

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/07/2004

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NO.19459 of 2002 and W.P.NO.29868 of 2002

AND

WPMP.NOs.26864 & 48410 OF 2002

W.P.NO.19459 OF 2002

The Workmen represented by the Secretary
Addisons Paints & Chemicals Limited,
Assistants Association (Regd.No.1344/MDS)
No.22, State Bank Officer Colony,
1st Street, Perambur High Road,
Chennai 600 012. .. Petitioner

-VS-

1. The Presiding Officer,
Industrial Tribunal,
Chennai 600 104.

2. The Management of
Addisons Paints & Chemicals Limited,
Huzur Gardens, Sembiam,
Chennai 600 011. .. Respondents

W.P.NO.29868 OF 2002

The Management of
Addisons Paints & Chemicals Limited,
Huzur Gardens, Sembiam,
Chennai 600 011. .. Petitioner

Vs.

1. The Presiding Officer,
Industrial Tribunal,
Chennai 600 104.

2. The Secretary
Addison Paints & Chemicals Ltd.,
Assistants Association,
10, Vasan Street, Perambur,
Madras 11. .. Respondents

Petitions filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari and Mandamus as stated therein.

!For Petitioner
in WP.19459/02 & : Mr.S. Vaidyanathan for
2nd Respondent in M/s. Row & Reddy
W.P.No.29868/02

^For 2nd Respondent
in WP.19459/02 & : Mr. Sanjay Mohan
Petitioner in
W.P.No.29868/02

:COMMON JUDGMENT

A brief background of the dispute is required to be noticed.

The continuing dispute is between the Management of Addison Paints & Chemicals Limited and some of its employees (hereinafter referred to as "the Management" and "the employees" respectively). Prior to 1973, the employees were performing duties as clerks, chemists, stenographers, etc., and were being paid wages consisting of basic pay, dearness allowance, house rent allowance, etc.. In April, 1973 such employees were paid consolidated payment of wages on the basis of contracts between the management and the concerned employees. However, a dispute arose which was ultimately referred by the Government to the Industrial Tribunal on 2.11.1984 by G.O.Ms.No.2313. The said G.O. was challenged by the management in W.P.No.12729 of 1984. Even though such writ petition was admitted, no stay had been granted and the Tribunal proceeded to consider the matter. Even though 22 questions were referred for adjudication, for the purpose of the present writ petitions only Issue Nos.2, 3 and 6 being relevant, are quoted hereunder :-

□ Issue No.2. Whether the demand for payment of dearness Allowance based on cost of living index is justified, if so to fix the rate and date from which it should be given effect to.

Issue No.3. Whether the demand for fixation of scales of pay for various categories of assistants is justified, if so to fix (a) scales of pay (b) manner of fitment, and (c) the date from which it should be given effect.

Issue No.6. Whether the demand for payment of House Rent Allowance is justified, if so to fix the rate and the date from which it should be given effect to.□

2. Relating to issue No.3, the Tribunal by award dated 29.12.1986 granted an increase of Rs.125/- per month by way of additional sum to be paid with effect from 1.4.1986, if the concerned workers have not received the same earlier. All other issues were also decided by the Tribunal. W.P.No.3419 of 1987 was filed on behalf of the employees by the Association challenging the award so far as it went against their contentions,

whereas the management filed W.P.No.1679 of 1989 challenging G.O.Ms.No.128 dated 13.1.1989, which related to nonemployment of one Sri E.D. Arumugam. All the three writ petitions, namely W.P.No.12729/84, 3419/87 and 1679/89 were disposed of by common judgment dated 8.4.1992. Learned single Judge held that W.P.No.12729/84 had become infructuous. In W.P.No.3419 of 1987, the learned single Judge quashed the award relating to issue Nos.2,3 and 6 and remitted the matter to the Tribunal for fresh consideration. The Association, however, filed W.A.No.787 of 1992 challenging that part of the order of the learned single Judge rejecting the claim of certain other demands. The management filed W.A.No.802 of 1992 challenging the order of remand relating to the issues 2,3 and 6 concerning the fixation of basic wages, dearness allowance and house rent allowance. The writ appeals were admitted, but no stay had been granted. In course of time, a fresh award was passed by the Industrial Tribunal on 31.10.1992 wherein it was held that the contracts under which the set of workmen in the category called Junior Management Assistant (In short JMA) came to be governed was illegal and unenforceable with effect from 1.11.1984 and payment of dearness allowance to all the concerned workmen should be made by the management at the usual rate and formula applicable to Madras City with effect from 1.11.1984. In respect of Issue No.3, the Tribunal held that in the place of consolidated wages, the workmen should be categorized into certain designations with certain scale of pay as indicated by the Tribunal. Such direction was made effective from 1.11.1984. The Tribunal while abolishing JMA system with effect from 1.11.1984 made it clear that those JMAs, who accepted further promotion were free to retain the promotional post by rejecting the relief granted under the award, but if they intend to avail the benefits of the award they should not retain the promotional post.

3. Against the aforesaid award, the management filed W.P.No.12476 of 2003. The Association filed W.P.No.13814 of 1993 contending that fixation of basic wages were not proper. The above two writ petitions were taken up along with the pending W.A.Nos. 787 and 802 of 1992. By judgment dated 19.3.1994, the Division Bench raised the following seven points for determination :-

□ (1) Whether the service contracts entered into by the members of the JMAs Association with the management in 1973 are unjust, illegal and unenforceable and whether the members of the JMAs Association are bound by the service contracts ?

(2) Whether the JMAs having all along enjoyed the benefits, under the service contracts be allowed to break the service contracts and claim pay-scales, D.A. and H.R.A. to which the non-JMA workmen are entitled to ?

(3) Whether the order of the learned Single Judge, dated 8 April 1992 in W.OP.No.3419 of 1987 setting aside the findings of the Tribunal, dated 29 December 1986 in I.D.No.83 of 1984 on issues 2, 3 and 6 and remanding the matter to the Tribunal for fresh disposal on the said three issues is correct ?

(4) Whether the award of the Tribunal dated 31 December 1992, holding that the JMAs are entitled to :

(a) payment of D.A. at the usual rate and formula applicable to Madras City with effect from 1 November 1984,

(b) that in the place of consolidated wages, JMAs shall have regular scales of pay with increment with effect from 1 November 1984 and,

(c) that the H.R.A payable to the JMAs shall be at the same rates applicable to workmen covered by Exhibit W89 settlement with effect from 1 November 1984 is correct ?

(5) Whether the wage scale fixed in the award of Tribunal, dated 31 December 1992 for various categories of JMAs in Paras 34 and 36 of the award of the Tribunal is correct ?

(6) Whether the Members of the JMAs association are entitled to the benefit of the settlement under Exhibit W81 and Exhibit W89 ?

(7) Whether the award of the Tribunal dated 31 December 1992 in I.D.No.83 of 1984 will apply to the JMAs who have subsequently resigned from the JMAs Association ?

4. On Point No.1, the Division Bench held that the contracts entered into between the association by the management was unjust, illegal and unenforceable and the members of the association are not bound by such service contracts. On Point No.2 it was held that JMAs were not estopped from claiming pay scales, D.A., H.R.A. On Point No.3, the Division Bench upheld the order of the learned single Judge dated 8.4.1992 in remanding the matter in respect of issue Nos.2,3 and 6. On Point NO.4, the Division Bench held that JMAs were entitled to be treated on par with non-JMA workmen in the matter of scales of pay, D.A., and H.R.A.. The Division Bench upheld the order of the Tribunal dated 31.12.1992 in respect of issue Nos.2,3 and 6 which had been reconsidered in the light of the observation of the learned single Judge. On question Nos.5 and 6, the Division Bench observed :
□ . . . In our view, the Tribunal has not adopted the proper procedure in fixing the pay-scales of the JMAs in question. The Tribunal ought to have taken into account the basic pay for each of the JMAs when they entered the service of the management as non JMA workmen and then should have fixed the basic pay as on 2 November 1984 taking into consideration the increments to which he would be entitled to and the benefits of the settlements under Exhibit W81 and W89 treating him as non- JMA workmen as if the concerned workmen never entered into the JMAs service contract with the management. As the Tribunal has not followed the said procedure in fixing the pay-scales for the JMAs in question, the award of the Tribunal in paras 34 and 36 with regard to the fixation of pay-scales alone is liable to be set aside and accordingly it is set aside. We ourselves are not in a position to do the exercise of fixing the correct wage scales for the JMAs in question because, there is no consensus between the parties as to what is the basic pay drawn by the JMAs in question when they entered into the service of the management as a

non- JMA workmen. In fact, the chart submitted by the counsel for the management showing they joined the service of the management as non-JMA workmen during the course of hearing of all these matters by us was not accepted by the counsel for the J.M.A.'s Association. In these circumstances we are constrained to remit the matter back to the Tribunal for the limited purpose of fixing the wages scales for the JMAs in question as on 2 November 1984, on the basis of the various categories of non JMA workmen on the date of entering into service. Accordingly, the question of fixation of the scales of pay to the workmen in question alone, is remitted to the Tribunal for fresh disposal according to law and in the light of the observations made in this paragraph of the judgment. In fixing the wage scales, the Tribunal is also directed to proceed on the basis that the JMAs in question are entitled to the benefits of the settlement under Exhibits W81 and W89 as the JMAs have been declared to the workmen, by the award of the Tribunal, dated 29 December 1986, which has not been challenged by the management. In the case of JMAs who entered into the service of JMAs after 1973, the basic pay of a similar non-JMA workmen doing the very same work may be taken as the basic pay of such JMA, who entered the service of the management after 1973.

5. On question No.7, the Division Bench held that the award of the Tribunal dated 31.12.1992 will not apply to those JMAs who had voluntarily resigned from the association as evidenced by Exhibit M77 series and also to those JMAs who had accepted further promotion and who opted to retain such promotion. The Division Bench confirmed the award of the Tribunal to the effect that no JMAs could be permitted to enjoy the benefits under the award dated 31.12.1992 and also the benefits under the JMAs service contracts.

6. Ultimately, the Division Bench gave the following directions:-

□ . . . In view of our findings on points iv to vi the award of the Industrial Tribunal dated 31 December 1992 in I.D.No.83 of 1984 with regard to mode of fixation of pay-scales as found in Paras.34 and 36 of the award is set aside and the matter is remitted to the Tribunal for the limited purpose of fixing wage scales for the JMAs in question as on 2 November 1984 according to law and in the light of the observations made in this judgment. To that extent W.P.No.13814 of 1993 filed by the JMAs Association is partly allowed and in other respects W.P.No.13814 of 1993 is dismissed. In other respects the order of the Tribunal, dated 31 December 1992 in I.D.No.83 of 1984 is confirmed and consequently W.P.No.12476 of 1993 is dismissed. The Tribunal is directed to dispose of the matter within 3 months from 4 April 1994 on which date the parties will appear before this Tribunal.

7. After the aforesaid decision of the Division Bench, the Tribunal again took up the exercise and passed an award which was to the liking of neither the management nor the employees and W.P.No.820 of 1995 and W.P.No.12389 of 1995 came to be filed by the management and the employees respectively.

8. Learned single Judge while deciding the matter came to the conclusion that the Tribunal had not kept the observation of the Division Bench in mind while deciding the matter and observed that for considering the

question remitted for fresh consideration by the Division Bench, the following relevant questions would arise for determination to the Tribunal, namely -

□ (1) The concerned persons to whom the award could be made applicable ?

(2) What was the scale of pay drawn by the concerned workmen at the time they joined as JMAs prior to 1973? i.e., before they governed by the service contracts.

(3) What was the scale of wages actually drawn by the concerned JMAs prior to the date when their wages came to be consolidated under the service contract which is stated to have taken place in the year 1973?

(4) What was the respective scales of pay of non-JMA workmen who were doing the same kind of work as that of the JMA workmen that was prevalent during the period when the consolidation of wages came to be made for the concerned JMAs and upto 2 November 1984.

(5) What was the scales of pay of the JMA to be determined from 2 November 1984 by fixing them in the appropriate categories and the corresponding scales based on the duties performed by them during the relevant period vis-a-vis the categories and scales of pay of the non-JMA workmen during the relevant period by taking into consideration the increments to which he would be entitled to and the benefits of the settlements under W81 and W89.□

9. Accordingly, the matter was remanded for fresh consideration. Thereafter the present impugned award, which is again challenged by the management and the employees in two separate writ petitions, has been passed.

10. The Tribunal on fresh consideration relating to five questions, which had been formulated by the learned single Judge came to the conclusion that 11 persons (named in paragraph 17 of the award of the Tribunal) having resigned from the Association and having accepted promotion, □have to be excluded from the benefits of the award□. The Tribunal negatived the contention of the management for deletion of sales representatives like Sri E.D. Arumugam and other 10 persons (as indicated in para 19 of the award) and held □ For the above reasoning there cannot be deletion of eleven individuals.□ Similarly it also rejected the contention of the management regarding 18 other persons and ultimately held that 89 persons are entitled to benefits. The names of such persons under various headings, namely Chemists (20), Salesman (18), Assistants (48), Research Scientist (1) and Junior Clerk (1) have been indicated at the end of para 21 of the award passed by the Tribunal. While considering other aspects, the Tribunal observed :

□ . . . Fitment of pay of only 89 persons found eligible are contained in page 1 to 60 of Ex.C-8 and page Nos.1 to 32, 34 in Ex.C-8-1. Their scales of pay are found in Annexure-1 at page 66 of Ex.C-8. Thus page 66, 67 and 1 to 60 of Ex.C-8 and page 1 to 32 and 34 of Ex.C-8 -1 form part of the award. They are appended herewith. Award passed accordingly.□

11. The main contention raised in the writ petition filed on behalf of the management is to the effect that the Tribunal has committed error of law in making the award applicable to the sales representatives as such sales representatives were not workmen as per the findings of the Division Bench in W.A.Nos.787 and 802 of 1992 and other connected writ petitions. It is the contention of the learned counsel for the management that since the High Court had come to a categorical conclusion that the sales representatives were not workmen, the Tribunal should not have gone beyond such finding and come to a different conclusion.

12. Even though such a contention may appear *prima facie* attractive, I am not inclined to accept such a contention on deeper scrutiny. There is no doubt that in the context of the reference made by the Government in connection with non-engagement of E.D. Arumugham it was observed by the High Court that the sales representatives did not come within the category of workmen. However, such observation was in the context of question as to whether non-engagement of E.D. Arumugam could be the subject matter of industrial dispute. Such observation must be understood in the context in which it has been made. It has to be remembered that the conclusion of the Tribunal is by applying the doctrine of [community of interest]. The question of fixation of salary or payment of Dearness Allowance and House Rent Allowance, etc., could also be considered for others had not been challenged by the management at that stage nor such conclusion had been anyway reversed by the High Court. The entire discussion relating to reference of E.D. Arumugam was in the context of his non-engagement and obviously had no bearing on the question as to whether the basic salary of other employees, who though strictly speaking were not workmen, had to be considered for the purpose of fixing salary and entitlement to Dearness Allowance, House Rent Allowance, etc., because of the community of interest. The reasoning of the Tribunal on this aspect cannot be stated to be vitiated by any error of law apparent on the face of record. The question of validity of non-engagement of E.D. Arumugam is not one of the matters to be decided in the industrial dispute and is not a matter of dispute in the present writ petitions.

13. The other contention raised by the management to the effect that the Tribunal had extended the benefit of the award to the persons who had already accepted the controversial benefit and who were not inclined to continue the industrial dispute appears to be very vague to warrant any serious consideration. The writ petition filed by the management therefore is dismissed. However, it is made clear that the validity or invalidity of non-engagement of E.D. Arumugam is not a matter which has been decided in the present case.

14. In the writ petition filed on behalf of the Association, contention has been raised challenging the fixation of salary and other perquisites. It has been contended that the Tribunal has wrongly placed reliance upon Ex.C-8 and Ex.C-8-1 and has fixed the salary without keeping in view the observations made by the Division Bench and subsequently by the learned single Judge while remanding the matter for fresh consideration. It

is contended by the learned counsel that the Tribunal should have accepted the documents which had been filed on behalf of the employees and fixed the salary and other perquisites accordingly.

15. The High Court, while deciding a matter under Article 226 of the Constitution of India, does not sit as an appellate authority over the award rendered by the industrial forum in an industrial dispute. Merely because the Tribunal has accepted one set of evidence or documents or has not accepted the rival contention, is not a ground to interfere with such award. It is of course true that if the Tribunal commits an error of law or completely misdirects itself or does not take into consideration the important facts and circumstances, such award becomes vulnerable.

16. In the present case, the Tribunal has kept in view the observation made by the Division Bench and the learned single Judge at the time of remand, has applied its judicial mind to the various facts and circumstances including the documents and has come to a particular conclusion. Even if such conclusion appears to be conservative either to the counsel appearing for the parties or even to the High Court, in the absence of any error of law or fundamental defect, the High Court should not interfere with such conclusion merely because it may be inclined to take a different view of the matter. Therefore, the award is not liable to be interfered on this score.

17. For the aforesaid reasons, I do not find any merit in either of the writ petitions which are accordingly dismissed. The award if not already implemented should be implemented by the management within a period of four months. The additional payment should be made to the concerned employees individually even if some of them have retired or left the employment in the meantime. There is no order as to costs. Consequently, WPMP.NOs.26864 & 48410 OF 2002 are closed.

Index : Yes

Internet: Yes

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To

1. The Presiding Officer,
Industrial Tribunal, Chennai 600 104.

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Addisons Paints & Chemicals Limited,

Huzur Gardens, Sembiam,
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3. The Secretary
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10, Vasan Street, Perambur,
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