(1995) 11 P&H CK 0008

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 129 of 1988

Suraj Textile Mills APPELLANT

Vs

National Textile Corpn. Ltd. and Others RESPONDENT

Date of Decision : 17-11-1995

Acts Referred:

Industrial Disputes Act, 1947 — Section 36A
Minimum Wages Act, 1948 — Section 18(1)

Citation : (1998) 3 LLJ 697

Hon'ble Judges : N.K. Sodhi, J

Bench : Single Bench

Advocate : Sumeet Mahajan and H.N. Mehtani, for the Appellant; J.C. Verma, Rajiv Godara and Rajesh Sharma, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Sodhi, J.—This petition filed under Article 226 of the Constitution is directed against the order dated October 8, 1987 passed by the Presiding Officer, Industrial Tribunal, Bathinda on a reference made to it u/s 36-A of the Industrial Disputes Act, 1947 (for short, the ''Act'') to have the doubts that had arisen in regard to the interpretation of the settlement between the petitioner-employer and his workmen clarified.

2. Facts giving rise to this petition which are not in dispute may first be noticed. The Minimum Wages Act, 1948 (hereinafter called 1948 Act) was made applicable to the textile industries in the State of Punjab with effect from January 1, 1979. As per notification issued by the State Government the minimum wage fixed for Clerks was Rs. 275/ - and that for senior Clerks was Rs. 300/-. While the aforesaid minimum wages were operative, the petitioner-management and its workmen through their Union arrived at a settlement on December 31, 1979 u/s 18(1) of the Act. The relevant clauses of the settlement with which we are concerned in this petition are reproduced hereunder for facility of reference :

" 1. It is agreed between the parties that the existing grades of the clerical staff would be revised and they will also be given an element of fixed and variable D.A. as per details below :

1.1. Following scales of pay are to be provided to the clerical staff in the mills :

Clerk : Rs. 280-8-320-10-370-12-430.

Sr. Clerk : Rs. 350-10-400-EB-l 5-475-20-615.

1.2. In addition to the basic pay in the above scales, the clerical staff would be given the following fixed DA to raise their wages to desired level:

Category Amount of fixed dearness allowance. Clerk Rs. 75/- per month. Sr. Clerk Rs. 100/- per month.

The above amount of DA will remain fixed and is being given in lieu of the claim for HRA, CCA etc."

After the settlement, the Clerks and the Senior Clerks started drawing their wages in the scale of Rs. 280-430 and Rs. 350-615 respectively together with fixed dearness allowance at the rate of Rs. 75/-and Rs. 100/- per month respectively. Thereafter with effect from December 31, 1981 the minimum wages were again revised by the State Government through a notification issued under the 1948 Act. The minimum wages for Clerks was raised to Rs. 415/- and that for the Senior Clerks was raised to Rs. 445/-. In implementing the minimum wages as fixed by the latest notification the petitioner-employer gave the minimum wages as prescribed by the notification and did not pay fixed dearness allowance over and above the minimum wage, it being contended that the dearness allowance was a part of the minimum wage as fixed under the 1948 Act. The employees, however, through their Union contended that under the settlement the employer had to pay the fixed dearness allowance over and above the minimum wage. Since the dispute relating to the interpretation of the settlement could not be resolved amicably the State Government took cognizance of the same and a reference was made to the Industrial Tribunal-respondent on the joint request of the parties. The terms of reference were as under :

(i) Whether or not the fixed dearness allowance/ dearness pay of Rs.75/-p.m. and Rs. 100/-p.m. given to the Clerks and Sr. Clerks of Suraj Textile Mills, Malout respectively in lieu of house rent allowance, city compensatory allowance etc. in terms of the Memorandum of Settlement dated December 31, 1979 forms part of the minimum wages as determined and notified by the Government of Punjab under the Minimum Wages Act, 1948 for inter alia clerical personnel of textile industry in the Punjab State vide Notification No. 13(16)-81 -3-Lab-II/1662 dated December 31, 1981 effective from January 1, 1982.

(ii) If so, whether the Management of Suraj Textile Mills, Malout can adjust the aforesaid fixed dearness allowance/dearness pay amount in the rates of minimum wages as notified by the Punjab Government for clerical personnel in the textile industry in Punjab State vide Notification No. 13(16)-81-3-Lab-11/1662 dated December 31, 1981 referred to above effective from January 1, 1982 in terms of settlement dated December 31, 1979.

(iii) Relief, if any."

On receipt of the reference, the parties filed their statements of claim before the Tribunal who after hearing their representatives gave its decision holding that from the definition of the term ''wages'' as given in Section 2(h) of the 1948 Act, it is clear that dearness allowance was a component of the minimum wage but the fixed dearness allowance payable under Clause 1.2 of the settlement was not adjustable towards the increase in the minimum wage. It is this decision of theTribunal that has been impugned in the present petition.

3. The first argument of Mr. Sumeel Mahajan, Advocate appearing for the petitioner is that since the definition of ''wages'' as given in Clause (h) of Section 2 of the 1948 Act includes dearness allowance, the fixed dearness allowance payable under the settlement was adjustable against the minimum wage that was fixed by the State Government as per notification dated December 31, 1981. There is no merit in this submission. It is true that dearness allowance forms a part of ''wages'' as defined under the 1948 Act but that does not mean that the fixed dearness allowance payable under the settlement is adjustable against the minimum wage fixed by the State Government. A perusal of the settlement makes it clear that the intention of the parties was that the fixed dearness allowance payable in terms of Clause 1.2 of the settlement was payable in addition to the minimum wage. There is no manner of doubt that the settlement is operative between the parties and unless it runs counter to any statutory provision, it has to be given effect to. Terms of the settlement in so far as they relate to the payment of fixed dearness allowance and the notification fixing minimum wages can both be implemented simultaneously. This being so, it has to be held that fixed dearness allowance is not adjustable and the same must be paid over and above the minimum wage fixed by the notification. There is thus no infirmity in the finding recorded by the Tribunal in this regard.

4. It was then contended that since the Tribunal has not answered the second part of the reference, the case should be remanded so that it can determine the amount payable under the settlement and also the persons entitled thereto in terms of the settlement. There is no need to adopt this course as contended by the learned counsel for the petitioner.

5. A perusal of the terms of reference made to the Tribunal makes it clear that the two questions referred to the Tribunal were whether the fixed dearness allowance payable under the settlement formed a part of the minimum wages as determined by the State Government and if so, whether the management could adjust the same against the rates of minimum wages as fixed by the notification. It is also clear that the second question referred to the Tribunal was to be answered only if the answer to the first question was in the affirmative. Since the

Tribunal has answered the first question in the negative, it was not called upon to answer the second question. Moreover, the question of determining the amount and the persons entitled thereto was not the subject matter of reference u/s 36-A of the Act nor can these questions be determined in such proceedings. The concerned employees are entitled to the fixed dearness allowance over and above the minimum wage and if they are not paid, it will be open to them to recover the same by taking appropriate proceedings u/s 33-C and the like.

6. Lastly, it was urged that the Tribunal while aswering the questions referred to it has gone beyond the terms of reference. Having perused the impugned order of the Tribunal, I fail to understand how such a contention can be raised in the present case. No meaningful argument was advanced to show as to how the Tribunal had exceeded its jurisdiction.

6A. No other point was raised.

7. In the result, there is no merit in the writ petition and the same stands dismissed with costs which are assessed at Rs. 1,000/-.