Supreme Court of India
Hindustan Lever Ltd vs B.N. Dongre on 26 July, 1994
Equivalent citations: 1995 AIR 817, 1994 SCC (6) 157
Author: S Mohan
Bench: Mohan, S. (J)

PETITIONER:
HINDUSTAN LEVER LTD.

Vs.

RESPONDENT:
B.N. DONGRE

DATE OF JUDGMENT26/07/1994

BENCH:
MOHAN, S. (J)
BENCH:
MOHAN, S. (J)
AHMADI, A.M. (J)
DAS, SUDHI RANJAN (CJ)
RAMASWAMY, K.
SAHAI, R.M. (J)

CITATION:
1995 AIR 817 1994 SCC (6) 157
JT 1994 (4) 599 1994 SCALE (3)529

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by AHMADI, J.-- Special leave granted in the aforesaid special leave petitions .

2.Five references bearing Nos. (i) 123 of 1977, (ii) 215 of 1979, (iii) 91 of 1984, (iv) 92 of 1984 and (v) 43 of 1985, the first three under Section 10(2) and the remaining two under Section 10(1)(d) of the Industrial Disputes Act, 1947, hereinafter called 'the I.D. Act', arose out of certain demands made by the workmen-employees of Hindustan Lever Limited as well as the Management's Notice of Change for the imposition of a ceiling on dearness allowance. These disputes concerned the demands made by the monthly- rated clerical and technical staff working at the Sewree factory of the Company as well as the monthly-rated C & T categories of workmen employed at the Company's head office and branch office in Bombay, the former represented by Hindustan Lever Employees' Union, hereinafter

called 'the Union' and the latter represented by Hindustan Lever Mazdoor Sabha, hereinafter called 'the Sabha'. The Company had desired placement of a ceiling on dearness allowance based on the premise that in the absence of such a ceiling the neutralisation factor exceeded 100%. It may here be mentioned that both the clerical and technical staff of the Company was, at all material times classified into four categories, namely, C-1 to C-4 and T-1 to T-4 carrying different pay scales. The clerical staff worked for 36 hours a week, whereas the technical staff worked for 48 hours a week. It is not necessary for us to indicate the nature of demands made by the workmen in the aforesaid references because we are, in the present appeals, mainly concerned with the Company's demand for placing a ceiling on dearness allowance. The Industrial Tribunal, Maharashtra, by its Award dated 18-12- 1985 conceded the demand of the management for the placement of a ceiling on dearness allowance on basic pay exceeding Rs 500 per month. The Tribunal also granted certain demands of the workmen in regard to upward revision of pay scales, grant of special allowance, social security allowance, ad hoc allowance, automatic promotion scheme, etc., but since we are concerned with the limited question in regard to the placement of a ceiling on dearness allowance as demanded by the management, it is unnecessary for us to refer to the demands of the workmen which were not conceded by the Tribunal and against which the workmen had approached the High Court. The workmen had also challenged the Tribunal's Award conceding the management's demand for placement of a ceiling on dearness allowance. The learned Single Judge who heard the writ petition upheld the order of the Industrial Tribunal placing a ceiling on dearness allowance but modified the award with regard to certain other demands. Against the decision of the learned Single Judge appeals were carried to the Division Bench of the High Court. In the said appeals the Division Bench was called upon to examine the correctness of the view taken by the Industrial Tribunal in regard to the placement of a ceiling on dearness allowance which came to be affirmed by the learned Single Judge. In addition the Division Bench was also invited to deal with the demand for automatic promotion which was conceded by the Tribunal but spurned by the learned Single Judge who substituted it by the grant of stagnation increment. The management also made a grievance before the Division Bench in regard to grant of stagnation increment and upward revision of wages. The Division Bench rejected the management's plea against stagnation increment but preferred to make a remand in respect of wage revision. The major issue was, however, in regard to ceiling fixed on dearness allowance where basic wage exceeded Rs 500.

3.Under the extant scheme, the dearness allowance was linked to index 1450 of the Consumer Price Index (CPI), Bombay (1934=100) at 635% of basic wage for the first Rs 100, at 284.25% of basic wage for the second Rs 100 and at 251% of basic wage where the salary exceeded Rs 200 per month. This was the Fixed Dearness Allowance (FDA) payable to the workmen. However, on the CPI exceeding 1450, the Variable Dearness Allowance (VDA) was payable on every 10 points rise at 5% of basic wage for the first Rs 100, 2.25% of basic wage for the second Rs 100 and 2% of basic wage on salary exceeding Rs 200 per month. The Company's demand was that the existing scheme of dearness allowance should be applicable to workmen whose basic salary, inclusive of dearness allowance, did not exceed Rs 1500 per month. However, for those whose basic salary, inclusive of dearness allowance, exceeded the said figure of Rs 1500 per month, it was contended that the existing scheme should continue up to the CPI point of 1450 and for every 10 points rise above the same, 5% of basic wage should be allowed for first Rs 100 and 1% of basic wage for the second Rs 100 and to those whose basic wage exceeded Rs 200 the workmen should not be paid any FDA. So

far as VDA is concerned, it was contended that it should be subject to a maximum of Rs 1310 for C-1, Rs 1535 for C-2, Rs 1725 for C-3, and Rs 1900 for C-4 categories of clerical employees and Rs 1385 for T-1, Rs 1600 for T-2, Rs 1775 for T-3 and Rs 2025 for T-4 categories of technical employees. The Tribunal while continuing the existing scheme directed that the maximum dearness allowance payable to the workmen shall be that which is payable to a workman drawing a basic salary of Rs 500. To put it differently the Tribunal directed that those workmen drawing a salary exceeding Rs 500 per month will get the same dearness allowance as admissible to those drawing a basic salary of Rs 500 per month without their being any variation in the dearness allowance for salary slabs exceeding Rs 500 per month. This direction given by the Tribunal was made retrospective from 1-10-1979. Those workmen who received dearness allowance in excess of the scheme worked by the Tribunal between 1-10-1979 and 30-12-1985, the date of the award, were directed to refund the excess amount by adjusting the same against dearness allowance payable to them subsequent to 30-12-1985. Thus the dearness allowance scheme worked out by the Tribunal immediately affected those workmen whose basic salary exceeded Rs 500 per month and was likely to affect those who crossed the Rs 500 mark at a future date. The contention of the management before the Tribunal was that the slab system of dearness allowance was unrealistic as it had the effect of distorting the entire wage-structure as it exceeded the 100% neutralisation factor which has always been the justification for the introduction of the dearness allowance formula.

4.Indisputably the existing dearness allowance formula was in vogue for many years before the Company gave a Notice of Change under Section 9-A of the I.D. Act sometime in 1976. The Company had entered into settlements in 1979 and 1983 with a section of the workmen whereunder it had agreed to continue the existing dearness allowance formula at certain levels of salary. It is unnecessary to go into the details in regard to the said settlements but it would be sufficient to say that the extant scheme provided neutralisation at the lowest level varying between 95% and 100% whereas for those drawing higher pay the neutralisation was much more than ordinarily granted to that class of employees. The main justification for imposition of a ceiling on dearness allowance payable to workmen drawing a basic salary exceeding Rs 500 per month was that it exceeded what other comparable companies paid by way of dearness allowance to those whose basic wage exceeded Rs 500 per month. The Tribunal noted that in such comparable companies, having no ceiling on VDA, the percentage of dearness allowance was quite low and, therefore, it did not result in any distortion in the wage-structure. The learned Single Judge while examining the impact of the dearness allowance formula on the wage-structure pointed out that the emoluments of workmen exceed the emoluments received by the junior executive staff of the Company notwithstanding the fact that the latter are promotion posts. Due to this reason workmen are unwilling to accept promotions as that would result in a shrinkage in their total emoluments. Such a situation, points out the learned Single Judge, is not conducive to efficient working of the Company. In this view of the matter the learned Single Judge upheld the award insofar as it placed a ceiling on dearness allowance as explained earlier. It also upheld the Tribunal's decision making the same retrospective w.e.f. 1-10-1979.

5.It may be mentioned that the Tribunal while placing a ceiling on dearness allowance granted an upward revision in the wages. One of the justifications for the upward revision of basic salary was the placement of a ceiling on dearness allowance, vide paragraph 53 of the Award. The second

reason was that the basic wage paid to workmen in TOMCO was higher at the maximum levels and, therefore, there was justification for increasing the maxima of the scales applicable to each category of workmen of the Company. In that view of the matter the Tribunal revised the basic wage of the workmen belonging to C- 1 to C-4 categories and T- 1 to T-4 categories as is evident from paragraph 53 of the Award. The revised wage-structure was also brought into force from 1-10-1979. It will thus be seen that the placement of a ceiling on dearness allowance had a direct nexus to the Tribunal revising the salary structure of the aforesaid categories of employees. Secondly the Tribunal also opted in favour of time-bound automatic promotion. The other demands conceded by the Tribunal have no direct bearing on the question of placement of a ceiling on dearness allowance and, therefore, need not be adverted to. The learned Single Judge while affirming the Tribunal's decision in regard to placement of a ceiling on dearness allowance granted stagnation increment in lieu of the Tribunal's formula in regard to time-bound automatic promotion. It will thus be seen that over and above the upward revision of the salaries sanctioned by the Tribunal, the learned Single Judge granted stagnation increment as a substitute for the automatic promotion scheme introduced by the Tribunal. The grant of stagnation increment, therefore, it is contended has a direct nexus to the ceiling on dearness allowance.

6.The Division Bench of the High Court upheld the learned Single Judge's view that time-bound automatic promotion would adversely affect merit and, therefore, upheld its substitution by stagnation increment. It disapproved of the ceiling on dearness allowance and summed up its conclusion in that behalf in paragraph 42 of the judgment as under:

> "42. To sum up, the present dearness allowance system, as shown above, does not result in over-neutralisation of the cost of living index at any level of the income group. It maintains a tapering scale, though not a steeply declining one. The system also does not result in distortion of total incomes either of the workmen inter se or between the workmen and their superiors, namely, the executive staff. The Company does not plead any financial inability. The industry-cum- region formula does not warrant its replacement. There are no other compelling reasons why the existing system which is beneficial to the workmen should be replaced by the new one which is less beneficial to them and which would result in steep decline in their incomes they would otherwise gain. It is a well-recognized principle of industrial adjudication that the courts, wage bodies and the industrial adjudicators should not tinker with the existing benefits available to the workmen unless it becomes unavoidable and obligatory to do so. The Company has failed to make out any such case."

However, in regard to the upward revision of wages it felt that the issue should go back to the Tribunal for a de novo consideration whether in view of the rejection of the management's demand for a ceiling on dearness allowance, upward revision of wages was any more justified. This is how the Division Bench concluded in paragraph 48 of its judgment:

> "48. We have commented upon the approach of the Tribunal and the learned Judge by observing that to the extent that they have mixed up the considerations for increasing the wage scale with those for fixing the dearness allowance, they have

> committed an error apparent on the face of the record. It cannot also be gainsaid that one of the main considerations, which has weighed with the Tribunal, while introducing the revised pay scales is that it was introducing the ceiling on dearness allowance, for those earning salary above Rs 500 per month. In fact, as pointed out earlier, what the Tribunal has done is to give by way of some increase in the maximum of the pay scale, particularly to those in Category C-3, C-4 and T-3 and T-4, what it has taken away from them by reduction in dearness allowance. Thus both the revision of salary and introduction of the new dearness allowance system are interlinked. Since we are setting aside the award with regard to the dearness allowance and directing the continuation of the existing dearness allowance system, it is only fair that we remand the matter to the Tribunal to consider the case for revision of wage scales afresh independently and irrespective of the change in the dearness allowance system which was proposed by it. We are aware that this would involve prolongation of the litigation between the parties. But in the circumstances it is unavoidable. We, therefore, set aside the award with regard to the revision of wage scales and remand the demand of the workmen for the revision of wage scales to the Tribunal for fresh consideration, in the light of what we have stated hereinabove."

The issue of upward revision of wages was, therefore, remanded to the Tribunal in the aforestated circumstances.

7.After the matter went back to the Tribunal, the Tribunal went into the question whether or not an upward revision of wages for the clerical and technical staff was called for. On the question of financial capacity of the employer-company it rightly concluded that the financial position of the Company was sound and the Company was in a position to bear an additional financial burden. On this point there was no controversy even before us. Secondly it compared the extant wage-structure with the wage-structure prevailing in comparable similar concerns and came to the conclusion in paragraph 25 of its order dated 25-6-1991 as under:

25.To sum up, since 1970 there is no wage revision as such in HLL Company in respect of the employees of C-1 to C-4 and T-1 to T-4 grades. As in 1970 there was a Reference, which has been decided by the President, Shri Chitale in 1974 and Shri Bhojwani, J. slightly modified it. Thus for allowing the period till today, there is no revision of wage scales. Admittedly the cost of living index has increased from 1400 to 2900 and in September 1990 it is 4524. Considering this, it is clear that there is ustification for the wage scales, as demanded by the workmen." 8. Partly allowing the Reference the Tribunal revised the wage scales w.e.f. 1- 10- 1970 as under:

> Clerical Grade Modified Demand C-1 160-15-445 C-2 211-18-553 C-3 220-20-620 C-4 260-22-700 Technical Grade T- 1 200-17-523 T- 2 250-20-630 T-3 270-22-710 T-4 320-25-820 It is against this order of the Tribunalin Reference No. 123 of 1977 that Special Leave Petition Nos. 14558-59 of1991 came to be preferred.

9. Against the aforesaid decisionof the Division Bench of the High Court the Company approached this Court seeking special leave to appeal under Article 136 of the Constitution. Pending grant of

special leave an ad interim stay was granted against the implementation of the judgment of the Division Bench. Ultimately this Court while granting special leave vacated the ad interim stay of the judgment of the Division Bench. The Company, therefore, became liable to implement the award as modified by the judgment and order of the Division Bench. Despite the same the workmen complained that the Company had failed to implement the Award as modified by the Division Bench in regard to grant of stagnation increment to those employees who had reached the maxima in their pay scales and were entitled to stagnation increment every alternate year of their service from 1-10-1979 and that the Company had refused to pay the dues under the modified Award to those employees who had in the meantime retired or left service of the Company. Complaint wits, therefore, lodged with the Tribunal under Item No. 9 of Schedule IV of the MRTU and PULP Act. This complaint was contested by the Company. The Tribunal after considering the various contentions raised on behalf of the Company came to the conclusion that the Company had engaged in unfair trade practice failing within the mischief of the said item and that it should desist from doing so in future. The Company was directed to implement the modified Award in relation to the grant of stagnation increment and to work out the benefit on the wage scales existing on the date of the reference and pay the monthly benefits unconditionally to the retired workmen or those who had left the service of the Company in the meantime with interest at 12% per annum on the arrears. It is against this order of the Tribunal that the Company has approached this Court directly by way of Special Leave Petition Nos. 13327 and 13339 of 1990. Once this Court vacated the interim stay in regard to the implementation of the modified Award while granting leave to appeal, one fails to understand how the Company can refuse to implement the Award for the grant of stagnation increment. To do so would be to refuse to comply with the High Court's order in regard to which this Court refused to continue the interim stay. Therefore the Tribunal was justified In directing the Company to implement the modified Award relating to the grant of stagnation increment and to work out the benefit on the existing wage structure. We, therefore, do not see any merit in these two special leave petitions and summarily dismiss the same.

10. From the resume of the facts it is evident that as a sequel to the Notice of Change given by the Company under Section 9-A of the I.D. Act for placement of a ceiling in regard to the grant of dearness allowance, the clerical and technical workmen belonging to the C- 1 to C-4 and T- 1 to T-4 categories working at Sewree factory and at the head office raised certain demands for the revision of wages and grant of various allowances. Since the Company had a slab system dearness allowance formula linked to basic wage and CPT, the Tribunal imposed a ceiling by providing that the workmen drawing a basic wage exceeding Rs 500 per month shall be paid the same amount by way of dearness allowance as admissible to workmen drawing a basic wage of Rs 500 on every rise of 10 points in the CPI. In taking that view the Tribunal acted on the region-cum-industry basis and noticed that while other similarly situate industries in the region paid dearness allowance calculated at 1.25% on the third Rs 100 and above the Company paid as high as 2% which exceeded the neutralisation of 86% normally granted at the highest level of the salary structure. It rejected the Company's extreme contention that the neutralisation factor exceeded 100% as well as the Union's contention that it did not exceed 80% [vide paragraph 33 of the Tribunal's (Dongre Award)]. It also found as a matter of fact that the total emoluments of C-4 and T-4 employees exceed that received by Supervisors and Junior Executives by Rs 400 to Rs 600 per month. Taking note of the fact that 100% neutralisation is ordinarily allowed to the lowest paid staff and as the basic salary rises the

percentage of neutralisation slides down, the Tribunal felt that the neutralisation factor was very high at the higher levels of salary and even at the highest and, therefore, it opted in favour of imposing a ceiling to balance the wage-structure. Since it imposed a ceiling on dearness allowance it ruled in favour of an upward revision in the wage-structure. The Tribunal also granted certain allowances, including gratuity, with which we are not concerned. However, the learned Single Judge in the High Court while affirming the Tribunal's decision concluded that the neutralisation rose to 100% at the higher levels of salary since the percentage fixed for VDA was very high as compared to other companies. In taking the said view the teamed Judge placed reliance on the decision reported in Chotanagpur Chamber of Commerce Singhbhum Chamber of Commerce and Industries v. State of Bihar1 distinguishing the ratio laid down in Monthly Rated Workmen at the Wadala Factory of the Indian Hume Pipe Co. Ltd. v. Indian Hume Pipe Co. Ltd., Bombay2. The Division Bench of the High Court, as pointed out earlier, came to a definite conclusion that the neutralisation did not exceed 100% in any of the categories of the workmen concerned. The Division Bench considered three methods, A, B and C, and opted for method B. Method A was canvassed by the management, method B by the workmen and method C was advocated by the Boothalingam Committee (1978). These have been explained in paragraph 15 of the judgment. The Division Bench rejects method A on the ground that it fails to achieve the main objective of protecting the real value of the basic wage. It points out that if the dearness allowance is to serve the real objective, the rate at which it is paid must constantly reflect the basic wage which it seeks to protect. As regards method B the Division Bench holds that it largely achieves the objective since it avoids the drawback of method A and constantly protects the value of the basic wage. Not that it does not have its drawbacks but on the whole it was found to be attractive. Method C though projected by the workmen was not seriously pressed. Before the Division Bench the Company tried to make good its contention by calculating the neutralisation as under:

TABLE I

---------- Grade Basic D.A. TotalBasicD.A.1989TotalTotalNeutralisation 1970 1970 wage-1989 CPI 3912 wage-wage-under the CPI packet at 100% packet inpacketexisting system 800 in neutralisa-1989 at under the 1970 tion 100% existing (CPI neutralisa- system

800) tion (CPI 3912)

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1 2 3 4 5 6 7 8 9

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1 (1987) 1 LLJ 275 (Pat)
2 1986 Supp SCC 79 : 1986 SCC (L&S) 278 (1986) 2 SCR 484

C-1

Min. 130 351 481 130 171 618 462 252 121.93% Max. 385 672 105 738 532 863 671 4473 121.84% C-2 Min.175 413 588 175 2020 2195 2675 121.86% Max. 481 788 1269 481 3853 4334 5284 121.91% C-3 Min.220 472 692 220 2308 2528 3079 121.79% Max.560 884 1444 560 4323 4883 5952 121.89% C-4 Min.260 521 781 260 2548 2808 3417 121.68% Max.634 973 1607 634 4758 5392 6577 121.97% T-1 Min.160 393 553 160 1922 2082 2534 121.70% Max.415 708 1123 415 3462 3877 4727 121.92% T-2 Min.200 448 648 200 2191 2391 2910 121.70% Max.506 818 1324 506 4000 4506 5496 121.97% T-3 Min.240 496 736 240 2425 2665 3248 121.87% Max.580 908 1488 580 4440 5020 6121 121.93% T-4 Min.310 581 891 310 2841 3151 3839 121.83% Max.684 1034 1718 684 5056 5740 7000 121.95%

---------- The Company thus projected that under the existing scheme the neutralisation exceeds 100%. The workmen, however, worked out the neutralisation as under:

TABLE II

---------- Grade Basic D.A.TotalBasicD.A.1989 TotalTotal Neutralisation 1970 1970 wage-1989 CPI 3912 wage- wage-under the CPI packet at 100% packet inpacket existing 800 in neutralisa-1989 at under the system 1970 tion 100% existing (CPI neutralisa- system

800) tion (CPI 3912)

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1 2 3 4 5 6 7 8 9

C-1 Min. 130 351 481 130 2218.20 2348.20 2252 95.90% Max. 385 672 1057 385 4779.84 5164.84 4473 84.60% C-2 Min.175 413 588 175 2684.76 2859.76 267593.54% Max.481 788 1269 481 5736.08 6217.08 528484.99% C-3 Min.220 472 692 220 3148.32 3368.32 307991.41% Max.560 884 1444 560 6485.60 7045.60 595284.48% C-4 Min.260 521 781 260 3570.76 3830.76 3417 89.20% Max.634 973 1607 634 7228.12 7862.12 657783.65% T-1 Min.160 393 553 160 2540.28 2700.28 253493.84% Max.415 708 1123 415 5064.80 5479.80 472786.26% T-2 Min.200 448 648 200 2968.72 3168.72 291091.83% Max.506 818 1324 506 5952.80 6458.80 549685.09% T-3 Min.240 496 736 240 3359.04 3599.04 324890.24% Max.580 908 1488 580 6696.32 7276.32 612184.12% T-4 Min.310 581 891 310 4035.32 4345.32 384088.37% Max.684 1034 1718 684 7724.80 8408.80 700083.24%

---------- Thus according to the workmen the neutralisation does not exceed 100% as alleged by the Company. This difference is on account of the fact that the Company has worked out the neutralisation by employing method A whereas the workmen have relied on method B. Since method B commended itself to the Division Bench it concluded that the

neutralisation did not exceed 100% and, therefore, rejected the Company's contention in that behalf.

11.The concept of dearness allowance, the second most important element in a worker's wage-plan next to the basic wage, was introduced during the Second World War to meet the increase in the cost of living caused by inflation. It was either linked to the cost of living index or was given by way of flat increases. When linked to the former, it was granted to all the income groups at a flat rate or was graded on a scale admissible to different income groups diminishing with rise in income. Basically, the concept of dearness allowance was designed to combat inflation and protect real wages and therefore it would appear that there should be cent per cent neutralisation. This is a concept peculiar to India, Ceylon, Pakistan and Bangladesh. The National Commission on Labour (1969) recommended 95% neutralisation for minimum wage earners but it was reluctant to recommend the same rate for workers in higher wage groups for fear that it may spark off inflationary trends. Normally such a dearness allowance formula suffers from two drawbacks, (i) it has the pernicious effect of distorting the wage-structure and (ii) it results in a sharp erosion of real income, particularly of those in the higher wage groups. Generally speaking, the distortion of the wage-structure takes place because employees in different pay scales are granted dearness allowance not at a uniform rate but at a tapering rate, i.e., the workers in the lower scales getting a higher neutralisation as compared to those in the higher pay-brackets in whose case the neutralisation percentage diminishes with the rise in basic wage. That is because it is believed that those in the higher pay-brackets have a cushion to absorb the brunt of inflation. The Company's case, therefore, is that as a concomitant to the tapering neutralisation system built into the extant formula, the maximum limit of the quantum of dearness allowance at a certain point in the pay-structure was imperative to maintain certain differentials in the pay- packets of employees so that the lower level employees do not draw emoluments equal to or almost equal to those in the officers' scales. The Company therefore contends that the Tribunal as well as the learned Single Judge had rightly appreciated the need for exercising control by imposition of a ceiling at the appropriate salary level to ensure that the neutralisation does not exceed 100% and the wage- differentials are not so distorted as to make promotion to officers' level unattractive. The contention urged on behalf of the Company before the Tribunal was that the dearness allowance formula based on the slab system is so unrealistic that the employees of the Company constitute a privileged class, in that, their total emoluments have risen to disproportionately high levels as compared to their counterparts in similar other industries in the same region, thereby posing a threat to industrial peace in the region. Dealing with the Company's case on the question of the percentage of neutralisation the Tribunal points out that the existing dearness allowance formula had been in vogue for many years preceding 1976 when the Company gave a Notice of Change under Section 9-A of the I.D. Act, and the neutralisation varied from 97.4% at the lowest level to 86% at the highest point. It, however, felt that the percentage of neutralisation at the highest level was considerably higher than that granted to similarly situate employees in other comparable units. According to the Tribunal the neutralisation for higher pay scales of Rs 450 or Rs 500 p.m. and above is higher and that was thought to be enough justification for placement of a ceiling on dearness allowance. But at the same time the Tribunal conceded that there was no company of the size of the appellant Company in the region, not even Godrej, Tata Oil Mills Company Ltd. (TOMCO) or Lakme for that matter. In the absence of a comparable unit in the region, the Tribunal felt that they could be treated as somewhat comparable as they manufactured some of the goods manufactured by the appellant-Company. The

Tribunal noticed that in these units the variation percentage above the basic wage of Rs 300 was very low. It was found that while the variation percentage above Rs 300 was as low as 1 1/4% in Godrej, TOMCO, Colgate and other similar units, it was as high as 2% in the appellant- Company. The dearness allowance variation was noticed as under:

Pay H. L. L. TOMCO Godrej Colgate 300 Rs9.25Rs 8.75 Rs8.25 Rs 8.00 400 Rs11.25 Rs 10.00 Rs 9.25 Rs 9.00 500 Rs13.25 Rs 11.25 Rs 10.25 Rs 10.00 600 Rs 15.25 Rs 12.50 Rs 11.25 Rs 11.00 700 Rs 17.25 Rs 13.75 Rs 12.25 Rs 12.00 From the above table the Tribunal held that the high variation percentage in the scheme of the appellant-Company above the basic wage of Rs 300, caused a marked difference in the total carry-home pay-packet of its employees vis-a-vis the employees of other comparable units resulting in a distortion in the wage-structure in the said region. The Tribunal then noticed the reports of certain bodies, the Boothalingam Committee, the National Commission on Labour, the Central Pay Commissions, etc., and concluded that placement of a ceiling was imperative to ensure that the wage-structure does not get distorted and the disparity ratio between the wages paid by the appellant-Company and the wages paid by other comparable units in the region at the level of employees drawing a basic salary of Rs 500 and above remains within reasonable bounds.

12. Against the Award of the Tribunal (Dongre Award) both the Sabha and the Union as well as the Company preferred writ petitions under Articles 226/227 of the Constitution which were numbered as Writ Petition Nos. 864, 865 and 1224 of 1986 respectively. They were heard together by a learned Single Judge of the High Court. The learned Single Judge, after coming to the conclusion that it was permissible for the Tribunal to fix a ceiling on dearness allowance admissible to workmen, found that the neutralisation at the higher level of basic wage of Rs 500 and above exceeded 100%. He also found as a fact that the total emoluments to which workmen would be entitled under the extant dearness allowance formula far exceeded the emoluments drawn by Junior Executives of the Company. Since the posts of Junior Executives are promotional posts for C-3 and C-4 and T-3 and T-4 categories, experience had shown that these workmen were unwilling to accept promotions resulting in indiscipline which caused an adverse effect on the Company's administration. After referring to the case law in this behalf the learned Judge concluded as under:

> "In our case the imposition of ceiling on dearness allowance has not been effected merely on the ground that the senior workers may be earning more than the junior officers. The entire wage-package including additional benefits given under the award along with the fact that despite the imposition of ceiling there is more than 100% neutralisation are all taken into account while imposing the ceiling. Hence the finding of the Tribunal on this issue cannot be faulted."

The learned Judge while noting that the placement of the ceiling will cause disparity in the wage-differential between C and T grades inter se observed that that would be a necessary consequence of the ceiling but merely on that account it may not be correct to refuse to place a ceiling as in the higher slabs of wages the differentials must be reduced. In this view of the matter the award of the Tribunal in this behalf was sustained.

13.As stated earlier, appeals were preferred against the decision of the learned Single Judge, being Appeal Nos. 1606 and 1607 of 1988 by the Sabha and the Union, respectively, and Appeal No. 151 of 1989 by the Company against the grant of the stagnation increment etc. The view taken by the Division Bench has been indicated hereinbefore and we need not restate it.

14. It is in the above background that we must consider the question of placement of a ceiling on dearness allowance. As is so well-known, wages are among the major factors in the economic and social life of the working classes. Workers and their families depend almost entirely on wages to provide themselves with the three basic requirements of food, clothing and shelter. The other necessities of life like children's education, medical expenses, etc., must also come out of the emoluments earned by the bread- winner. Workers are therefore concerned with the purchasing power of the pay-packet they receive for their toil. If the rise in the pay-packet does not keep pace with the rise in prices of essentials the purchasing power of the pay- packet falls reducing the real wages leaving the workers and their families worse off. Therefore, if on account of inflation prices rise while the pay-packet remains frozen, real wages will fall sharply. This is what happens in periods of inflation. In order to prevent such a fall in real wages different methods are adopted to provide for the rise in prices. In the cost-of-living sliding scale systems the basic wages are automatically adjusted to price changes shown by the cost-of-living index. In this way the purchasing power of workers' wages is maintained to the extent possible and necessary. However, leapfrogging must be avoided. This Court in Clerks & Depot Cashiers of Calcutta Tramways Co. Ltd. v. Calcutta Tramways Co. Ltd.3, held that while awarding dearness allowance cent per cent neutralisation of the price of cost of living should be avoided to check inflationary trends. That is why in Hindustan Times Ltd. v. Workmen4 Das Gupta, J. observed that the whole purpose of granting dearness allowance to workmen being to neutralise the portion of the increase in the cost of living, it should ordinarily be on a sliding scale and provide for an increase when the cost of living increases and a decrease when it falls. The same principle was reiterated in Bengal Chemical and Pharmaceutical Works Ltd. v. Workmen5 and Shri Chalthan Vibhag Khand Udyog Sahakari Mandli Ltd. v. G. S. Barot, Member, Industrial Court, Gujarat6 and it was emphasised that normally full neutralisation is not given except to the lowest class of employees and that too on a sliding scale. To the lowest paid employees who are near about the 3 AIR 1957 SC 78 :(1956) 2 LLJ 450 4 AIR 1963 SC 1332: (1963) 1 LLJ 108 5 AIR 1969 SC 360: (1969) 1 LLJ 751 6 (1979) 4 SCC 622: 1980 SCC (L&S) 76: AIR 1980 SC 31 : (1979) 2 LU 383 subsistence level, full neutralisation or thereabouts would be justified. It was, therefore, emphasised by the learned counsel for the Company that in no case can the neutralisation exceed cent per cent, since the purpose of granting dearness allowance is to enable the worker to tide over the rise in the cost of living so that it does not affect his purchasing power in relation to basic necessities of life. But it must be realised that even at the lowest level since neutralisation is related to basic requirements of food, clothing and shelter, several other requirements remain unattended and workmen have to bear the brunt of the price rise to satisfy such needs. At higher levels also because of the tapering neutralisation allowed employees suffer a sharp fall in their real earnings over a period of time. Besides, the food basket which constitutes the major item in the kitty of basic necessities on which neutralisation is determined, differs at different levels and keeps changing with the passage of time even for employees of the lowest level with the result that the new items remain outside the admissible items for neutralisation. All these factors contribute to the distortion in the real wages of the workmen. As a concomitant to the tapering

neutralisation system, maximum limits of the quantum of dearness allowance at different pay belts is often insisted upon so that lower level employees do not draw more. But as against that the counter-effect of the tapering or sliding neutralisation system with fixed maxima at different levels is that it completely distorts the pay-structure and erodes the real value of the wages. To overcome such an effect on the pay structure the Third Central Pay Commission had stipulated that should the price level rise above the 12 monthly average of 272 (1960=100) points, the position should be reviewed to remove the ceiling of Rs 2400 p.m. That is why in Kamani Metals & Alloys Ltd. v. Workmen7, Hidayatullah, J. remarked that the dearness allowance given to compensate the cost of living being less than the cent per cent increase ceases to make up for the ever widening gap between wages and cost of living and an upward revision of wages or dearness allowance becomes imperative. In Killick Nixon Ltd. v. Killick & Allied Companies Employees' Union8, the Company gave a Notice of Change on 11-5-1966 for placing a ceiling on dearness allowance already in vogue at the figure of Rs 325 on account of the steep rise in dearness allowance linked with the cost-of-living index in Bombay. The workmen resisted the same and by consent reference was made in June 1966 to the Industrial Tribunal which removed the ceiling. The award was challenged in this Court. The employers contended that the scheme of dearness allowance linked to the cost-of-living index as well as to the basic wage by way of slabs necessitated a ceiling for otherwise it ceased to be compensation for rise in cost of living but in fact amounted to additional remuneration not related to the rise in the cost of living. The stand of the employees was that there should be no ceiling on dearness allowance till the level of living wage was achieved. In the Bombay region, it was pointed out that there were a number of concerns having a slab system of dearness allowance without a 7 (1967) 2 SCR 463 :(1967) 2 LLJ 55 8 (1975) 2 SCC 260: 1975 SCC (L&S) 316 : 1975 Supp SCR 453 : (1975) 2 LLJ 53 ceiling and there were others with a ceiling as well. Taking note of the ceiling applicable in the case of Central Government employees, this Court observed that imposition of ceiling was not a totally alien phenomenon, though it could not be said to be a generally prevalent practice. The Court rejected the idea of imposition of ceiling at the lowest level but observed that the removal of ceiling on dearness allowance would not be justified, even though the Company was prosperous and consumer price index was soaring, because

(i) the rise in CPI produces a steep rise in dearness allowance (ii) the absence of a ceiling may result In clerical staff getting more than junior executives and (iii) a general problem such as this cannot be treated on a statistical burden relating to only 265 of 1142 workmen. This Court held that those at the subsistence level would be entitled to 100% neutralisation without a ceiling but for those in higher slabs, the Tribunal was required to consider, having regard to principles laid down therein, at what level the ceiling should be imposed. Considerable reliance was placed on this decision.

15. However, we may take note of the recent decision of this Court in Workmen v. Reptakos Brett. & Co. Ltd.9 In that case, the Company first introduced the slab system of dearness allowance in 1959 which was liberalised in 1964 by the addition of VDA with a limit, which limit was later removed in 1969. Thereafter, when the Company attempted to restructure the scheme on the plea that the slab system had resulted in over-neutralisation thereby placing the workmen in the high wage island, the same was resisted by the workmen on the plea that what they were paid was not even need-based wage. The Tribunal upheld the Company's plea for placing a ceiling on dearness allowance but this Court disapproved of the same on the ground that there was nothing on record to show that what

was paid was higher than what would be required to be paid on the concept of need- based wage. This Court conceded that the Company can revise the wage-structure to the prejudice of its workmen in certain situations, e.g., financial stringency, etc., but held that no such revision can be permitted if the wage- structure is at the minimum-wage level. This decision was pressed into service by counsel for the workers before us to buttress his submission that merely because the total emoluments drawn by the workers of the appellant-Company compare favourably with that paid to workers of TOMCO, Godrej, Colgate, etc., that by itself is not sufficient reason to slice down the emoluments of the former by placing a ceiling on dearness allowance at Rs 500 and above wage level.

16. From the above discussion it clearly emerges that the appellant Company is a big industrial establishment and there is no other similar establishment of that size in that region. The volume of business of the appellant-Company is many many times more than companies like Godrej, TOMCO, Philips, Colgate, etc., which have been treated as comparable units in the absence of a really comparable unit in that area. The other units 9 (1992) 1 SCC 290: 1992 SCC (L&S) 271 though tiny in size and with a low volume of business as compared to the appellant-Company were treated as comparable only because they manufactured some of the items manufactured by the latter. Otherwise, truly they are not comparable. Secondly, the appellant-Company is financially sound and there is no dispute, indeed none was raised at any stage of the present proceedings, that it is in a position to absorb any additional financial burden that may be thrown on it if all the demands made by the employees are conceded. Thirdly, the extant dearness allowance scheme has been in vogue since long before the Company gave the Notice of Change. Ordinarily, when the workers are enjoying the benefit under a scheme without a ceiling the Tribunal or the Court would be slow to interfere with the scheme unless compelling reasons are shown. Fourthly, there is no dispute that the salary structure must be cost-effective and merely because the Company is financially sound and in a position to absorb the additional burden is no ground to revise the emoluments upward. There can be no doubt that no industrial establishment can be expected to show such financial indulgence or indiscipline as would distort the existing differentials, etc., merely because its financial condition is sound enough to absorb additional financial burdens. That is for the obvious reason that irresponsible and unjustified upward revision of wages would create ripples elsewhere and disturb the wage-structure in the region. However, it must be realised that under Article 43 of the Constitution the ultimate goal or objective is to secure a 'living wage' and therefore, contends the learned counsel for the workers, till that goal is reached, the Court should refuse to interfere in such cases. It was, therefore, strongly urged by the learned counsel for the workers that this Court should not interfere in exercise of its extraordinary jurisdiction. Lastly, it was said that the passage of time also would justify non-interference.

17. On behalf of the appellant it was contended that the Division Bench exceeded its jurisdiction in interfering with the concurrent decisions of the Tribunal (Dongre Award) and the learned Single Judge based on appreciation of evidence on record and in particular with the decision of the latter who held that under the prevailing formula the neutralisation exceeded 100% leading to a distortion in the wage-structure. It was pointed out that the Tribunal committed an error in holding that the neutralisation varied between 94.4% at the lowest level and 86% at the highest level and the learned Single Judge was, therefore, right in correcting the error and in recording a finding that the existing

formula provided for neutralisation which at certain levels exceeded 100%. It was further pointed out that notwithstanding the above error in working out the neutralisation percentage, the Tribunal rightly held in paragraphs 36 and 37 of its Award that since under the existing scheme employees in pay-brackets of basic Rs 500 and above were entitled to VDA at 2% flat for every 10 points rise in the CPI, the dearness allowance payable to them was excessive compared to 1 to 11/4% admissible to workers in comparable units and hence a ceiling at Rs 500 and above was imperative to ensure that the wage- differentials were not distorted. Contended counsel that this finding of the Tribunal was rightly affirmed by the learned Single Judge following the decision of this Court in Killick Nixon Ltd.8 distinguishing Hume Pipe Co. case2 on facts. Counsel submitted that this concurrent view ought not to have been disturbed by the Division Bench on the totally erroneous premise that dearness allowance was meant to compensate the change in cost of living when it was fairly well settled by a catena of decisions of this Court that it was meant to protect the purchasing power of the employees in respect of the items constituting the basket of essential commodities and not to compensate for rise in prices of non-essentials. Proceeding on yet another erroneous basis that the neutralisation formula can vary depending on the purpose to which it is applied, counsel contended that the entire approach of the Division Bench was misconceived and the confusion created thereby is worst confounded by the assumption that the parties consented to 1970 being the base year, when it was not so, and in relying on the tables reproduced earlier prepared on that base/year. It was pointed out that the tables were constructed taking 1970 as the base year as that was the desire of the learned Judges constituting the Division Bench but that was never conceded as acceptable by the management. Lastly, it was said that the decision of the Division Bench runs counter to the well-recognised region-cum-industry principle.

18. On behalf of the employees, counsel submitted, that even if it is assumed that the material on record indicated that the emoluments paid to the workers were much higher than the subsistence level, they were indisputably far below the 'living wage' promised by Article 43 of the Constitution and hence there was no justification to put a ceiling on dearness allowance. It is submitted that as rightly held by the Division Bench there is in fact no over-neutralisation and no distortion in the emoluments drawn by workers and executive officers, and, therefore, on region-cum-industry basis also the plea for placement of a ceiling on VDA in the higher pay-bracket of Rs 500 and above is not justified. It is pointed out that the prevailing slab system dearness allowance scheme is related to 180 points (1934=100) and therefore up to that level no dearness allowance is admissible to workers. It is only after that level that dearness allowance become payable on the cycle of 10 points rise. This formula which has been in vogue since long does not permit cent per cent neutralisation even at the lowest level of basic pay not exceeding Rs 100 per month. This works out to a variation of 5% at the lowest level and then tapers down 2.25% and 2% for the second and the third Rs 100 rise which reduces the neutralisation much below 90%. That is why the Dongre Award also conceded that the neutralisation does not exceed 100% at any level of the wage-structure. It is further pointed out that there has been no merger of dearness allowance in basic wage since the scheme was introduced in 1952 and hence the workers have suffered and if the dearness allowance is frozen as per the Tribunal's award it would be most unjust to the workers. It is further pointed out that there had been no upward revision of the basic wage since 1972. Insofar as the vertical relativity in the wages of workers and officers just above the workers is concerned, it is contended that workers and officers are not comparable, the former are covered under the I.D. Act while the latter are not, the

wage-structure of the former is determined by hard bargaining which is not the case with the latter and hence the comparison is wholly misplaced. Besides the benefits which officers derive under the terms and conditions applicable to them offsets the apparent, though not real, difference, if at all, in the emoluments. Lastly, it was said that if any such distortion in the differential troubles the Company, the same can be corrected by revising the salary structure of the officers but there would be no justification to control it by placing a ceiling on the dearness allowance admissible to the workers under the extant scheme.

19.We may first answer the contention whether the Division Bench acted without jurisdiction and contrary to well- established principles for the exercise of jurisdiction under Article 226 of the Constitution in reversing the decision of the Tribunal as well as the learned Single Judge placing a ceiling on dearness allowance at the level of basic pay of Rs 500 per month and above. It must be remembered that the jurisdiction of the Industrial Tribunal under the I.D. Act was invoked both by the management as well as the workers. It is well settled that the decision of the Tribunal rendered under the I.D. Act would be subject to review by the High Court under Articles 226/227 of the Constitution. Since against the decision of the Industrial Tribunal no remedy was available under the provisions of the I.D. Act, the aggrieved party could only invoke the jurisdiction of the High Court under the aforesaid articles. Since both the Company and the workers were aggrieved by the award, to the extent it went against them, they preferred writ petitions challenging the award. All the three writ petitions, two on behalf of the workers by the Sabha and the Union, and the third by the Company, were heard together and disposed of by a common judgment. Against the decision of the learned Single Judge, appeals under the Letters Patent were preferred once again by the said three parties. The Company never questioned the jurisdiction of the High Court to hear and decide the writ petitions nor did it question the jurisdiction of the Division Bench under the Letters Patent. Even the Company had appealed against the learned Single Judge's decision to the extent it was against it. No contention regarding the scope and ambit of the jurisdiction of the Division Bench was raised in the appeal. If the jurisdiction of the learned Single Judge was not challenged by the Company, the Company itself had invoked it, it is difficult to comprehend how the Company can challenge the jurisdiction of the appellate court. If the learned Single Judge had jurisdiction to hear the writ petitions against the decision of the Industrial Tribunal, at any rate if his jurisdiction was not questioned by the Company, it cannot lie in the mouth of the Company to challenge the appellate jurisdiction of the Division Bench since that jurisdiction is conferred by the Letters Patent. We are, therefore, of the view that this contention belatedly raised before us cannot and should not be entertained. We reject if.

20. We now come to the main issue. We have indicated in detail the nature, scope and ambit of the controversy. The contesting parties have updated the tables on which they relied before the Tribunal and the High Court and have also presented fresh calculations the Company endeavouring to show that the percentage of neutralisation soars above 100% and hence the need to impose a ceiling so that the existing differentials between the emoluments drawn by the workers in the higher pay-brackets do not exceed those drawn by the junior executives immediately above them; the workers on the other hand refuting the contention that there is over neutralisation and the need to impose a ceiling. In fact an attempt has been made to point out that those in the higher pay-brackets are scientists and section-heads doing highly skilled work and it is wrong to think that they are in

any manner inferior to junior executives. The workers have tried to emphasise that as the record stands it is not possible to say whether the wage-structure is at the subsistence level, need-based level, fair-wage level or living-wage level to enable this Court to decide whether or not a case for imposition of ceiling is made out. It is also contended that the Company has tried, time and again, to cloud the facts and has falsely alleged that the 1970 base was not adopted by consent. Since that was the year in which the last revision had taken place under the Chitale/Bhojwani Awards, 1970 was taken as the base year by consent. It is, therefore, contended by the workers that the Company has tried to shift its stand from stage to stage of the litigation to suit its purpose in the fond hope that it may be able to persuade this Court to its point of view. The respondents, therefore, have requested us not to look into these revised and misleading statements.

21. We have, however, carefully examined the various statements placed on record to prove the rival points of view. The principal question is whether the Company's case of over-neutralisation is well-founded and, if yes, whether there is need to impose a ceiling on dearness allowance as advocated by the Tribunal and affirmed by the learned Single Judge. Now it is established that the present dearness allowance formula has been in vogue since long. It is also not in dispute that after the Chitale/Bhojwani Awards the Company had entered into settlements in 1979 and 1983 with the subclerical and hourly-rated employees in the Sewree factory and continued the existing formula. Before the Tribunal the Company produced statements to show that the neutralisation was as high as 204% at the minimum of C-1 grade tapering to 132.4% at the maximum of C-4 grade. As against that the workers contended that the percentage of neutralisation was 80% and 46%, respectively. The Tribunal held that the calculations made by both sides were incorrect. Referring to the Chitale Award the Tribunal points out that the Company's own statement showed that the neutralisation was 97.4% at the lowest and tapered to 86% at the highest. It, however, felt that 86% neutralisation was on the higher side. It was for this reason that the Tribunal opted for placement of a ceiling. However, the Tribunal did not determine the percentage of neutralisation on the basis of calculations submitted to it. The learned Single Judge in the High Court, however, placed reliance on the following statement:

---------- Wages Wages Wages Wages Wages %age %age Percent- as of pay as pay on pay as pay on rise in rise in age Oct.85 per Impl.of per Impl.of Ind. May DAoverNeutrali- at CLI settle.Award Award at Award 88 over same sation 2886 dt. 20- Nov.85 CLI w/o Sept.85 period (without 11-85 at CLI 3765 ceiling (May revised at CLI 2837(May 88) on DA Index LTA/ 2837 at CLI for July HRA) 3765 Payt. & Sept.

Index for Nov.

EARNINGS BASIC 540 580 700 720 720132.71% 135.05% 101.76% D.A. 3796 3937 3514 4746 6319 25 25 0 0 0 HRA- 350 350 350 350 LTA 13 100 100 100 100 SPL.- 0 110 110 110 ALLOWANCE AD HOC- 0 60 60 60 ALLOWANCE SOC. SEC.- 0 60 60 60 ALLOWANCE S.D.- 25 25 25 25 ALLOWANCE PERSONAL- 0 423 0 0 PAY

---------- TOTAL 4374 5017 5342 6171 7744

---------- DIFFERENCE BETWEEN COLUMN 1 AND 3 = 968 DIFFERENCE BETWEEN COLUMN 1 AND 4 = 1797 DIFFERENCE BETWEEN COLUMN 3 AND 4 = 829 DIFFERENCE BETWEEN COLUMN 4 AND 5 = 1573 and concluded that the percentage worked out to 101.76%. This calculation was based on the Chotanagpur Chamber of Commerce casel method. The calculation statement placed by the Company before the Division Bench showed that the neutralisation was as high as 121 % or thereabouts. The The neutralisation is calculated by the method adopted in a judgment of Patna High Court reported in Chotanagpur Chamber of Commerce Singhbhum Chamber of Commerce v. State of Bihar.

statement produced before this Court shows the neutralisation varying between 133% at the minimum level and 125% at the maximum level. The Company has also produced a statement showing the total emoluments drawn by C-3 and C-4 category workers vis-a-vis junior executives and T-3 and T-4 category employees vis-a-vis JDS and SDS (executives). It shows at when the CPI stood at 6229 points, C-3 received Rs 10,908 and C-4 Rs 12,006 whereas junior executive officers, such as, Sales Accounting Officer/Law Officer/Export Officer drew Rs 8492. Similarly T-3 category received Rs 12,168 and T-4 Rs 13,677 as against JDS getting Rs 8043 and SDS getting Rs 9242. This was to bring out the disparity in earnings between the earnings of workers in high wage brackets as against those of the executives of the Company. We may say that the statements produced by both the sides have not helped us in clearing the queer pitch.

22.Let us first understand the Company's dearness allowance scheme. It is in two parts. Under the scheme FDA was linked to cost-of-living index 1450, CPI (Bombay), (1934=100) whereunder dearness allowance was admissible as under:

(i)For the first Rs 100 635% of basic wage

(ii) For the second Rs 100 284.25% of basic wage

(iii) For salaries above Rs 200 251 % of basic wage.

On the CPI rising above 1450 points, VDA for every 10 points rise became admissible as under:

(i) For the first Rs 1005% of basic wage

(ii) For the secondRs100 2.25% of basic wage

(iii) For salaries above Rs 2002% of basic wage.

It immediately strikes one that the dearness allowance is payable uniformly to all the workers and although it may at first blush appear to be on a sliding scale, in actual application it is not so and hence it is not likely to disturb the internal differentials between the workers covered by the scheme.

That is because all the workers regardless of their basic salaries would be paid uniformly, in the sense, that all the workers would be paid at 635% of basic wage for the first hundred rupees, at 284.25% for the next hundred rupees and above Rs 200 at the rate of 251 %. So also in the case of VDA. Now these percentages were worked out long back on the basis of the neutralisation to be allowed to the workers in different salary groups. It is nobody's case that when the scheme was introduced the Company had permitted itself the indulgence of conceding more than cent per cent neutralisation to its employees. It is, therefore, difficult to assume that when the scheme was introduced workers belonging to any wage group were allowed more than 100% neutralisation. Nor is it the Company's case that the dearness allowance initially agreed upon exceeded 100% at any level even if FDA and VDA were taken together. In fact as per the table supplied by the Company, no VDA was paid up to 180 points rise, as is evident from the following extract:

Bombay Working Class CPI	Up to and including Rs 100 basic salary %	Up to and including Rs 101-200% basic salary %	On the balance of basic salary
105-180	NIL	NIL	NIL
181-190	5	.75	NIL
Variation	5%	2.25%	2%

It would seem extremely doubtful that the Company would agree to pay FDA or VDA at a rate higher than the percentage required to neutralise the impact of price rise as reflected by the CPI. Therefore, on first principles it would seem that the Company's case of the neutralisation exceeding 100% does not seem to be correct. We are, therefore, inclined to think that the Tribunal was right in concluding that the neutralisation varied from 97.4% to 86%. The learned Single Judge in the High Court committed an error in setting aside the said finding in upholding the Company's contention in this behalf. The Division Bench, as an appellate forum, was justified in correcting the error by pointing out that it had crept in because the method adopted by the Company in calculating the neutralisation percentage was wrong and that the error which would disappear if the correct method 'B' is employed.

23. The second ground on which the Company sought imposition of control or ceiling on dearness allowance is that it distorts the vertical relativity, in that, clerks receive emoluments exceeding what is paid to junior executives and are, therefore, disinclined to accept promotion. Since the basic pay of the workers belonging to the C-1 to C-4 and T-1 to T-4 categories is low they continue to be governed by the provisions of the I.D. Act whereas the junior executives are not governed by the said statute. The wages of the former would be determined either by settlements or by awards made on reference under the said statute. These workers, therefore, constitute a class by themselves and their wage determination is under the provisions of the I.D. Act. But the junior executives do not belong to that class and their salaries are differently determined. The process of determination of their salary plan has nothing to do with the workers governed by the I.D. Act. How to make the

promotional post attractive is for the company to decide but it may not be by denying the workers of a part of their dearness allowance for pegging down their emoluments. Besides it is well known that executives enjoy a certain-status and perquisites which the workers do not receive. We think the better way to overcome the difficulty is make the junior executive grade more attractive rather than deny to the workers what they are receiving since long.

24. Next, we have pointed out earlier the relation between wages and prices of food, clothing and other necessities of life which even the lowest wage earner purchases month after month. If the prices of these commodities rise and the basic wage remains constant, real wage actually falls creating a problem for survival for the lowest wage earner. And it is common knowledge that this frequently happens during periods of inflation as is reflected from how rapidly the index rose from 313 points in 1950 to 6229 points by August 1993. To prevent the real wages from falling with the rise in CPI, some allowance had to be paid to the workers which gave rise to the introduction of the dearness allowance scheme. Besides, it must be realised that the protection against price rise is limited to only those items included in the basket and not to all items which a wage earner at the lowest level consumes. For those items not included in the basket, the wage earner at every level has to bear the brunt of inflation. It must also be remembered that while dietary habits change, the food items in the basket remain constant for want of periodical revision with the result that the new items of food which are highly priced do not count for neutralisation. Again wage revisions do not take place for long spells. In certain wage plans upward revision of wages take place by the merger of a portion of the dearness allowance in the basic wage plus an addition thereto to take care of the inflationary dents in the wage-structure in respect of other items outside the basket. Under certain dearness allowance schemes, neutralisation is allowed on tapering percentages on the assumption that those in the higher wage groups have a certain cushion to bear a part of the inflation. Such a scheme is in vogue in Central and State Government servants' salary plans. That cushion does not remain static and gets depleted as the prices rise and there comes a time when it becomes necessary to inflate it once again by an upward revision of the salary structure. But in certain industries merger of dearness allowance in the basic wage does not take place at all as in the present case and instead periodically increases are allowed in the basic wage to nullify the adverse effect of inflation on items outside the basket. It must, however, be remembered that in the case of employees belonging to high wage islands, their carry-home-pay-packets shrink on account of the deduction of income tax at source.

25. Let us now notice the movement of basic wage:

TABLE Category Pre-Dongre Revised Dongre Deshpande Scales Scales Rs Award Rs Rs

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C1	130-15-385	145-15-475	160-15-445
C2	175-18-481	190-18-550	211-18-553
C3	220-20-560	220-20-660	220-20-620
C4	260-22-634	260-22-788	260-22-700
T1	160-15-415	175-15-520	200-17-523
T2	200-18-506	218-18-614	250-20-630

T3	240-20-580	240-20-720	270-22-710
T4	310-22-684	310-22-838	320-25-820

It may be mentioned that the scales fixed under the Chitale Award were revised by the Bhojwani Award by raising the maxima only without altering the minima and the annual increments. The pre-Dongre Scales are the Bhojwani Scales fixed in 1977 when the CPI was at 1400 points. Since then there was no revision.

26.It will be seen from the above table that except in C1 C2 and T1 T2 categories for which the Dongre Award raised the minimum, retaining the annual increments at the same figures, in the other categories the minimum as well as the annual increments remained unchanged giving no benefit to those at the minimum of the scales. Under the Dongre scheme the maxima were raised upwards but since there was no increase in the increments, the real effect was mere elongation of the scales. To the C1-C2 and T1-T2 categories while the Dongre Award granted one increment at the minimum of the scale, Deshpande wage-plan has given two or more increments at the starting point while retaining the annual increments at the same level. In the C1 C2 category the maxima is marginally revised; in that, in the C1, C3 and C4 categories the maxima is slightly reduced whereas in the C2 category it is slightly increased. The annual increments have not been revised in C1 to C4 categories but that is not the case with T1 to T4 categories. In the T1-T2 categories the scale has been substantially revised upwards both at the minima and the maxima but in the T3-T4 categories while the minima has been slightly raised, at the maxima there is a slight reduction. With the rise in annual increments in the technical categories, the span of scales stood reduced whereas in the clerical categories it stood enlarged. It may also be mentioned that employees in the clerical cadres were required to work for 36 hours in a week unlike those belonging to the technical cadres who are required to work for 48 hours in a week. That provides that justification for higher scales to the technical staff.

27. The Deshpande Tribunal could have revised the wage- structure on certain well-settled principles for pay determination or on comparative method on region-cum- industry principle. It chose to follow the latter course and considered the salary structures of TOMCO, Philips, etc., but placed considerable reliance on the wage-structure of TOMCO. The Tribunal after considering the rival contentions concluded in paragraph 22 as under:

> "In my considered opinion, other benefits both of HLL Company's employees and TOMCO Company's employees, should not be taken into account, while considering the wage scales revision, what we have compared is wage scales only. It is pertinent to note that this reference is remanded back to this Court only to consider the wage scales revisions, and there is no mention of other benefits, which are receivable by HLL employees or the employees of TOMCO or other company. Therefore, in my considered opinion, while considering the wage scales revision, only wage scales and dearness allowance payable in HLL, TOMCO and Philips companies, should be considered, and other benefits receivable either by the employees of HLL or the employees of other comparable company, should not be considered."

It is obvious from the above observations that while determining the question of revision of pay scales, the Tribunal considered the basic salary and dearness allowance plans of other companies and not the total emoluments inclusive of all allowances.

> "So far as the scales of revision wage scales is concerned, it is clear that it must be brought into par with the wage scales of comparable concern i.e. TOMCO and in that respect statements furnished by Shri Menon, Advocate for the Union, appear to be correct. Hence, I agree with a modified revision of wage scales, as demanded by the workmen."

29. The learned counsel for the Company took serious exception to the upward revision of the scales above those recommended by the Dongre Award. His objection runs thus: The workers were not aggrieved by the revised wage-structure granted under the Dongre Award and had stated so in no uncertain terms in their writ petitions in the High Court in the following words:

> "The petitioner says that the petitioner is not challenging the entirety of the Award, but is limiting the attack on the Award, insofar as it relates to (a) Dearness Allowance, (b) Classification, (c) Automatic Promotion and Stagnation Increment, (d) Housing Loan and (e) Provident Fund."
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> This averment is not denied.

30. It was the Company which had challenged the revised wage-structure prepared under the Dongre Award. The learned Single Judge spurned the Company's challenge. The Division Bench found it necessary to remit the matter to the Tribunal for reconsidering the question regarding revision of pay scales as in its view the Dongre Award had considered the revision necessary as a package formula since it had placed a control on dearness allowance, which control the Division Bench had lifted. Counsel, therefore, vehemently contended that there was no question of a further upward revision beyond what was allowed under the Dongre Award. Counsel submitted that the Deshpande Award whereunder higher pay scales have been granted is wholly unsustainable. We see merit in this line of reasoning.

31. The learned Single Judge in paragraph 8 of his judgment points out that the Tribunal had while making the Award "awarded a package deal to the workers" and had allowed various other benefits since he had placed a ceiling on dearness allowance. He has granted revision of pay scales, special allowances, etc. However, in paragraph 11 there is a mention that counsel for the workers had raised the contention that the salary structure of TOMCO was higher, the entire wage-packet was in fact better, and since it was a comparable industrial unit the workers of the company were entitled to the same. In fact the learned Single Judge notes that he had enquired of the management if it would be willing to grant the entire pay-packet of TOMCO to the workers of the Company and the management after taking time showed its willingness to do so but the workers did not agree. Thus although the learned Single Judge explored the possibility of the management giving the TOMCO pay-packet to the workers of the Company when the workers backed out on second thought he did not interfere with the Dongre Award in that behalf in view of the aforesaid statement.

32. The Division Bench noticed the submission made on behalf of the Company in paragraph 46 of its judgment and conceded in paragraph 48: "It cannot be gainsaid that one of the main considerations, which was weighed with the Tribunal, while introducing the revised pay scales is that it was introducing the ceiling on dearness allowance, for those earning salary above Rs 500 per month," which accords with what counsel for the Company has urged. It was on this consideration that the Division Bench concluded that both the revision of salary and introduction of the new dearness allowance system were interlinked and since the ceiling on the latter was lifted, the Division Bench considered it "only fair" to remand the matter to the Tribunal "to consider the case for revision of wage scales afresh independently and irrespective of the change in the dearness allowance system which was proposed by it". The observations of the Division Bench had to be understood in the backdrop of the fact that the workers were content with the revised pay scales worked out under the Dongre Award and had therefore not questioned that part of the award. Since the learned Single Judge had not interfered with it, there was no question of their getting higher pay scales. When the Division Bench remitted the matter in this background the Tribunal should have realised that the remand was necessitated because the factum of imposition of a ceiling on dearness allowance was the reason which had impelled the Tribunal to increase the pay scales and since the ceiling was lifted it was necessary to consider whether upward revision of the pay scales was at all necessary in the changed circumstances and, if yes, whether the revision ordered under the Dongre Award was justified. There was no question of the pay scales being revised above the Dongre Award stipulations. Besides, we are also not happy with the approach of the Tribunal. It is not correct to say that the Division Bench had imposed any limitation of the type read by the Tribunal as evidenced by the recital in paragraph 22 of its order extracted earlier. We also find that the Tribunal has merely set out the rival contentions and the data in support thereof and has, without analysing the same, concluded that the modified revision of pay scales suggested by the workers was justified. This approach is far from satisfactory. The need fir stagnation increment would again depend on the time span in each scale in the revised pay- structure. If the length of the pay scale is sufficient not to result in stagnation there would be no need for stagnation increment. We would, therefore, like the Tribunal to consider that question but if it comes to the conclusion that it is necessary to revise the pay scales and that the revised scales may cause some workers to stagnate at the maxima of the scale, it may opt in favour of retention of the stagnation increase but if it does not see any scope for its retention it may for reasons to be stated do away with it.

33. In the result Civil Appeal Nos. 4848 to 4850 of 1989 challenging the order of the Division Bench are dismissed. Civil Appeals arising from SLP (C) Nos. 14558-59 of 1991 directed against the Deshpande Award are allowed and the said Award is set aside. The issue whether in view of there being no ceiling on dearness allowance, there is any need for upward revision of the wages, and, if yes, whether up to the level of Dongre Award or less will have to be redetermined by the Tribunal on the existing material on record. In doing so the Tribunal will also keep in view the level at which the present wage-structure stands, i.e., whether it is above the subsistence level and, if yes, whether it is at the need-based, fair wage or living wage level and then determine the question of revision of wages. Since the dispute is pending since long, the Tribunal will decide the question on the material already on record after hearing oral submissions at an early date, preferably within six months from the date of receipt of this Court's order. Consequently the civil appeals arising from SLP (C) Nos. 13327 and 13339 of 1990 will stand allowed limited to the grant of stagnation increments on

condition that the payments already made towards stagnation increments by the thrust of the orders impugned herein will not be recalled and those who are allowed stagnation allowance will continue to receive the same till the Tribunal makes a fresh award. In that sense the remand will operate prospectively only but will be subject to orders of the Tribunal from the date it makes a fresh award. The equities, if any, will be adjusted by the Tribunal. Since those who may become entitled to stagnation allowance hereafter will have to wait till the Tribunal makes its fresh award we do hope that the Tribunal will abide by the time-limit.

34. Having regard to the extent of success and failure, we make no order as to costs in all the aforesaid appeals.