

## UNION OF INDIA &amp; ANOTHER

A

v.

## DHRANGADHRA CHEMICAL WORKS &amp; ANR.

December 16, 1976

[P. K. GOSWAMI AND S.MURTAZA FAZAL ALI, JJ.]

B

*Additional Emoluments (Compulsory Deposit) Act, 1974—S. 2(b) Explanation I—Scope of.*

Section 2(b) of the Additional Emoluments (Compulsory Deposit) Act, 1974 defines additional dearness allowance to mean 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 to the clause states that where payment of dearness allowance is linked to the cost of living index *any automatic payment* after the appointed day of dearness allowance in consequence of any 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.

C

Dearness allowance was paid to the employees of the respondent at the rate of quarterly average cost of living index for the relevant quarter. The rate of dearness allowance for one quarter e.g. the first quarter of 1974 was paid on the basis of the average cost of living index for the months of July—September, 1973. For the quarter July-September, 1974 there was a rise in the cost of living index and consequently there was a rise in the dearness allowance payable to the employees. In a writ petition under art. 226 of the Constitution the employees contended that the increased dearness allowance payable for the quarter July-September, 1974 was as a result of rise in the cost of living index between January-March, 1974 which was before the appointed day in July 6, 1974 and, therefore, no additional dearness allowance was deductible under the Act. The High Court granted the writ.

D

Allowing the appeal,

**HELD :** The High Court was wrong in its view that the rise of cost of living index should be after the appointed day. The nexus, for the purpose of the explanation, is with the payment after the appointed day and not with the rise in the cost of living index. There is nothing in the Explanation to warrant the conclusion that rise in the cost of living index should be after the appointed day. What is to be after the appointed day is any automatic payment of dearness allowance in consequence of any rise in such cost of living index and not that any rise in the cost of living index should be after the appointed day. [482B; 481H]

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F

When D.A. is linked to the 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 yard-stick 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 cost of living index any automatic payment after the appointed day of 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. [481G]

G

CIVIL APPELLATE JURISDICTION : CIVIL APPEAL No. 691 of 1976.

(From the Judgment & Order dated the 16th December 1975 of the Gujarat High Court in Special Civil Appln. No. 572 of 1975).

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G. L. Sanghi and Girish Chandra, for the Appellants.

A *V. M. Tarkunde, K. L. Hathi and Mrs. P. C. Kapur*, for respondent No. 1.

The Judgment of the Court was delivered by

B 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 first respondent. The second respondent is Dhrangadhra Chemical Works (hereinafter to be described as the employer).

C 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 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.

F 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.

G 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 to-day<sup>(1)</sup>. It is, therefore, not necessary to repeat those observations here.

H The short question that arises in this particular appeal turns on the Explanation-I 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.

(1) [1977] 2 S. C. R. 472.

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 any 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 the 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 of 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

A rise....." and not that any rise in the cost of living index should be after the appointed day.

B 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 and not with the rise in the cost of 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.

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

P.B.R.

*Appeal allowed.*