Monthly Rated Workmen at The Wadala Factory of the Indian Hume Pipe Co. Ltd.

Vs

Indian Hume Pipe Co. Ltd., Bombay

Civil Appeal No. 3040 (NL) of 1980

(V. Khalid, O. Chinnappa Reddy, S. Natarajan JJ)

11.04.1986

JUDGMENT

KHALID, J. :-

1. This appeal, by special leave, is directed against the award of the Industrial Tribunal in IT No. 531 of 1975, dated October 27, 1980. The appellants are the monthly-rated workmen at Wadala Factory of the Indian Hume Pipe Company Ltd., Bombay and the respondent the Company mentioned above.

2. We will briefly refer to the history of the demands of the workmen in this Company to appreciate how the dispute involved in this appeal originated. The respondent (hereinafter referred to as the Company) is an engineering concern owning sixty factories spread throughout India. In Bombay, it has a factory at Wadala and head office at Bellard Estate. In this appeal, we are concerned with the monthly-rated workmen at the Wadala factory. In this factory there are about 375 daily-rated workers and 80 monthly-rated clerical and subordinate staff. The total labour strength all over India is about 3000 daily-rated workers and 1000 monthly-rated clerical and subordinate staff.

3. In the year 1950, there was an industrial dispute pertaining to the pay scales and dearness allowance of the workmen in this factory. An award was passed in this dispute by the concerned Industrial Tribunal in reference No. IT 82 of 1950. By this award pay scales and fixed dearness allowance were introduced w. e. f. July 1, 1950, with the consumer price index in Bombay at 312 points in 1950. In 1957, the index rose by 55 points and stood at 367 points. There was another industrial dispute in 1958 in reference IT No. 77 of 1958 resulting in the award published on May 21, 1959 introducing the slab system of DA w. e. f. February 1, 1958. This award was not challenged by the Company at any time.

4. In 1964, the labour sought revision in the pay scales for the monthly rated clerical and subordinate staff, as a consequence of which reference IT No. 47 of 1964 was made resulting in an award published on December 30, 1965, which provided marginal increase in the basic pay scales, mainly on the ground that the slab system was working satisfactorily.

5. In this Company the daily-rated operatives were getting the old textile scale since the year 1942 which was raised to the revised textile scale as DA by an award. Thus, the daily-rated operatives and the monthly-rated clerical and subordinate staff were paid DA on different basis and at different rates in this Company. As there was no revision in pay scales from 1950, for about 22 years a demand was made for revision in pay scales for monthly rated clerical and subordinate staff in the year 1972. This demand was referred to adjudication in reference IT No. 42 of 1973 as a

consequence of which an award was published on July 7, 1977. The clerical and subordinate staff in the head office of this Company were also being given the slab system of DA. This award observed that there should not be any disparity in the DA between the monthly-rated factory staff and the head office staff.

6. While the wage structure stood thus, the Company gave notice of change for doing away with slab system of DA by notice dated July 15, 1975, in respect of the head office staff and the monthly-rated factory staff. The notice of change in respect of the head office staff was not pressed since a settlement was reached between the parties. As per this settlement arrived at in July 1976, the DA at consumer price index 1380 points was merged in revised consolidated pay scale of different categories w. e. f. September 1, 1975. Although in September, 1975, the consumer price index figure was 1270 points, it was taken nationally as 1380 for the purpose of merger, indicated above, providing for review of consolidated pay scales if the consumer price index moved high. The notice of change in respect of monthly-rated factory staff was, however, referred to adjudication. The Company's claim was to do away with the slab system of DA and to substitute it by revised textile scale. The Union filed a written statement justifying continuity of the slab system which was in vogue for 17 years. The Industrial Tribunal gave the award, impugned in this appeal, on October 27, 1980. The Tribunal came to the conclusion that the employer was justified in seeking abolition of the slab system of DA and substituting it with the textile scale of DA affording 115 per cent neutralisation.

7. The Tribunal said that the workmen should be paid DA at 115 per cent of the revised textile rate in the same manner in which "the daily-rated workmen are paid their DA at the prevalent cost of living index in the month of November, 1980 or if such index number is not available at that time then at the index No. 1771-1780". While making this award the Tribunal was conscious of the fact that the workmen were likely to lose quite a substantial amount of their DA. However, the Tribunal got over this concern stating that it was inevitable, when attempt was made to bring about uniformity and parity amount the workmen of the same company working at the same place doing similar work. The Tribunal felt conscious of another distressing result of the award. The Tribunal felt that if the parity scheme was to come into force "either from the date of the demand or from the date of reference, another unfortunate happening would take place in that the workmen would be liable to refund a lot of amount excessively recovered by them as and by way of DA on account of slab system". The Tribunal felt that "it would be too harsh and unkind to such workmen" and therefore held that the award would come into force prospectively w. e. f. November 1, 1980. The Tribunal, not rest content with the expression of concern for workmen, gave another palliative to them lest the reduction in their DA should cause them dislocation financially all of a sudden and therefore observed that the reduction in the monthly emoluments of the workmen should be a gradual process "so that they are able to bear the burden and can learn to adjust themselves with little less income month to month". The reduction was, therefore, directed to be spread over equally for a period of six months from November 1, 1980.

8. When the matter came up before this Court on December 15, 1980, special leave was granted and the following interim relief was given to the appellants :

> Special leave granted. By way of interim relief it is hereby directed that the difference in the DA awarded by the Industrial Tribunal and the DA being paid on slab system which is directed to be reduced phasewise on monthly basis of 1/6th, reduction will be implemented in payments to be made in the months of December, 1980 and January, February, March, April and May, 1981, but shall be based on

> monthly wages thereafter from payments in the subsequent months and this will be subject to the further direction of this Court. Appeal be expedited....

This interim order was modified by the vacation Judge on March 14 1981, as follows :

> The order passed by this Court on December 15, 1980 to continue till the end of August, 1981 on the appellants agreeing to reimburse the management in case they fail in the appeal which reimbursement will be by way of deduction from their dues.

9. We will now proceed to consider the rival contentions put forward by the parties in support of and against the award. The Company, in justification of their change of notice and defending the award passed, put forward their case as follows :

10. The Company manufactures various pipes, cement concrete pipes as well as steel pipes for Hydro Electric Projects. These products are manufactured as per definite orders and specifications by governmental bodies and other local authorities, unlike other industrial units which are at liberty to manufacture their products and market them. Their products are usually bulky in nature, making transport difficult and costly. For easy transport of theses bulky products, the Company decided to establish as many as sixty factories all over India to cater to the needs of the local markets and to make them easily accessible to avoid damage to their products and heavy transporting charges. The products of the Company have only a limited market and therefore, has to face keen competition unlike cement, steel, sugar, chemicals etc. which have an expanding market and which can be programmed in anticipation of sale.

11. The Company has three thousand daily-paid workmen and thousand monthly-paid workmen all over India. Out of these, the appellants form only 80 monthly-paid workmen, employed in Wadala manufacturing factory. The slab system of dearness allowance, according to the Company, has been universally condemned by successive Tribunals. The appellant-Union enjoys a privileged position out of this four thousand workmen of the Company all over India. While conceding that the appellant-Union had been enjoying the slab system of dearness allowance till the reference was made, it is stated that at the time the slab system was introduced it was never conceived by the Tribunals that cost of living index would spiral up to such great heights as to make payments difficult. The dearness allowance enjoyed by the appellant-Union is so high in certain cases that neutralisation is at rates much higher than 100 per cent which is discouraged and is disapproved consistently by this Court and other Industrial Tribunals. It is further stated that the Company does not have the capacity to pay the slab system of dearness allowance and in case the remaining monthly-rated workmen put forward such a claim, the respondents will be force to close down their factories.

12. The appellant-Union pleaded that the award of the Tribunal was defective both in law and on facts. The Tribunal did not have any material before it compelling it to change a system that had satisfactorily worked for 18 years and in effect had become part and parcel of the service conditions of the workmen. The findings of the Tribunal that the slab system had become unscientific and improper, that continuance of the system was not in national interest or in public interest, that ever since slab system was introduced neutralisation had become more than 100 per cent and that the slab system confined to the appellant alone would create disparity and discontent among workmen are according to the appellants not based on evidence. The observation in the award that the Union did not bring on record any evidence to show that wages paid to them were far below the living wage or to show that the modification sought would cause them hardship which they would not be able to

stand is incorrect and is made without being faithful to the facts and evidence in the case. With these rival contentions in view, we will now proceed to consider the award.

13. The dispute arose when the respondent-Company served a notice under Section 9-A of the Industrial Disputes Act. The dispute referred to arbitration reads as follows :

> The rate of payment of dearness allowance payable to monthly-rated clerical and subordinate staff working at the Wadala factory will be changed and will be worked out as per revised textile scale calculated on the basis of working days in the month with a ceiling on dearness allowance payment at consumer price index number for working class of Bombay at 800 (base 1933-34 : 100) with effect from 1975.

It was the Tribunal presided over by Shri Sawarkar, in IT No. 77/58 by its award dated May 21, 1959 that introduced the slab system of dearness allowance first. Before making the award, the Tribunal considered the various contentions put forward by the Company. The Tribunal considered the nature of this industry and held that it was an engineering concern, and a member of the Engineering Association of India. The Tribunal examined the scales of dearness allowance in eight different units of the engineering industry and concluded that the total emoluments of the monthly-rated staff of the Indian Hume Pipe Company Ltd., at its Wadala factory (i. e. Rs. 125 to Rs. 385) were far lower than those of the other concerns with which they were compared. This Tribunal repelled the plea that an increase in dearness allowance would cause disparity between the workmen at the head office and at the factory and passed the award introducing the slab system as follows :

> # ---------- Slab DA at cost of living index 311-320 Variation per 10 pts. ---------- 1-100 65% of the basic salary or textile scale calculated on the basis of the number of days in the month which ever is higher 5% 101-200 30% do 2% 202-300 15% do 1% 301 & above 10% do 1% ----------##

14. Dearness allowance was being paid to the appellants at this rate without any objection by the Company till the notice of change was given. It has to be borne in mind even at the outset that the reference was occasioned because of the notice of change given by the Company. It was therefore necessary for the Company to make available before the Tribunal all evidence necessary to justify its stand for a change from the existing system. We were taken through the award in full by the learned counsel for the appellants. All that we find in the award, by way of justification for this change, is that the Company would be confronted with similar demands by the workers in its other factories, that it has no capacity to pay the dearness allowance at this rate, that it would result in more than 100 per cent neutralisation and that this system had not found favour with many of the Tribunals who considered the question of the dearness allowance in Maharashtra.

15. We will presently refer to some portions of the award to see whether the Tribunal was justified in doing away with the existing scheme and thus denying to the workmen what they were getting till the award was made. But before we do so, we would like to show the effect of the award on the emoluments of the workmen involved in this case if the award were to be implemented.

> # TABLE I ---------- Monthly Pay at Index 1771- Monthly Pay at Index 1771- Reduction 1780 available prior to 1780 that would be in the the award under challenge available as per the award monthly

emoluments ---------- Basic D. A. Total Basic D. A. Total Rs. Rs. Rs. Rs. Rs. Rs. Rs. 500 1,590 2,090 500 542 1,042 1,048 400 1,434 1,834 400 542 942 892 300 1,278 1,578 300 542 842 736 200 1,117 1,317 200 542 742 575 100 795 895 100 542 642 253 40 544 584 40 542 582 2 ----------##

16. The table below shows the total monthly pay of the above workmen and the consolidated pay that similarly placed workmen get at the head office.

TABLE II ---------- Basic Dearness Total Total Monthly Difference pay allowance monthly monthly consolidated between as per pay pay pay packet total pay slab packet of at head packet of system DA Wadala office as head office applicable factory per workmen and at index workmen statement total pay 1771-1780 as per submitted packet of prior to the award by the similar the award company workmen at before the Wadala Tribunal factory as awarded ---------- Rs. Rs. Rs. Rs. Rs. 500 1,590 2,090 1,042 1,815 773 400 1,434 1,634 942 1,635 693 300 1,278 1,578 842 1,380 538 200 1,133 1,347 752 1,185 433 100 795 895 642 790 148 ----------##

17. The first table glares one in the face. The reduction is substantial in most of the cases. Mr. Pai, the learned counsel for the company had to agree that as per that award the difference in the dearness allowance was substantial and the damage to the workmen was not inconsequential. However, he tried to get over this inconvenient position with the plea that continuance of the scheme would spiral up the dearness allowance so much that it would render the working of the Company difficult and create wide disparity between these workmen and others. The second table which shows the difference between the pay packet of Wadala factory workmen and the head office was explained away by Mr. Pai with the plea that the head office workmen had bigger responsibilities and did better work. These justifications put forward by him, have been echoed by the Tribunal also.

18. As indicated earlier, we will now refer to the award under challenge. The company had a case that out of its sixty factories, each factory should be treated as an independent unit. This contention did not find favour with the Tribunal. According to us, the Tribunal rightly held that since there was no functional integrality, the units had to be taken as one. The Tribunal also found that the Company's financial position taken as a whole was not only satisfactory but quite sound till 1979.

19. The Tribunal committed an error by overlooking the circumstances under which reference was made casting the burden wrongly on the workmen to prove that a change in the system was not necessary. The Tribunal assumed that so far as the Bombay Region was concerned, it was an admitted fact that the daily-rated workmen at Wadala factory and the staff at the head office were not paid wages as per the slab system. This assumption is wrong because the slab system was available at the head office and for the daily-rated workmen at Wadala up to the year 1976. The Tribunal apprehends that if the slab system was introduced in all the factories the net result would be that the whole Company will have to be closed down. This apprehension is without any foundation because at the time the Tribunal considered the dispute there was no demand from any region for the slab system. The Tribunal admits that the slab system had been in vogue for 18 years and that it had worked satisfactorily and had become part of the service conditions of the monthly-rated workmen. However, the Tribunal observes that the system could be revised if it was shown

that the system had outlived its utility. The justification for this observation is that the time the slab system was introduced no one foresaw the spiralling rise in the cost of living index and that it would work against the principle of parity and uniformity and the danger of the subordinate staff getting more emoluments than their officers who might be recently employed. These are all assumption without necessary materials and this is the second error committed by the Tribunal. It is not uncommon that even in prestigious institutions recently employed officers get emoluments less than the subordinate staff. On this plea, the benefits that the workmen were enjoying till then should not be denied to them. To say that the system had become "unscientific" and "improper" because the workmen were getting fantastic amount of dearness allowance was again without necessary material. The Tribunal then proceeded to say that change in the slab system was necessary in the "larger interest of the country", "in the interest of social justice", "in the interest of justice and fair play", "to avoid industrial unrest", "general interest of the company and in the larger interest of the nation". These are empty verbiage without any basis on the facts of the case. The discussion in the award that continuation of the dearness allowance would bring about neutralisation above 100 per cent is also not supported by sufficient materials. The Tribunal has devoted some discussion in support of the highly placed officers and went to their rescue with the plea that they were subject to taxation rendering their salaries modest. We wish to state that all these statements could have been avoided in a matter where the Tribunal had only to consider whether the management was justified in trying to upset a scheme that had worked satisfactory for a period of 18 years. We do not propose to make further comments upon the award of the Tribunal. Suffice it to say that the whole approach is erroneous and the conclusions were arrived at on assumptions without acceptable evidence. The management had not produced before the Tribunal sufficient to persuade it to change the existing system. It may be that the slab system did not find favour with some other Tribunals. But that is no reason why a system that had existed for a long period of time should be stopped to the detriment of the workmen without compelling reasons.

20. Notice of change was given by the company to bring about parity of uniformity of DA in respect of its workmen. The Tribunal accepted this case of the company in passing the award. A close scrutiny of the facts of the case, however, would indicate that such a parity was not possible and that the Company also knew that parity was impossible of achievement. This is evident from the fact that notice of change did not relate to all the workmen in the company. It will be seen that the Company had three systems for payment of dearness allowance i. e., dearness allowance based on revised textile scale for daily-rated factory workers; dearness allowance without ceiling for monthly-rated factory staff and consolidated wages and dearness allowance for monthly-rated head office staff. The Company has not shown that it had adopted a uniform dearness allowance system for all its workmen even in the Bombay region. Therefore; the Tribunal's conclusion based on the object of achieving uniformity in dearness allowance does not appear to be correct.

21. Mr. Pai, learned counsel for the respondent Company took us through the various awards passed by different Tribunals in his attempt to impress upon the fact that such Tribunals had not only discouraged the slab system of dearness allowance but had ever condemned it.

22. In the case of Hind Cycles Ltd., an award was given by Mr. M. R. Meher, Industrial Tribunal. Bombay, wherein it was observed as follows : The slab system devised when it was not expected that the consumer price index would shoot up the extent that it has with the result that where the slab system is followed (as in the concerns listed in Ex. U 3) the dearness allowance of monthly paid staff have shot up completely out of proportion to basic wages with the result that in industries and occupations in which that system is not followed but some other system is followed the dearness allowances, even though linked with the index, are much lower than the dearness

allowance in the concerns listed in Ex. U 3.

23. In the case of Shaw Wallace & Co. Ltd., the Industrial Tribunal, presided over by Mr. M. R. Meher, observed as follows :

> I have made reference to the dearness allowance in banks, mill companies and in government offices not because these are concerns comparable with Hind Cycle but to show the varying systems of dearness allowance and to illustrate how the total emoluments of employees in industrial employments in which the slab system referred to above prevails have shot up so as to be completely out of proportion with those employees doing similar work in employments in which there is either fixed dearness allowance or the dearness allowance though linked with the index, is not on the slab system. Thus, by the slab system a certain class of fortunate employees have been absolutely protected against rise in cost of living and have not to bear hardships which other larger sections of employees have to suffer on account of inflation.

The same Tribunal has this to say in the case of the Wadala factory, with which we are concerned, in its award dated December 6, 1965 :

> This dispute concerns only the monthly-rated staff of the factory. The demands concerning daily-rated staff is pending before a Board of Conciliation.... I have therefore to make the award having in mind the total emoluments i. e. wage scales and dearness allowance prevailing in factories of this size in the region belonging to other prosperous concerns in the engineering industry.

In considering the demands for improved wage scales the total emoluments have to be borne in mind. While the daily-rated staff get the textile rate of dearness allowance the monthly-rated staff get dearness allowance according to the slab system at the same rate as for the head office, and which dearness allowance is very satisfactory.

The Tribunal did not interfere with the slab system prevalent in the company.

24. In the case of Central Tin Works, a demand was made for the introduction of the slab system. But the Industrial Tribunal, Bombay, presided over by K. R. Pawar, raised the rate of dearness allowance to 100 per cent of the cotton textile rate.

25. In the case of Voltas Limited, in an award given on September 30, 1965, the Industrial Tribunal presided by Mr. V. A. Naik raised ceiling of maximum dearness allowance from Rs. 400 to Rs. 450. Fixation of the ceiling according to Mr. Pai, is to contain the rigours of the slab system.

26. In Forbes Forbes Campbell & Co. Ltd., an award as passed by the Industrial Tribunal presided over by Mr. V. A. Naik on December 23, 1969, on the claim for raising the dearness allowance declining the demand.

27. Mr. R. D. Tulpule, Industrial Tribunal, Bombay, passed an award in the case of Polychem Ltd., on June 9, 1970. In this case, the Tribunal noticed the criticism of the slab system of dearness allowance and sought to rectify it by granting 110 per cent of the revised textile dearness allowance along with fixed ad hoc payment tapering with increase of the slab of the salary.

28. Considerable stress was made by Mr. Pai on the following observation of the Tribunal at page

246 of volume VII paper book :

> I have not come across a case where slab rate of dearness allowance was introduced for the first time. The answer to this observation is that in the case of the Company with which we are concerned it was introduced for the first time in 1958. We may also state that we have not come across any award wherein the slab system once introduced was abolished except in one case.

29. In the case of Mazagaon Docks, an award was passed by the Industrial Tribunal presided over by Shri S. A. Patel on December 13, 1984, substituting the existing scheme of dearness allowance based on the slab system by a revised textile scale of dearness allowance. This was done following the decision of this Court in Killick Nixon Ltd. v. Killick & Allied Companies Employees' Union, rendered on May 2, 1975. It can be argued, perhaps justifiably, that in this case this Court introduced a ceiling on dearness allowance in place of slab system available in the Mazagaon Docks. This decision was pressed into service in support of the submission that the situation obtaining in the company with which we are dealing is the same as in the above case and to contend that the slab system should yield place to at least a ceiling on dearness allowance.

30. We have no quarrel with the conclusion arrived at in the above case on the facts of that case. However, the conclusion arrived at in that decision cannot be applied in a general manner in all cases. In that case, the employer's grievance was this : The post of junior executives is a promotional post for supervisors. Still the former were drawing less emoluments than the latter. This is because there was no ceiling on dearness allowance in respect of workmen and supervisors. The employer produced a chart in support of his case and contended that this would result in indiscipline and unrest in this industry. It was in this context that this Court laid down fourteen different aspects, not exhaustive in their scope, which had to taken into account before tinkering with the dearness allowance. The Mazagaon Docks case has taken support from Killick Nixon Ltd. case without sufficient material to sustain its conclusion that slab system should be abolished to avoid huge distortion of wage differences among the persons employed in that concern. A close study of Killick Nixon Ltd. case will bear out that this Court did not lay down that in all cases slab system of dearness allowance should be abolished or done away with to the detriment of the workers. All that this Court held in that case was that the employer having made out a case for putting a ceiling on dearness allowance, it was for the Tribunal to decide at what particular amount there should be a ceiling on dearness allowance. At attempt was made by the employer in that case to press into service the view of the National Commissioner of Labour to ascertain the minimum wage in the Company at which a worker would require complete neutralisation of the cost of living and then find the amount necessary as a protection against his real wages. This was not accepted by this Court. The Court observed : (SCC p. 274, para 37)

We do not wish to lay down as an invariable rule that in all cases there should be ceiling on D. A. Whenever a case of this nature comes for industrial adjudication, it will always be a delicate task for the Tribunal to strike a balance keeping in view the above principles, weightage of each one of which being variable according to conditions obtaining. Whether or not there should be a ceiling on dearness allowance in a given case must depend on the facts and circumstances of that case. There can be no inexorable rule in that respect. We have formulated the various principles which must be taken into account by the Tribunal in determining this question, but the most dominant of these must always be that of social justice, for that is the ideal which we have resolved to achieve when we framed out Constitution.

Thus, the ratio of that case cannot be extended to every case to interfere with the existing DA scheme, which is be neficial to the workmen.

31. Mr. P. S. Mavalenkar, Industrial Tribunal, Bombay, in an award dated November 30, 1976, imposed a ceiling of Rs. 700 on the slab system of dearness allowance.

32. We thought it necessary to refer to the various awards read by Mr. Pai only for the completeness of the judgment. It has to be borne in mine that in most of these cases, awards were passed at the instance of the employees when demands were made for raising the dearness allowance paid to them. Here we have the case of the employer trying to get over a system of dearness allowance which had worked smoothly for 18 years, on the specious plea that at the time the slab system was introduced, it was not in the expectation of anyone that the cost of price index would spiral up so much as to make it impossible for the Company to pay according to this scheme. From the materials available we do not find that this plea can be accepted. The records produced show that despite this system of dearness allowance the Company has been making profits and has been improving its position year by year.

33. At page 103 of volume I paper book, the appellants have produced a table showing dearness allowance paid by seven companies including the respondent-Company at the slab system to show that other companies have been paying more dearness allowance to their workmen that the respondent-company with inconsequential differences in certain pay scales. They have also given a comparative statement showing how the increase in total wages including dearness allowance as per slab system, for pay scale of Rs. 100 to Rs. 500 is less than the percentage of increase in consumer price index. The percentage of increase in consumer price index of 2642 over CPI 320 in 1958 is 826 while the percentage of increase in wages for the same CPI is only 806.

34. In reply to the Company's case of capacity to pay, the appellants have produced at page 101, volume V paper book, a table showing the net profit and the gross profit of the Company from 1979 to 1984. The net profit has increased from a sum of Rs. 19.65 lakhs in 1978 to a sum of Rs. 176.38 lakhs in 1984 and the gross profit from Rs. 115.60 lakhs to Rs. 439.11 lakhs, after paying the slab system of dearness allowance to the appellants. They have also produced a table showing the financial position of the Company from the year 1979 to 1984. Sales have increased from Rs. 1221.56 lakhs in the year 1979 to Rs. 2193.94 lakhs in the year 1984 and the dividend on equity capital from 12.80 per cent in 1979 to 18 per cent in 1984.

35. We do not think it necessary to deal in length about the evolution of the concept of dearness allowance. Suffice it to say that this Court has, often times, emphasised the need for a living wage to workmen instead of a subsisting wage. It is indeed a matter of concern and mortification that even today the aspirations of a living wage for workmen remain a mirage and a distant dream. Nothing short of a living wage can be a fair wage. It should be the combined effort of all concerned including the courts to extend to workmen a helping hand so that they get a living wage which would keep them to some extent at least free from want. It is against this background that a claim by employers to change the conditions of service of workmen to their detriment has to be considered and it is against this background that we have considered the award under review. We are not satisfied that a case has been made out on the facts available, for a change.

36. The question is often asked as to whether it would be advisable for tribunals and courts to revise the wage structure of workmen to their prejudice when a dispute arises. Normally the answer would be in the negative. Tribunals and courts can take judicial notice to one fact; and that is that the

wages of workmen, except in exceptionally rate cases, fall within the category of mere "subsisting wages". That being so, it would be inadvisable to tinker with the wage structure of workmen except under compelling circumstances. Employers have seldom displayed a co-operative attitude where wage structure of workmen are devised. They have never shown a willingness for the involvement of the labour with the capital so as to engender a participative labour capital relationship. This is a reality that tribunals and courts have to reckon with. That being so, courts and tribunals have necessarily to keep their hands off from upsetting a wage structure that has satisfactorily worked for a long time. The sweat of the labour is never reflected in any balance sheet, although the latent force behind every successful industry is this sweat. With their present wage structure, the labour just exist. No one should try to deny them even this bare source of existence.

37. In reinforcement of our conclusion, we will refer to the following passage in the case of Crown Aluminium Works v. Workmen :

> The question posed before us by Mr. Sen is : Can the wage structure fixed in a given industry be never revised to the prejudice of its workmen? Considered as a general question in the abstract it must be answered in favour of Mr. Sen. We do not think it would be correct to say that in no conceivable circumstances can the wage structure be revised to the prejudice of workmen. When we make this observation, we must add that even theoretically no wage structure can or should be revised to the prejudice of workmen if the structure in question falls in the category of the bare subsistence or the minimum wage. If the wage structure in question falls in a higher category, then it would be open to the employer to claim its revision even to the prejudice of the workmen provided a case for such revision is made out on the merits to the satisfaction of the tribunal.... It would be interesting to notice in this connection that all the tribunals that have dealt with the present dispute have consistently directed that existing wages should not be reduced to the prejudice of the workmen. In other words, though each tribunal attempted to constitute a wage structure in the light of materials furnished to it, a saving clause has been added every time protecting the interests of such workmen as were drawing higher wages before. Even so, it would not be right to hold that there is a rigid and inexorable convention that the wage structure once fixed by industrial tribunals can never be changed to the prejudice of workmen. In our opinion, therefore, the point raised by Mr. Sen must be answered in his favour subject to such relevant considerations and limitations as we have briefly indicated.

38. We are not prepared to accept the submission made by the learned counsel for the respondent that the slab system has not been approved either by tribunals or by courts, not to say that they have been condemned. In the case of Unichem Laboratories Ltd. v. Workmen, this Court has occasion to consider the slab system and this Court gave its seal of approval to this system. This Court after considering the various materials placed before it observed that in the Bombay region there were several pharmaceutical units adopting slab system of dearness allowance. We read the following passage in support of our conclusion that the slab system did find favour with this Court on more than one occasion : (SCC p. 583, para 118)

When once such units can taken into account as comparable units, the pattern of dearness allowance obtaining therein can very well be considered to ascertain the system adopted by the industry as that will show the trend in the region. As pointed out above, at least 11 units, referred to in Ex. DU-1 have adopted the system now introduced in the case of the appellant by the Tribunal. Under those

circumstances, when such system is prevailing in the industry in the same region, it cannot be held that the Tribunal has committed any error, in introducing a similar pattern in the case of the appellant. The slab system has been approved by this Court as will be seen by the decisions in Greaves Cotton and Co. v. Workmen and Bengal Chemical and Pharmaceutical Works Ltd. v. Workmen. Even in Bombay that such a pattern of dearness allowance as the one introduced in the case of the appellant, is existing is seen by the decisions of this Court in Greaves Cotton and Co. v. Workmen and Kamani Metals and Alloys Ltd. v. Workmen. No doubt the industries therein were not pharmaceutical units. But that such a system exists in Bombay region is clear from the above decisions.

This Court then noticed that in a number of awards rendered during the years 1965 to 1968 the slab system of dearness allowance was adopted and wound up by saying : (at p. 604 of the Reports) (SCC p. 584, para 120)

This facts clearly show that the scheme of dearness allowance provided in the award before us in respect of the appellant is not anything new.

The only grievance that the respondent's counsel can have against these observation is that the court in those cases were considering pharmaceutical units which were not comparable with the unit in question. We do not agree that this distinction can be pressed into service to deny the workmen the slab system existing in this unit. The Tribunal has found this unit to be an engineering unit which is not in a far less disadvantages position than pharmaceutical units.

39. The learned counsel for the respondent made a strong plea for substitution of the existing system of dearness allowance with ceiling on the quantum of dearness allowance. We have already indicated that in the absence of compelling materials a system that gives benefit to the workmen cannot lightly be interfered with to their detriment. The theory of ceiling on the quantum of dearness allowance cannot be accepted since under the prevailing conditions there is no control over the prices of essential commodities and as such a ceiling would not give sufficient cushion when prices of essential commodities continuously rise.

40. Mr. Pai apprehended the possibility of similar demand by the workers in other factories which would render the working of the factory itself difficult and sometimes compel it to close them down. He has made available to us a statement showing the amounts that the Company will have dole out if the present system is to continue. In respect of 80 monthly-rated workmen the difference payable will be Rs. 75,000 per month, works out to Rs. 9,00,000 per year. It this slab system is to be introduced for 4000 employees, the liability will be about Rs. 4,50,00,000. Though at the first flush one would be tempted to agree with Mr. Pai, the temptation will disappear when we inform ourselves of the fact that in a catena of decisions this Court has laid down the industry-cum-region basis as the acceptable basis while working out dearness allowance. This is the usual alarmist cry of the employers. Uniformity of wage structure throughout the country if accepted will be giving a go-by to the well settled principle of industry-cum-region. This Court has time and again laid down the industry-cum-region principle whenever the question of wage structure arose. As an answer to this plea of the respondent, we will only read the following passage from the judgment in the case of Workmen v. Indian Oxygen Ltd. to which one of us was a party. Desai, J. while repelling the plea that in an industrial undertaking which has an all-India operation, the unit as a whole should be considered, observed thus (SCC p. 185, para 14)

> 14. On behalf of the Karmachari Union, it was contended that in devising a dearness

> allowance formula, the region-cum-industry principle should ordinarily be accepted. As pointed out earlier, dearness allowance generally has a local flavour. A man is exposed to the vagaries of the market where he resides and works, even though he may be an employee of a national, multinational or transnational industrial empire. The workman is concerned with the vagaries of price fluctuation in the area in which he resides and works for gain and to which he is exposed. Therefore the region-cum-industry principle must inform industrial adjudication in the matter of dearness allowance. In Woolcombers of India Ltd. v. Woolcombers Workers Union this Court following its earlier decision in Greaves Cotton and Co. v. Workmen held that in devising basic wages and dearness allowance structure, industrial adjudication sometimes leans on the industry part of the industry-cum-region formula and at other times on the region part of the formula as the situation demands. This well recognised principle of industrial adjudication cannot be given a go-by on the specious plea that the workmen are employed by an industrial undertaking which has an all-India operation. In this case, the Tribunal has overlooked this important principle of industrial adjudication.

41. We have extracted the above passage to repel the argument that if the status quo is allowed to continue in this case, there will be demands from other sectors and other factories. This is only a theoretical apprehension with which we are not concerned. We have repeatedly stated that in this case reference to adjudication was made not at the instance of the workmen, but at the instance of the employer who wanted to bring about a change in the existing system which had satisfactorily worked for 18 years, without producing compelling materials, in support of their claim.

42. On a careful consideration of the various questions involved in this case, we are of the view that the Tribunal erred grossly in its approach to the questions raised and in answering the reference in favour of the employer. We, therefore, allow the appeal, set aside the award and direct that the existing slab system will continue for the appellant unit. The interim order passed on March 14, 1981 is hereby vacated. The respondent is directed to pay the cost of the appellant at Rs. 5000.

43. The Construction Employees Union of the respondent-Company intervened in the case and filed their written arguments as directed by this Court. In the written arguments, the said Union supported the appellant's case.

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