

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) No.7338/2002**

% 12th January, 2011

GLOBE DETECTIVE AGENCY (P) LTD. Petitioner
Through: Mr.Rajat Arora with
Mr.Jagat Arora, Advocates

VERSUS

PRESIDING OFFICER INDUSTRIAL TRIBUNAL NO.III & ANOTHER
..... Respondents
Through: Mr. D.K.Aggarwal,Sr.Advocate with
Mr.N.A.Sebastian, Advocate

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? **Yes.**
3. Whether the judgment should be reported in the Digest? **Yes.**

VALMIKI J. MEHTA, J (ORAL)

1. The present petition under Article 226 of the Constitution of India impugns the award dated 16.9.2002 passed by the Industrial Tribunal answering the reference as to whether the workmen are entitled to payment of bonus on the entire amount of wages or bonus has to be calculated on the wages minus the figure of house rent allowance. Though, this was only one of the issues in the case which was decided, however. I may note that other issues

in this case were given up by the petitioner vide order dated 7.5.2004.

2. Crystallizing the issue for determination by this Court, the question would be as to what would be the “salary or wages” for the purpose of payment of bonus under the Payment of Bonus Act, 1965.

3. To understand the issues involved, it is necessary to refer to the definition of “salary or wages” under Section 2(21) of the Payment of Bonus Act, 1965 and the said provision reads as under:-

“2(21)”salary or wage” means all remuneration (other than remuneration in respect of over-time work) capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance (that is to say, all cash payments, by whatever name called, paid to an employee on account of a rise in the cost of living), but does not include-

(i) any other allowance which the employee is for the time being entitled to;

(ii) the value of any house accommodation or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of foodgrains or other articles;

(iii) any travelling concession;

(iv) any bonus (including incentive, production and attendance bonus);

(v) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;

(vi) any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any *ex gratia* payment made to him;

(vii) any commission payable to the employee.”

4. It is also necessary to refer to the definition of wages under Section 2(h) of the Minimum Wages Act, 1948 inasmuch as the issue in the present case is intertwined with the fact that what the workmen are getting in the present case are only minimum wages which are treated as their salary or wages.

5. The contention as raised on behalf of the petitioner by the learned counsel is that in terms of Section 2(21)(ii) the value of a house accommodation is not included in the salary or wages of Payment of Bonus Act, 1965. Counsel for the petitioner has relied upon the decision of the Supreme Court in the case of ***Hamdard Laboratories vs. Deputy Labour Commissioner & Ors. (2007) 5 SCC 281***. As per paras 16 and 17 of the judgment in the case of ***Hamdard Laboratories (supra)***, the Supreme Court has said that the Courts while interpreting the provisions of statutes must interpret them in such a manner so as to give effect thereto keeping in mind that different statutes have different purposes to achieve. Counsel for the petitioner also relies upon ***Scindia Steam Navigation Co. Ltd. vs. Scindia Employees Union 1983 Labour I.C. 759***, wherein in para 39, the Division Bench of the W.P.(C) No.7338/2002

Bombay High Court has laid down that the claim to profit based bonus must be based on the provisions of the Bonus Act.

6. In response, the learned senior counsel for the respondent no.2/workman, Union has relied upon the decision of the Supreme Court in the case of ***Airfreight Ltd. vs. State of Karnataka AIR 1999 SC 2459***. The Supreme Court in the decision of ***Airfreight Ltd. (Supra)*** in paras 21 and 22 of the judgment has held that once minimum wages are fixed, it is one pay package which is not amenable to being split up, although, the minimum wages itself may be fixed on the basis of various ingredients one of which can be requirement of house rent. The learned senior counsel for the respondent has also relied upon ***S.Krishnamurthy Vs. Presiding Officer, Central Govt. Labour Court 1985 LLJ 133 (SC)*** to canvass that amounts payable which are otherwise included as part of the permanent wages of an employee, cannot be removed for purpose of calculating payment of bonus under the Payment of Bonus Act, 1965.

7. Before proceeding ahead, I may note that the object of Payment of Bonus Act, 1965 is to grant bonus to the employees with reference to a genuine salary or wages as it were, meaning thereby, the salary or wages must exclude there from certain inflatable's which are provided in the sub-Clauses (i) to (vii) of Section 2(21) of the Payment of Bonus Act. The object of this provision is quite clear

that if an employer has to be burdened with the liability of bonus payable being a percentage of salary or wages, the figure of salary or wage must be such that basic salary or wage figure should include all necessary ingredients thereof, but, salary or wage should not include variables which vary as per the nature of employment, type of employment, period of employment, type of employer, type of employee and so on. The object is therefore to arrive at a balanced figure of salary or wages and which figure is of such basic salary or wages without unnecessarily reducing or inflating the same.

8. The statute of Minimum Wages Act, 1948 is a social legislation in a polity which is a Socialist Democratic Republic and a Welfare State. A minimum wage as accordingly prescribed by this statute by the Government has co-relation to an employee being able to keep his head above water, that is such amount of wages which would take care of the really basic necessities for a human being to survive, and which is also a mandate of Article 21 of the Constitution of India. No doubt, when fixing a minimum wage, the appropriate authority from time to time may reconsider various ingredients such as the cost of living index, requirement towards minimum medical treatment and other requirements necessary for our citizens living in the democratic state to have a dignified life. Merely because a minimum wage is fixed keeping into account various ingredients will not take away from the fact that it is really a

minimum wage that is the most basic wage and nothing more. Surely, it would therefore exclude by its very nature inflatables which would have otherwise inflated the wage figure so as to take it out of the definition of minimum wages. This undoubtedly, without any doubt, can be said to be the object or purpose of the legislation of the Minimum Wages Act, 1948 and its respective provisions.

9. Keeping the aforesaid in mind, I am of the opinion that the Writ Petition cannot succeed and must fail. The contention of the learned counsel for the petitioner that the definition of salary or wages under the Payment of Bonus Act, 1965 excludes house accommodation, is in the context of the Payment of Bonus Act itself only, meaning thereby, the object of the definition of salary and wages in the Payment of Bonus Act, 1965 was to have a salary or wages which would not include the ingredients falling in sub-Clauses (i) to (vii) 2(21) of Payment of Bonus Act which can be said to be variables to the true nature of salary or wages so that the same should be excluded for calculation of the salary or wages for the purpose of giving permanent bonus. In fact, in the opinion of this Court, the observations of the Supreme Court in the case of ***Hamdard Laboratories (Supra)*** relied upon on behalf of the petitioner can be in fact read in favour of the respondent and against the petitioner because the said judgment very clearly provides that a Court should keep in mind the different purposes for which the different statutes have been enacted and that the

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interpretation must further the object of the Acts/Statutes. Supreme Court has very pithily observed that by interpreting the provisions of salary or wages, the provisions must be so interpreted so as to give effect to the true meaning thereof. In my opinion, in order to give true effect to the definitions in the Payment of Bonus Act, 1965 it will have to be so done so as to achieve an object that the basic minimum wages ought not to be split up. That the basic minimum wages ought not to be split up is no longer *re integra* and this had been very clearly pronounced upon by the Supreme Court in ***Airfreight Ltd.(Supra)*** case. Since Paras 21 and 22 of this judgment are clear, I would seek to reproduce the same in toto. These paras read as under:-

“21. As stated above minimum wage must provide not merely for the bare subsistence of life but for the preservation of the efficiency of the worker and so it must also provide for some measure of education, medical requirements and amenities of himself and his family. While fixing the minimum wages, the capacity of the employer to pay is treated as irrelevant and the Act contemplates that rates of minimum wage should be fixed in schedule industries with a dual object of providing sustenance and maintenance of the worker and his family and preserving his efficiency as a worker. So it is required to take into consideration cost of bare subsistence of life and preservation of efficiency of the workers and for some measure of education, medical requirements and amenities. This cost is likely to vary depending upon the cost prevailing in the market of various items. If there are inflationary conditions prevailing in the country, then minimum wages fixed at a particular point of time would not serve the purpose. Therefore, Section 4 contemplates that minimum wages fixed at a

particular point of time should be revised from time to time. Section 4 postulates that minimum wages fixed or revised by the appropriate Government under Section 3 may consist of basic rates of wages and special allowance at a rate to be adjusted at such intervals in such manner as the appropriate Government may direct to accord as nearly as practicable with a variation in the cost of living index number applicable to such workers; alternatively, it permits the fixation of basic rate of wages with or without cost of living allowance and the cash value of the concessions in respect of supplies of essential commodities at concessional rates where so authorised; or in the alternative, it permits an all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of concessions, if any. The purpose of Section 4 is to see that minimum wage can be linked with increase in cost of living so that increase in cost of living can be neutralised or all inclusive rates of minimum wages can be fixed. But, from the aforesaid Sections 3 & 4, it is apparent that what is fixed is total remuneration which should be paid to the employees covered by the Schedule and not for payment of costs of different components which are taken into consideration for fixation of minimum rates of wages. It is thus clear that the concept of minimum wages does take in the factor of prevailing cost of essential commodities whenever such minimum wage is to be fixed. The idea of fixing such wage in the light of cost of living at a particular juncture of time and of neutralising the rising prices of essential commodities by linking up scales of minimum wages with the cost of living index is provided for in Section 4 but V.D.A. is part and parcel of wages. Once rates of minimum wages are prescribed under the Act, whether as all inclusive under Section 4(1)(iii) or by combining basic plus dearness allowance under Section 4(1)(i) are not amenable to split up. It is one pay package. Neither the scheme nor any provision of the Act provides that the rates of minimum wages are to be split up on the basis of the cost of each necessities taken into consideration for fixing the same. Hence, in cases where employer is paying

total sum which is higher than minimum rates of wages fixed under the Act including the cost of living index (VDA), he is not required to pay VDA separately. However, that higher wages should be calculated as defined in Section [2\(h\)](#) of the Act. Section [2\(h\)](#) specifically provides that value of the following items are not required to be computed for finding out whether employer pays minimum wages as prescribed under the Act:

(i) the value of any house, accommodation, supply of light, water, medical care, or any other amenity or any service excluded by general or special order of the appropriate Government.

(ii) any pension fund or provident fund or under any scheme of social insurance

(iii) any travelling allowance or the value of any travelling concession

(iv) any sum paid to any person employed to defray special expenses curtailed on him by the nature of his employment or

(v) any gratuities payable on discharge.

22. But while deciding the question of payment of minimum wages, the competent authority is not required to bifurcate each component of the costs of each item taken into consideration for fixing minimum wages, as lump sum amount is determined for providing adequate remuneration to the workman so that he can sustain and maintain himself and his family and also preserve his efficiency as a worker. Dearness Allowance is part and parcel of cost of necessities. In cases where the minimum rates of wages is linked up with V.D.A., it would not mean that it is a separate component which is required to be paid separately where the employer pays a total pay package which is more than the prescribed minimum rate of wages."

10. A reference to the aforesaid paragraphs therefore leave no manner of doubt that though doubt certain ingredients are

contained in the minimum wage once the same is fixed, the same cannot be broken up. Therefore, when reading the definition of salary or wages as found in the Payment of Bonus Act, 1965, we must also take into account the intention and purpose of the legislature in enacting the Payment of Bonus Act and the observations of the Supreme Court in ***Airfreights Ltd. (Supra)*** case that the minimum wages ought not to be broken up.

11. In view of the above, I hold that the minimum wage is a figure which is to be taken as a whole and when bonus is paid on the same, the petitioner/Management is not entitled to break up this figure of minimum wage by stating that the minimum wage includes the figure of house rent allowance which should be deducted from the minimum wage and bonus is then payable only on such reduced figure of wages after removing the alleged figure of house rent allowance. I may of course note that the contention of the petitioner is also misconceived because this Court failed to understand that under what authority the petitioner has arrogated to itself the power of an appropriate authority under the Minimum Wages Act to decide what would be the house rent allowance in the consolidated figure of minimum wage which is claimed to be split up and reduced from the definition of salary or wages for the purpose of payment of bonus.

12. In view of the above, I do not find any merit in this petition and the same is dismissed leaving the parties to bear their own costs. Interim orders stand vacated.

JANUARY 12, 2011
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VALMIKI J. MEHTA, J.