles evolved by the industrial adjudication in regard to private sector undertakings should govern the public sector undertakings, having a distant corporate existence. By and large the acceptance of the principle of region-cum-industry was considered to be more conducive to industrial relations than that of the governmental wage structure framed on All India basis.

17. The principles on the fixation of the wage structure were also considered in subsequent decision in Kamani Metals and Alloys Ltd. Vs. Their Workmen, Observing that fixation of wage structure is always a delicate task because a balance has to be struck between the demands of social justice, which requires that the workmen should receive their proper share of the national income, which they help to produce with a view to improving their standard of living and

the depletion, which every increase in wages makes in the profits as this tends to divert capital from industry into Ors. channels, thought to be more profitable. The Court reiterated the principles as noticed in earlier decisions by the apex Court in the following words:

...Broadly speaking the first principle is that there is a minimum wage which, in any event, must be paid, irrespective of the extent of profits, the financial condition of the establishment or the availability of workmen on lower wages. This minimum wage is independent of the kind of industry and applies to all alike big or small. It sets the lowest limit below which wages cannot be allowed to sink in all humanity. The second principle is that wages must be fair, that is to say sufficiently high to provide a standard family with food, shelter, clothing, medical care and education of children appropriate to the workman but not at a rate exceeding his wage earning capacity in the class of establishment to which he belongs. A fair wage is thus related to the earning capacity and the work load. It must, however, be realised that "fair wage" by which is meant a wage which is sufficient to provide not only the essentials above mentioned but a fair measure of frugal comfort with an ability to provide for old age and evil days. Fair wage lies between the minimum wage, which must be paid in any event, and the living wage, which is the goal. As time passes and prices rise, even the fair wage fixed for the time being tends to sag downwards and then a revision is necessary. To a certain extent the disparity is made up by the additional payment of dearness allowance. This allowance is given to compensate for the rise in the cost of living. But as it is not advisable to have a 100 per cent neutralisation lest it lead to inflation, the dearness allowance is often a little less than 100 percent neutralisation. In course of time even the addition of the dearness allowance does not sufficiently make up the gap between wages and cost of living and a revision of wages and/or dearness allowance then becomes necessary. This revision is done on certain principles.

18. Even in the matter of the claim for revision of dearness allowance, the following principles were broadly culled out in Bengal Chemical and Pharmaceutical Works Ltd. Vs. Its Workmen,

1. Full neutralisation is not normally given, except to the very lowest class of employees.
2. The purpose of dearness allowance being to neutralise a portion of the increase in the cost of living, it should ordinarily be on a sliding scale and provide for an increase on the rise in the cost of living and a decrease on a fall in the cost of living.
3. The basis of fixation of wages and dearness allowance is industry-cum-region.
4. Employees getting the same wages should get the same dearness allowance, irrespective of whether they are working as clerks or members of subordinate staff or factory workmen.

5. The additional financial burden which a revision of the wage structure or dearness allowance would impose upon an employer, and his ability to bear such burden, are very material and relevant factors to be taken into account.

19. In the matter of fixation of wages, after considering the earlier decisions, the apex Court in *Woolcombers of India Ltd. Vs. Woolcombers Workers Union and Another*, held that the first principle on which wages are fixed is that there is a minimum wage which, in any event must be paid, and this minimum wage is independent of the kind of industry. The second principle, as noticed in this decision, is that the wages must be fair that is to say, sufficiently high to provide a standard family with food, shelter, clothing, medical care and education of children appropriate to the workmen, but not at a rate exceeding his wage-earning capacity in the class of establishment to which he belongs. A fair wage was held to be related to the earning capacity and the work-load, and distinguished from a living wage. For the determination of basic wage and dearness allowance, industry-cum-region formula was reiterated by laying down some guidelines even in such of the cases, where the management is the only concern in the region carrying on the business of a particular type.

20. In *Shivraj Fine Arts Litho Works and Others Vs. The State Industrial Court, Nagpur and Others*, relevant factors to be taken note of while fixing the dearness allowance were reiterated by observing that one hundred per cent neutralisation is not advisable since the same might lead to inflation. Dearness allowance has to be little less than 100% neutralisation and in fixing the dearness allowance, the principle followed should be the increase in the cost of living, the resulting change in the economic conditions and the pattern of dearness allowance prevailing in Ors. concerns in the same region. The increase in the cost of living, since the time when dearness allowance was last fixed is also one of the factors, which is to be taken note of.

21. The next decision cited at the Bar is *Workmen of Metro Theatre, Bombay Vs. Metro Theatre Ltd., Bombay*, in which it was held that revision in case of dearness allowance with respect to employees of a concern for one unit on region-cum-industry basis and linking it with cost of living index in case of Ors. units in the same industry is not the proper approach.

22. On consideration of the aforementioned decisions, there is no manner of doubt that there are well known and established principles, which have been broadly enumerated, which always deserve to be taken into consideration while fixing the wages or making an assessment for increase in the dearness allowance. The Petitioner-Management had in its reply taken up a specific stand that the demand for additional allowance cannot be determined until and unless neutralisation figure is indicated. It was stated that it was not possible to fix the rate of increase in the dearness allowance unless the base for determining the neutralisation figure is worked out.

23. The Tribunal, without taking into consideration the objections, which had

been taken by the Petitioner and without even caring to apply the well known principles, which are required to be taken in allowing increase in the dearness allowance, proceeded to make its award by just observing that since the Government had also allowed dearness allowance, the workmen should also be given an increase in the dearness allowance. It was necessary, before taking such a decision to have atleast come to the conclusion as to the neutralisation figure. The matter had been sent to the Tribunal once with specific directions. The workmen did produce on record certain material, but the same was not critically examined by the Tribunal. Without the Tribunal having taken the trouble in making proper determination, whose duty was to do, it would not be appropriate for us to take a decision in the matter.

24. In *M/s. Woolcombers of India Ltd.*'s case (supra), the importance of giving reasons in support of the conclusions by any judicial or quasi- judicial authorities, when exercising initial jurisdiction was emphasised. It was observed that:

...The giving of reasons in support of their conclusions by judicial and quasi-judicial authorities when exercising initial jurisdiction is essential for various reasons. First, it is calculated to prevent unconscious unfairness or arbitrariness in reaching the conclusions. The very search for reasons will put the authority on the alert and minimise the chances of unconscious infiltration of personal bias or unfairness in the conclusion. The authority will adduce reasons which will be regarded as fair and legitimate by a reasonable man and will discard irrelevant or extraneous considerations. Second, it is a well-known principle that justice should not only be done but should also appear to be done. Unreasoned conclusions may be just but they may not appear to be just to those who read them. Reasoned conclusions, on the Ors. hand, will have also the appearance of justice. Third, it should be remembered that an appeal generally lies from the decisions of judicial and quasi- judicial authorities to this Court by special leave granted under Article 136. A judgment which does not disclose the reasons, will be of little assistance to the Court. The Court will have to wade through the entire record and find for itself whether the decision in appeal is right or wrong. In many cases this investment of time and industry will be saved if reasons are given in support of the conclusions. So it is necessary to emphasise that judicial and quasi-judicial authorities should always give the reasons in support of their conclusions.

25. The Industrial Tribunal has not only failed to give reasons for its award, but also it is not possible from the record to ascertain as to how the figures have been arrived at. There is absolutely nothing in the award, which might even give an inclination that the well known principles, as have been noticed in the aforementioned decisions, more particularly, the ones culled out in *Bengal Chemical and Pharmaceutical Works Ltd.*'s case (supra), were considered, what to say applied.

26. In these aforementioned circumstances, we have no option left except to quash and set aside the award with directions to the second Respondent to take

a fresh decision in the light of the aforementioned directions and make an award, in accordance with law, after affording opportunity to the parties of being heard. Needless to add that the matter has become pretty old. Decision will be taken by Respondent No. 2 within a period of four months from the date of receipt of the copy of the writ order. The record be sent back to the Tribunal forthwith. The parties are directed to appear before the Tribunal on 4th March, 1994.

Costs on parties.