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IN THE HIGH COURT OF DELHI AT NEW DELHI

W. P. (C) 1565/2000

GOVT. OF INDIA PRESS CO-OPERATIVE
THRIFT & CREDIT SOCIETY LTD.

..... Petitioner

Through: Mr. Ashwini K. Sukhija with Mr. Puneet
Saini, Advocate.

versus

DESH BANDHU & ORS.

..... Respondents

Through: Mr. Tarkeshwar Nath, Advocate for R-2 and
R-3.
Mr. Alope Kumar Bhattacharya, Advocate
for R-4.

CORAM: JUSTICE S. MURALIDHAR

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| 1. Whether Reporters of local papers may be
allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | No |
| 3. Whether the judgment should be reported in Digest? | No |

JUDGMENT
04.08.2011

1. The Petitioner, Government of India Press Co-operative Thrift and Credit Society Ltd. ('Society'), challenges an order dated 11th August 1999 passed by the Labour Court allowing seven applications filed by Respondent Nos. 1 to 6 under Section 33C(2) of the Industrial Disputes Act ('ID Act') claiming, *inter alia*, the arrears of dearness allowances ('DA') from July 1988 to June 1989.

2. In the application filed under Section 33C(2) ID Act, Respondent Nos. 1 to 6 stated that each of them was employed as a Lower Division Clerk ('LDC') with the Society. It was claimed that the recommendations of the First, Second, Third and Fourth Pay Commissions application to government servants were also applicable to Respondent

Nos. 1 to 6. In particular, it is stated that arrears of DA from July 1988 to June 1989 have not been paid.

3. In the written statement filed in reply to the claim petition, the stand taken by the Petitioner Society, *inter alia*, was that the workmen had no existing right to claim DA for the period mentioned in the application. It was in particular submitted as under:

“The opposite party, being a Co-operative Society of the individual i.e. Govt. employees of the press is a private body and pay scales and rate of DA admissible to the Government Employees are not applicable to the employees of the aforesaid society. The Co-operative Society from time to time keeping in view financial position of the Society on an unilateral basis and as gesture has been allowing the salary to its employees at the rate at which the Government Employees were getting the salary. But this was never their service conditions. So the applicant has not fixed pay scale Rs. 950-1500. As the aforesaid Co-operative Society started suffering losses the Society intimated the applicant and other employees that no increment in the name of DA can be allowed till the financial position of the Society improves and permits such benefits. The decision of the Co-operative Society was within its competence and jurisdiction and any disputes with regard to same cannot be raised under the provisions of sub-sec (2) of section 33C of the Industrial Disputes Act. For the aforesaid purposes regular dispute has to be raised.”

4. In the affidavit filed by way of evidence of Shri Krishnan Gopal, Secretary of Society dated 30th September 1993 it was specifically pleaded, in para 5, as under:

“5. That our society was running in losses in the year 1987-88. The applicants of the L.C.A. Nos. 35 to 41/89 i.e. employees of our Society used to make written requests to the Society for grant of D.A. from time to time and the Managing Committee of our Society keeping in view its policies and financial position used to take decision thereon. The meeting of the Management committee held on 28.12.1988 expressed its inability to accede to the request of the employees i.e. applicants of the present L.C.A. Photostat copy of the minutes of the said meeting are attached herewith as Ex. R-3. I have brought with me the original minutes. It bears my signatures as well as that of the President.

I have also brought the application earlier moved by the employees i.e. applicants of Present L.C.A.s and produce photostate copies of the

same which are Ex. R5 to R-7. Besides that Shri P. Choudhry moved an application. The original application, I have brought and produced. Photostate copy is Ex. R-4.”

5. In cross-examination of Shri Krishan Gopal, he stated as under:

“It is correct that prior to 1988 the employees used to raise the demand whenever the D.A. was released by the Central Govt. and after consideration of their demand the society used to raise their D.A. at par with the Central Govt. employees.”

6. He further added as under:

“It is correct that Mr. Deshbandhu was on leave from July 88 to Dec. 1988. Without consulting the record I cannot tell that he was on ill due to illness. As far as my knowledge goes we had not issued any notice to these employees reg. change in their service conditions. We had not passed any resolution for effecting change in the service condition of our employees.”

7. In the further cross-examination, he stated as under:

“I am not in a position to affirm or deny that upto the year 1988, the claimants were paid D.A. in accordance with the instructions of the Central Govt. for release of D.A. for their staff, for the record for those period is not available. It is incorrect that I am not producing the said record intentionally and deliberately to avoid the claim of these claimant. It is correct that we maintain regular accounts of all the 15 hundred members of the mgt.”

8. In addition, the Petitioner also placed on record of the Labour Court the applications made by the workmen pursuant to which DA was granted to them from time to time.

9. The impugned order the Labour Court noted the above plea of the Petitioner but chose to rely on the deposition of the witness for the workmen who in his cross-examination stated as under:

“It is correct that we moved an application to the Respondent society for grant of the facilities for D.A. and that was rejected. Prior to that no application moved since D.A. was paid to us. It is incorrect that we had moved applications earlier to. It is incorrect that I have made wrong

statement in my affidavit. It is also incorrect I was granted D.A. every time on request except the disputed period.”

10. The Labour Court on the above basis concluded as under:

“The meeting of the Managing Committee held on 28.12.1988 declined the request of the employees for dearness allowance, and copy of the minutes is proved Ex. R-3. But the plea that the dearness allowance used to be given to the employees on their request is not taken in the written statement. However, in any case, neither in the written statement of the management, nor in the affidavit of M.W. Sh. Kishan Gopal, the then Secretary of Respondent Society. It is stated that dearness allowance was never given to the applicants. The applicants by way of re-enumeration of WW-3 to show that dearness allowance was being paid to them. It is also not disputed that the dearness allowance prior to the period of claim mentioned in the application was being paid to the applicants by the respondent society. Thus, the same, in my view, has become term of their condition of service and cannot be unilaterally withdrawn by the management for the period in question irrespective of financial conditions without taking recourse to Section 9-A of the Act in view of *Indian Oil Corporation Ltd's* case (supra) relied on behalf of the applicants. By giving dearness allowance to the applicants for the period prior to the claim period in these applications, the management was recognised the entitlement of the applicants to dearness allowance as part of their salary and service conditions.”

11. The above conclusion of the Labour Court is not supported by the record at all. In the affidavit filed by the management witness it was categorically stated that the DA was not part of the service conditions and was being paid every time upon applications by the Petitioners. Once it is evident that DA was not a part of the service conditions, there is no question of the Respondent workmen having a right to enhanced DA and to maintain an application under Section 33C(2) of the ID Act to enforce such right to receive monetary benefits in the form of enhanced DA.

12. Mere stoppage of grant of allowances does not give rise to a claim under Section 33C(2) of the ID Act. This position in law has been settled in the decisions of the Supreme Court in *Municipal Corporation of Delhi v. Ganesh Razak (1995) 1 SCC 235*, *Tara v. Director, Social Welfare 1998 II LLJ 632* and *Hindustan Steel Works*

Construction Ltd. v. Hindustan Steel Works Construction Ltd., Employees Union 2005 LLR 1025. In the last mentioned decision the Supreme Court emphasised that the question of non-compliance of Section 9A of the ID Act would essentially be a question of fact and could not be decided by the Labour Court in an application under Section 33C(2) of the ID Act. In ***MCD v. Ganesh Razak*** it was clearly mentioned that unless there is a pre-determined entitlement that has been earlier adjudicated by the Labour Court, an application under Section 33C(2) ID Act would not lie. In ***Jeet Lal Sharma v. Presiding Officer 84 (2000) DLT 706*** the above legal position was reiterated. In particular, it was held that where there was no conclusive order that the workman was entitled to receive any monetary benefits, such a question had to be adjudicated in the first instance in the Labour Court in a reference under Section 10 of the ID Act.

13. In light of the above legal position, it is not possible to agree with the Labour Court in the present case that the DA was part of the terms and conditions of service of the Respondent workmen and that before stopping to pay DA the management was required to comply with the procedure under Section 9A of the ID Act. Consequently, there was no occasion for the Respondent workmen to invoke Section 33C(2) of the ID Act.

14. In similar circumstances in ***Hindustan Steel Works Construction Ltd. v. Hindustan Steel Works Construction Ltd., Employees Union***, the Supreme Court gave a direction to the appropriate Government to refer the question of the workers entitlement to allowances as well as the question of non-compliance of Section 9A ID Act to the Labour Court. In para 14 a direction was accordingly issued.

15. In light of the decision in ***Hindustan Steel Works Construction Ltd.***, this Court directs the appropriate Government to refer the following questions for adjudication by the appropriate Tribunal:

(i) Whether the decision of the management to decline payment of enhanced DA to the workmen at the meeting of the Managing Committee held on 28.12.1988 amounted

to change in conditions of service and whether such decision is justified?

(ii) Whether there was a violation of Section 9A ID Act by employer as claimed by the workmen?

16. The parties will jointly move the appropriate Government on the basis of this order within two weeks. The appropriate Government will make a reference of the above disputes to the Labour Court within a further period of four weeks. Considering the dispute on right of the workmen to receive enhanced DA is pending for over two decades, the Labour Court is requested to dispose of the reference within a period of six months of receiving a copy of the notification making reference to it by the appropriate Government.

17. Consequently, the impugned order dated 11th August 1999 of the Labour Court is hereby set aside.

18. The writ petition is allowed in the above terms.

19. Order dasti to learned counsel for the parties.

AUGUST 04, 2011

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S. MURALIDHAR, J