

A                   TAMIL NADU ELECTRICITY BOARD  
                  REP. BY ITS CHAIRMAN  
                                v.  
                  TNEB-THOZHILALAR AYKKIYA  
                  SANGAM BY ITS GENERAL SECRETARY  
B                   (Civil Appeal No. 1653 of 2019)  
                                FEBRUARY 13, 2019

**[R. BANUMATHI AND INDIRA BANERJEE, JJ.]**

*Labour Laws:*

- C    *Payment of Dearness Allowance – Settlement between the employer-Board and its workmen u/s. 18 of Industrial Disputes Act – As per one of the terms of settlement Dearness Allowance rates were to be revised twice in a year i.e. on 1<sup>st</sup> January and 1<sup>st</sup> July taking into account the variations in previous 12 months average of All India Consumer Price Index Numbers – Pursuant to the*
- D    *settlement, in the proceedings of the employer-Board it was decided that Dearness Allowance would be sanctioned to the employees of the Board as granted by the State Government to its employees at the same rate and from the same date – State Government, due to financial crunch revised the Dearness Allowance later than it was granted to the Central Government employees for the relevant year –*
- E    *Employer-Board also adopted the order of State Government in revising the Dearness Allowance – Respondent-Workers' Union filed writ petitions seeking direction to pay Dearness Allowance at the rate and from the date when it was paid to the Central Government employees – Single Judge of High Court allowed the petitions – Division Bench of High Court affirmed the order of Single Judge – On appeal, held: Payment of Dearness Allowance was governed by the Settlement and the Board Proceedings – All along, the revision of Dearness Allowance had been paid at par with the employees of the State Government – There is no rule or obligation on the State Government to always adopt the Dearness Allowance as revised by*
- G    *Central Government – The revision of wage or Dearness Allowance would depend upon the ability and financial position of the employer– The employer-board is run by the State Government – It was within the power of the Board to set a cut-off date for payment of revised Dearness Allowance keeping in view financial constraints of the State – Therefore, employees' demand for revision in Dearness*
- H    *Allowance was governed by the Settlement and the Board Proceedings – All along, the revision of Dearness Allowance had been paid at par with the employees of the State Government – There is no rule or obligation on the State Government to always adopt the Dearness Allowance as revised by*

*Allowance at a higher rate than what was granted by the State Government to its employees is not warranted – Industrial Disputes Act, 1947 – s. 18.*

**Allowing the appeals, the Court**

**HELD:** 1. Payment of Dearness Allowance was governed by the Wage Settlement dated 08.07.1998 and the Board Proceedings BP (FB) No.58 dated 18.07.1998. The increases in Dearness Allowance which fell due w.e.f. 01.07.1998, 01.01.1999, 01.07.1999, 01.01.2000, 01.07.2000, 01.01.2001 and 01.07.2001 were all paid as per the above agreed term only. As per settlement dated 08.07.1998, the Dearness Allowance rates were to be revised twice in a year i.e. on 1<sup>st</sup> January and on 1<sup>st</sup> July taking into account the variations in the previous twelve months average of the All India Consumer Price Index Numbers adopting the same formula as followed by the State Government. The Board Proceeding BP(FB) No.58 dated 18.07.1998 stipulated that the revised Dearness Allowance would be sanctioned to the employees of the Board as granted by the State Government to their employees at the same rate and from the same date. In the subsequent wage settlement entered into between the appellant-Board and the respondent-union on 15.10.2005 (w.e.f. 01.12.2002) stipulates the existing practice of sanction of Dearness Allowance to the employees of the Board as granted by the State Government to their employees at the same rate and from the same date. The subsequent settlement also reiterates that all along, the revision of Dearness Allowance to the employees of the Board was on par with the employees of the State Government. [Para 19][161-C-F]

2. The respondent(s) union having agreed that the revised Dearness Allowance will be sanctioned as granted by the State Government to their employees, the appellant-Board has been consistently adopting the revised rates of Dearness Allowance following various State Government orders. Having agreed for the grant of revised Dearness Allowance on par with the State Government employees, the respondent(s) union cannot seek for revision in Dearness Allowance at a higher rate than what was granted by the State Government to its employees. [Para 19][161-G-H]

- A        3. The High Court did not keep in view the well settled principles that the revision of wage or Dearness Allowance would depend upon the ability and the financial position of the employer. In G.O. Ms. No.346 in and by which the Government of TN revised the Dearness Allowance from 45% to 49% (w.e.f. 01.10.2002), it was made clear that the Government of TN was facing extremely difficult financial position and therefore, decided to sanction additional four per cent (45% to 49%) of Dearness Allowance to the employees of the State Government w.e.f. 01.10.2002. Having regard to the difficult finance situation which the State and the Board were facing and having regard to the terms of the settlement, respondent(s) union cannot seek for sanction of enhanced rate of Dearness Allowance on par with the Central Government employees. [Para 21][162-C-D]
- B        4. There is no rule or obligation on the State Government to always adopt the Dearness Allowance as revised by the Central Government. It is absolutely not necessary for the State Government to adopt the Dearness Allowance rates fixed by the Central Government. It should be looked from the financial position of the State Government to adopt its own rates/revised rates of Dearness Allowance. The Board, being the State Government undertaking, the money has to come from the State Government. Keeping in view the extremely difficult financial position of the State Government, Board's order revising the Dearness Allowance rate from 45% to 49% only from 01.10.2002 cannot be said to be arbitrary or in violation of the terms of the settlement. [Para 22][162-E-G]
- C        5. It is not disputed that Board is run by the State Government and unless the funds are provided by the State Government, the Electricity Board would not have adequate funds of its own to pay the wages. It is within the power of the Board to set a cut-off date for payment of revised Dearness Allowance keeping in view its financial constraints. Moreover, the settlement agreement and the decisions taken by the Board in the Board Proceedings are to be harmoniously construed. Having regard to the financial difficulties which the State Government was facing, appellant-Board being a State Government
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undertaking, decided to adopt the State Government's revised Dearness Allowance at the same rate and from the same date. In view of extremely difficult financial situation, not only the State Government employees but all the employees of various other corporations were granted revised Dearness Allowance at the rate of 49% only w.e.f. 01.10.2002 and 52% w.e.f. 01.07.2003. In that factual scenario, the decision of the Board to adopt the rate of Dearness Allowance as granted by the State Government cannot be said to be arbitrary. The respondent(s) union cannot insist for revision of Dearness Allowance at a higher rate than what was being paid to the State Government employees. [Paras 28 and 31][164-F-H, 165-A, 166-D-E]

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6. It is not correct to say that the Board has unilaterally altered the terms of settlement between the parties that Dearness Allowance rates will be revised twice in a year taking into account the variations in the previous twelve months average of the All India Consumer Price Index numbers. Board's proceeding BP (FB) No.58 dated 18.07.1998, *inter alia* provides for various other terms like work norms, retrenchment etc. It is not the case of the respondent(s) union that those terms of the settlement were not acted upon. The respondent(s) union are not right in taking one clause from the Board proceeding dated 18.07.1998 and contending that in so far as payment of Dearness Allowance is concerned, the Settlement dated 08.07.1998 has been unilaterally altered. The respondent(s) have not challenged that portion of the Board's proceeding BP(FB) No.58 dated 18.07.1998; the respondent(s) cannot approbate and reprobate the Board Proceedings dated 18.07.1998. [Paras 29 and 30][165-D, G-H, 166-A-B]

*Workmen of Gujarat Electricity Board, Baroda v. Gujarat Electricity Board, Baroda (1969) 1 SCC 266 : [1969] 1 SCR 174; Bengal Chemical & Pharmaceutical Works Ltd. v. Its Workmen [1969] 2 SCR 113; Kamani Metals & Alloys Ltd. v. Their Workmen [1967] 2 SCR 463; T.N. Electricity Board v. R. Veerasamy and Ors. (1999) 3 SCC 414 : [1999] 2 SCR 221; State of Punjab and Others v. Amar Nath Goyal and Others (2005) 6 SCC 754 : [2005] 2 Suppl. SCR 549 – relied on.*

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- | A | <b><u>Case Law Reference</u></b>   |           |                |
|---|--|-----------|----------------|
|   | [1969] 1 SCR 174   | relied on | <b>Para 24</b> |
|   | [1969] 2 SCR 113   | relied on | <b>Para 25</b> |
|   | [1967] 2 SCR 463   | relied on | <b>Para 25</b> |
| B | [1999] 2 SCR 221   | relied on | <b>Para 26</b> |
|   | [2005] 2 Suppl. SCR 549  | relied on | <b>Para 27</b> |
|   | CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1653<br>of 2019  |           |                |
| C | From the Judgment and Order dated 27.03.2015 of the High Court of Judicature at Madras in W.A. No. 497 of 2015   |           |                |
|   | With   |           |                |
|   | Civil Appeal No. 1654 of 2019.   |           |                |
| D | K. Ramamoorthy, Sr. Adv., C. Paramasivam, Vinodh Kanna B., Pushkin Rajkumar, C. K. Chandrasekhar, S. R. Setia, Ms. Asmita Singh, Gautam Narayan, Advs. for the appearing parties.  |           |                |
|   | The Judgment of the Court was delivered by   |           |                |
|   | <b>R. BANUMATHI, J.</b> 1. Leave granted.  |           |                |
| E | 2. These appeals arise out of the judgment dated 27.03.2015 in W.A. No.497 of 2015 and judgment dated 21.08.2015 in W.A. No.1166 of 2015 in and by which the High Court affirmed the order of the learned Single Judge directing the appellant-Board to pay Dearness Allowance at the rate of 49% w.e.f. 01.01.2002 to the members of respondent(s)- |           |                |
| F | F union on par with the Central Government employees.  |           |                |
|   | 3. These appeals relate to the claim of employees of the appellant-Board for the payment of difference of Dearness Allowance (DA) for a period of nine months as under:-   |           |                |
| G | - 4% of DA (difference of 49% - 45%) from 01.01.2002 to 30.06.2002   |           |                |
|   | - 7% of DA (difference of 52% - 45%) from 01.07.2002 to 30.09.2002   |           |                |

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4. Brief facts giving rise to these appeals are as under:-

A Memorandum of Settlement dated 08.07.1998 was recorded under Section 18(1) of the Industrial Disputes Act, 1947 between the appellant-Tamil Nadu Electricity Board (Board) and its workmen represented by unions for settlement of pay related issues. The Settlement covered about eighty thousand employees of the Board in Class III and IV service and it was for a period of four years from 01.12.1996 to 30.11.2000. The terms of settlement also dealt with the payment of Dearness Allowance. As per Clause 5 of the terms of settlement agreement, it was agreed that the Dearness Allowance rates will be revised twice in a year i.e. on 1<sup>st</sup> January and on 1<sup>st</sup> July taking into account the variations in the previous twelve months average of the All India Consumer Price Index numbers, adopting the same formula as followed by the State Government. In pursuance of the said settlement, order dated 18.07.1998 was issued by the appellant-Board in Board Proceedings BP (FB) No.58 wherein, it was *inter alia* provided that the revised Dearness Allowance would be sanctioned to the employees of the Board as granted by the State Government to their employees at the same rate and from the same date. The Board by its various proceedings has been adopting the revised rate of Dearness Allowance payable to State Government employees at the same rate and from the same date.

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5. The Government of India, Ministry of Finance, Expenditure Department *vide* Office Memorandum dated 20.03.2002 enhanced the Dearness Allowance payable to Central Government employees from the existing rate of 45% to 49% w.e.f. 01.01.2002. The State Government faced acute financial crisis during the period 2001-2002 due to which, Government of Tamil Nadu was paying Dearness Allowance at the rate of 45% on that date to its employees. The appellant-Board also followed the same rate of DA at 45%. On 07.05.2002 and 12.07.2002, the respondent-CITU submitted representations to the Board. After giving personal hearing to the representatives of the respondent, the Chairman of the Board rejected the representation on 13.09.2002 stating that as per the settlement dated 08.07.1998, Dearness Allowance would be sanctioned to the employees of the Board as granted by the State Government to their employees at the same rate and from the same date.

6. The Government of Tamil Nadu subsequently *vide* G.O.Ms. No.346 dated 21.10.2002 issued an order revising the Dearness

- A Allowance from existing rate of 45% to 49% w.e.f. 01.10.2002 in view of its difficult financial position. The appellant-Board also adopted G.O. Ms. No.346 dated 21.10.2002 and issued orders in BP(FB) No.58 dated 29.10.2002 revising the Dearness Allowance to 49% from 01.10.2002 to its employees on par with the State Government employees.
  - B 7. The Central Government revised the rates of payment of Dearness Allowance to Central Government employees from the existing rate of 49% to 52% w.e.f. 01.07.2002. The Government of Tamil Nadu *vide* G.O. No.215 dated 27.06.2003 revised the rate of Dearness Allowance to its employees w.e.f. 01.07.2003 from the existing rate of 49% to 52%. The appellant-Board adopting the G.O. No.215 dated 27.06.2003 revised the Dearness Allowance to its employees to 52% from 01.07.2003 on par with the State Government employees.
  - C 8. Respondent-Union filed the writ petition in WP No.9525 of 2003 before the High Court of Madras seeking direction to pay Dearness Allowance at the rate of 49% of the basic pay w.e.f. 01.01.2002 to 30.06.2002 and at the rate of 52% of the basic pay w.e.f. 01.07.2002 respectively. Similarly, another respondent union-CITU filed the writ petition in WP No.36197 of 2002 with the same prayer. By order dated 14.09.2012, the learned Single Judge allowed the Writ Petition No.36197 of 2002 observing that the question involved was already concluded in W.P. No.10474 of 1999 and held that it is not open to the Board to postpone the arrears of Dearness Allowance and credit the same to the General Provident Fund account of the employee without the consent of the employees.
  - D 9. By order dated 22.03.2013, Writ Petition No.9525 of 2003 was also allowed in terms of the order passed in Writ Petition No.36197 of 2002 by holding that the Board cannot postpone the arrears of Dearness Allowance and credit the same to the General Provident Fund of the employee without the consent of the employees. The appeal preferred by the appellant-Board also came to be dismissed with the direction that the appellant-Board was liable to pay Dearness Allowance at the revised rate w.e.f. 01.01.2002 to 30.09.2002.
  - E 10. Mr. Ramamoorthy, learned senior Counsel for the appellant-Board has submitted that as per the settlement dated 08.07.1998, the Dearness Allowance rates will be revised twice in a year i.e. on 1<sup>st</sup> January and on 1<sup>st</sup> July taking into account the variations in the previous
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twelve months average of the All India Consumer Price Index numbers adopting the same formula as followed by the State Government. It was submitted that the above settlement has been followed in Board Proceedings BP (FB) No.58 dated 18.07.1998 which stipulates that the revised Dearness Allowance will be sanctioned as granted by the State Government to its employees and respondent(s) cannot seek for revision of Dearness Allowance contrary to what was granted by the State Government to its employees. It was submitted that the High Court did not keep in view the well settled principle that the obligation to pay enhanced Dearness Allowance depends upon the employer's financial position and other factors. It was contended that the High Court erred in holding that the issue is covered by judgment in W.P. No.10474 of 1999 which relates to entirely a different issue i.e. payment of arrears of Dearness Allowance in cash instead of crediting the arrears of Dearness Allowance into the General Provident Fund account of the employees concerned. Learned senior counsel urged that at the relevant time and also presently, appellant-Board is facing extremely difficult financial position and the payment of revised Dearness Allowance for the disputed period to more than eighty thousand of its employees would have a huge financial implication on the Board.

11. Per contra, Mr. Chandrasekhar, learned counsel for the respondent has submitted that the employees of TNEB are not government servants and there is no parity in their service conditions and status and hence, comparison of the Board employees with the employees of the State Government will be inapposite. Learned counsel *inter-alia* submitted that employees of TNEB are governed by the labour laws like Industrial Disputes Act, Payment of Wages Act, Payment of Bonus Act, etc. and when the settlement dated 08.07.1998 stipulates that the revision in Dearness Allowance depends upon the All India Consumer Price Index number, the Board by its Board Proceedings BP (FB) No.58 dated 18.07.1998 ought not to have unilaterally changed the terms of the settlement restricting the payment of Dearness Allowance to the Board employees on par with the employees of the State Government. It was further submitted that restricting the payment of revised Dearness Allowance only from 01.10.2002 instead of giving effect from 01.01.2002 is contrary to the agreed terms in the settlement dated 08.07.1998.

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- A        12. We have carefully considered the submissions and perused the impugned judgment and materials on record. The following points arise for consideration:-  
(i) Pursuant to the Memorandum of Settlement dated 08.07.1998 recorded under Section 18(1) of the Industrial Disputes Act, 1947 and BP (FB) No.58 dated 18.07.1998, when the Board has been adopting the formula of the State Government in revising the rate of Dearness Allowance on par with the State Government employees, whether the High Court was right in directing the appellant-Board to pay the revised DA at the rate of 49% from 01.01.2002 and 52% from 01.07.2002?
- B        (ii) When the settlement dated 08.07.1998 between the appellant and the unions has been followed by the Board stipulating that the revision of Dearness Allowance would be on par with the rate sanctioned by the State Government to its employees, in deviation therefrom, whether the respondents are right in insisting upon revision of Dearness Allowance at the abovesaid rates?
- C        13. In the settlement dated 08.07.1998 recorded under Section 18(1) of the Industrial Disputes Act, 1947 between the appellant-Board and the respondent-CITU, Clause 5 of the settlement deals with Dearness Allowance which reads as under:-
- E        “5. Dearness Allowance  
The revised rates of Dearness Allowance for various pay ranges will be as indicated in Annexure III. The Dearness Allowance rates will be revised twice in a year on 1<sup>st</sup> January and 1<sup>st</sup> July taking into account the variations in the previous twelve months average of the All India Consumer Price Index numbers, adopting the same formula as followed by the State Government.”
- F        On 18.07.1998, orders were issued by the Board in Board Proceedings BP (FB) No.58 in accordance with the terms of the provisions of the settlement dated 08.07.1998 stating that the revised Dearness Allowance would be sanctioned to the employees of the Board as granted by the State Government to their employees at the same rate and from the same date. The relevant portion of the order in BP (FB) No.58 which deals with Dearness Allowance reads as under:-
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“III Dearness Allowance

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(a) The existing pay structure has been revised at All India Consumer Price Index of 1510 points and the revised dearness allowance will be sanctioned to the employees of the Board as granted by the State Government to their employees at the same rates and from the same date.”

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14. Pursuant to the settlement and Board Proceedings BP(FB)No.58 dated 18.07.1998, the Board passed various orders/proceedings adopting the revised Dearness Allowance rates as per the State Government orders revising Dearness Allowance to the State Government employees. We may refer to few earlier Government orders followed by the Board orders adopting the same rate of revised Dearness Allowance rates with effect from the same date:-

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(i) On 12.05.2001, Proceedings (Per) BP (FB) No.24 was issued by the Board whereby the Board adopted the revised DA rates as per GO No.188 dated 26.04.2001 i.e. 43% w.e.f. 01.01.2001.

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(ii) On 31.12.2001, by G.O. No.525, the Tamil Nadu Government had revised the rate of DA to 45% to the State Government employees from 01.07.2001. Adopting the revised Dearness Allowance rates as per G.O No.525 dated 31.12.2001, Board *vide* its proceedings BP (FB) No.3 dated 17.01.2002 adopted the revised Dearness Allowance rates i.e. 45% w.e.f. 01.07.2001.

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It is clear from the above that the Board has been sanctioning the revised rates of Dearness Allowance at the same rate and from the same date as has been sanctioned by the State Government to its employees.

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15. On 20.03.2002, the Government of India enhanced the Dearness Allowance for the Central Government employees from 45% to 49% w.e.f. 01.01.2002. Due to extremely difficult financial position which the State Government was facing, the State Government was paying the Dearness Allowance at the rate of 45% on the said date without enhancing it to 49%. Accordingly, the appellant-Board also followed the same rate i.e. 45% as paid by the State Government on the said date. As pointed out earlier, Chairman of the Board rejected the respondent-CITU's representation on 13.09.2002 stating that as per the settlement dated 08.07.1998 followed by Board Proceedings BP (FB) No.58 dated 18.07.1998, Dearness Allowance would be sanctioned to

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- A the employees of the Board as granted by the State Government to their employees at the same rate and from the same date. While rejecting CITU's representation, it was made clear that the State Government had not issued any order revising Dearness Allowance at the rate of 49% w.e.f. 01.01.2002 on par with the Central Government employees.
- B 16. On 21.10.2002, the Government of TN issued G.O. Ms.No.346 revising the Dearness Allowance from 45% to 49% w.e.f. 01.10.2002 in view of extremely difficult financial position faced by the State Government. Para 3 of the said G.O. reads as under:-
- “3. In view of the extremely difficult financial position faced by the Government, the Government after having discussions with the Tamil Nadu Government Officer's Union, Tamil Nadu Arasu Aluvalarkazhagam (C&D Group) and Tamil Nadu Secretariat Association, has decided to sanction one additional instalment of Dearness Allowances at 4% to the employees of the State with effect from 01.10.2002. Accordingly, the Government now sanction the revised rate of Dearness Allowance to the State Government employees as indicated below:-
- |   | Date from which payable      | Revised rate of DA (per month) |
|---|------------------------------|--------------------------------|
| E | 1 <sup>st</sup> October 2002 | 49 per cent of pay             |
- C Following the State Government's G.O. Ms.No.346, appellant-Board *vide* orders in BP (FB) No.58 dated 29.10.2002 revised the Dearness Allowance to its employees from 45% to 49% w.e.f. 01.10.2002 and thus followed the terms of the settlement dated 08.07.1998 followed by the Board Proceedings BP (FB) No.58 dated 18.07.1998.
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- F 17. Likewise, when Government of India revised the rate of Dearness Allowance from 49% to 52% w.e.f. 01.07.2002, the State Government as well as the Board have been paying Dearness Allowance at the rate of 49% only. On 27.06.2003, the State Government issued G.O. No.215 revising the Dearness Allowance from 49% to 52% w.e.f. 01.07.2003. Accordingly, on 09.07.2003, Board issued orders revising the Dearness Allowance from 49% to 52% from 01.07.2003 adopting the G.O. No.215 dated 27.06.2003.
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- H 18. Comparative table of the Dearness Allowance paid to the employees of the Central Government, State Government and the Board in the relevant period are as under:-

From	Percentage of Dearness Allowance allowed by the Central Government	Percentage of Dearness Allowance allowed by the State Government	Percentage of Dearness Allowance allowed by the appellant Board
01.01.2002	49%	45%	45%
01.07.2002	52%	45%	45%
01.10.2002	52%	49%	49%
01.01.2003	55%	49%	49%
01.07.2003	59%	52%	52%

19. As discussed earlier, payment of Dearness Allowance is governed by the Wage Settlement dated 08.07.1998 and the Board Proceedings BP (FB) No.58 dated 18.07.1998. The increases in Dearness Allowance which fell due w.e.f. 01.07.1998, 01.01.1999, 01.07.1999, 01.01.2000, 01.07.2000, 01.01.2001 and 01.07.2001 were all paid as per the above agreed term only. As per settlement dated 08.07.1998, the Dearness Allowance rates will be revised twice in a year i.e. on 1<sup>st</sup> January and on 1<sup>st</sup> July taking into account the variations in the previous twelve months average of the All India Consumer Price Index numbers adopting the same formula as followed by the State Government. The Board Proceeding BP(FB) No.58 dated 18.07.1998 stipulated that the revised Dearness Allowance would be sanctioned to the employees of the Board as granted by the State Government to their employees at the same rate and from the same date. It is pertinent to note that in the subsequent wage settlement entered into between the appellant-Board and the respondent-union on 15.10.2005 (w.e.f. 01.12.2002) stipulates the existing practice of sanction of Dearness Allowance to the employees of the Board as granted by the State Government to their employees at the same rate and from the same date. The subsequent settlement also reiterates that all along the revision of Dearness Allowance to the employees of the Board was on par with the employees of the State Government. The respondent(s) union having agreed that the revised Dearness Allowance will be sanctioned as granted by the State Government to their employees, the appellant-Board has been consistently adopting the revised rates of Dearness Allowance following various State Government orders. Having agreed for the grant of revised Dearness Allowance on par with the State Government employees, the respondent(s) union cannot seek for revision in Dearness Allowance at a higher rate than what was granted by the State Government to its employees.

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- A        20. The appellant-Board has been adopting the formula of the State Government in revising the rate of Dearness Allowance, which was settled under Section 18(1) of the Indian Disputes Act, 1947 and the settlement between the appellant-Board and the respondent union. The appellant-Board is not bound to adopt the revised rate of Central Government, when the settlement prescribes the formula to be adopted from the rates of the State Government.
- B        21. The High Court, in our view, did not keep in view the well settled principles that the revision of wage or Dearness Allowance would depend upon the ability and the financial position of the employer. In G.O. Ms. No.346 in and by which the Government of TN revised the Dearness Allowance from 45% to 49% (w.e.f. 01.10.2002), it was made clear that the Government of TN was facing extremely difficult financial position and therefore, decided to sanction additional four per cent (45% to 49%) of Dearness Allowance to the employees of the State Government w.e.f. 01.10.2002. Having regard to the difficult finance situation which the State and the Board were facing and having regard to the terms of the settlement, respondent(s) union cannot seek for sanction of enhanced rate of Dearness Allowance on par with the Central Government employees.
- C        22. Each State Government following their own rate of Dearness Allowance payable to their employees may be adopting the revised Dearness Allowance of the Central Government. There is no rule or obligation on the State Government to always adopt the Dearness Allowance as revised by the Central Government. It is absolutely not necessary for the State Government to adopt the Dearness Allowance rates fixed by the Central Government. It should be looked from the financial position of the State Government to adopt its own rates/revised rates of Dearness Allowance. The Board, being the State Government undertaking, the money has to come from the State Government. Keeping in view the extremely difficult financial position of the State Government, Board's order revising the Dearness Allowance rate from 45% to 49% only from 01.10.2002 cannot be said to be arbitrary or in violation of the terms of the settlement.
- D        23. The main source of finance of the Electricity Board is the State Government; the Board is run by the State Government. Unless the funds are provided by the State Government, the Electricity Board would not have sufficient funds of its own to pay the wages and the revised Dearness Allowance to its employees. Considering the financial

difficulties which the State Government was facing, the revision of the Dearness Allowance from the above said dates at above said rate cannot be said to be arbitrary or without any reason.

24. While considering the grievance of wage structure or Dearness Allowance, the importance of considering the financial implications while providing benefits to employees has been noted by the Supreme Court in number of judgments. The Supreme Court in *Workmen of Gujarat Electricity Board, Baroda v. Gujarat Electricity Board, Baroda* (1969) 1 SCC 266 while dismissing the appeal preferred by the workmen, has confirmed the view taken by the Tribunal which rejected the demand of the employees of the Board for Dearness Allowance that it should be fixed with the scale prescribed for the Ahmedabad Mill Owners' Association on the ground that the Board does not have the capacity to meet the additional expenditure that would have to be incurred if such demands are acceded to.

25. The Supreme Court in *Bengal Chemical & Pharmaceutical Works Ltd. v. Its Workmen* [1969] 2 SCR 113 after referring to *Kamani Metals & Alloys Ltd. v. Their Workmen* [1967] 2 SCR 463 has laid down that one-hundred per cent neutralisation is not advisable as it will lead to inflation and therefore, dearness allowance is often a little less than one-hundred per cent neutralisation. Explaining the purpose of Dearness Allowance and that it should depend upon the ability of the employer to bear such burden, the Supreme Court held as under:-

“1. Full neutralization is not normally given, except to the very lowest class of employees.

2. The purpose of dearness allowance being to neutralise a portion of the increase in the cost of living, it should ordinarily be on a sliding scale and provide for an increase on the rise in the cost of living and a decrease on a fall in the cost of living.

3. The basis of fixation of wages and dearness allowance is industry-cum-region.

4. Employees getting the same wages should get the same dearness allowance, irrespective of whether they are working as clerks or members of subordinate staff or factory workmen.

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- A 5. The additional financial burden which a revision of the wage structure or dearness allowance would impose upon an employer, and his ability to bear such burden, are very material and relevant factors to be taken into account.....[underlining added]
- B 26. In *T.N. Electricity Board v. R. Veerasamy and Ors.* (1999) 3 SCC 414 which has been relied upon by the respondent, in which TNEB itself was the appellant, the Supreme Court while dealing with the prospective application of a pension scheme observed that financial constraint is a valid ground for introducing a cut-off date and took note of the financial burden that the Board will have to borne if the scheme would be made effective retrospectively.
- C 27. In *State of Punjab and Others v. Amar Nath Goyal and Others* (2005) 6 SCC 754, the Supreme Court negatived the contention of the employees that the decision of the Central Government/State Governments to limit the benefit only to certain employees after calculating the financial implications thereon, was irrational or arbitrary and held as under:-
- “28. ....the final recommendations of the Pay Commission were not *ipso facto* binding on the Government, as the Government had to accept and implement the recommendations of the Pay Commission consistent with its financial position. This is precisely what the Government did. Such an action on the part of the Government can neither be characterised as irrational, nor as arbitrary so as to infringe Article 14 of the Constitution.”
- F 28. It is within the power of the Board to set a cut-off date for payment of revised Dearness Allowance keeping in view its financial constraints. Moreover, the settlement agreement and the decisions taken by the Board in the Board Proceedings are to be harmoniously construed. Having regard to the financial difficulties which the State Government was facing, appellant-Board being a State Government undertaking, G decided to adopt the State Government's revised Dearness Allowance at the same rate and from the same date. In view of extremely difficult financial situation, not only the State Government employees but all the employees of various other corporations were granted revised Dearness Allowance at the rate of 49% only w.e.f. 01.10.2002 and 52% w.e.f. 01.07.2003. The respondent(s) union cannot insist for revision of H

Dearness Allowance at a higher rate than what was being paid to the State Government employees.            A

29. Mr. C.K. Chandrasekhar, learned counsel for respondent(s) submitted that as per Clause 5 of the settlement dated 08.07.1998, Dearness Allowance rates will be revised twice in a year taking into account the variations in the previous twelve months average of the All India Consumer Price Index numbers adopting the same formula as followed by the State Government and based on the same, the employees were periodically given revision of Dearness Allowance in every six months without any deviation on par with Central Government Dearness Allowance by applying the State Government formula. It was submitted that B.P. (FB) No.58 dated 18.07.1998 issued by the Board to pay Dearness Allowance only on par with the State Government and based on the same revising the Dearness Allowance from 45% to 49% from 01.10.2002 instead of giving effect from 01.01.2002 was contrary to the settlement dated 08.07.1998. It was submitted that in BP(FB) No.58 dated 18.07.1998, the Board has unilaterally altered the terms of the settlement and even though All India Consumer Price Index was revised and Dearness Allowance increased from 45% to 49% with effect from 01.01.2002, the Board's unilateral action is contrary to the terms of the settlement. It was urged that instead of following the formula for Dearness Allowance based on All India Consumer Price Index, the Board's action in restricting the payment from 01.10.2002 following State Government order in G.O. No.346Finance Department dated 21.10.2002 is contrary to the binding settlement dated 08.07.1998. As per Clause 3 of the Board Proceeding BP(FB) No.58 dated 18.07.1998, Dearness Allowance will be sanctioned to the employees of the Board as granted by the State Government to their employees at the same rate and from the same date. Based on the same, the employees were periodically given revision of DA in every six months without any deviation by applying the State Government formula, at the same time, it was on par with the Central Government dearness allowance.            B  
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30. There is no merit in the contention that by BP (FB) No.58 dated 18.07.1998, the Board has unilaterally altered the terms of settlement between the parties. On perusal of Board's proceeding BP (FB) No.58 dated 18.07.1998, it is seen that Clause 2of the Board proceedings *inter alia* provides for various other terms like work norms, retrenchment etc. It is not the case of the respondent(s) union that those terms of the settlement were not acted upon. The respondent(s)            G  
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- A union are not right in taking one clause from the Board proceeding dated 18.07.1998 and contending that in so far as payment of Dearness Allowance is concerned, the Settlement dated 08.07.1998 has been unilaterally altered. It is pertinent to note that the respondent(s) have not challenged that portion of the Board's proceeding BP(FB) No.58 dated 18.07.1998; the respondent(s) cannot approve and reprobate the Board Proceedings dated 18.07.1998. Therefore, the contention that revision of Dearness Allowance as granted by the State Government to their employees is the unilateral alteration of the terms of settlement lacks merit.
- B 31. Contention of the respondent(s) is that the employees of the appellant-Board are not State Government employees and they cannot be treated on par with the State Government employees. It is not the contention of the appellant-Board that the employees of the Board are to be treated on par with the State Government employees nor the same is the issue for consideration before us. It is not disputed that Board is run by the State Government and unless the funds are provided by the State Government, the Electricity Board would not have adequate funds of its own to pay the wages. In that factual scenario, the decision of the Board to adopt the rate of Dearness Allowance as granted by the State Government cannot be said to be arbitrary.
- C 32. The learned Single Judge as well as the Division Bench proceeded under the erroneous footing that the issue has been covered by the orders of the High Court issued in the two batches of W.P. Nos.8574-8578 of 1992 and W.Ps. No.10474 of 1999 etc. The orders in those batch of writ petitions were only against crediting of the arrears of Dearness Allowance sanctioned. After referring to the earlier judgment in W.P. Nos.8574-8578 of 1992 dated 16.10.1992 and W.Ps. No.10474 of 1999 dated 11.08.1999, the High Court held that "there is no stipulation in the settlement that the arrears of Dearness Allowance for the past period would be credited to the General Provident Fund account of the individual employee and in the absence of any stipulation in the settlement, it is not open to the Board to credit arrears of Dearness Allowance for the earlier period to the credit of General Provident Fund account of the respective employee unless individual employee gives the written consent". The orders of the High Court in those earlier writ petitions were only against crediting of the arrears of the Dearness Allowance in the respective provident fund account of the employees, wherein, the court directed the Board to pay arrears in cash and restrained the Board

from deducting any arrears of the Dearness Allowance and crediting the same into the General Provident Fund account of the workmen.            A

33. Of course, in the earlier batch of writ petitions i.e. Writ Petition Nos.8574-8578, the High Court *inter-alia* held that the Board cannot unilaterally transgress from the terms of the settlement and observed as under:-

“The settlement, as long as it is in force, will govern both the parties. One of the parties cannot unilaterally transgress the terms of the agreement or ignore the same. Clause-4 referred to above does not enable the respondent to make the payment in the mode adopted by the Government. Clause-4 only directs that the formula which is followed by the Government should be adopted by the Board and that is only for the purpose of calculating the dearness allowance on the basis of the Price Index and nothing more than that. Hence, the contention that the respondent is bound to adopt the method followed by the Government for payment is without any substance.”

34. The learned Single Judge as well as the Division Bench did not keep in view that in the present dispute, settlement dated 08.07.1998 was followed by BP(FB) No.58 dated 18.07.1998 which clearly stipulates that the Dearness Allowance would be paid to the employees of the Board as granted by the State Government to its employees. It is pertinent to note that the representation of respondent-CITU dated 12.07.2002 was rejected by the Board *vide* order dated 13.09.2002 which refers to BP(FB) No.58 dated 18.07.1998 to the effect that the revised Dearness Allowance would be sanctioned to the employees of the Board as granted by the State Government to their employees at the same rate and from the same date. The learned Single Judge and the Division Bench erred in not considering the matter in the proper perspective and erred in holding that the issue has been covered by the earlier judgment in Writ Petition No.10474 of 1999 dated 11.08.1999.            E

35. The learned Single Judge and the Division Bench did not keep in view the terms of the Settlement and the Board Proceeding BP(FB) No. 58 dated 18.07.1998 which stipulates that Dearness Allowance would be revised on par with the State Government employees and that it has been consistently followed by the appellant-Board. The High Court erred not keeping in view the extremely difficult financial            G

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- A position of the State Government and the Board and also the additional financial burden which would be imposed upon the appellant-Board if the demands of the respondent(s)-union are acceded to. The High Court, in our view, was clearly in error in allowing the writ petition and the impugned judgment cannot be sustained and liable to be set aside.
- B 36. In the result, the impugned judgments of the High Court in W.A. No.497 of 2015 and W.A. No.1166 of 2015 dated 27.03.2015 and 21.08.2015 respectively are set aside and these appeals are allowed. No costs.

Kalpana K. Tripathy

Appeals allowed.