IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2024

CORAM

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P. Nos.25158 & 5072 of 2003

W.P.No.25158/2003

Transformer & Switchgear
Employees Union rep. by its
General Secretary,
110, Dr.Muthulakshmi Salai,
Adyar, Chennai – 20. ... Petitioner

/vs/

1. The Presiding Officer,
   Industrial Tribunal,
   Chennai.

2. The Management of
   Andrew Yule & Company Limited
   rep. by its General Manager,
   5/346, Old Mahabalipuram Road,
   Perungudi, Chennai – 96.

3. Andrewyule Staff and Workers Union,
   26, Pillaiyar Koil Street,
   Rajaji Nagar, Thiruvanmiyur,
   Chennai – 41. ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the records relating to the award dated 07.12.2001 passed by the first respondent in I.D.No.123/1997, quash the same and consequently direct the second respondent to merge Fixed Dearness allowance and variable dearness allowance at 1099 points with the basic pay by giving 100% neutralisation w.e.f. 01.01.1992 and revise the basic pay based on such merger and also to pay the variable dearness allowance for every point over and above 1099 point on percentage basis based on the said basic pay in terms of the Office Memorandum dated 19.07.1995 issued by the Department of Public Enterprises, with all arrears and consequential benefits, award costs.

For Petitioner ... Mr.V.Ajoy Khose

For R2 ... Mr.P.Raghunathan
for M/s.T.S.Gopalan & Co.

For R3 ... Mr.P.K.Gopalraj

W.P.No.5072/2003

The General Secretary,
Andrew Yule Staff and Workers Union,
No.26, Pillaiyar Koil Street,
Rajaji Nagar,
Thiruvanmiyur,
Chennai – 600 041. ... Petitioner

/vs/

1. The Presiding Officer,
   Industrial Tribunal,
   Chennai.

2. The General Manager,
   Andrew Yule & Company Ltd.,
   No.5/346, Old Mahabalipuram Road,
   Perungudi,
   Chennai – 600 096.

3. The President,
   Transformer & Switch Gear Employees Union,
   No.110, Dr.Muthulakshmi Nagar,
   Adyar, Chennai – 600 020. ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified to call for the records of the first respondent and quash the impugned award dated 07.12.2001 made in I.D.No.123 of 1997 by the first respondent with costs.

For Petitioner ... Mr.P.K.Gopal Raj

For R2 ... Mr.P.Raghunathan
for M/s.T.S.Gopalan & Co.

For R3 ... No appearance

COMMON ORDER

These writ petitions have been filed challenging the order of the Industrial Tribunal, Chennai dated 07.12.2001 made in I.D.No.123 of 1997.

2. On a reference made by the Government of Tamil Nadu vide G.O.(D) No.1055 Labour and Employment Department dated 24.11.1997 by raising the following issues an adjudication has been made by passing an award by the Industrial Tribunal on 07.12.2001 in I.D.No.123 of 1997.

> *"(i) Whether the demand of the workmen that their FDA and VDA at 1099 point (1960-100) should be merged with the existing basis and a revised basis wages should be arrived at is justified; if so to give appropriate directions.*
>
> *(ii) Whether the demand of the workmen that the VDA above 1099 points should be calculated and paid at the percentage basis as laid down in office Memo No.2(50)/86 DLE (WC) dated 26.07.1995 and 29.09.1995 is justified; if so to give appropriate directions"*

3. The Government of India, Ministry of Industry, Department of Public Enterprises (in short "DPE") has revised the scale pay of the Executives holding posts below the Board level and non-unionised supervisors vide Official Memorandum dated 19.07.1995 and the revised pay scales will take effect from 01.01.1992. In the same memorandum it is mentioned that the Industrial D.A. at AICPI (All India Consumer Price Index) – 1099 as on 01.01.1992 admissible to the incumbents of the below Board level posts in the revised scale would be "Nil". It is because the amount of Industrial D.A. of Rs.787.75/- arrived on 01.01.1992 has been merged with the revised basic pay. Also, the D.A. payable from 01.04.1992 to the incumbents of the below Board level posts would be as per new D.A. scheme.

4. The Government of India has issued another memorandum dated 25.07.1995 by assuring that the new D.A. formula and the rates of Variable D.A. payable to the employees of Public Sector Enterprises (in short "PSE") from 01.04.1992 to 01.04.1995 would be on the different pay ranges indicated in annexure - III of below Board level and the same is applicable

to unionised staffs workers of PSE where the agreement for revision of wages have already been concluded on the basis of the guidelines issued by the earlier Official Memorandum of DPE dated 12.04.1993 and 17.01.1994 on the same conditions. It is clarified that wherever the quarterly index average on 01.01.1992 is not 1099, the D.A. would be calculated at Rs.7/- per points shift in AICPI up to 1099 and above quarterly index average of 1099, the D.A. would be calculated as per the new DA scheme. There is no quarrel about the scheme announced by the Government of India and the applicability of the same to the executive post below Board level and also to the unionised workers / staffs. The only difficulty is in interpreting the subsequent memo dated 29.09.1995 issued by DPE. Paragraph No. 3 of the above memorandum reads as under:

> *" 3. If the management at the time of wage negotiations has not merged the entire fixed D.A. into the basic pay, the percentage D.A. should be calculated only on revised basic pay. This would be above quarterly index average of 1099 points irrespective of date of effect of wage settlements concluded by the management."*

5. The petitioner's Unions have requested their respective management to implement the revised pay scheme by neutralising the D.A.

for 1099 points of AICPI with a basic pay and then pay the variable D.A. as per the new formula and as a percentage on the basic pay and as and how it was announced. However, the Management refused to implement the same to the unionised workers by citing the clarification given vide Official Memorandum dated 29.09.1995 especially to its paragraph No.3 and reading it to the terms of the 12(3) settlement dated 18.05.1995 entered into between the petitioner's Unions and the Management which is marked as Ex.M6. The interpretation and reading of both the above documents namely paragraph No.3 of the memorandum (Ex.M8) dated 29.09.1995 and paragraph No.3 of Ex.M6 is the basis of the reference made to the Industrial Tribunal.

6. Different interpretations and readings were made by the Union of the Management and that has resulted in the Industrial Dispute on a reference made by the Government of Tamil Nadu which has been dealt in I.D.No.123 of 1997 on the file of Industrial Tribunal, Chennai. However, vide the impugned award dated 07.12.2001, the Industrial Tribunal has rejected the claim of the Union and answered the reference in favour of the

Management. The Industrial Tribunal has observed that as per the bilateral agreement between the Union and the Management vide Ex.M6 settlement, the terms of D.A. and method of arriving at the basic pay should be done only in accordance with the terms of reference and hence the revised D.A. formula as announced by the Government of India vide Official Memorandum dated 19.07.1995 and 26.07.1995, is not applicable to the petitioner's Unions.

7. Though a single award has been passed on the reference in respect of both the Unions and both the Management, the individual Unions have filed individual writ petition challenging the award of the Industrial Tribunal dated 07.12.2001.

8. Heard both sides and perused the materials available on record.

9. The learned counsel for the petitioners submitted that the 3rd Wage Settlement arrived between the Management and the Labour Union dated 18.05.1995 would take effect from 01.09.1992 to 31.08.1997; even though

the period covered under the previous settlement had expired as on 31.08.1992, the 3rd Wage Settlement had come into existence only on 18.05.1995; the settlement dated 18.05.1995 would govern the wages, allowance and benefits from 01.09.1992 to 31.08.1997. As per the settlement, the Management and the Trade Union had agreed to the terms of settlement in respect of Dearness Allowance.

9.1 The learned counsel for the petitioner further submitted that though Clause 3(ii) of the settlement speaks about the variable D.A., beyond the All India Consumer Price Index (AICPI) 800, the D.A. shall be the same for the present; the above term also explains how the variation in Dearness Allowance has been calculated for every quarterly revision at Rs.2/- per point of increase over the AICPI-800; though the learned Presiding Officer of the Industrial Tribunal had taken note of the above fact, he omitted to take note of the further reservation made by the Union in the terms of the settlement.

9.2 In the very same term under Clause 3(ii) of the agreement it is agreed that DA pattern @ Rs.2/- per point of AICPI would apply for the present AICPI 800 and in the event of any other revised scheme decided by the Government of India, the same will also apply to the employees covered under the settlement from such date and in such manner as may be prescribed by the Government of India.

9.3 Despite the above reservation, the Industrial Tribunal had proceeded to give a contrary finding that the petitioner's Unions did not deserve the right to get the benefit of pay revision on the basis of the variable DA at the rate provided by the Government of India while issuing its pay revision order on 19.07.1995.

10. The learned counsel for the respondent submitted that the Government has given a clarification memorandum dated 26.07.1995; if the Management has merged the entire DA with basic pay then the pay payable under AICPI-1099 would be under question; the dispute was only for the period between 1992 and 1997 which was based on a Government Order

and it clearly states that a settlement that has been entered earlier will govern the rights of parties and there need not be any merger of the basic pay; the payment of fixed D.A. and payment of variable D.A. are different from merger of basic pay; the parties have consciously agreed that certain amount of money which is payable as variable DA would be made into a fixed basic pay.

11. As per the Official Memorandum of the Government of India dated 19.07.1995 the Industrial DA at AICPI – 1099 will be applicable as on 01.01.1992 and the same is admissible to the incumbents of the below Board level posts. The statement which forms part of the Government of India Official Memorandum dated 19.07.1995 in respect of the revision of scales with effect from 01.01.1992 would also show the rate of All India Consumer Price Index (AICPI) fluctuations for every quarter starting from 01.01.1992. Since 12(3) settlement dated 31.05.1990 has reserved the provision for wage revision in accordance with the pay revision announced by the Government of India applicable on and from 1992, the members of the petitioner's Union are entitled to get the difference in fixation of pay on

the basis of the AICPI declared by the Government of India. The Industrial Tribunal has omitted to take note of the further benefit reserved in the settlement in terms of the revised rate on the scheme decided by the Government of India and had allowed only the Dearness Allowance @ AICPI - 1800.

12. The AICPI point to the maximum limit of 1099 as on 01.01.1992 should be merged with the basic pay and the DA should be calculated from the next quarter onwards in accordance with the revision as shown in the Government of India memorandum. Hence, the petitioners are entitled to the pay revision as per the Government of India notification dated 19.07.1995. The wage revision has been given to the incumbents who hold the post above supervisory level below the Board level. But the benefit has not been extended to the unionised workers and that is discriminatory and violative of Article 14, 16 and 39D of the Constitution of India.

13. The applicability of the clarification depends upon the interpretation given to the clauses of the settlement. If right interpretation is

given to the clauses of the settlement then the clarification issued is very much in favour of the workers. The merger of DA with the basic pay has been contemplated in the settlement of the year 1995. The merger of basic pay is confined to a sum of Rs.300/- and that shall be carved out and added to the basic salary. If this is the basic pay that is being fixed and if the respondent did not merge the basic pay, then this clarification will apply. If the management has not merged the entire D.A. with basic pay then D.A. shall be calculated only on the revised basic pay and not on the entire merger as contemplated by the Government circular. Even according to the petitioner, in the settlement dated 29.11.2010 grades, scales of pay and D.A. has been refixed; this settlement governs the rights of parties after 1997. So the period of dispute which is subsisting will be only between the year 1995-1997.

14. As per Ex.M6 settlement dated 18.05.1995, in respect of D.A., the following terms were agreed:

> *“ 3. (i) D.A. shall continue to be linked to quarterly movement of AICPI (All India Average) Base 1960=100 as published by Labour Bureau, Simla.*

(ii) Variable Dearness Allowance (VDA)

Variation in VDA beyond AICPI (All India Average) 880 shall be in the same manner as at present i.e. quarterly revision calculated @ Rs.2/- per point of increase over the said AICPI 800. In case the Government of India revises its policy on the rate of neutralisation per point of AICPI in respect of all public sector enterprises following Industrial DA pattern where the rate of Rs.2/- per point of AICPI applies at present over AICPI 800, such revised rate or any other scheme as may be decided by the Government of India will also apply to the employees covered by this settlement from such date and in such manner as may be fixed by the Government of India.

(iii) Out of fixed Dearness Allowance of Rs.772.35 per month at AICPI 800 (base 1960=100, All India Average) a sum of Rs.300/- shall be carved out and added to the basic salary as on 01.09.1992."

15. It is claimed by the petitioner's Unions that as per Clause 3(2) of the settlement it has been agreed that the Industrial D.A. pattern @ Rs.2/- per point would be applicable over AICPI – 800 and any revised rate or scheme decided by the Government of India will also be applicable to the employees covered under the settlement and in such case the variable D.A. has to be fixed in a manner as fixed by the Government of India. The above settlement has to be taken into effect from 01.09.1992 to 31.08.1997. As per

the 12(3) settlement as on 01.09.1992, the variable D.A. has been worked out as per the circular issued by DPE in the year 1989. At that relevant point of time the existed basic pay was Rs.450/- and additional basic pay of Rs.150/- was allowed.

16. The fixed D.A. up to 521 points was Rs.312/-. From 521 points to 800 points the D.A. was @ Rs.1.65/- per point. If the said calculation is made on 279 points (279*1.65=460.35). The above figure was merged with the fixed D.A. of Rs.312/- and that would come to Rs.772.35/-. As per the scheme adopted, the neutralisation is achieved at 800 points and over and above 800 points, Rs.2/- per point is agreed as variable D.A. Out of the fixed D.A. arrived at Rs.772.35/- a sum of Rs.300/- was deducted and was added to the basic pay. Thus the basic pay was arrived at Rs.900/-, representing the addition of existing basic pay Rs.450/- + additional basic pay Rs.150/- + merger of D.A. to the extent of Rs.300/-. To be noted that as per the above settlement, the merger of fixed D.A. up to 800 points which was arrived at Rs.772.35/- and the whole of the above fixed D.A. was not included in the then existed basic pay of Rs.450/-. Only a portion to the

extent of Rs.300/- alone have been included to the basic pay. The above settlement was effected from 01.09.1992 and the same was in effect for five years till 31.08.1997.

18. As per the scheme announced by the Government of India with effect from 01.01.1992, 100% neutralisation beyond 1099 points of AICPI, has to be given for pay ranging up to Rs.3500/- of basic pay with effect from 01.01.1992, subject to a minimum of Rs.2/- per point. No doubt the workers of the petitioner's Unions would come below the bracket of Rs.3500/- basic pay as on 01.01.1992. There is no quarrel about the applicability of the minimum of Rs.2/- per point beyond 1099 of AICPI points. Hence, the petitioners claim that they are entitled to 100% neutralisation.

19. The fixed D.A. was Rs.1070.35/-. Since shifting AICPI has been raised up to 1099 points from the earlier 800 points, the difference is allowed at Rs.2/- per point. Meaning to say 1099-800=299 points. If Rs.2/- per point variable D.A. is allowed on 299 points that would come to 598. When 598 is added to the fixed D.A. 472.35, that would come to

Rs.1070.35/-. The difference between 1070.35-1099=28.65 rounded off to 30 points. 30*100/1099 = 2.7%. There is no quarrel with regard to the applicability of 2.7% but that has been applied to the unionised workers on the basic pay worked out by having the neutralisation at 800 AICPI instead of 1099. According to the petitioners, their basic pay ought to have been fixed by merging the basic pay with fixed D.A. of Rs.1070. 35/- along with Rs.2/- per point worked out to 30 points. But the Management refused to effect merger as claimed by the petitioners by stating that merger has already happened through the 12(3) settlement and hence the petitioners are not entitled to variable D.A. and they are entitled to only fixed D.A.

20. Even according to the terms of Ex.M6 settlement there is a condition that in the event of the Government of India revises the policy at the rate of neutralisation by increasing per point rate of Rs.2/- over AICPI 800 that will be applicable. So far as the merger is concerned it appears from the 12(3) settlement that a portion of the fixed D.A. alone was merged into basic pay and 100% merger did not happen. As per the clarification memorandum dated 20.09.1995 it has been simply stated about the merger

of the **entire fixed D.A with basic pay**. Such kind of merger had never happened to the unionised workers even as per Ex.M6.

21. As the clarification has been given only in respect of the merger of entire fixed D.A. with basic pay, the respondent management ought not to have rejected the implementation of the revised pay as claimed by the managed workers. In fact, in the terms of the settlement it has been specifically stated that not only the revised rate or any other scheme as may be decided by the Government of India will be applicable to the employees covered under the settlement from such date as fixed by the Government of India, i.e. on 01.01.1992. On 01.01.1992 even Ex.M6 settlement was not in force because it has been given effect only from 18.05.1995. Hence there is no merger happened on 01.01.1992 as claimed by the Management by giving wrong interpretation to both the clauses of settlement under 3(2) and Paragraph No.8 of Ex.M8 (Official Memorandum).

22. The clarification given in Ex.M8 – Official Memorandum does not state about the slightest merger or portion of the merger. All that was

stated is about the entire merger of fixed D.A. In any case for the petitioners, as on 01.01.1992 on which date Ex.M6 had come into effect, no 100% merger of fixed D.A. with the basic pay had happened. The learned Presiding Officer of the Industrial Tribunal without understanding the full import of the clauses under Ex.M6 settlement and the clarification given in Ex.M8 – Official Memorandum, had arrived at a wrong conclusion that as per the bilateral agreement, the Unions have waived the variable D.A. as allowed in the scheme decided by the Government of India. In fact, the Industrial Tribunal has given a meaning beyond what is stated under the relevant clauses under Ex.M6 and Ex.M8. There is an explicit reference in Ex.M6 settlement that any revised scheme announced by the Government of India is applicable as and when the Government declares the revised application of revision of pay and D.A. So a different meaning cannot be applied to what was already agreed in 12(3) settlement and thereby, deny the benefit accrued to the unionised employees as per the revised pay scale and pattern allowed by the Government. In view of the above discussion, the award of the Industrial Tribunal is liable to be set aside.

23. In the result, these Writ Petitions are allowed and the award passed by the first respondent in I.D.No.123 of 1997 dated 07.12.2001 is hereby quashed and the reference is answered in favour of the petitioners and I.D.No.123 of 1997 is allowed. Consequently, the second respondent is directed to merge fixed Dearness allowance and variable Dearness Allowance at 1099 points with the basic pay by giving 100% neutralisation w.e.f. 01.01.1992 and revise the basic pay based on such merger and also pay the variable dearness allowance for every point over and above 1099 point on percentage basis based on the said basic pay in terms of the Office Memorandum dated 19.07.1995 issued by the Department of Public Enterprises, with all arrears and consequential benefits, within a period of three months from the date of receipt of a copy of this order. No costs.

23.10.2024

Index: Yes
Speaking order
Neutral citation : Yes
bkn

To:

1. The Presiding Officer,
   Industrial Tribunal,
   Chennai.

2. The General Manager,
   Management of
   Andrew Yule & Company Limited
   5/346, Old Mahabalipuram Road,
   Perungudi, Chennai – 96.

R.N.MANJULA ,J.

bkn

W.P. Nos.25158 & 5072 of 2003

23.10.2024