IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2371 OF 2007

Ravalgaon Sugar Farm Limited .... Petitioner

Vs.

Workmen employed by them .... Respondents
C/o The Construction Employees
Union, Mumbai & another

Mr. Rajesh Gehani alongwith Mr. Vikas Khanchandani, Advocate for the Petitioner.

Mr. Arshad Shaikh alongwith Ms. Radha Ved i/by Sanjay Udeshi & Co. for respondent no.1.

Coram : **Smt. R.P. SondurBaldota, J.**
Date : 4th September, 2015

P.C. :

1 This petition preferred under Article 226 of Constitution of India arises out of the disputes between the parties over interpretation of paragraph 51.18 of the Award dtd. 19th January, 2006 passed by the Industrial Tribunal in Reference (IT) No.84 of 1998. The paragraph 51.18 reads as under:

> 51.18. The revised scales are being granted with effect from 01.04.1992 and the variable dearness allowance is to be calculated over and above the consumer price index numbers for Bombay (1960=100) 1234. In the existing scales, the VDA was payable per point of rise and fall of the CPI over and above 650. It would be thus appropriate to direct that the DA as on 01.04.1992 shall be merged with the basic salary and shall be shown separately as dearness pay. It shall qualify as basic pay for all purposes."

2 The brief facts giving rise to the petition are as follows:

The Petitioner-Company is engaged in the business of manufacturing of sugar and sugar candy. It is classified as unit of "Sugar Wage Industry" as per the decision of Sugar Wage Board for sugar industry which is constituted under the provisions of Bombay Industrial Relations Act, 1946. It has it's factory at Ravalgaon and office with communication centre at Mumbai. Eight of the workmen of the petitioner at Mumbai are the members of respondent no.1- Union. On 19th November, 1992, respondent no.1 submitted a charter of demands to the management, at that time, the petitioner was a part of Walchand Group of Industries. It separated from the group in the year 1994 and started functioning as an independent company and shifted it's registered office and Head office to Ravalgaon on 2nd May, 1995. After separation, it submitted reply to the charter of demands but the demands could not be settled before the

Conciliation Officer and by the order dtd.11th November, 1998 passed under the Industrial Disputes Act, the Conciliation Officer referred the demands to the Industrial Tribunal. Over-ruling the objections of the petitioner that it is governed by the provisions of the Bombay Industrial Relations Act, the Industrial Tribunal adjudicated the dispute in Reference (IT) No.84 of 1998 and passed award dtd. 9th January, 2006 granting some of the demands and rejecting some. As regards the objection of the petitioner to the maintenability of the proceedings, it held that the Bombay Industrial Relations Act is not applicable to the petitioner.

3 Being aggrieved by the award, the petitioner preferred Writ Petition No.1875 of 2006 in this court. After filing of the petition, the management of the petitioner decided not to press for the interim relief and to implement the award as regards the monetary demands granted by the Industrial Tribunal. It, however, decided to continue with the petition on the issue of applicability of the Industrial Disputes Act. That petition later came to be decided by this court by the judgment and order dtd. 13th December, 2012 holding that the reference made under the Industrial Disputes Act was competent and the view taken by the Industrial Tribunal that the workmen at Mumbai office of the petitioner were not governed by the Bombay Industrial Relations Act, because the petitioner itself had been treating the Mumbai office separately.

4 Since the petitioner had decided not to press for the challenge on merit to the award dtd.9th January, 2006, it revised the basic salaries of the employees as per the award on and from 1st April, 1992 and calculated the additional pay of the employees and added dearness pay separately as Rs.1,314/-. It paid various allowances and also the arrears to the employees on 2nd August, 2006. After acceptance of arrears and the increased salary by the employees, respondent no.1 raised an issue that there was an error in the calculation made by the petitioner, e.g. according to it, the dearness pay paid to the workman by name Mr. Sathe should have been Rs.3,034/- instead of Rs.1,314/- as calculated by the company. Then respondent no.1, by it's letter dtd.19th September, 2006 complained to the Chairman and Managing Director of the Company that the award of the Industrial Tribunal was not interpreted properly and threatened to initiate contempt proceedings against the petitioner as well as it's Managing Director. The petitioner responded by calling respondent no.1 to the table for discussion as regards interpretation of the award. Nonetheless respondent no.1 filed Contempt Petition No.375 of 2006 against the petitioner and it's Managing Director. In the contempt petition, the parties tendered Minutes of Order providing for limited remand to the Industrial Tribunal to investigate into the following question and report thereon:

> "Whether the Dearness Pay granted in paragraph No.51.18 of the award dtd.19th January, 2006 in Reference (IT) No.84 of 1998 constitute basic pay as on 1st April, 1992 plus Dearness Allowance payable to that employee as on that date i.e.1st April, 1992 OR Dearness Pay constitutes only Dearness Allowance paid to that employee as on 1st April, 1992".

5 Thereafter the Industrial Tribunal passed further award on 19th July, 2007. It held that the dearness allowance as on 1st April, 1992 stands merged with the basic of wages. However, it has to be shown separately as dearness pay and it constitutes basic pay as on 1st April, 1992. It does not constitute only dearness allowance paid to the employees as on 1st April, 1992. On receiving report of the Industrial Tribunal, this court, on 24th September, 2007 admitted the contempt petition and granted liberty to the petitioner to challenge the award under the report. Thereafter the present petition came to be filed.

6 It is to be noted that when the question of interpretation of paragraph 51.18 was referred to the Industrial Tribunal, there was a change in the Presiding Officer of the Tribunal. Consequently, the limited remand for interpretation heard by a different Presiding Officer.

7 The petitioner contends that the Industrial Tribunal failed to appreciate that if the interpretation of respondent no.1 of paragraph 51.18 is accepted, it would amount to paying the

basic wages, twice to the workmen and there was no such intention on the part of the Industrial Tribunal. According to the petitioner the impugned order creates more confusion than clarification.

8 Since the question is of interpretation/clarification of para-51.18 of the Award dated 9th January, 2006, it will be fruitful to briefly note the relevant portion of the Award alongwith the claim of respondent no.1 and the defence of the petitioner. The reference before the Industrial Tribunal was in respect of 15 of the demands of respondent no.1. The first four demands thereunder, which are relevant for the present purposes are (i) demand-1-Basic scales of pay, (ii) demand-2-Net additional pay, (iii) demand-3-Fixed dearness allowance and (iv)demand-4-Dearness allowance. Paras-51 to 54 of the Award deal with the four demands respectively. For considering the first demand of basic pay, the Industrial Tribunal noted that, respondent no.1 was claiming wage scale on the basis of the settlement signed between respondent no.1 and the Hindustan Construction Company Ltd (HCCL), which belonged to the same earlier group of companies, i.e. Walchand group whereas, the petitioner placed reliance on communication with the Union and in particular, letter dated 27th May, 1994 written to the President of respondent no.1 and reply of the even date given by the Union. On appreciation of the relevant documents and the submissions advanced before it, the Tribunal held that the

submission on behalf of the petitioner and the reliance placed on the two communications cannot be accepted. According to it, the settlement arrived at between HCCL and respondent no.1 on 23rd July, 1990 and the further settlement between the two, could be taken for comparison. The Tribunal accepted the grades and the pay scales as per the settlement dated 8th March, 2002 and granted the same w.e.f. 1st April, 1992. It also provided that the variable dearness allowance be calculated over and above the Consumer Price Index number for Mumbai i.e. 1234 and directed that the Dearness Allowance as on 1st April, 1992 shall be merged with the basic salary and shall be shown separately as basic pay.

9 Demand-2 of net additional pay of Rs.300/- per month was uniformly allowed to the existing net additional pay w.e.f. 1st April, 1992. The third demand for fixed Dearness Allowance, a new demand made by respondent no.1 was found to be without justification and hence not accepted. Demand-4 for Dearness Allowance was allowed as per the demand. Thus, the demands for basic pay, additional pay and Dearness Allowance is seen to be specifically and separately considered in that Award.

10 Respondent no.1 contended that, since the Dearness Allowance as on 1st April, 1992 is directed to be merged with the basic salary and also to be shown separately as Dearness Pay,

the same must be added to the basic pay and also paid separately as Dearness Pay from 1st April, 1992. Mr. Shaikh, the learned Advocate appearing for respondent no.1, submits that, if any direction is capable of two interpretations, the Court must accept the interpretation that favours the workman rather than that which favours the employer. As regards the object of the Industrial Disputes Act, and the nature of the disputes thereunder, he relies upon two decisions of the Apex Court in the cases of The Premier Automobiles Ltd. vs. Kamlakar Shantaram Wadke and others and Automatic Electric Pvt. Ltd. vs. Engineering Mazdoor Sabha and others, reported in AIR 1975 Supreme Court, page 2238(1) and Hindustan Antibiotics Ltd. vs. The Workmen, reported in AIR 1967 SC page 948. It is his argument that the object of industrial law is twofold namely (1) to improve the service conditions of industrial labour so as to provide for them the ordinary amenities of life and (ii) by that process, to bring about industrial peace which would in its turn accelerate productive activity of the country resulting in its prosperity. The prosperity of the country in it's turn helps to improve the conditions of labour. Mr. Shaikh points out that the decision in Hindustan Antibiotics case also arose out of a wage reference, in which, the Apex Court has observed as follows:

> "9.......What is the justification from the standpoint of the employees that different wage structure shall be adopted having regard to the fact that in one case the shares are held wholly or partly by the Central Government or the State Government and in other cases by the

> members of the public? The worker is interested in his pay packet and if he is given reasonable wages, it is expected that a satisfied worker will contribute to the growth of the industry and ultimately the prosperity of the country. From his standpoint, which is a paramount consideration, so long as the capacity of the industry is assured, the character of the employer is irrelevant."

In the same decision further, the Apex Court considered the concept of Dearness Allowance in following terms:

> "27........ The doctrine of dearness allowance was only evolved in India. Instead of increasing wages as it is done in other countries, dearness allowance is paid to neutralise the rise in prices. This process was adopted in expectation that one day or other we would go back to the original price levels. But, when it was found that it was only a vain hope or at any rate, it could not be expected to fall below a particular mark, a part of the dearness allowance was added to the basic wages, that is to say, the wages, to that extent, were increased. While the Tribunal increased the wages, in fixing the dearness allowance, it looked into the overall picture, namely, whether the total wage packet would approximate to the total packet wages in comparable industries. There is no question, therefore, of paying dearness allowance on dearness allowance, but it was only a payment of dearness allowances in addition to the increased wages."

11 Mr. Gehani, the learned advocate for the petitioner submits that the Industrial Tribunal has directed that variable dearness allowance as on 1st April, 1992 be treated as dearness pay and merged with basic. The intent of the Industrial Tribunal in further saying that the dearness pay should be shown separately was to ensure that the variable dearness allowance as on 1st April, 1992, which would otherwise become nil after revision of basic-scales as directed by the Industrial Tribunal, on account of raising of the Consumer Price Index be continued by showing it as dearness pay, which was to be treated as 'Basic' for all the purposes where the amount of basic pay is reckoned for calculation of certain monetary benefits. It is his argument that since the Industrial Tribunal by the order has made an upward revision in the basic, there was no question of it being further added to the basic for the purpose of basic-pay and that it was to be used only for the purpose of calculation of the other monetary benefits. It has been the further argument of Mr. Gehani that the course adopted by the Industrial Tribunal was also logical. The Tribunal while upwardly revising the pay-scales w.e.f. 1st April,1992, also raised the base Consumer Price Index from 650/- to 1234/-. With the base CPI raised by 584 points, the Industrial Tribunal directed that money equivalent to 584 points i.e. Rs.1314/- (584 points x Rs.2.25 per point), the rise existing as on 1st April, 1992) be shown as Dearness Pay, so that the employee does not lose that amount, which he was otherwise not getting as on1st April, 1992 with CPI base at 650/-.

12 Mr. Gehani further argues that prior to revision, the amount of VDA i.e. Rs.1,314/- was not considered for calculation of benefits where basic had to be reckoned like leave salary, overtime etc. However, post revision the amount would be considered thereby facilitating increase in the total amount of those allowances. He points out that the petitioner has already implemented the order of the Industrial Tribunal in it's entirety. The other argument of Mr. Gehani is that if the argument of respondent no.1 is to be accepted, the same would lead to an absurd increase in the salary of the employees, which increase was not even demanded and hence not considered. For demonstration, he refers to the salary of a Peon one Mr. Murlidhar. Prior to the revision, basic salary of Mr. Murlidhar as on 1st April, 1992 was Rs.855/- and his gross salary was Rs.2498.20 ps. As per the award his revised basic as on 1st April, 1992 comes to Rs.1,000/- and his gross salary Rs.3,179/-. Thus the revised salary under the award gives raise of 27% to Mr. Murlidhar. The demand made by respondent no.1 was for rise in the basic to Rs.1,000/- and with other demand, the gross salary would come to Rs.4,034/-. This would mean raise by 61% in the salary. But if the interpretation sought to be put by respondent no.1 on para 51.18 is to be accepted, the basic salary of Murlidhar will go up to Rs.1,855/-. This raise would amount to 116% of his salary. Mr. Gehani submits this is unreasonable and defies logic.

13 The salary calculation of Mr. Murlidhar given by the petitioner read as follows:

Components Salary	Pre-revised salary (as on 1.4.1992)	Revised salary (as on 1.4.1992)	Revised salary as demanded by Union.
Basic	855	1000	1000
VDA (based on CPI)	1314 (Base CPI 650)	– (Base CPI 1234)	– (Base CPI 1234)
DP	–	1314	2169 (1314+855)
Net Addl. Pay	115	415	415
Sub Total	2284	2729	3584
HRA	114.2	150	150
Conv. Allowance	50	100	100
Edu. Allowance	50	100	100
Washing Allowance	–	100	100
Total allowance	214.2	450	450
Gross Salary	2498.2	3179 (27% increase)	4034 (61% increase)

These arithmetic calculations cannot be and are not disputed by respondent no.1.

14 I find substantial force in the submissions of Mr. Gehani. Undoubtedly there were separate and distinct demands

for revision of the basic pay and dearness allowance. Both demands have been independently considered by the Industrial Tribunal. Therefore it would be but obvious that there was no question of considering grant of dearness allowance / dearness pay while considering the demand for revision of basic pay at para 51 of the award. Therefore any statement in para 51 would pertain only to revision of basic pay and cannot extend to conferment of any allowance. Besides once the dearness allowance is directed to be merged with the basic pay, the same cannot be again added to the revised basic pay. Therefore, the explanation for the direction that it should be shown separately given by Mr. Gehani that otherwise variable dearness allowance would become nil after revision of pay-scales by taking into account the Consumer Price Index must be accepted. Because it is to be treated as basic for all purpose where 'basic pay' is to be reckoned. That it has infact been taken into account while calculating several other benefits payable to the employees has been established by the petitioner by producing chart of payments made to each employee. Further the extra-ordinary raise in the basic pay of 116% which is neither demanded nor deliberated upon in the award cannot be allowed by way of interpretation of solitary paragraph of the award.

15 The impugned order unfortunately does not consider any of the above aspects. In fact it considers nothing. The order runs into 11 paras. The first 8 paras narrate the history of the

matter. At para 10, the learned Tribunal Member says that during the course of the arguments both sides had made submissions on their own interpretations of Clause 51.18 and he has refrained himself from referring to the same. The reason therefor is not stated. The question framed and forwarded for decision by this court by it's order dtd.17th April, 2007 arises out of the dispute over interpretation of para 51.18. The learned Member therefore could not have ignored the arguments. At para 9 of the award, the learned Member has directly stated his conclusion on the question referred in following words.

> "It is clear from the award that the merged Dearness Allowance as on 1.4.1992 has to be shown separately as a Dearness Pay, instead of adding together the said amount within the basic pay and showing the figure arrived at as a basic pay. It is made clear that the Dearness Pay, to be paid, shall be treated as a basic pay for all purposes. Therefore, considering from any angle, it appears as clear that by the said award, this Tribunal has directed that the Dearness Allowance payable to the second party workmen as on 1.4.1992 shall be merged with the basic pay and such Dearness Allowance shall be shown separately as a Dearness Pay, but it shall be treated as the basic pay for all purposes. This appears to be the true import of para 51.18 of the award".

The order thus actually suffers from lack of reason. For all the reasons stated above, the impugned award cannot be sustained. The same needs to be set aside and interpretation of para 51.18

of the award dtd. 19th January, 2006 placed by the petitioner accepted.

16 The Writ Petition is allowed in terms of prayers clause (a) and (b).

(Smt. R.P. SondurBaldota, J.)