

**HIGH COURT OF TRIPURA
AGARTALA**

W.A. No.18/2023

1. Oil & Natural Gas Corporation Ltd., Through its Chairman and Managing Director, Plot No.5A-5B, Nelson Mandela Road, Basant Kunj, New Delhi-110070.

2. Director (Human Resource), Oil & Natural Gas Corporation Ltd., Plot No.5A-5B, Nelson Mandela Road, Basant Kunj, New Delhi-110070.

3. Asset Manager, Oil & Natural Gas Corporation Ltd., Having its office at Hapania, PIN-799014, Agartala, District-West Tripura.

..... Appellant(s).

V E R S U S

1. ONGC Workers Union, Tripura Asset, Represented by Sri Tusar Datta Majumder, General Secretary, ONGC Workers Union, Tripura, Having its Office at ONGC Tripura Asset, Agartala, West Tripura, PIN-799014.

2. Union of India, Represented by Secretary to the Government of India, Ministry of Heavy Industries and Public Enterprise, Department of Public Enterprise, Public Enterprise Bhavan, Block No.14, CGO Complex, Lodhi Road, New Delhi-110070.

.....Respondent(s).

For Appellant(s) : Mr. S.M. Chakraborty, Sr. Advocate,
Mr. A.L. Saha, Advocate.

For Respondent(s) : Mr. T.D. Majumder, Sr. Advocate,
Mr. Dalit Kalai, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

Date of hearing and judgment: **23rd April, 2024.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

Heard Mr. S.M. Chakraborty, learned senior counsel assisted by Mr. A.L. Saha, learned counsel appearing for the appellant-ONGC and Mr. T.D. Majumder, learned senior counsel assisted by Mr. Dalit Kalai, learned counsel appearing for the respondent-ONGC Workers Union.

2. Appellant is aggrieved by the direction issued by the learned Writ Court vide impugned order dated 06.01.2023 in WP(C) No.33 of 2022 to release the additional installments of Industrial Dearness Allowance (IDA, for short) for 3(three) quarters from 01.10.2020 till 30.06.2021 in favour of the members of the petitioner-Union and other members of the recognized Union as also other employees including workmen of Central Public Sector Enterprises (CPSEs, for short) who may not belong to any association or Union. The said additional installments of IDA are to be paid within a period of 3(three) months from the date of the order.

3. The writ petitioners are indisputably unionized workmen of ONGC and are covered under a tripartite settlement dated 20.10.2020 w.e.f. 01.01.2017 for a period of 10(ten) years as per Clause-13.1 of the agreement which is Annexure-J. The petitioners approached the Writ Court with a grievance that their dearness allowance from 01.10.2020 is not being paid for three quarters. They referred to the office memorandums dated 19.11.2020 and 08.01.2021 which related to freezing of dearness allowance of employees of CPSEs. Both the office memorandums are extracted hereunder:

“No. W-02/0039/2017-DPE(WC)-GL-XVI/20
Government of India
Ministry of Heavy Industries & Public Enterprises
Department of Public Enterprises

Public Enterprise Bhawan
Block No. 14, CGO Complex,
Lodhi Road, New Delhi-110003.
Dated, the 19th November, 2020

OFFICE MEMORANDUM

Subject: Freezing of Dearness Allowance to Employees of Central Public Sector Enterprises (CPSEs) drawing pay as per 2017, 2007, 1997, 1992 & 1987 IDA pay revision guidelines at current rates till 30th June, 2021-reg

The undersigned is directed to say that in view of the crisis arising out of COVID-19, it has been decided that additional installments of Dearness Allowance payable to Employees of Central Public Sector Enterprises (CPSEs) drawing pay as per 2017, 2007, 1997, 1992 & 1987 IDA pay revision guidelines, due from 01.10.2020 shall not be paid. The additional installments of Dearness Allowances due from 01.01.2021 & 01.04.2021, shall also not be paid. However, Dearness Allowance at current rates (w.e.f. 01.07.2020) will continue to be paid.

2. As and when the decision to release the future installment of Dearness Allowance due from 01.07.2021 is taken by the Government, the rates of Dearness Allowance as effective from 01.10.2020, 01.01.2021 & 01.04.2021 will be restored prospectively and will be subsumed in the cumulative revised rate effective from 01.07.2021. No arrears for the period from 01.10.2020 till 30.06.2021 shall be paid.
3. The above guidelines shall be applicable in case of Executives and Non-Unionised Supervisors of CPSEs drawing 2017, 2007, 1997, 1992 & 1987 IDA pay scales. The DA rates in case of CPSE employees drawing CDA pay scales has already been frozen vide DPE's OM No.W-02/0038/2017-DPE(WC)-GL-IX/20 dated 28.04.2020 in line with the Department of Expenditure's OM No.1/1/2020-E.II(B) dated 23.04.2020 in this regard.
4. All administrative Ministries/Departments of Government of India are requested to bring the foregoing to the notice of the CPSEs under their administrative control for necessary action at their end.
5. This issues with the approval of the Minister (HI&PE).

Sd/Illegible
(P.K. Saha)
Director"

"No. W-02/0045/2020-DPE(WC)
Government of India
Ministry of Heavy Industries & Public Enterprises
Department of Public Enterprises

Public Enterprises Bhawan
Block No. 14, CGO Complex,
Lodhi Road, New Delhi-110003.
Dated 8th January, 2021

OFFICE MEMORANDUM

Subject: Freezing of Dearness Allowance of Employees of CPSEs-reg.

The undersigned is directed to refer to Ministry of Coal (MoC)'s OM No. 49015/1/2020-LA&IR dated 07.12.2020 and Ministry of Mines (MoM) 11/18/2020 Mot I dated 14.12.2020 seeking clarifications in the matter cited above.

2. DPE vide OM dated 19.11.2020 has issued guidelines on freezing of IDA rate w.e.f. 01.10.2020 till 30.06.2021, in respect of Executives and Non-Unionized Supervisors of CPSEs following 2017, 2007, 1997, 1992 & 1987 IDA pay scales Para 3 of the said OM inter-alia states that "The above guidelines shall be applicable in case of Executives and Non-unionized Supervisors of CPSEs drawing 2017, 2007, 1997, 1992 & 1987 IDA pay scales". **The other employees including workmen of CPSEs are not covered under these guidelines.**

Sd/Illegible
(Samsul Haque)
Under Secretary

Ministry of Coal,
(Shri Ram Shiramani Saraj, Dy. Secretary)
Lok Nayak Bhawan, Khan Market, New Delhi

Ministry of Mines,
(Shri Adhir Kumar Malik, Under Secretary)
Shastri Bhawan, New Delhi"

4. The learned Writ Court was of the opinion that the Office Memorandum dated 08.01.2021 did not allow the employer-ONGC to impose any restriction in regard to additional dearness allowance to other categories of employees and workmen of CPSEs including unionized employees. The said memorandum also did not stall the payment of additional dearness allowance in case of other employees including workmen of CPSEs in view of the

categorical expression "the above guidelines shall be applicable in case of Executives and Non-Unionised Supervisors of CPSEs drawing 2017, 2007, 1997, 1992 and 1987 IDA pay scales." Therefore, the employer-ONGC was liable to pay additional installments of IDA for three quarters from 01.10.2020 to 30.06.2021.

5. Learned counsel for the appellant has questioned the opinion of the learned Writ Court with the submission that the writ petitioners being unionized workmen were governed by a tripartite settlement arrived under Section 18(3) of the Industrial Disputes Act, 1947. Their cases were not at all covered by the office memorandums dated 19.11.2020 and 08.01.2021. Though the writ petitioners relied upon the office memorandum dated 19.11.2020 but no relief has been sought for in respect of the said office memorandum. There is no document to substantiate the contention of the petitioners that the office memorandums dated 19.11.2020 and 08.01.2021 are the basis to stop the release of IDA at every quarter since 01.10.2020. According to the appellant, moreover, the alleged dispute, if any, falls within the realm of Industrial Disputes Act, 1947. Therefore, the Writ Court ought to have restrained itself from interfering in the matter.

6. Learned senior counsel for the respondent-Union does not dispute that the writ petitioners are covered by a tripartite settlement arrived between the Union, the employer and the Central Government which contains detailed provisions for the wages/scales of pay, annual increments and other benefits like IDA payable to the workmen covered under the settlement. This settlement is revised every 10(ten) years. However, learned senior counsel for the petitioners-Union submits that the office memorandums dated 19.11.2020 and

08.01.2021 are the basis to withhold the release of the additional installments of IDA in favour of the employees of the petitioners-Union acting in compliance with the directions of the Central Government during the COVID period. He also, however, does not dispute that there is no specific office order issued by the appellant-ONGC acting upon the office memorandums dated 19.11.2020 and 08.01.2021 to withhold the release of additional IDA for three quarters to the writ petitioner which is the Union of ONGC Workmen herein.

7. Learned senior counsel for the petitioners-Union has placed reliance upon a judgment of the learned Single Bench of Kerala High Court in WP(C) No.27918 of 2020(L). He submits that the Kerala High Court has in similar circumstances held that monetary benefits such as freezing of dearness allowance to other categories of employees including workmen are not withheld on issuance of the office memorandum dated 19.11.2020. Therefore, the impugned order does not suffer from any error.

8. However, it is pertinent to mention here that in the case of the petitioners in WP(C) No.27918 of 2020(L) the employer had issued consequential office order dated 25.11.2020 which had applied the office memorandum dated 19.11.2020 to the case of the writ petitioners also who were unionized employees guided by a settlement under the Industrial Disputes Act, 1947. In those circumstances, the operation of the circular dated 25.11.2020 issued by the General Manager, Fertilisers and Chemicals Travancore Limited (FACT) was held as confined to Executives and Non-Unionised Supervisors of CPSEs. The circular dated 25.11.2020 so far it was made applicable to persons other than Executives and Non-Unionised

Supervisors of CPSEs was set aside, resulting in consequential monetary benefits to other categories of employees including workmen.

9. In the present case, the foundational facts that the writ petitioners are unionized employees governed by a tripartite settlement dated 20.10.2020 arrived in terms of Section 18(3) of the Act is not in dispute. The employer appellant-ONGC has not issued any circular or office order which applies the office memorandums dated 19.11.2020 and 08.01.2021 to the case of unionized employees. In that way, the apprehension of the petitioners-Union that the appellant had frozen release of IDA for three quarters on the basis of the office memorandums dated 19.11.2020 and 08.01.2021 is misconceived. The writ petitioners being the workmen of the ONGC are not guided by the office memorandums dated 19.11.2020 and 08.01.2021. Since they are covered by a settlement arrived under Section 18(3) of the Industrial Disputes Act, 1947, the right forum for them to agitate their grievance relating to withholding of additional IDA for three quarters would be before the statutory forum under the Industrial Disputes Act, 1947. The learned Writ Court, therefore, committed an error in directing otherwise.

10. We, therefore, find reasons for interference in the impugned order dated 06.01.2023 passed in WP(C) No.33 of 2022. Accordingly, it is set aside. The writ petitioners are at liberty to invoke the statutory forum in accordance with law in respect of their grievances. The writ appeal is allowed.

Pending application(s), if any, also stands disposed of.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ