

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

+ **W.P.(C) 1091/2003**

Judgment reserved on: 21.01.2015

Judgment pronounced on: 11.03.2015

DD GEARS LTD.

.....Petitioner

Through: Mr.Lalit Bhasin, Advocate alongwith
Ms.Ratna D.Dhingra and Ms.Bhawna
Dhami, Advocates.

versus

DD GEARS EMPLOYEES UNION & ORS.

..... Respondents

Through: None.

AND

+ **W.P.(C) 7667/2003**

DD GEARS EMPLOYEES UNION

...Petitioner

Through: None.

versus

DD GEARS LTD. & ORS.

..... Respondents

Through: Mr.Lalit Bhasin, Advocate alongwith
Ms.Ratna D.Dhingra and Ms.Bhawna
Dhami, Advocates.

CORAM:

HON'BLE MS. JUSTICE DEEPA SHARMA

JUDGMENT

1. Vide this order, I propose to dispose of the writ petitions no. 1091/2003 and 7667/2003, filed by the employer and the workers union respectively, challenging the same award dated 29th October, 2002 of the

Industrial Tribunal.

The terms of reference before the tribunal was as follows:-

1. Whether the workmen as shown in Annexure A are entitled to their wages w.e.f. 13.01.2000 and if so, what directions are necessary in this respect?
 2. Whether the workmen as shown in Annexure A are entitled to annual increment and if so at what rate and what directions are necessary in this respect?
 3. Whether the workmen as shown in Annexure A are entitled to house rent allowance and if so at what rate and what directions are necessary in this respect?
 4. Whether the workmen as shown in Annexure A are entitled to conveyance allowance and if so at what rate and what directions are necessary in this respect?
 5. Whether the workmen as shown in Annexure A are entitled to two pair of summer and winter uniform, one rain coat, two pair of shoes and if so, what directions are necessary in this respect?
2. The award shows that during the trial, the workers union had forgone the terms of reference nos. 2 to 5 and had not pressed the same and also had

not led any evidence on the reference item nos. 2 to 5. The tribunal has thus given its finding only on terms of reference item no. 1 which relates to the entitlement of the workers shown in Annexure A to their wages w.e.f. 13th January, 2000.

3. The facts of the case shows that the relationship of the employer and the employee between parties is not in dispute. Both the parties had entered into the settlement through union valid from 20.12.1994 to 30.11.1998 relating to certain demands of workers of Management of DD Gears. On 24th April, 1997, there was a strike in the establishment which continued till 22nd August, 1997. Since the wages were not paid for this period, the workers union raised industrial dispute for wages for the period from 24th April, 1997 to 22nd August, 1997. The management filed the civil suit No.175/97 and the civil judge vide its order dated 28.05.1997 restrained the union from holding the demonstrations within periphery of 100 meters from the entrance of the gate. On 5th August, 1997, the union gave an undertaking before the civil court to refrain from any dharna or to resort to any violent action or demonstration, and the civil suit was disposed of, on this undertaking. On account of an incident dated 28th October, 1997, the management lodged an FIR No. 703/1997 P.S Model Town against its

workers.

4. On 17th March, 1998, the workers resorted to a tool down strike without any prior notice. In 27.10.99, the Assistant Labour Commissioner sent a notice dated 27th October, 1999 containing the demands raised by the Union which was duly replied by the management. On 13th December, 1999, the workers again went on strike. On 13th January, 2000, the management declared a lock out of its factory. On 10th February, 2000, the Secretary (Labour of Government of NCT of Delhi) vide its order dated 10th February, 2000, prohibited the continuance of the lock out in the factory. Vide separate order of the even date, the present reference was also made by the Secretary (Labour). The management challenged the order of the Secretary, Labour of Government of NCT dated 10th February, 2000 (whereby continuance of the lock out was prohibited) vide civil writ petition no. 1659/2000. Against the order of the High court in WPC No. 1659 of 2000, the employer filed LPA No. 658/2004. Vide its order dated 19.12.2005 in LPA 658/2004, the Division Bench of this court declared that order dated 10th February, 2000 that the prohibiting of continuance of the lock out is illegal.

5. In writ petition no. 1091/2003, the employer/management has

challenged the following portion of the award wherein the tribunal has held as under:-

“53. So the lock out declared on 13.01.2000 cannot be termed as illegal or unjustified.

54. The lock out after 14.02.2000 would definitely have been illegal as the same was prohibited by the competent authority in pursuance of orders passed u/S 10(3) of the I.D. Act but the fact remains that the said orders are under challenge by the management before the Hon’ble High Court and as such, whether the strike was illegal or not because of the prohibition order will depend upon the outcome of the orders passed by Hon’ble High Court in the writ petition filed by the management.

55. However, the fact remains that the lock out is still continuing and it is also a fact that lock out cannot be continued for an indefinite period. Especially in the present case, the management had applied for retrenchment of the 156 workmen and by declaring lock out and continuing it for unlimited period the very purpose that the management wanted to achieve by seeking permission would be achieved by the management by declaring a lock out which cannot be permitted as even permission has been refused and only a review application had been filed. It is a case where the lock out had been continued for unduly protected period also, So far as the evidence of the management is concerned, the agitations on the part of the workmen have been continued till August 2000 and as such the continuation of the lock out after August 2000 and as such the continuation of the lock out after August 2000 cannot be justified. No document had been proved on record that the management collect upon the workmen resumed duties after August 2000 and they failed to do so. So, the workmen are entitled to the wages from 1.9.2000. The arrears of wages be paid within one

month of the date of publication of the award. Term No.1 of the reference is answered accordingly while rest of the terms of reference No.2 to 5 are answered against the workmen. Award is passed accordingly.”

6. It is contended that these findings of the tribunal are perverse, contrary to the legal proposition and that the tribunal has exceeded its jurisdiction. It is contended that terms of reference relates only to the entitlement of the wages by workers w.e.f 13th January, 2000 and there was no reference before the Tribunal whether continuation of the lock out by the management was legal or illegal. It is argued that these findings are liable to be set aside. In these writ petitions, the workers/respondents have not filed any counter affidavit. The contentions taken by them in their writ petition no. 7667/2003 is considered. It is contended by the workers in their writ petition no. 7667/2003 that since the lock out w.e.f 13.01.2000 was illegal, they were entitled for the wages w.e.f. 13.01.2000 itself. It is contended that the tribunal has failed to see the entire facts of the case and thus the award whereby the Tribunal has awarded the wages to the workers from the date 01.09.2000 is bad in law and is perverse and is the result of non-application of mind with prayer of issuing a writ of certiorari/order/direction quashing the award dated 29.10.2002.

7. It is further contended by workers in their writ petition no. 7667/2003

that the tribunal has failed to consider the fact that the true intentions of the management was to close down its unit which was evident from the fact they first sought the permission to retrench its workers in the month of June 1999 and when their request to retrench the workers was turned down by the Government, they resorted to the lock out. Their subsequent application seeking permission to close down the establishment further confirms their intention. It is further contended that since the lock out on 13.01.2000 was declared during the pendency of the conciliation proceedings before the conciliation officer and existence of industrial dispute before the industrial tribunal, the lock-out was illegal. It is further contended that the award has been passed in violation of Section 22 and Section 23 of the Industrial Dispute Act and the Industrial Tribunal has not correctly interpreted the law. It is further contended that the tribunal had exceeded its jurisdiction while giving its findings of the fact that since the workers were on illegal strike, the employer were compelled to declare the lock out, when there was no such reference before Tribunal relating to validity of strike.

8. In the present writ petitions, while the arguments had been addressed by the management/employer, nobody on behalf of workers had come forward to argue the matter. Since both the writ petitions challenge the same

award, this Court did not dismiss in default the W.P.(C) No.7667/2003 filed by workers, instead the grounds of challenge of award by workers in W.P.(C) No.7667/2003 has been taken as defence in W.P.(C) No.1091/2003, wherein the employees have not filed any counter-affidavit.

9. This court has given careful consideration to the material on record.

10. The sole contention of the worker union in WPC No.7667/2003 is that there was no reference to the tribunal relating to the strike by the workers and thus the tribunal had exceeded its jurisdiction while dealing with the question of strike by the workers.

11. The terms of reference show that the Item no.1 relates to the entitlement by workers of wages w.e.f. 13th January, 2000. Admittedly, this is the date on which the management had declared lock out of the factory.

12. It is clear from the pleadings before the tribunal that while the workmen had claimed the wages for the period 13th January, 2000 on account of their contention that the lock out was illegal, the management had taken the plea that lock out was not illegal because it was forced to declare the lock out on account of illegal strike of workers w.e.f. 13.12.1999. The question before the tribunal therefore was whether the lock out was legal or illegal. In order to reach to this conclusion, the tribunal was bound to

consider the pleas of both the parties raised in support of their contention i.e. the pleas raised by the worker union in support of their contention that lock out was illegal and the plea of the management that the lock out was legal because it was the result of the illegal strike on the part of the workers.

13. Under Section 10(4), the Tribunal is required to confine its adjudication to those points and matters incidental to the Industrial Dispute as referred to it. The expression “incidental” includes the disputes which are necessary to be determined in order to decide the industrial dispute in hand. In the present case, it was essential for the tribunal to deal with both the contentions, whether lock out was illegal or legal on account of illegal strike by the workers. In order to reach to the conclusion whether the workmen were entitled for wages from 13th January, 2000 on account of illegal lock out, it was essential for the Labour Court to decide whether the strike which led to the lock out was legal or illegal. The tribunal has correctly held that it was also essential to decide whether the workers resorted to the strike which was legal or illegal to meet with the contention of the workers that the lock out was illegal because of the pendency of the proceedings before the tribunal by virtue of provision of Sub-Section 3 of Section 24.

14. The contention of the workers therefore that the tribunal had exceeded

its reference, has no merit. The tribunal has clearly dealt with this contention of the workers and reached to the conclusion that it was essential for it to deal with the issue whether strike was legal or illegal as the application of the law was depending on findings of this fact.

15. The workers had challenged the lock out on the following grounds before the Labour Court Tribunal:-

- i. Prohibition in Section 23.
- ii. Motivated on refusal to permit the management to retrench the 156 workers by the Government.
- iii. The continuation of production in the factory and refusal of the permission to close down the factory by the Government and that the real intention of the management was to close down the factory.

16. As to the question whether the workers were on strike with effect from 13.12.1999, the Tribunal has relied on the documentary evidences which included the correspondence between the parties and also the admissions in the cross-examination by the workman witness.

17. Following were the admissions made by the workman witness:-

- a. The existence of settlement Ex.WW1/M1 having its validity from 20.12.1994 to 30.11.1998 and the admission that by virtue of clause 15 of

this settlement, no demand can be raised during the existence of the settlement.

b. Serving demand notice dated 01.02.1997 upon the management during the existence of the settlement without the termination of the said settlement dated 20.12.1994.

c. Admission that the workman slowed down the work in the year 1998 to press the demands for canteen facilities and settlement with the management on 31.07.1998 with regard to canteen facilities.

d. Raising of the demands, raised earlier in the year 1997, again in August, 1998.

e. Writing of the letter dated 13th January, 2000 Ex. WW1/M2.

f. Admission of raising the same demands in the year 1998 which had been raised in the present reference.

g. Admission of the passing of the prohibition order exhibited as Ex.MW1/4 by the Civil Court in a suit filed by the management.

h. Lock out notice Ex. WWq/M6 wherein the reason to lock out was given as the illegal strike by workers since 31st December, 1999 which also shows the slogan, shouting and the demonstrations, gherao of the officers etc.

i. The report of the Inspector of the factory regarding his visit on the complaint made by the Union Ex. WW1/M14 B dated 21st February, 2000 wherein no working activities were found being carried out in the premises and only four workers were found engaged in packing the finished goods.

18. The tribunal has summarized the evidences led by the workmen as under:-

“39. From the testimony of the workers discussed above, it is evident that the workmen have admitted that the management had been writing to the authorities and the police that the workman have been indulging in agitations from 13.12.99 onwards and had been threatening and restraining the other workmen to do that work and have been indulging in gherao and hurling abuses and misbehaving and mal-treating the factory incharge and had not been adopting a cooperative attitude but creating lot of trouble which is evident from the police reports dated 6.1.2000 Ex.WW1/M8, 4.1.2000 Ex.WW1/M9, 23.12.99 Ex.WW1/M10, complaint to labour commissioner dated 18.12.99 Ex.WW1/M11, another letter dated 6.1.2000 to labour commissioner Ex.WW1/M12 and Ex.WW1/M13. The first report made to police station is dated 13.12.99 and is Ex.WW1/M14. It is further evident that the management had filed a civil suit for restraining the union and its workmen from carrying out any gherao, demonstrations and the workmen were restrained from holding demonstration meeting within a radius of 100 meters.”

19. The management had proved on record the following documents:-

a. Production chart Ex. MW1/W1 to Ex.MW1/W5 of the factory.

- b. Attendance record Ex.MW1/W16 and Ex.MW1/W17.
 - c. Notice Ex.MW1/W7 issued by the management.
 - d. Production chart Ex.MW1/W1 is dated 16.12.99 in respect of workman Hari Shankar Verma, Ex.MW1/W3 in respect of workman Madho Prasad and similar are Ex.MW1/W1 to Ex.MW1/W9.
20. On the basis of these documents, the Labour court has made the following observations:-

“46. Ex.MW1/W1 is the production chart for 1.1.2000 in respect of Navin Singh and Ex.MW1/W15 is in respect of other persons while Ex.MW1/W16 and Ex.MW1/17 are the attendance card of Jan.2000 in respect of Anil Kumar Tyagi and Dinesh Kumar.”

21. On the basis of testimony of the witnesses as well as the documents on record, the Tribunal had reached to the conclusion that the workers were on illegal strike. The arguments of the workers that in the application seeking permission for retrenchment of 156 workers, the management had not made any mention of the workers holding demonstrations or not interested in the work and also creating obstacles to others, was rejected on the basis on the documents MW1/W3 in which the management had stated the labour unrest as one of the factors .
22. The Tribunal has also rejected the arguments of the workmen further

on the ground that in the Performa, there was no column regarding labour unrest. The tribunal has also rejected the contention of the workmen that the production chart as well as attendance register and the report of the Labour Inspector was sufficient to show that there was no strike by the workmen and the workmen were doing their duties.

23. The tribunal had given the following findings:-

“50. AR for workmen had further argued that for the production chart as well as attendance register and from the report of the labour inspector. It is evident that there was no strike by the workmen and the workmen were doing their duties. So far as production charts are concerned, it relates to only 10-15 workmen and it is not the case of the management as well as the workmen that claim, the statement of claim is on behalf of 340 workmen which is not the total strength of the management and more over. The production of charts in original by the workmen show their control over the management in as much as they could retrieve the same from the possession of the management as otherwise such documents ought not have been in the possession of the workmen. So far as the attendance registers are concerned, it relates to only 2 persons. When the workmen could seize the record of the management with regard to some of the workmen, one can definitely presume that the other records could have also been seized by the workmen but no other record had been produced. It also proves that no other workmen but no other record had been produced. It also proves that no other workmen than mentioned in the production charts were on duty.

51. So far as labour inspector's report is concerned, both the parties have relied upon the same and a bare

perusal of the same reveals that his report is that no production work was going in the factory and only 4 persons found working that too far packing work. It shows that the workers were on strike.”

24. The findings of the Labour Court of the fact that the workers were on illegal strike is thus based on the evidences produced on record.

25. On the legal aspect, the contention of the workmen before the tribunal was that the lock out was illegal because it was declared by the management during the pendency of the proceedings before the industrial Tribunal no. 3 wherein their dispute related to the wages from the strike period from 24th April, 1997 to 22nd August, 1997 was pending.

26. The same contention was raised by the management stating therein that since the strike was declared by the workers during the existence of the industrial dispute, the strike was illegal and when the strike was illegal, lock-out in consequence of illegal strike is not illegal by virtue of Section 24 (3) of the Act.

27. The tribunal has held that the strike was illegal for the following reasons:-

“52.The reference so far wages are concerned is limited to the period from 13.1.2000 and the lock out has been declared admittedly by the management on the said very date. It is the definition case of the workmen that they have not been paid wages from January 1 to

January 12 also but no claim has been lodged by them before the conciliation officer and it further proves the contention of the management that workmen on strike. The workmen had not claimed the wages for this period as they know fully well that they were on strike though it is their case that they had not been paid their wages. The contention of the workmen that the pleas of the management that the workmen are on strike from 13.12.99 onwards is of no use as admittedly. The workmen had been paid wages upto December 31, 1999 is unsustainable, the payment of wages cannot be the sole factor for arriving at the conclusion that the workmen in fact were not on strike but the fact remains that as on 13.1.2000, when the lock out was declared and before that the workmen were on strike and that is only the relevant period to be taken into consideration and as such the strike was illegal. The strike was also not justified as it is stated to be in response to their demands raised by the union. Such demands have not been pressed nor any evidence has been led in this regard before this tribunal and it goes to show that the demands were only a curtain for the union to indulge in illegal activities and documents show that these demands were raised even at the time when the earlier settlement was in force and even continued to be raised from 97 onwards but have not been pressed even before the conciliation officer and have been dropped from time to time and the same had not been pressed when finally they have been referred.”

28. It is also an admitted fact that before resorting to the strike, the workmen had not given any notice to the management.

29. This court thus cannot sit as an appellate court and review and reappraise the findings. It is not a case where the findings of the Labour

Court to the fact that the workmen were on strike, is based on no evidence and hence perverse. This court cannot in the writ jurisdiction upset the findings on the fact of the tribunal, which is based on the evidences on record. Thus, the Labour court findings that the workmen were on strike w.e.f. 13.12.1999 are based on the voluminous documents and the evidences on record.

30. Section 24 of the Industrial Disputes Act deals with the situation when the strikes and lock outs are illegal. Pursuant to Section 24(3) of the Industrial Disputes Act, the lock out declared in consequences of the illegal strike shall not be deemed to be illegal. Findings of the tribunal therefore that the lock out declared on 13.02.2000 was not illegal, is based both on the facts on record and correct interpretation of law.

31. There is no perversity or error apparent on the face of the record in the findings of the tribunal on this count. The tribunal has rightly declined the wages of the workers for the period w.e.f. 13.01.2000 on the ground that the lock out was not illegal. The writ petition of the workers with W.P. C. No.7667/2003 therefore fails.

32. The management in its writ petition no. 1091/2003 has challenged the part of the award whereby the tribunal had awarded wages to the workers

from 01.09.2000. It is argued that the findings of the tribunal are based on presumptions and assumptions and are not based on any evidence on record. It is further contended that the tribunal had exceeded its jurisdiction when it had travelled beyond the terms of reference which was whether the workers were entitled for wages w.e.f 13.01.2000 and has wrongly presumed that since the management was prohibited to continue with the lock out w.e.f. 14.02.2000 pursuant to the order passed under Section 10(3) of Industrial Disputes Act by the Government the workers were entitled for wages. It is further contended that the finding that the continuation of the lock out after August 2000 was unjustifiable, was not the terms of reference and moreover the order of the Government under Section 10(3) of the Industrial Disputes Act pursuant to which the management was prohibited to continue with the lockout on challenge in LPA No.658/2004 was declared illegal by the Division Bench of this Court.

33. The result of the said LPA is that the management was justified in continuing with the lockout beyond 14th February, 2000. Moreover, the findings of the Tribunal to the effect that lockout could not have been allowed to continue for an indefinite period, is based on assumption and presumption and is not based on any fact on record or any legal proposition.

The directions of the Labour court that the workers were entitled for wages w.e.f. 1st September, 2000 is not based on any fact on the record and certainly the findings are based on some figment of imagination of the Industrial Tribunal No.1. This finding therefore is perverse and therefore is liable to be set aside.

34. Accordingly, the award dated 29.10.2002 is modified to the effect that the workers are not entitled to any wages w.e.f. 13.01.2000.

Both the writ petitions stand disposed of.

**DEEPA SHARMA
(JUDGE)**

MARCH 11, 2015
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