
(2019) 07 BOM CK 0235

In the Bombay High Court

Case No : Writ Petition No. 1920, 3152 Of 2014

VVF Limited Employees' Union And Ors

APPELLANT

Vs

VVF India Ltd. And Another

RESPONDENT

Date of Decision : 25-07-2019

Acts Referred:

Industrial Disputes Act, 1947 — Section 10A
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 07 BOM CK 0235

Hon'ble Judges : S.C. Gupte, J

Bench : Single Bench

Advocate : Sanjay Singhvi, Bennet D'Costa, Jignasha Pandya, K.S. Bapat, P.C. Pavaskar

Final Decision : Dismissed

Judgement

S.C. Gupte, J

1. The petition (Writ Petition No. 1920 of 2014), filed by a trade union, challenges an award of Industrial Tribunal in a dispute involving wages and allowances payable by the Respondent employer to its workmen represented by the Petitioner union.

2. A few salient facts of the Petitioner's case, necessary for determination of the controversy, may be noted as follows:

Respondent No. 2 ('VVF Ltd.'), established in the year 1939, was manufacturing and marketing personal care products including soaps, shampoos and cosmetics. Over the years, it acquired and established various units all over the world. Its website (as of 2014) claims a global capacity of 300,000 metric tonnes per year as a contract manufacturer of bar soap, making it one of the largest such manufacturer in the world. We are concerned here with its two units in Maharashtra, namely, at Sion/Sewree in Mumbai ("Mumbai unit") and at Taloja in Thane district ("Taloja unit"). In course of time, it started manufacturing partially

hydrogenated vegetable oils at the Mumbai unit. This business showed rapid expansion and steadily grew in terms of turnover and net profits. Around the year 2004, the company started its Talaja unit, installing one of the largest fatty alcohol plants there. In the following years, i.e. 2005 and 2006, it commissioned a soap noodle and fatty acid fractional distillation plant and a fatty acid hydrogenation plant at Talaja and shifted its plant and machinery from Mumbai to Talaja. Despite the fact that operations at Mumbai and Talaja, which were under one common business division, were the same, required the same set of skills and involved the same working conditions, there was disparity in service conditions between Mumbai and Talaja plant workers; the wages of Talaja workers were far too higher than their counterparts in Mumbai. A charter of demands was accordingly made by the Petitioner union for Mumbai workers, which came to be referred to the Industrial Tribunal. During the pendency of the reference, VVF Ltd. was demerged and Respondent No. 1 ('VVF India Ltd.') became the resulting company. The undertaking at Sewree remained with the demerged company, i.e. VVF Ltd., whilst the Sion unit and Talaja unit went to the resulting company, i.e. VVF India Ltd. In order to allay the apprehensions of the Petitioner union, two concrete assurances were made to the Company Court, which were recorded and accepted by it in its order sanctioning the scheme of demerger. One was that the benefit of the then pending adjudication (Ref. IT 44 of 2009) on wage revision for general demands of the workmen would be extended to the employees of Sewree unit, which would remain with the demerged company. The other was that whilst assessing the financial capacity of the employer as one of the parameters for wage adjudication, the common balance sheet of the demerged company (without giving effect to the demerger scheme) as on the appointed date (i.e. 1 April 2011) shall be considered. The wage dispute reference was accordingly prosecuted and it resulted into an award of 29 March 2014, impugned herein. By the impugned award dated 29 March 2014, the Industrial Tribunal partly granted the Petitioner's demands on certain allowances, but rejected their main demands of revision in pay scales, and fixed and variable dearness allowances. This award has been challenged both by the Petitioner union and the Respondent employer.

3. The Petitioner's challenge concerns mainly the issues of parity between the units at Mumbai and Talaja, and financial soundness of the Respondent company so as to justify the benefits claimed by the Petitioner for its workmen members. The Respondents' challenge (Writ Petition No. 3152 of 2014) involves justification or otherwise of the individual allowances granted by the tribunal on the Petitioner's charter of demands. The period of demands considered by the tribunal is between 1 April 2009 and 31 March 2011.

4. Mr. Singhvi, learned Senior Counsel appearing for the Petitioner union, takes me through the material placed by the parties before the tribunal for justification of the demands. Learned Counsel analyses data from the industry for comparative financial position, comparative products and comparative wages from the point of view of principles of region-cum-same employer as well as

industry-cum-region parity. Learned Counsel submits that based on this data, the Industrial Tribunal had accepted the Taloja plant to be comparable to the Mumbai plant. Having done so, Counsel asserts, it was not proper for the tribunal to fix wages of workmen at Mumbai at a level lower than that of workmen at Taloja. Learned Counsel submits that even on an industry-cum-region principle, the tribunal was not justified in fixing wages lower than other comparable undertakings such as Godrej Industries Ltd, Hikal Ltd. and Deepak Fertilizers Ltd. It is submitted that had the demands for revision in pay scales and dearness allowances been granted, the wages of Mumbai workmen would have been nearer to those prevailing in the Taloja unit. It is submitted that the reasons employed by the tribunal for rejection of the union's claim for revision in basic wages suffer from perversity and misconception of law. Learned Counsel makes a particular reference in this behalf to the tribunal's approach in treating the period of 10 years as a minimum period required to elapse before basic salary structures could be revised. Learned Counsel relies on various judgments of the Supreme Court including the case of *Workmen of Balmer Lawrie & Co. Ltd. v. Balmer Lawrie & Co. Ltd.* (1964) 1 LLJ SC 380 in support of his case for revision. Learned Counsel submits that denial of increase in dearness allowance merely on the ground of an existing dearness allowance scheme is contrary to the law laid down by the Supreme Court. Learned Counsel submits that the tribunal's finding that there was no data furnished for dearness allowance in comparable industries is perverse. Learned Counsel refers to the data placed before the tribunal in this behalf. Learned Counsel contends that the tribunal's refusal to revise basic salary and dearness allowance, both fixed and variable, has resulted in the pay packet of the concerned workmen being inacceptably lower to comparable units on considerations of region, industry and employer parity. Learned Counsel makes elaborate submissions on each of the individual demands of the workmen.

5. Mr. Bapat, learned Counsel for the Respondents, contests the comparison between Taloja and Mumbai units referring to various indices. Learned Counsel does not accept that Mumbai workmen are getting any unfair deal. He refers to the different structures of salaries at Taloja and Mumbai to buttress his point. Learned Counsel submits that comparison between units as well as industries/regions must be made only on the basis of data upto 31 March 2011; for subsequent periods, a separate reference (for the period 2011-2014) and conciliation (for charter of demands post 2015) have been pending. Learned Counsel also contests comparability of companies such as Godrej, Hikal and Deepak Fertilizers with the Respondent company. Learned Counsel refers to the financial condition, and particularly, depleting profits and progressively weaker balance sheets of the Respondents and submits that wage revisions demanded by the union are not justified. Learned Counsel offers comments on individual demands to support the conclusions of the tribunal on the demands that were rejected and challenge the conclusions on those that were allowed.

6. Before we get into the specifics of individual demands and their justifiability, it is imperative to take a broad view of the principles of industry-wise, region-wise

and employer-wise parity in the matter of wages and related service conditions and see how the Respondents' Mumbai unit fares on these principles. It is apposite to then take a look at the merits and demerits of the demands generally from the standpoint of the financial condition of the Respondents per se, followed by a consideration of individual demands from their own perspective.

7. As the Supreme Court held in *Hindustan Antibiotics Ltd. v. The Workmen* (1967) 1 SCR 652, the object of Industrial Law is two-fold:

(i) to improve service conditions of industrial labour so as to provide them ordinary amenities of life, and (ii) to bring about, by that process, industrial peace, which, in turn, is expected to accelerate productivity of the country leading to its prosperity, such prosperity, in its turn, helping improve the conditions of labour. This whole process envisages a progression from a minimum basic wage (below which no employer can be permitted to operate) to a need based fair wage (linked with the capacity of the industry) to a living wage (for maintaining the workmen in the highest state of industrial efficiency and in a position to provide their families with all material things necessary for their health and well-being). The Supreme Court in *Kamani Metals and Alloys Ltd. v. Their Workmen* (1967) II LLJ SC 55 explained these concepts 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 workload. It must, however, be realized that "fair wage" is not "living 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."

8. Fixation of wage structure, as the Supreme Court observed in *Kamani Metals and Alloys Ltd.*, has always been a delicate task; a balance has to be struck between the demands of social justice which mandate that workmen should receive their proper share of national income which they help to produce, with a view to improving their standard of living, on the one hand, and the depletion which every increase in wages makes in profits which may have a tendency to divert capital from the particular industry into other channels considered more profitable. The well-settled principles of industrial law of industry-wise, region-wise and employer-wise parity in matters of wage fixation are inextricably linked

to these socioeconomic considerations.

9. The first of these formulae, namely, the industry-cum-region formula, was explained by the Supreme Court, after an extensive review of authorities, in *Bengal Chemical and Pharmaceutical Works v. Its Workmen* (1969) 2 SCR 113 in the following words:

" In *Greaves Cotton & Co. v. Workmen* [1964] 5 S.C.R. 362, after referring to the *Hindusthan Motors Case* and the *French Motor Car Co. case* this Court laid down that the basis of fixation of wages and dearness allowance is industry-cum-region and observed, at p. 368:

"The principle therefore which emerges from these two decisions is that in applying the industry-cum-region formula for fixing wage scales the Tribunal should lay stress on the industry part of the formula if there are a large number of concerns in the same region carrying on the same industry; in such a case in order that production cost may not be unequal and there may be equal competition, wages should generally be fixed on the basis of the comparable industries, namely, industries of the same kind. But where the number of industries of the same kind in a particular region is small it is the region part of the industry-cum-region formula which assumes importance particularly in the case of clerical and subordinate staff, for, as pointed out in the *French Motor Car Co. Case*, there is not much difference in the work of this class of employees in different industries."

Again, at p. 374, it is stated as follows:

"Time has now come when employees getting same wages should get the same dearness allowance irrespective of whether they are working as clerks, or members of subordinate staff or factory-workmen."

10. The Supreme Court later went on to observe in *Tata Chemicals Ltd. v. Workmen* 1978 LAB. I.C. 637 that though this formula has to be kept in view, at the same time, it has to be borne in mind that there can be no comparison between a small struggling concern and a large flourishing unit. The court noted as follows:

"It cannot also be lost sight of that with the march of time, the narrow concept of Industry-cum-Region is fast changing and too much importance cannot be attached to region. The modern trends in industrial law seem to lay greater accent on the similarity of industry rather than on the region. It was observed by this Court in *Workmen of New Egerton Woollen Mills and New Egerton Woollen Mills* (1969) 2 Lab LJ 782 (SC) that where there are no comparable concerns in the same industry in the region, the Tribunal can look to concerns in other industries in the region for comparison but in that case such concerns should be as similar as possible and not disproportionately large or absolutely dissimilar. On the parity of reasoning, it is reasonable to conclude that where there are no comparable concerns engaged in similar industry in the region, it is permissible

for the Industrial Tribunal or Court to look to such similar industries or industries as nearly similar as possible in adjoining or other region in the State having similar economic conditions."

11. Then came the case of Food Corporation of India Workers' Union v. Food Corporation of India 1990 Supp SCC 296 : AIR 1990 SC 2178, where departmentalised workers engaged by Food Corporation of India at the docks and port godowns in the State of West Bengal were being paid wages on the same basis as port and dock workers in the State. The same principle had been adopted by the Corporation for all its departmentalised workers even at its other depots in the State of West Bengal. When departmentalisation of labour force was introduced in other regions, disputes arose with regard to pay scales to be applied to such workmen. Disputes with regard to wage structures of departmentalised workers of the Corporation in Bihar were referred to arbitration under Section 10-A of the Industrial Disputes Act. The Corporation sought to justify the disparity in the wage structures on the ground that workers employed at depots in Bihar, Assam, Orissa, U.P. and Delhi could not claim parity with the workers employed at the ports and port city godowns of West Bengal. It evoked the industry-cum-region formula and submitted that since the workers were working in different regions, one could not insist on parity in wages. Disagreeing with the Corporation's contention, the arbitrator was of the view that instead of the industry-cum-region formula, the zone-cum-same employer rule should be applied to the case so as to avoid discrimination leading to discontent among employees. The arbitrator felt that it would be fair and proper to fix the wage structure of Bihar workers of the Corporation on the West Bengal pattern; otherwise it would be creating unnecessary discrimination without reasonable grounds. The Division Bench of Calcutta High Court affirmed this award. The Supreme Court held that the decision of the High Court had become final and was binding on the Respondent corporation; it was not open to the corporation to invoke the industry-cum-region formula and deny to the workers employed in the depots in Bihar, Orissa, Assam, U.P. and Delhi regions parity in the matter of wages with the workers employed at the ports and godowns in Calcutta city and the depots in the State of West Bengal. The Corporation sought to justify the disparity in the wages of departmentalised labour employed in different regions on the ground that they were not transferable from one place to another. The court was of the view that even this aspect was considered in the award. On the basis of the evidence produced before him, the learned arbitrator had observed that except for some few allowances, the scales of pay, dearness allowance and other fringe benefits were uniform throughout India for officers, clerks and peons of the Corporation. The learned arbitrator had held that clerks and other sub-staff were not transferred from one region to another except on promotion or on special requests implying that they were not normally transferable. The Supreme Court held that none of the reasons put forward by the corporation to deny parity in pay scales was sustainable.

12. Of course, for considering parity of workmen of the same employer, there

must be a substantial identity in the work of the comparing sets of workmen. If not, it would be open to the employer to place different values on individual sets of employees. The Supreme Court in the case of *Workmen of Western India Match Co. Ltd. v. Western India Match Co. Ltd.* (1963) 2 SCR 27 was concerned with two sets of employees of the respondent. One was of employees of the respondent in their factory at Alambazar, whilst the other was their counter-parts in the sales office at Calcutta. The court held that since these employees were not doing identical work, distinction could be made between them. There was one more reason considered by the court for countenancing disparity of service conditions of these two sets of employees. The court noted that though both sets were living within the limits of the Corporation of Calcutta, that circumstance, though relevant, was not by itself sufficient to justify payment to them at the same rate of dearness allowance. The court held that it could not ignore the fact that the employees of other factories situated in that area were not paid dearness allowance at the rates formulated by the Bengal Chamber of Commerce and therefore, if those rates were adopted by the respondent with respect to the factory employees, existing industrial peace in that region might be destroyed. The court held that the tribunal was, in the premises, justified in exercising its discretion by not acceding to the appellant's demand for parity.

13. One more caveat needs to be added and that is that the comparison between different concerns in the region must not be made on the basis of mere similarity between their respective lines of business. There are a host of other factors which must also be considered whilst considering similarities or dissimilarities between different concerns. The Supreme Court in *Woolcombers of India Ltd. v. Woolcombers Workers Union* (1974) 3 SCC 318 held as follows:

"What is the total capital invested by the concern, what is the extent of its business, what is the order of the profits made by the concern, what are the dividends paid, how many employees are employed by the concern, what is its standing in the industry to which it belongs, these and other matters have to be examined by industrial adjudication in determining the question as to whether one concern is comparable with another in the matter of fixing wages. Now, it is obvious that these questions cannot be decided merely on the interested testimony either of the workmen, or of the employer and his witnesses."

14. Yet another important criterion is the financial condition of the very concern for whom the wage fixation exercise is being undertaken. This would reflect both on the comparison with other employer concerns within the region as also on the capacity of the concerned unit to bear the burden of wages. As the Supreme Court noted in *Novex Dry Cleaners v. Workmen* (1962) 1 LLJ 271, even on the principle of industry-cum-region, it would be necessary to examine whether the wage structure proposed to be fixed can be fairly and reasonably borne by the establishment having regard to its financial position. The court held as follows:

"It is now well settled that in fixing a minimum wage, the capacity of the industry to pay the wage is not relevant. But in fixing a fair wage, the capacity of the

industry to bear the burden of the said wage is a very relevant and very important factor. Therefore, there can be no doubt that before fixing the wage structure, it was necessary that the Tribunal should have examined the financial position of the appellant and come to a definite conclusion in that behalf."

15. Also in the case of *A.K. Bindal v. Union of India* (2003) 5 SCC 163, the Supreme Court noted as follows:

"19. The contention that economic viability of the industrial unit or the financial capacity of the employer cannot be taken into consideration in the matter of revision of pay scales of the employees, does not appeal to us. The question of revision of wages of workmen was examined by a Constitution Bench in *Express Newspaper (P) Ltd. v. Union of India* AIR 1958 SC 578 having regard to the provisions of the Industrial Disputes Act and the Minimum Wages Act and the following principles for fixation of rates of wages were laid down: (AIR p. 605, para 73)

"(1) that in the fixation of rates of wages which include within its compass the fixation of scales of wages also, the capacity of the industry to pay is one of the essential circumstances to be taken into consideration except in cases of bare subsistence or minimum wage where the employer is bound to pay the same irrespective of such capacity;

(2) that the capacity of the industry to pay is to be considered on an industry-cum-region basis after taking a fair cross section of the industry; and

(3) that the proper measure for gauging the capacity of the industry to pay should take into account the elasticity of demand for the product, the possibility of tightening up the organisation so that the industry could pay higher wages without difficulty and the possibility of increase in the efficiency of the lowest-paid workers resulting in increase in production considered in conjunction with the elasticity of demand for the product - no doubt against the ultimate background that the burden of the increased rate should not be such as to drive the employer out of business."

(Emphasis supplied)

20. The same question was again examined in *Hindustan Times Ltd. v. Workmen* AIR 1963 SC 1332 and the Court recorded its conclusion in following words in para 7 of the Report: (AIR p. 1336)

"7. While industrial adjudication will be happy to fix a wage structure which would give the workmen generally a living wage, economic considerations make that only dream for the future. That is why the Industrial Tribunals in this country generally confine their horizon to the target of fixing a fair wage. But there again, the economic factors have to be carefully considered. For these reasons, this Court has repeatedly emphasised the need of considering the problem on an industry-cum-region basis, and of giving careful consideration to the ability of the industry to pay."

(Emphasis supplied)

21. It may be noticed that in these cases the Court was considering the question of wage structure for workmen who belong to economically poor section of society and providing them even living wage was held to be a distant dream on account of economic considerations and also the capacity of the industry to pay."

16. We may end our review of this law by noting that once the concerns have been held to be comparable, the tribunal must ordinarily endeavour to fix revised wage-scales in a manner so as to obviate the disparity between the concerned employees and their comparable counterparts. The Supreme Court in *Workmen of New Egerton Woollen Mills v. New Egerton Woollen Mills* (1969) II LLJ SC 782 considered this issue, observing as follows:

"The grievance of the workmen, on the other hand, was that while professing to treat the Orient Carpet Manufacturers as a comparable concern the tribunal did not in fact fix the revised wage-scales in such a manner as to equalize with those of the Orient Carpet Manufacturers. It was also urged on their behalf that the increments awarded by the tribunal were not adequate and lastly that the award should have been brought into force from the date of the demand or at least from the date of the award. There is, in our view, considerable justification for the workmen's first contention. Taking the dearness allowance payable by the two companies as on 1 November 1963, the date when the award was directed by the tribunal to come into force, the wage-scales as awarded by the tribunal fell short of those existing in the Orient Carpet Manufacturers on that day. A comparison of the two wage-scales clearly brings out the disparity between the two of them. Whereas in the Orient Carpet Manufacturers the maximum which an unskilled workman was entitled to get was Rs. 118.50, the maximum which an unskilled workman under the award can get is Rs. 88 only. Similarly, the maximum which all the other categories of workmen in Orient Carpet Manufacturers were entitled to are higher than those awarded by the tribunal. A glance at the minimum consolidated wages fixed by the Punjab Government by their said notification also shows that the wage-scales awarded by the tribunal are hardly better than those prescribed under the said notification. Since the tribunal accepted the Orient Carpet Manufacturers as the only comparable unit in the region it could not with any reason fix wage-scales at levels lower or less favourable than those existing in that company. There is, therefore, force in the workmen's complaint that the revision made by the tribunal was neither fair nor adequate."

17. In keeping with this law and after taking into account oral and documentary evidence led by the parties including the balance sheets and profit and loss accounts of VVF India Ltd, the tribunal, relying on well settled principles laid down by a catena of judgments, some of which are noted above, held that while adjudicating a wage revision dispute, along with financial position, industry-cum-region formula was required to be considered as an important aspect. The tribunal held that the chart filed by the union, which was not a matter of dispute,

upon comparison of products and financial position of VVF India Ltd. v. Godrej Industries, Deepak Fertilizers and Hikal Ltd. and taking into account various factual aspects bearing on such comparison, VVF India Ltd. was comparable to these three companies. Disregarding the slight difference in the employment component, which would have a bearing on increase or decrease of production, sales and net profits, the tribunal held that if total net profits were taken into consideration vis-a-vis investments, admittedly it clearly indicated comparability of VVF India Ltd. to these three companies. Considering the overall factual aspects, including, particularly, the products and their respective locations, the tribunal was of the considered view that VVF India Ltd. could be compared favourably with these companies. The tribunal also held that service conditions in these three companies were, admittedly, comparatively much better than service conditions of the employees covered by the reference. The tribunal accordingly accepted the union's case of applicability of the principle of industry-cum-region formula in the context of comparison with the aforesaid three concerns in the same region and held that the second party workmen were entitled to revision of wages on that basis.

18. So far as the financial condition of VVF India Ltd. is concerned, the tribunal came to a clear conclusion that though the company was currently making losses (that is to say, for the years 2012, 2013), considering its capacity for making recovery and compensating its losses, it could not be said that the financial position of the company was very bad or that it would not be able to bear the burden arising out of the charter of demands. For coming to this conclusion, the tribunal relied upon the pleadings of the respective parties, the annual reports of the company showing rapid and considerable growth in the turnover as well as net profits, the audited balance sheets of the company for the years 2006-07 and 2010-11 including profit and loss accounts. The tribunal also, one may add, rightly, whilst ascertaining gross profits of the company, kept aside taxation and development rebate and worked out the figures without taking into account depreciation. In *Unichem Laboratories Ltd. v. Their Workmen* 1972 I LLJ 576 (SC), the Supreme Court laid down various principles for ascertaining the financial capacity of the company. Whilst fixation of pay scales and dearness allowance, in particular, involves ascertaining of gross profits, the court held that these gross profits have to be arrived at without deducting provisions made in the balance sheets for taxation, development rebate and depreciation. After considering its various earlier decisions, the court held that fixation of wage structure stands more or less on the same footing as framing of a gratuity scheme and the principles applicable for ascertaining profits were the same; provisions for taxation and for reserves could not take precedence over provision for gratuity and fixation of wages; these provisions have to take second place as compared to provisions for wage structure and gratuity. The court also held that like provisions for taxation and reserves, even depreciation reserves could not be deducted for the purposes of computing profits for the purpose of wage fixation. This position was again reiterated by the Supreme Court in the case of *Shivraj*

Fine Art Litho Works v. The State Industrial Court, Nagpur (1978) 2 SCC 601.

19. The conclusions of the tribunal on comparability of VVF India Ltd. with the three companies referred to by the union as well as on the financial condition per se of VVF India Ltd. are fair and reasonable conclusions having regard to the material placed before it. In the matter of applying the industry-cum-region principle, the tribunal's conclusion that the Mumbai unit of VVF India Ltd. was comparable to Godrej Industries Ltd., Deepak Fertilizers and Hikal Ltd. cannot be faulted as an unreasonable or perverse conclusion. The products of the four companies are clearly comparable. All four are dealing in chemicals, and edible and non-edible oils, VVF India Ltd. and Godrej Industries producing chemicals including fatty acids, oils and vanaspati, and Deepak Fertilizers and Hikal Ltd. also producing chemicals. Their turnovers and gross profits also could most certainly be said to be comparable, particularly for the year 2010-2011 for which data was available before the tribunal. It is important to bear in mind that we are presently concerned with a charter of demands for the period between 1.4.2009 and 31.3.2011. The tribunal was, accordingly, justified in its conclusions on comparability of VVF India Ltd. with others in the region and applying the industry-cum-region formula to the facts of the case. The financial indices considered by the tribunal also indicate in no uncertain terms the sound financial condition of VVF India Ltd. for the period upto 31.3.2011. Its turnover in the financial year 2006-07 of Rs. 851.84 crores had gone upto Rs. 1776.70 crores for the financial year 2010-11, whilst operating profit of Rs. 124.24 crores had gone upto Rs. 262.28 crores. Profit available for appropriation had also shown a likewise upward trend. As against Rs. 27.85 crores available for appropriation in the financial year 2006-2007, the figures for the financial year 2010-11 were in the region of Rs. 49.61 crores. As against additional reserves and surpluses of Rs. 221.31 crores for the financial year 2006-07, there was a provision of Rs. 251.06 crores for the financial year 2010-11. All these figures clearly suggest that the company was in a very sound financial health right upto the end of financial year 2010-11, and particularly, for the wage revision period of 1.4.2009 to 31.3.2011. The tabular data set out in paragraph 23 of the impugned order makes the position unmistakably clear.

20. Mr. Bapat, arguing for the employer, makes one more point here. Learned Counsel submits that even subsequent developments (i.e. developments after the concerned wage fixation period) relating to the financial condition of the employer need to be kept in mind whilst adjudicating the wage dispute. Learned Counsel refers to the case of Mukand Ltd. v. Mukand Staff and Officers' Association (2004) 10 SCC 460 in support. One need not join issue with the proposition canvassed by Counsel here. In the facts of the present case, even going by the financial circumstances for the following years placed by the parties before the tribunal, i.e. upto the year ending 31 March 2013, the charter of demand by the union appears to be justified. Of course, I am not taking into account economic circumstances purportedly obtaining thereafter, that is to say, after 1 April 2013. These were neither before the tribunal nor do they form part

of evidence before this court. The balance sheets for subsequent years and the alleged downgrading of the employer's credit rating during these years, which are matters flashed across the Bar during arguments (and without proof), cannot form part of consideration of this court whilst examining the legality and propriety of the impugned order of the tribunal. We may only legitimately consider the purported losses upto and including the financial year 2012-2013. The losses shown in the year 2012-2013, if set off against depreciation, do not, in any case, paint any particularly gloomy picture. If one disregards the provision of depreciation, the company has returned a cash profit of Rs. 12.58 crores for the financial year 2011-12 whilst the loss for the financial year 2012-13 has been only in the sum of Rs. 7.62 crores, i.e. a very miniscule percentage of its total turnover. The tribunal's conclusion on the workmen's entitlement to revision on the principle of industry-cum-region and on the basis of financial soundness of the Respondent employer, thus, cannot be faulted in a judicial scrutiny expected under Articles 226 and 227 of the Constitution of India.

21. Having thus considered the evidence favourably to the union and applied the legal principles correctly to come to a conclusion that the second party workmen were entitled to revision of service conditions, the tribunal, however, appears to have committed a serious error in law in not accepting their major demands of wage revision. Whilst individual demands may be considered separately in that context, one general observation at the very outset may be in order. As indicated above, the tribunal came to a categorical finding of fact to justify wage revision. The final finding of the tribunal in this behalf was as follows:

"Therefore, considering the financial affairs of the Company and poor service conditions of the workmen concerned in this Reference vis-a-vis the comparable industries, complying with the principle of "industry-cum-region" formula, in my considered view, the second party workmen are entitled for revision of service conditions."

22. There again, the tribunal identified correctly, as noted above, the three companies comparable with the First Party company for applying the "industry-cum-region" formula. Its conclusion in this behalf was as follows:

"Considering the overall factual aspects, particularly the products and location, in my considered view, the First Party can be compared with the three other companies. Admittedly the service conditions of all these three companies are comparatively much more higher and better than the service conditions of the employees concerned in this Reference."

23. Having thus returned a clear and unambiguous finding in favour of the workmen, the tribunal did not follow up its line of reasoning to grant comparable benefits whilst considering revision in wages. In fact, the whole discussion in the order on the major demands of the union, which follows the aforementioned findings, is conspicuously silent on either individual wage scales/dearness allowance/other allowances, etc. of these three comparable industries or the

overall effect of the revision actually ordered by the tribunal in comparison to these three industries. The Supreme Court has made it clear in *Workmen of New Egerton Woollen Mills* (supra) that ordinarily, if the tribunal accepts any particular industry as a comparable unit in the region, it could not fix wage-scales at levels lower or less favourable than those existing in that unit. This may not be an inflexible rule in all cases. There may indeed be other considerations such as prevailing financial circumstances of the industry for whom the wage fixation exercise is being carried out. But, even here, the tribunal, as noted above, clearly and unmistakably held in favour of the union. It actually returned a finding of fact that the financial circumstances of VVF India Ltd. were sound and, as we have seen above, that conclusion was indeed justified. From the law as it stands and the findings of fact rendered in the reference, thus, it clearly emerges that ordinarily, that is to say, if there is no other important consideration for holding otherwise, once comparable industries in the region are identified, every attempt should be made to achieve parity in wages and service conditions, and, in the present case, there is no other important circumstance, at least none is discussed in the impugned award, why there should not be even a semblance of parity between the wages of workmen concerned in the reference and those of the three other comparable units.

24. If anything, there is an additional important reason why this should be all the more so. The wages and service conditions of the workmen of the Respondent's Taloja unit actually compare much more favourably to those of the comparable industries considered by the tribunal. Even on a principle of employer parity, discussed above, not just in a zonal but actually in a regional context (Taloja and Mumbai come within the same region), there is indeed no reason why there should be no revision at least so as to achieve parity with the Taloja unit of the same employer.

25. The basic wages together with fixed and variable dearness allowance of Godrej Industries, Deepak Fertilizers and Hikal Ltd. for the wage revision period (from the figures of 2010-2011) work out, respectively, to about Rs. 23,000/-, Rs. 23,500/- and Rs. 18,500/-. In Taloja unit of VVF India Ltd., these work out to Rs. 16,165/-. On the other hand, the existing (i.e. pre-revision) pay packet of employees at Mumbai unit of the Respondent, which worked out to a mere Rs. 11,383/-, was not revised by the tribunal to reach even a semblance of parity. No doubt, as Mr. Bapat for the Respondent employer puts it, the wage structures of comparable industries may be different and it may not be a correct method to compare the elements of the salary structure individually on a stand-alone basis. But, then, even if we were to consider the final wage packets of the concerned workmen and those of the comparable industries or even, for that matter, those of the Taloja unit of the Respondent, there is a gross and unacceptable disparity. The total wage packets, after taking into account all other allowances and benefits forming part of service conditions of the three comparable industries for the relevant period disclose the following figures: Godrej Industries - Rs. 33,595/-; Deepak Fertilizers - Rs. 44,666/-; Hikal Ltd. Rs. 31,985/-. As against

these, the total pay packet of the workmen of Mumbai unit of VVF India Ltd., after the revision in various allowances ordered by the tribunal, comes to a mere Rs. 20,699/-. Compared to this wage packet, the Taloja wages are Rs. 25,805/-. (The figures pertain to salaries of skilled grade workman with 15 years service taken as a representative case.) There is absolutely no justification why Mumbai wages should at least not be brought on par with Taloja workmen.

26. We may now come to the individual demands of wage revision and examine their justification. As I have held above, the workmen of the Respondents' Mumbai unit are entitled to parity with those at their Taloja unit. I propose to now examine the individual elements of salary to that end. Whilst doing so, what I have kept in mind is the overall pay packets of the workmen arising from the resultant exercise. The order of reference mainly related to (i) basic wages, (ii) adjustment increment, (iii) fixed dearness allowance, and (iv) variable dearness allowance. So far as the revision of wage scales (Demand No. 1) is concerned, it is submitted by the Respondents that the last pay scale revision was made in 2006 and a demand for revising it in 2009 is not in order. Mr. Bapat argues that in normal course revision in pay scale is to be made after a period of minimum 15 years; Variable Dearness Allowance (VDA), annual increments and LTS amounts provide the workmen upward wage revision year on year. In the first place, there is no such inflexible rule. The Supreme Court, as far back as in *Balmer Lawrie & Co.'s case* (supra), had made it very clear that whenever a claim is made for revising the wage structure on the grounds of justifiable circumstances, the industrial adjudicator would not normally be justified in rejecting it solely on the ground that enough time has not passed after the last award. If that is so, there is nothing to suggest that a structural change in the form of a revision in pay scales is per se impermissible within any particular interval. No doubt any change in pay scales has an impact beyond the wage fixation period, but that is so virtually for every other component of wage, at least in practice if not in theory. The cost of living index is ever on the rise; and any change in fixed or variable dearness allowance or other allowance is not expected to be revised downwards in future; it would always introduce a permanent burden on the employer, that is to say, beyond the particular wage fixation period. There is indeed no hard and fast rule in this behalf. Every question of revision, as the Supreme Court put it in *Balmer Lawrie & Co.* and reiterated in *Unichem Laboratories Ltd.* (supra), must be examined on merits in each individual case that is brought before an adjudicator. In our case, we are undertaking this exercise of revision of pay scales so as to rationalize the salary structures of affected workmen and bring them on par with similarly situated workmen. So long as we take into account the overall impact of the revised pay scales from the point of view of future financial burden on the employer, there could be no objection to revising the scales per se.

27. The Petitioner union is demanding increase in basic wages from 1 January 2010. The proposed revised pay scale is as follows:

GRADE

USK

10

1

13

2

19

3

28

4

40

5

55

SSK

20

2

26

3

35

5

50

7

71

9

98

SK

30

3

39

5

54

7

75

10

105

14

147

HSK

1000

100

1300

150

1750

225

2425

325

3400

450

4750

1

st

CLASS BOILER ATTENDANT

1100

110

1430

165

1925

250

2675

375

3800

525

5375

WATCHMAN

500

50

650

75

875

115

1220

165

1715

250

2465

PEON

400

40

520

60

700

90

970

130

1360

180

1900

HEAD WATCHMAN

750

75

975

125

1350

200

1950

300

2850

425

4125

DRIVER

750

75

975

125

1350

200

1950

300

2850

425

4125

JR. SUPERVISOR

1200

120

1560

180

2100

270

2910

400

4110

550

5760

SUPERVISOR

1700

170

2210

250

2960

380

4100

570

5810

795

8195

SR. SUPERVISOR

2500

250

3250

350

4300

550

5950

825

8425

1175

11950

OFFICER SUPERVISOR

3000

300

3900

450

5250

675

7275

1000

10275

1450

14625

The following adjustments are proposed so as to rationalize the transition from the present basic wage structure to the revised scale proposed as above:

A. The present basic of employees/staff as in annexure I & II should brought up to the level of minimum of wage scales wherever they are below.

B. Those whose present wages of basic do not fit in any stages of their respective revised wage scales and fall in between two stages, they should be stepped up to earnest highest stages in the scales.

C. On doing so (a) and (b) above every employee/staff should be granted additional increment in their respective wage scales as indicated below:-

i)

Those who have put service up to 5 years increment

-1

ii)

Those who have put service more than 5 years but less than 10 years years increment

-2

iii)

Those who have put service more than 10 years but less than 15 years increment

-3

(iv)

Those who have put service more than 15 years but less than 20 years increment

-4

(v)

Those who have put service more than 20 years but less than 25 years increment

-5

vi)

Those who have put service more than 25 years increment

-6

28. In Justification, what was submitted was that this, along with the applicable allowances (as revised), would bring the Mumbai workmen on par with their counterparts in the Taloja unit. To assess this submission, I called upon both parties to submit their respective charts of Mumbai and Taloja salaries for all classes of workers and the impact of revision in pay scales proposed by the union. According to the union, the revision proposed would bring up the salaries of skilled grade workmen having 15 years of service (taken as a representative case) to Rs. 16,250/- per month as against the salaries of Rs. 16,248/- of their Taloja counterparts (as of October 2010). (Comparative chart of Godrej Industries, Deepak Fertilizers and Hikal Ltd. shows their comparable salaries, as of October 2010, of Rs. 28,621/-, Rs. 20,492/- and Rs. 21,419/-respectively.) The monthly and annual burdens on the Respondent employer occasioned by the increase work out to between Rs. 6.58 lacs to Rs. 14.01 lacs per month, and Rs. 78.94 lacs to Rs. 1.68 crores, for the particular wage fixation period, namely, from 2008 to 2011.

29. The figures disclosed in the charts produced by the Respondents do not suggest much difference, provided, of course, one makes allowance for anomalies in those charts, some of which are indicated below. In the first place, the comparison proposed by the Respondent employer needs to be rationalized by correcting comparable grades proposed. For example, the company's chart contains a comparison between officer at Mumbai with supervisor at Taloja (S-2), but it compares his lower category (i.e. senior supervisor) with Grade (S-2) at Taloja. So also, medical allowance of Rs. 1000/-per month for categories such as unskilled (USK), Semi skilled (SSK) and skilled (SK) is not actually payable as these categories are covered within ESIS scheme; the amount of Rs. 1000/- can be considered only for supervisors and officers as these are outside ESIS for the relevant period. GHK allowance of Rs. 400/- per month payable at Taloja is not reflected in the company's charts for the years 2009 and 2010; the union has included it in their charts. The shift allowance considered by the company is actually the maximum shift allowance claimable and that too in case of few workmen; general shift workers, who represent the bulk of Mumbai workmen, do not get any allowance, whilst the others get it only for shifts other than the general shift. This has been rationalized by the union by considering the average

of the 1st shift, 2nd shift and 3rd shift divided equally for the month. The company has taken into account "other benefits" which add up to Rs. 984/-, which have no concrete basis. These benefits purportedly include 'canteen subsidized rates', and 'holidays'. If one considers workmen working in shifts, there is no justification for adding all subsidized meals, namely, breakfast, tea, snacks, lunch and dinner for all days of the month. Particularly those workmen who work in the night shift, for example, get nothing but tea (which is anyway free at Taloja). Mere arithmetic total of values of day's subsidized meals/snacks, thus, cannot commend itself as an item of wages whilst carrying out wage fixation exercise. Ditto for the purported benefit of holidays at Mumbai. Unskilled, semi-skilled and skilled workmen only get some paid holidays (6 Nos.) and other unpaid holidays (15 Nos.). So also, do highly skilled, supervisors and officers working on shifts. Then, the company has not taken into account free bus service for Taloja workmen, which is an amenity received by them in addition to conveyance allowance. If these matters are taken into account, the Taloja workmen can be said to be in fact better placed than their counterparts at Mumbai.

30. If one makes allowance for these matters, the charts presented by the union, by and large, are broadly supported by the material produced by the employer and can be accepted as the correct factual basis for working out the revision. It is also to be remembered that the comparison is on the basis of a typical workman (skilled workman with 15 years' experience), but even if one were to take into account different grades of workmen with differing tenure of service with some fitment, as proposed by the union, being applied (including striking out of inapplicable benefits), the salaries of workmen at Mumbai and Taloja are thereby rendered comparable after the revision proposed by the union, if one were to actually compare gross income (including PF'ble salary, allowances, annually paid PF towards employees' share and bonus, etc.) of the two sets of workmen.

31. To arrive at the proposed revision, the existing fixed dearness allowance of Rs. 225/- for daily rated unskilled (USK), Semi skilled (SSK) and skilled workmen (SK) as also monthly rated Highly Skilled workmen (HSK), 1st class boiler attendants, watchmen, head watchman, drivers, peons (i.e. all employees other than supervisors and officers) can be appropriately raised by Rs. 1000/- per month so as to make it Rs. 1225/- per month. Fixed dearness allowance for monthly rated junior supervisors, supervisors and senior supervisors and officers may not be increased. So far as variable dearness allowance is concerned, no increase may be in order till 2011. Increase, if any, deserves to be considered from 2011 onwards, which demand, any way, is the subject matter of a separate reference (for the period 2011-2014).

32. So far as variable dearness allowance (VDA) is concerned, the union proposes to categorize the workmen at Mumbai into two categories:

(i) Daily rated unskilled (USK); semi-skilled (SSK); and skilled (SK), and

(ii) Monthly rated Highly skilled (HSK); 1st class Boiler Attendants; Watchmen, Head Watchmen; Peons; Drivers; Jr. Supervisor; Supervisor; Sr. Supervisor; officer and other monthly rated staff. Variable dearness allowance of categories (i) and (ii) are proposed to be increased, respectively, by 30% and 20% over and above VDA under the pre-revised scheme with effect from 1.1.2011. Since that almost takes us to the end of the wage fixation period considered in the reference, and since for the period between 1.4.2011 to 31.3.2014, a separate reference has been pending, I have not deemed it fit to order any increase for the period upto 31.3.2011.

33. The wage revision proposed in this order puts the Mumbai workmen of the Respondents on par with their counter-posts in Talaja. The union has presented charts showing the comparison between two sets of workmen category-wise. These charts, as we have noted above, can be broadly accepted as reflecting the true picture of salaries and emoluments of the workers at Mumbai and at Talaja. In some individual cases charts prepared for comparison of particular grades of workmen may show a slightly higher total pay packet of Mumbai workmen when compared to Talaja workmen. But that is only when we take median cases of 15 years of completed service. If one takes a median service of 20 years, which may arguably be more appropriate for a realistic comparison, the Talaja salaries are still higher across the board when compared to the proposed revised salaries of Mumbai workmen in terms of the order herein, and this is so as per the charts of comparison submitted by both parties. (This, of course, holds good when we make allowances as suggested in the order above concerning individual components such as (i) corrections in grades, (ii) medical allowance, (iii) GHK allowance, (iv) shift allowance and (v) other benefits, as discussed above.)

34. That leaves us to the last of the considerations to be applied before the revision proposed herein is finalized. As I have indicated above, though this revision is for the particular wage fixation period, namely, 1 April 2009 to 31 March 2011, its overall impact from the point of view of future financial burden on the Respondents needs to be considered. The union has submitted a chart showing the proposed financial burden (including the burden of arrears). The chart, as mentioned above, shows a monthly burden between Rs. 6.58 lacs to 14.01 lacs (resultant annual burden being between Rs. 78.94 lacs to Rs. 1.68 crores) on the Respondents for the period upto 2011. Even for subsequent years it does not exceed these figures. These figures per se are not matters of any serious contest between the parties. The financials of the Respondents, as indicated above, clearly admit of absorption of this impact. Besides, for future periods, since the wage disputes are already pending before the authorities, and are yet to be decided, adjustments may still be possible for the period post - 1 April 2011. That will be for the concerned adjudicators to decide. We may, however, note that the union is satisfied with the revision proposed as of now and is ready to accept it even for the subsequent period 2011-2014 (subject of course to the revision proposed by them to the variable dearness allowance, which, as I have indicated above, is to be considered for this subsequent period).

35. The Respondents are unable to point out any serious anomalies in the demands of the Union allowed by the tribunal. We are in a judicial scrutiny in writ jurisdiction. Unless it is pointed out that the tribunal has not considered any relevant or germane material or circumstance, or has taken into account any irrelevant or non-germane matter or its conclusion is in any sense perverse, it is not open to successfully assail the findings of the tribunal. No such infirmity has been brought to my notice. The main contest at the hearing of the petitions was on the union's case on demands which were not granted by the tribunal. That, as we have noted above, clearly calls for an interference as set out hereinabove.

36. Rule is accordingly made absolute and Writ Petition No. 1920 of 2014 is allowed by quashing and setting aside the impugned award of the Industrial Tribunal so far as the demands of revision in basic wages and adjustments, and fixed and variable dearness allowances are concerned and substituting the same with the increases proposed in paragraphs 25 and 29 above. Rule is discharged and Writ Petition No. 3152 of 2014 is dismissed. Each party to bear its own costs.

37. At the request of Mr. Bapat, learned Counsel appearing for the Respondents in Writ Petition No. 1920 of 2014, this order shall remain stayed for a period of eight weeks from today.

38. In view of the disposal of the main petitions, the miscellaneous proceedings pending in the petitions, namely, Contempt Petition No. 38 of 2016 and Notice of Motion No. 110 of 2016, which inter alia deal with circumstances arising in the interregnum, do not survive and are disposed of accordingly.