

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 15TH DAY OF JULY 2015/24TH ASHADHA, 1937

WP(C).No. 10467 of 2015 (G)

PETITIONER:

TEXTILES WORKER'S UNION (A.I.T.U.C),
REG.NO.14/54, AMBALLUR, ALAGAPPANAGAR P.O.,
THRISSUR DISTRICT, REPRESENTED BY ITS SECRETARY,
K.C.MADHAVAN, AGED 55 YEARS, S/O. CHAKRAPANI.

BY ADVS.SRI.RENJITH THAMPAN (SR.)
SMT.P.R.REENA

RESPONDENTS:

1. ALAGAPPA TEXTILES (C) MILLS,
UNDER NATIONAL TEXTILE CORPORATION,
REPRESENTED BY GENERAL MANAGER, ALAGAPPANAGAR P.O.,
THRISSUR-680 302.
2. CHIEF GENERAL MANAGER,
NATIONAL TEXTILE CORPORATION,
NATIONAL TEXTILE CORPORATION HOUSE, COIMBATORE,
TAMILNADU.

R1 BY ADV. SRI.V.KRISHNA MENON
R1 BY ADV. SMT.P.VIJAYAMMA
R1 BY ADV. SMT.UMA GOPINATH

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
15-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS :

P1 : COPY OF THE NOTIFICATION SO 556(E) DTD.3.7.1998 (MINISTRY OF LABOUR).

P2 : COPY OF A LETTER DTD.30.7.2008 ISSUED BY THE OFFICE OF THE CHIEF LABOUR COMMISSIONER ENCLOSING THE ORDER PUBLISHED IN THE OFFICIAL GAZETTE AS GSR 336(E) DTD.5.5.2008.

P3 : COPY OF THE REPRESENTATION FILED BY THE PETITIONER DTD.16.3.2015 BEFORE THE 1ST RESPONDENT.

RESPONDENTS' EXHIBITS :

ANNEXURE A: TRUE COPY OF THE SETTLEMENT DATED 17.09.2011.

ANNEXURE B: TRUE COPY OF THE MINUTES OF THE MEETING HELD ON 13.02.2015.

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) No.10467 of 2015

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Dated this the 15th day of July, 2015

JUDGMENT

Alleging inaction on the part of the first respondent to pay Dearness Allowance to the workers of the petitioner trade union, it has come up before this Court.

2. The petitioner is a registered trade union functioning in Alagappa Textiles (Cochin) Mills, Amballur in Thrissur district. The petitioner is claiming the payment of Dearness Allowance at the scale of Industrial DA fixed by the Central Government to the workers of the first respondent, which is a company under the second respondent, a PSU held by the Central Government. Presently, the workers such as the members of the petitioner's union are being paid DA at the variable scale fixed by the State Government. The petitioner alleges that earlier, the Central Government had delegated all the powers exercisable by it to the State Governments by way of notification dated 3.7.1998 (Ministry of Labour).

3. In this context, in the matter of DA, the State Government

adopted the stand that variable DA that floats according to the variations in the Consumer Price Index be payable to the workers of the mills like the first respondent. The petitioner alleges that this was under the pretext that the appropriate Government was no longer the Central Government, but the State Government. Therefore, the DA payable would be not the Central Government DA, but the variable DA fixed by the State Government. Subsequently, the Central Government rescinded the delegation made by Ext.P1 order by way of another order published in the official gazette dated 5.5.2008. However, the workers such as the members of the petitioner union still continued to be paid the variable DA fixed by the State Government. It is alleged that the Industrial DA was paid only to the office-staff of the mills and not to the workers.

4. Challenging this, the Secretary of the petitioner union has filed a representation dated 16.3.2015 before the first respondent wherein it was noted that on account of the difference in the pay-scale of the DA, each mill worker stands to lose at least ₹6,000/- every month. Therefore, it was demanded that the Industrial variable DA shall be made applicable to both the staffs and workers. The grievance of the petitioner is that

despite Ext.P3 representation, the first respondent has not taken any action to ensure the timely payment of the DA to the workers.

5. The first respondent has filed a statement contending as follows:

A memorandum of settlement has been arrived at between the National Textile corporation Ltd., and the Mills under it in Kerala on the one side and the workers represented by various unions on 17.9.2011 on the other side. As per the said settlement, the variable DA was revised and for the purpose of calculation of DA points, the Thiruvananthapuram cost of living index was to be followed. It was further agreed in the said settlement that the workmen would not raise any monetary demand relating to wages and other benefits excluding bonus during the subsistence of the settlement and the workman had further agreed to drop all other demands involving financial commitments. A copy of the settlement dated 17.9.2011 is produced as Annexure-A. It is stated that the period of settlement is to be for a period of five years from its date of implementation. Thus, in terms with Annexure-A settlement in respect of Alagappa Textile (Cochin) Mills, the settlement is to be in force till 30.9.2016. It is further stated that in terms with the stipulations contained

in Annexure-A, the petitioner is precluded from raising any claim as presently raised in the writ petition.

It is further stated that owing to certain demands put forth by the trade unions in Kerala and Mahe, a meeting was held between the representatives of the NTC Management and the various trade unions on 13.2.2015 and in respect of the issue pertaining to the Industrial DA to the workmen it was decided that as the same is a policy matter, it would have to be referred to higher authorities in the ministry. A copy of the minutes of the meeting held on 13.2.2015 is produced as Annexure-B.

6. I have heard Smt.Surya Binoy, the learned counsel for the petitioner and Smt.P.Vijayamma, the learned counsel for the first respondent.

7. Smt.Surya Binoy would submit that the workers belonging to the petitioner's union are entitled to get DA at the Industrial DA scale, they being the workers of the second respondent which is a PSU held by the Central Government. It was pointed out that the payment of Industrial DA to workers is discriminatory and it is hit by Article 14 of the Constitution of India. It was pointed out by the learned counsel that the

difference in the scales of Variable DA and Industrial DA leads to a loss of ₹6,000/- per month to the workers. This deprivation is unwarranted and is violative of the rights of the workers under Articles 21 and 19(1) (g); so submitted Smt.Surya Binoy. it was argued that the delegation of powers of the Central Government to the State Government to constitute the latter, the appellate Authority under the Act, did not warrant the payment of differential scale of DA to the workers of the mills operating in Kerala such as the members of the petitioner's union. It was pointed out that even if it did so, such a basis for classification no longer exists as the Central Government has rescinded the earlier delegation of its powers by virtue of Ext.P2 notification.

8. The persuasive submissions of the learned counsel for the petitioner, notwithstanding, the petitioner is not entitled to the relief as prayed for, as it is evident from Annexure B filed along with the statement filed by the first respondent that a meeting was held between the representatives of the NTC Management and various trade unions on 13.2.2015 and in respect of the issue pertaining to the Industrial DA to the workmen it was decided that as the same being a policy matter, it would

be referred to the higher authorities in the Ministry.

9. In view of the decision taken in the said meeting, the petitioner is precluded from raising the issue as presently raised in the writ petition. Therefore, the petitioner is bound to fail.

In the result, the writ petition is dismissed.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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