

Union of India and Another

Vs

Dhrangadhra Chemical Works and Another

Civil Appeal No. 691 of 1976

(P. K. Goswami, Syed M. Fazal Ali JJ)

16.12.1976

JUDGMENT

GOSWAMI J.

This appeal on certificate is from the judgment of the High Court of Gujarat. The appellants 1 and 2 are respectively the Union of India and the Regional Provident Fund Commissioner. Dhrangadhra Chemical Works Kamdar Sangh (hereinafter to be described as the union) is the respondent. The second respondent is Dhrangadhra Chemical Works (hereinafter to be described as the employer).

With respect to the dearness allowance (D.A.) of the workers under the employer there was a reference No. 70/70 before the Industrial Tribunal at Ahmedabad. The parties had arrived at a settlement of the said industrial dispute and an award was passed in terms of the settlement. According to the award the employer was to pay D.A. to its employees at the rate of the quarterly average cost of living index as settled by the Simla Bureau, popularly known as "All India Consumers Price Index" for the relevant quarter. Thus, for the months of January, February and March, 1974, the rate of D. A. was on the basis of the average cost of living index for the months of July, August and September, 1973, as published by the said Bureau and this was to follow for every quarter. It is the accepted position that for the months of April, May and June, 1974, the D.A. worked out at Rs. 78 per month, but for the quarter commencing on 1st July, 1974 and ending on 30th September, 1974, it worked out at Rs. 88.50 per month. In other words, it was an agreed position between the union and the employer that the rate of D.A. payable to all the workers from 1st July, 1974, was at the rate of Rs. 88.50 per month.

With effect from 6th July, 1974, the Additional Emoluments (Compulsory Deposit) Ordinance, 1974, came into force. This Ordinance was replaced by the Additional Emoluments (Compulsory Deposit) Act, 1974 (Act No. 37 of 1974) (briefly the Act), and the Act is deemed to have come into force on the 6th day of July, 1974.

We have already made a detailed reference to the aim and object of the Act and also dealt with the material provisions thereof in dealing with a similar question in Civil Appeal No. 690 of 1976 in which we have delivered our judgment today. It is, therefore, of necessary to repeat those observation here.

The short question that arise in this particular appeal turns on the Explanation 1 to section 2(b) of the Act. We will, therefore, read that provision :

"2(b) 'additional dearness allowance' means such dearness allowance as may be

sanctioned from time to time, after the appointed day, over and above the amount of dearness allowance payable in accordance with the rate in force immediately before the date from which such sanction of additional dearness allowance is to take effect.

Explanation I. - Where payment of dearness allowance is linked to a cost of living index or any other factor, any automatic payment, after the appointed day, of dearness allowance in consequence of a rise in such cost of living index or in consequence of any change in such other factor shall, notwithstanding the provisions of this clause, be deemed to be the additional dearness allowance".

It is clear under section 2(b) that additional D.A. has to be sanctioned after the appointed day. "Sanctioned" is the heart of the definition clause. Since additional D.A. is defined to mean such D.A. as may be sanctioned from time to time after the appointed day, Explanation I to the definition is inserted to deal with a situation to avoid any controversy about the sanction while there is an automatic rise in D.A. linked to a cost of living index. Where D.A. is linked to a cost of living index any automatic payment, after the appointed day, of D.A. in consequence of any rise in such cost of living index shall be deemed to be additional D.A. In the absence of Explanation I there would have been scope for controversy whether additional D.A. which is paid automatically with the rise in the cost of living index, as agreed upon, can be said to be D.A. sanctioned from time to time. Such a controversy is set at rest by insertion of Explanation I which is a deeming clause.

The question that arises for consideration in this appeal is whether the rise in the cost of living index has also got to be after the appointed day. The union contends that the D.A. of Rs. 88.50 which is payable from 1st of July, 1974, for the quarter 1st July, 1974 to 30th September, 1974, is in pursuance of the rise of cost of living index between January to March, 1974, which is prior to the appointed day, namely, 6th July, 1974. It is, therefore, submitted that no additional D.A. is deductible under the Act. The High Court has accepted the contention of the union and allowed the application under article 226 of the Constitution granting a mandamus restraining the employer from deducting additional D.A. from the emoluments of the employees. The High Court also granted certificate to appeal to this court.

It is common knowledge that when D.A. is linked to a cost of living index, actual determination of the D.A. takes place after the index is published and known. The index, therefore, is always of a past period by the yardstick of which D.A. is adjusted. This being the concept about linkage of D.A. to cost of living index, Explanation I makes it clear that when payment of D.A. is linked to a cost of living index any automatic payment after the appointed day D.A. in consequence of any rise in the cost of living index shall, notwithstanding the provisions of this clause, be deemed to be the additional D.A.

The non obstante clause in the Explanation takes note of the definition clause where sanction after the appointed day has been mentioned. Explanation I, therefore, plays its role, notwithstanding whatever is stated in section 2(b), the definition clause. We do not find anything in Explanation I to warrant the conclusion that rise of the cost of living index should be after the appointed day. What is to be after the appointed day is "any automatic payment of D.A. in consequence of any rise....." and not that any rise in the cost of living index should be after the appointed day.

We are, therefore, unable to agree with the High Court that the rise of cost of living index also should be after the appointed day. It is sufficient for the purpose of Explanation I if payment of D.A., in consequence of rise of cost of living index, takes place after the appointed day on account

of rise in the cost of living index even prior to the appointed day. The nexus for the purpose of Explanation I is with the payment after the appointed day not with the rise in the cost living index. The specified percentage of additional D.A. which is 50% of the rise, being the difference, between Rs. 78 and Rs. 88.50 is, therefore, deductible under section 6(2)(b) of the Act and the High Court was not correct in holding to the contrary.

The appeal is allowed and the judgment of the High Court is set aside. There will be, however, no order as to costs.

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