

Supreme Court of India

The Malwa Sugar Mills Ltd. vs The Workmen on 16 September, 1971

Equivalent citations: (1972) 4 SCC 410, 1972 (4) UJ 447 SC

Author: C Vaidialingam

Bench: C Vaidialingam, P J Reddy

JUDGMENT C.A. Vaidialingam, J.

1. The only question that arises for consideration in this appeal, by special leave, is regarding the directions given in the award dated October 25, 1970 by the Industrial Tribunal, in respect of issue No. 4. was as follows :

Whether increase in Dearness Allowance granted to the workmen from 1st January, 1968, should be by 18 points in terms of Wage Board award instead of 17 points as allowed by the management ? If so, with what details ?

2. According to the appellant, the Dearness Allowance has been given by the Tribunal at the rate fixed by the Second Wage Board for Sugar Industry which came into effect only from November, 1970. According to Mr. Dang, Learned counsel for the appellant, the management was prepared to pay at the rates fixed by the First Wage Board for Sugar Industry, whose report was published in 1960.

3. The reference to the Industrial Tribunal was made by the notification dated September 23, 1969. There is no controversy that at that time the recommendations which were in force were those made by the First Wage Board for Sugar Industry. The First Wage Board was appointed on December 26, 1957 and its report was published in 1960. The relevant part of the recommendations contained in the report of the First Wage Board as paragraph 232, particularly Clause (b), is as follows :

232. Part II of the scheme comprises of the following system of D.A. rates linked to cost of living index to provide for adjustment in emoluments consequent to substantial changes in the living cost.

PART II OF THE D.A. SCHEME

(a) The cost of living index series to be taken for each region shall uniformly be the All India Average Consumer Price Index Numbers for Working Class (Base 1949).

(b) For rises over 123 points of cost of living index or fall below this level, adjustments in dearness amount shall not be made for less than 10 whole points. Once there has been rise or fall by 10 or more whole points, adjustments will be for every point of the rise or fall. Once an adjustment has been made, further adjustment shall be made for further rise, or fall of ten or more whole points.

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4. It is clear that the directions given by the Tribunal regarding Dearness Allowance are contrary to the principles laid down in the above paragraph. But as mentioned earlier, the appellant is prepared

to pay Dearness Allowance at the rates mentioned in the recommendations of the First Wage Board for Sugar Industry contained in the paragraph extracted earlier. Admittedly, the directions in the Award regarding Dearness Allowance have been given on the basis of the recommendations given by the Second Wage Board for Sugar Industry, which recommendations became effective only from November, 1970. The award itself was passed on October 25, 1970, even before the recommendations of the Second Wage Board became effective.

5. But it has become unnecessary for us to go more elaborately into these aspects because of the stand taken, which in our opinion was quite fair, by the learned Counsel for the appellant that his client will pay Dearness Allowance for the year 1967-68 on the basis of 18 points rise as mentioned in the award only as an ad-hoc or an ex gratia payment subject to the condition that the said payment will not be taken into account for the purpose of fitment which may arise when the recommendations of the Second Wage Board have to be implemented. This offer made on behalf of the appellant has been unconditionally accepted by Mr. Agarwala, learned Counsel appearing for the respondents.

6. In view of this agreement, expressed before us the award of the Industrial Tribunal in respect of issue No. 4 will stand modified as follows :

The appellant will pay an ex gratia payment for the year 1967-68 Dearness allowance on the basis of 18 points rise. Any payments already made will be adjusted towards the amount payable under this order. It is also made clear that the said payment is an ex gratia payment and that it will not be taken into account for the purpose of fitment when the recommendations of the Second Central Wage Board for Sugar Industry require to be implemented.

7. The Award is accordingly modified and the appeal allowed to this extent. Each party will bear their own costs.