



W.P.No.2074 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON: 31.01.2024
ORDER PRONOUNCED ON: 15.04.2024

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.2074 of 2022
and
WMP.No.2227 of 2022

THG Publishing Private Ltd.,
Formerly Known as
Kasthuri & Sons Ltd. (The Hindu)
859-860, Anna Salai,
Chennai 600 002.
Represented by its Authorised Signatory.

...Petitioner

Vs.

1.S.Madhavan
2.P.Prabhu
3.P.Venkatesan
4.M.Dhanushkodi
5.P.Raghu
6.S.Srinivasan
7.Ravi
8.S.Sankara
9.M.S.Arivodainambi
10.K.Rajendran.

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India
praying to issue Writ of Certiorari calling for the records of the Principal



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Labour Court, Chennai in I.D.No.205 of 2016 and quash its award dated 29.10.2021.

For Petitioner : Mr.G.Anandgopalan
for T & S Gopalan & Co.

For R1 : Mr.S.Madhavan
party in person

For R2 to R10 : No appearance

ORDER

Writ petition is filed for a writ of Certiorari calling for the records of the Labour Court passed in I.D.No.205 of 2016 dated 29.10.2021.

2.The petitioner is engaged in the business of publishing newspapers for more than 143 years. By notification dated 24.05.2007 in 809(e) and 810(e), a wage board was constituted under Working Journalist and other News Paper employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 for the purpose of revision of wages of working journalist as well as non-journalist newspaper employees. The wage board gave its recommendations to the Central Government on 31.12.2010 recommending that the award be implemented retrospectively from



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01.07.2010. The Central Government accepted the wage board recommendation and published the same in the Government Gazette on 11.11.2011. The recommendations of the wage board were challenged by the Association of Newspaper Establishments on various grounds including constitutional validity of the Act before the Hon'ble Supreme Court under Article 32 of the Constitution of India in W.P(Civil).No.246 of 2011. On 07.02.2014, the Hon'ble Supreme Court dismissed the writ petitions and upheld the recommendations of the wage board as valid in law and based on genuine and acceptable considerations with no valid ground for interference under Article 32 of the Constitution of India. The Hon'ble Supreme Court further held that the wages as revised / determined shall be payable from 11.11.2011, when the Government of India notified the recommendations of the Majithia Wage Boards and the arrears of wages up to March 2014 were directed to be paid to all eligible persons in four equal instalments within a period of one year from the date of the order with further direction to continue to pay the revised wages from April 2014 onwards.



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3. According to the petitioner, the petitioner implemented the wage board recommendations in accordance with the orders passed by the Hon'ble Supreme Court from 11.11.2011 and the petitioner had approximately paid Rs.60 Crores as early as in 2014-2015 in terms of the award as arrears. The respondents raised the dispute before the Labour Court with reference to the difference of Dearness Allowance payable to the 1st respondent and 181 others for the period from 11.11.2011, as per the Award of the Majithia Wage Board by the petitioner. It was claimed by the respondents in the Labour Court in the I.D. that, even though the effective date of implementation of the Wage Board recommendations, as accepted by the Central Government was moved to 11.11.2011 by the Hon'ble Supreme Court for the purpose of calculation of Dearness Allowance, the average of July 2009 to June 2010 ought to have been reckoned for the purpose of calculating the Dearness Allowance. In short the contentions of the respondents was that as far as dearness allowance was concerned, it would date back to 01.07.2010 and not 11.11.2011, because the Hon'ble Supreme Court found that the recommendations of the wage board were valid in law and based on genuine and acceptable consideration. The case



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of the petitioners on the other hand was that, when the Hon'ble Supreme Court moved the date of implementation of the Wage Board recommendations to 11.11.2011, it was not viable to reckon the period from July 2009 to June 2010 for the purpose of calculation of average for calculating the dearness allowance alone.

4.The Labour Court on reference by the Government of Tamil Nadu in G.O.(ID)No.441 dated 21.07.2016 under Section 17(2) of the Working Journalist Act considered the above rival submissions of the parties and held that the petitioners were entitled to revised rate of dearness allowance from 01.07.2010 and not from 11.11.2011. Aggrieved by the Award of the Labour Court, the petitioner has moved this Court by filing the above writ petition.

5.The history of litigation has been narrated above and therefore the same is not revisited. The dispute is whether while moving the date of implementation of the Majithia Wage Board recommendations from 01.07.2010 to 11.11.2011, the date for calculation of dearness allowance



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should also be moved to 11.11.2011. In this regard, the notification of the Central Government dated 11.11.2011 notifying the award of the Majithia Wage Board has to be first looked into. By the said notification, the Government had accepted the recommendations of the Majithia Wage Board. In the said Government notification Clause 13 dealt with Dearness Allowance. For better appreciation Clause 13 is extracted hereunder.

“13.Dearness Allowance-

(2) Dearness Allowance shall be payable bi-annually with effect from 1st July and 1st January every year and shall be sanctioned as soon as the figures for the preceding 12 months, for which all – India average consumer price index for industrial workers (Base 2001=100) used for determining rate of dearness allowance, becomes available. Dearness allowance will become payable from the beginning of the month immediately succeeding the 12 months period for which All – India average index figures are used for determining rate of dearness allowance.”

The Table-III of the notification dealt with the formula for calculating the Dearness Allowance and the same reads as follows:

“The formula for calculating Dearness Allowance would be the increase of all-India Average Consumer Price Index for Industrial Workers (Base 2001=100) in preceding 12 months in question over the all-India Average Consumer Price



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Index for Industrial Workers (Base 2001=100) at 167 for the year July 2009 to June 2010 payable bi-annually with effect from 1st July and 1st January every year, which would be then be multiplied by the rate of neutralization and Basic Pay. Mathematically, it can be put as follows:

$$\begin{aligned} & \text{All-India Annual Average CPI - IW} \\ & \text{(Preceding 12 months in question)} \\ & \textbf{Minus} \\ & \text{All-India Annual Average CPI - IW} \\ & \text{(July 2009 to June 2010)} \\ \text{Dearness Allowance} = & \frac{\text{All-India Annual Average CPI - IW} \\ & \text{(July 2009 to June 2010)}}{\text{All-India Annual Average CPI - IW} \\ & \text{(July 2009 to June 2010)}} \times \text{Rate of Neutralization (1.0)} \times \text{Basic Pay} \end{aligned}$$

6.The petitioner's counsel relies on the explanation given to Clause 13 and contends that the Dearness Allowance for the period preceding the date of implementation of the award should be reckoned on the basis of the average for November 2010 to October 2011, as the date of implementation of the award was moved from 01.07.2010 to 11.11.2011. On the other hand the respondents contend that the date for calculation of Dearness Allowance was fixed by the Wage Board as 01.07.2010 and therefore the average of July 2009 to June 2010 should be taken as base.

7.It is further pertinent to note here that Clause 22 of the notification relates to date of operation of allowance. The said Clause reads as follows.



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“22. Date of operation of Allowances – Except as otherwise provided in the Award, to the contrary, the House Rent Allowance, Transport Allowance, Hardship Allowance or any other allowances prescribed in the Award shall be effective from the date of notification of this Award.”

Clause 22 refers to the date of operation of allowances and it states that except as otherwise provided in the award, to the contrary it shall be effective from the date of notification.

8.Clause 13 referred to earlier with reference to dearness allowance gives an explanation stating that the dearness Allowance in respect of the period preceding implementation of the award shall be given at the existing rates. Therefore in my view when the Hon'ble Supreme Court had moved the date of implementation to the date of notification that is 11.11.2011, the period preceding the date of implementation of the award under Clause 13 would only be November 2010 to October 2011. In my view, as nothing contrary has been stated with respect to Dearness Allowance even as per Clause 22, the effective date would be date of notification of award. In my view as the date of operation of the Dearness



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Allowance under Clause 13 is also to be on the basis of the period preceding the date of implementation of the award, it is in consonance with Clause 22, relating to the date of operation of allowances were the effective date is also the date of notification of the award.

9.The respondents relies on table III relating to formula for calculating dearness allowances to state that the period July 2009 to June 2010 has to be taken for the purpose of calculating dearness allowance. In my view as rightly contented by the learned counsel for petitioner table III is only an illustration to show how dearness allowance has to be calculated. It does not have the effect of changing the date of implementation of the award as explained in Clause 13. It is further pertinent to note that the date of implementation of the award from 01.10.2011, as published in the Government Gazette dated 11.11.2011 was moved by the Hon'ble Supreme Court in W.P.(Civil) No.246 of 2011 to 11.11.2011. Therefore the effective date of implementation of the Award having been clarified by the Hon'ble Supreme Court, for the purpose of Clause 22 and Clause 13, the same date shall be taken as the basis. The respondents contended that as



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the Hon'ble Supreme Court upheld the Majithia Award the dates adopted for calculating the Dearness Allowance in the Award should be left untouched. I am afraid, the said contention cannot be countenanced because the approval of the Majithia recommendations were on the broader aspect of they being on acceptable considerations; therefore it can only be construed as an approval of the method adopted for calculating the Dearness Allowance and nothing more. The Hon'ble Supreme Court referring to the grant of 100% neutralisation of dearness allowances stated that the same was valid, since all public sector undertakings, banks and even private sector were granting 100% neutralisation of dearness allowances.

10.The formula for calculating the Dearness Allowance is as follows:

$$\text{Dearness Allowance} = \frac{\begin{array}{l} \text{All-India Annual Average CPI - IW} \\ \text{(Preceding 12 months in question)} \\ \text{Minus} \\ \text{All-India Annual Average CPI - IW} \\ \text{(July 2009 to June 2010)} \end{array}}{\begin{array}{l} \text{All-India Annual Average CPI - IW} \\ \text{(July 2009 to June 2010)} \end{array}} \times \text{Rate of Neutralization (1.0)} \times \text{Basic Pay}$$

11.The learned counsel for the petitioner filed additional affidavit



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stating that as per Majithia Wage Board, the basic pay of employees was to be fixed from 01.07.2010 and as the Hon'ble Supreme modified the date to 11.11.2011 the Basic Pay was fixed with effect from 11.11.2011 only and there was no notional fixation of Pay from 01.07.2010. It was further stated that it was not as if the Pay was refixed notionally from 01.07.2010, an increment was granted notionally on 01.07.2011 and thereafter the wages were paid from 11.11.2011 based on the notional fixation. It was further rightly stated that none of the respondents had made a claim that the basic pay should have been notionally fixed from 01.07.2010 and therefore when the basic pay was one of the components for calculating the dearness allowance, there could not be two dates one for basic pay and another for calculating dearness allowance.

12.The respondents objected to the additional affidavit on the ground that no plea was taken before the Labour Court. I am not inclined to accept the said contention, because it is admitted that basic pay is one of the components of dearness allowance and therefore the additional affidavit is only clarificatory in nature.



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13.It was next contended that the Labour Court could not clarify the Hon'ble Supreme Court Judgments. The Hon'ble Supreme Court keeping in view that there may be complaints and grievances against the Majithia Wage Board award, gave liberty to invoke Section 17 of the Act to redress the same in terms of the mechanism provided therein. Therefore in my view, the Labour Court was well within its powers to decide the reference and hence the contention that the Labour Court could not interpret the order of Hon'ble Supreme Court cannot be accepted.

14.For all the above reasons, I find merit in the writ petition and the same is allowed. The Award of the Labour Court in I.D.No.205 of 2016 dated 29.10.2021 is set aside. No costs. Consequently, connected WMP is closed.

15.04.2024

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dsn/ah
Index:Yes/No

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Speaking Order: Yes/No
Neutral Citation: Yes/No

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To

The Principal Labour Court,
Chennai.

N.MALA.J.

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PRE-DELIVERY ORDER IN

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ORDER DELIVERED ON

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