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IN THE HIGH COURT OF DELHI AT NEW DELHI

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LPA No.179 of 2011

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Decision Delivered On: 14th November, 2011.

GLOBE DETECTIVE AGENCY PVT. LTD. . . . Appellant.

Through: Mr. Jagat Arora, Advocate.

VERSUS

GLOBE WORKERS LAL JHANDA UNION . . . Respondent

Through: Mr. D.K. Agarwal, Sr.
Advocate with Ms. Shagun
Bhatnagar, Advocate.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

A.K. SIKRI, Acting Chief Justice (ORAL)

1. This appeal is preferred against the order of the learned Single Judge passed on 12.1.2011 dismissing the writ petition of the appellant herein whereby the appellant had impugned the award dated 16.9.2002 passed by the Industrial Tribunal. The issue before the Industrial Tribunal pertains to the calculation of bonus, viz., whether bonus payable to the workman was to be calculated on the entire amount of wages or it had to be calculated on wages minus the figure of house rent allowance. In other words, the

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question was as to ^{whether} what would be the "salary or wage" for the purpose of bonus under the Payment of Bonus Act, 1965.

2. Section 2(21) of the Payment of Bonus Act, 1965 which defines 'salary or wages' stipulates certain payments which are not included in the aforesaid terms and which includes "the value of any house accommodation....." Predicated thereupon, the contention of the learned counsel for the appellant before the writ Court, as before us, was that house rent allowance was not to be included in the component of 'salary or wages' for calculating bonus payable to the workman. This contention appears to be attractive. However, what was found in the present case was that the total wages paid by the appellant to its workman after including house rent allowance as well, was only the minimum wage as prescribed by the appropriate Government under the Minimum Wages Act, 1948. In fact, this minimum wage is paid under different heads and one of the heads is 'House Rent Allowance'. If the payment under House Rent Allowance is excluded, the remaining wage would be less than the minimum wage. In such a circumstance, if the contention of the appellant is accepted,

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the workman would get payment of bonus on wages which is less than the minimum wage. This is clearly impermissible. If such situation is allowed to prevail, clever employers would pay minimum wage under various heads which are not includible in the definition of 'salary or wage' under Section 2(21) of the Payment of Bonus Act inasmuch as other allowances, value of supply of light, water, medical attendance, concessional supply of foodgrain, travelling concession, etc. are excluded from 'salary or wage' under Section 2(21) of the Payment of Bonus Act, which is clear from the said definition, which is reproduced below:

"2(21) "salary or wage" means all remuneration (other than remuneration in respect of overtime 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

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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."

3. It is for this reason the learned Single Judge rightly remarked that 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. Further, it is also rightly observed that the Minimum Wages Act is a social legislation in a polity, which is a Socialist Democratic Republic and a welfare State.
4. We are of the opinion that such objective cannot be allowed to be defeated. The position would have been different if the workmen were getting the house rent allowance, over and above, minimum wage. The learned Single Judge has referred to the judgment of the Supreme Court in the case of ***Airfreight Ltd. Vs. State of Karnataka***, AIR 1999 SC 2459. In that case, the Supreme Court held that once minimum wages are fixed, it is one pay package which is not amenable to being split up, although the minimum wages

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itself may be fixed on the basis of various ingredients one of which can be requirement of house rent. The relevant portion thereof is 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

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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:

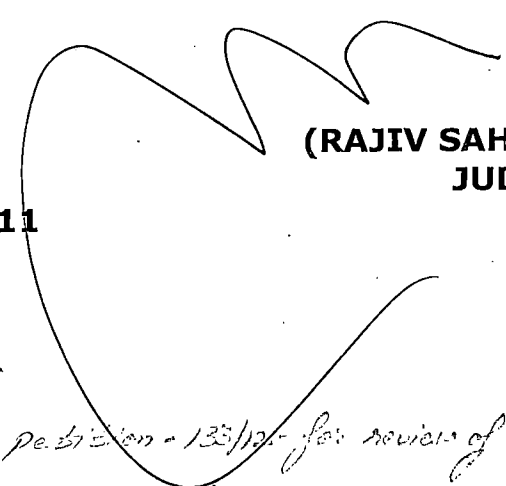
- (i) the value of any house, accommodation, supply of light, water, medical care, or any other amenity or any service excluded by general or special order of the appropriate Government.
- (ii) any pension fund or provident fund or under any scheme of social insurance
- (iii) any travelling allowance 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

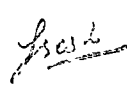
the employer pays a total pay package which is more than the prescribed minimum rate of wages."

5. To the similar effect is the judgment of the Supreme Court in the case of **S. Krishnamurthy Vs. Presiding Officer, Central Govt. Labour Court**, 1985 LLJ 133 (SC) wherein the Apex Court held that the amounts payable which are otherwise included as part of permanent wages of an employee, cannot be removed for purpose of calculating payment of bonus under the Payment of Bonus Act, 1965.
6. We, therefore, find that the order of the learned Single Judge is without any blemish and finding no merit in this appeal, it is accordingly dismissed.


ACTING CHIEF JUSTICE


**(RAJIV SAHAI ENDLAW)
 JUDGE**

NOVEMBER 14, 2011
 pmc


 - Review petition - 133/12 - for review of order dt: 14-11-11.
 - C.M. no - 4423/12 - for stay.
 - C.M. no - 4423/12 - for exemption.

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

+ LPA 179/2011

GLOBE DETECTIVE AGENCY PVT LTD Appellant
Through Mr. Rajat Arora, Advocate

versus

GLOBE WORKERS LAL JHANDA UNION Respondent
Through Mr. D.K. Agarwal, Sr. Advocate with
Ms. Tania Sebastain, Advocate

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER
% **14.05.2012**

CM No. 4430/2012 (Exemption)

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

Review Pet.133/2012 in LPA 179/2011 & CM 4429/2012

1. The appellant seeks review of the order dated 14.11.2011 dismissing the appeal. Notice of the review petition, limited to clarifying that the respondent/workmen had conceded to challenge to some part of the award of the Industrial Adjudicator, was issued.
2. Counsel for the appellant/review applicant invites attention to the

order dated 7.05.2004 in the writ proceedings before the learned Single Judge where it is recorded that the counsel for the respondent/workmen had conceded, firstly that the award to the extent of directing payment of provident fund and secondly that the award to the extent of awarding bonus for the period prior to reference dated 22.04.1997, was beyond the scope of reference.

3. Counsel for the appellant/review applicant contends that the order dismissing the writ petition challenging the award and the order dismissing the appeal thereagainst do not indicate that the challenge to the award to the aforesaid extent had been conceded.

4. Counsel for respondent also does not controvert the aforesaid position.

5. We, accordingly clarify that the award of the Industrial Adjudicator subject matter of these proceedings, to the extent of awarding provident fund as well as bonus (for the period prior to reference dated 22.04.1997), is unenforceable.

6. Counsel for the appellant/review applicant further seeks a clarification that the balance payments aforesaid under the award are to be released to the concerned workmen and not to the respondent Union. The counsel for the respondent/workmen has no objection to the said clarification also. It is informed that a sum of Rs.4,00,000/- was deposited in this Court pursuant to the directions in the appeal. If any further amounts are due under the award,

the appellant/review applicant to deposit the same also in this Court within four weeks thereof. The said amount be released in favour of the concerned workmen.

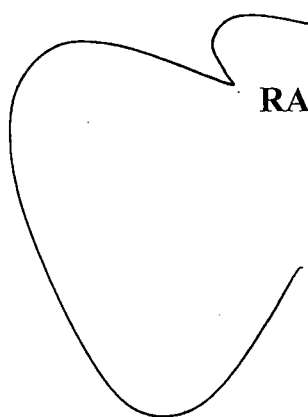
7. The review petition is disposed of in these terms.



ACTING CHIEF JUSTICE

RAJIV SAHAI ENDLAW, J

MAY 14, 2012
'raj'



Petition disposed of CM
14/11/12

for CM. 1474/14 Cms 151-9 CPC
for direction by
Appellate.