

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

WRIT PETITION NO. 343 OF 2019

Dagdu s/o Govindrao Shinde

...Petitioner

Versus

The Director (Shri. S. C. Sachdev)

of M/s. Bombay Forging Ltd., at Aurangabad & Ors. ...Respondents

.....

Shri. N. C. Ekbote, Advocate for the petitioner

Shri. T. K. Prabhakaran, Advocate for respondent no. 1

Shri. N. T. Tribhuvan, Advocate for respondent no. 2

.....

CORAM : BHARATI H. DANGRE, J.

DATE : FEBRUARY 02ND, 2022

PER COURT : -

1. Heard Shri. N. C. Ekbote, learned Counsel for the petitioner, Shri. T. K. Prabhakaran, learned Counsel for respondent no. 1 and Shri. N. T. Tribhuvan, learned Counsel for respondent no. 2

2. The petitioner is aggrieved by an order passed by the Labour Court at Aurangabad, on his application (IDA No. 02/2015) for recovery of an amount of Rs.2,45,906.50/- towards arrears of dearness allowance payable to him from 01.03.1994 to 30.09.2014 along with interest. On his application being rejected by the labour Court on 16.08.2018, the petition is filed.

3. Before adjudicating the legality and merits of the impugned order, a reference to few basic facts is necessary :

The petitioner was serving with respondent no. 1 as a skilled labour in Forging Shop since 1994. He tendered his resignation on 10.09.2014. During the interregnum period, he rendered his services to the respondent-Company and at the time of his resignation, he was offered an amount of Rs. 2,22,414/-, which he accepted, though under protest. The whole grievance of the petitioner is, he has not been paid the arrears of dearness allowance from 01.03.1994 to 30.09.2014 and he filed an application under Section 33C(2) of the Industrial Disputes Act, for recovery of the said amount as an unpaid amount.

4. The claim of the petitioner was resisted before the labour Court by the respondent by filing a written statement and though the employment of the petitioner was not denied, reference was made to various settlements entered between the members of the union including the present petitioner as regards the wages, allowances and other conditions governing them from time to time and it was specifically pleaded that the settlements provided over all benefits better than those provided under the Minimum Wages Act and the

notification prescribing minimum wages for engineering industry. The specific plea taken was, the wages paid to the employees included the basic pay, dearness allowance/special allowances, HRA, service allowance, attendance allowance, conveyance allowance, education allowance, tiffin allowance etc. Accordingly, the payment was made to every worker.

5. Before the Labour Court, the evidence was led and the agreement executed between the union and the respondent no. 1 - company for the year 2005-2009 as well as the agreement of the year 2010 was brought on record and the reference was made to the contents of the said agreement in the form of clause 9.2.1 where it was categorically stated that the consolidated basic wages were to include the component of basic wage, dearness allowance/special allowance as well as annual increment. Based on the said agreement which was placed before the Labour Court, the Labour Judge inferred that the average pay payable to a workman was to include the basic wage, dearness allowance / special allowance as well as increment and which led to an inference that the consolidated restructured wages comprise of basic wage, special allowance/dearness allowance and various other allowances. The learned Court recorded that in accordance with the settlements, the respondent no. 1 Company paid

salary even to the applicant/petitioner, with the dearness allowance being merge into the basic wage. The respondent-Company produced the full and final settlement before the learned Judge vide Exh. C-23, which was admitted by him and it recorded that by way of full and final settlement, on resignation he received an amount of Rs. 2,22,414/-. Based on the said finding being recorded, the application was found to be merit-less and without substance and it came to be rejected.

6. The learned Counsel for the petitioner has invited my attention to the various pay slips which are placed on record by him vide collectively at Exh. '4'. Perusal of the pay slips would justify the order passed by the Labour Court and the stand taken by the respondent-Company. The payment structure of the petitioner specifically covered the basic pay, dearness allowance, HRA and other allowances. If the amount that is calculated, is carefully looked into, it will reveal that his payment is calculated accordingly after the deductions, which have been also reflected in the salary slips. If the documents at page 122 & 123 annexed by the petitioner himself are perused, the basic pay is shown at Rs. 2002/- as on 19.03.2003. Other allowances being merged into it, the salary is reflected at Rs.3464/-. In the wake of the above, the salary earned by him in the

monthly pay slips which vary from the range of 5657.76/- to 6129.24/-, clearly reflect that this include the dearness allowance/special allowance.

7. In the wake of the aforesaid documents placed on record by the petitioner himself, the finding rendered in the impugned judgment do not suffer from any illegality or perversity and necessarily the same is upheld. The writ petition being without merit and substance and filed on the misconception carried by the petitioner that the salary payable to him did not include the dearness allowance/special allowance, deserve to be dismissed. No order as to costs.

[BHARATI H. DANGRE]
JUDGE