

union (“the union”) against a judgment of the High Court delivered on 22.06.2021 dismissing the union’s petition for review of the judgment passed on 25.07.2019. Argument of the union in the review petition was that their submissions relating to certain allowances were not considered in the main judgment. The employer is the appellant in Civil Appeal No.2754 of 2023 and the union is the appellant in Civil Appeal No.2744 of 2023 as also Civil Appeal No.2745 of 2023.

2. The present proceedings have their origin in a charter of demand raised by the union on 04.03.2008. The demand was in respect of altogether 146 workmen, out of which 80 were engaged at the employer’s establishment at Sewree and 66 of them employed at Sion, both being situated within Mumbai. We find from the judgment delivered on 24.07.2019 (which we shall henceforth refer to as the judgment under appeal) that the original corporate entity VVF Ltd., underwent a demerger process and the units of the company at Sion and Taloja went to VVF India Ltd., the resulting company, during pendency of the reference, arising from the charter of demand.

3. The demands of the Union would appear from the charter of demand and they primarily relate to prayers for revision in pay scale/wages/salaries along with certain allowances such as leave facilities and gratuity. The charter of demand for the year 2008 to 2011 were under the following heads:-

“The Charter of Demand for the corresponding year 2008 to 2011 is as follows-

1. Revision in the Pay Scale / Salary: The Old Pay Scale / Salary grade should be replaced by the New or Revised Pay Scale to the Categories of Workmen and Staff, which is annexed hereto as Annexure I & II.

2. Adjustment :

a) The present basic of employees/staff as in annexure I & II should brought up to the level of minimum of wage-scales wherever they are below.

b) Those whose present wages of basic do not fit in any stages of their respective revised wage-scales and fall in between two stages, they should be stepped up to nearest highest stages in the scales.

c) On doing so (a) & (b) above every employees/staff should be granted additional increment in their respective wage-scales as indicated below :-

i) Those who have put service of up to 5 years - 1 increment

ii) Those who have put service of more than 5 years but less than 10 years - 2 increment

iii) Those who have put service of more than 10 year but less than 15 years - 3 increment

iv) Those who have put service of more than 15 years but less than 20 years - 4 increment

v) those who have put service of more than 20 years but less than 25 years – 5 increment

vi) Those who have put service of more than 25 years - 6 increment

3. Fixed Dearness Allowance (FDA): The Fixed Dearness Allowance should be revised from Rs. 225/- per month to

Rs.2225/- per month, which shall stand reduced oil pro-rata on loss of pay.

4. *Variable Dearness Allowance:* The Variable Dearness Allowance should be revised and increased to 50% respective grade wise of the present Variable Dearness Allowance.

5. *House Remuneration Allowance:* The House Remuneration Allowance to be increased to 20% of the basic wages and Dearness Allowance or to Rs 2000/- per month, whichever is higher

6. *Shift Allowance:* The Shift Allowances should be increased in all categories irrespective of any shift he worked, which is as follows–

1st Shift Allowance - Rs.20/-

2nd Shift Allowance - Rs.30/-

3rd Shift Allowd1lce - Rs.50/-

7. *Travelling Conveyance Allowance:* Tite Travelling Conveyance allowances should be given to all Employees amounting to Rs. 1000 per month.

8. *Medical Allowance:* The Medical Allowance shall be raised to Rs. 15,000 per annum to all categories of Workmen, which falls out of the purview of ESI Act.

9. *Education Allowance:* An Education Allowance should be introduced to all the Workmen whose Children are studying in School or College. The Education Allowance should also be provided to those Workmen who are studying to an amount of Rs. 15,000 per annum for their higher Studies.

10. *Leave Travel Allowance:* The old Leave Travel Allowance should be revised from 1,200/- per year to Rs.6000/- per year.

11. *Leave Facilities:*

a) *Sick Leave* to be increased from 7 days per year to 15 days per year.

b) *Casual Leave* to be increased from 10 days per year to 12 days per year.

c) *Privilege Leave* to be increased from 15 days per year to 33 days per year.

d) *Paternity Leave* to be introduced to 7 days per year.

12. *Mediclaime Policy to the Family Members:* The family of the Employees who falls out of purview of ESI Act shall be

provided with a General Insurance Medclaim Policy to the family members amounting to Rs.3 lacs only.

13. Gratuity: The Gratuity of the Employees should be increased to 30 days per year instead of 15 days per year.

14. Housing Loan facility: The. Employees who have completed his 5 years of service or more should be entitled to Housing Loan @ 5% per annum or a rebate of @.5 % per annum on the loan availed in any Bank or Society.

15. Personal Loan Facility: The Employees who have completed his 2 years of service or more should be entitled to Personal Loan @9% per annum or a rebate of @ 5% per annum on the loan availed from any Bank or Society.”

4. The Tribunal, in its award passed on 29.03.2014, granted relief to the employees represented by the union under the following heads and in the following manner:-

“i) Reference is answered partly in affirmative.

ii) The following demands raised by the Second Party Workmen are granted as follows:-

1) Demand No. 5:- House Rent(Remuneration) Allowance- The First Party Company is directed to increase the HRA to 20% of the basic wages and dearness allowance or to Rs.2000/- per month whichever is higher.

2) Demand No.6:- Shirt Allowance- The First Party Company is directed to pay the shift allowance to all the workers irrespective of any shift they worked, as follows:-

1st Shift Allowance - Rs.20/-

2nd Shift Allowance - Rs.30/-

3rd Shift Allowance - Rs.50/-

This allowance will not be reckoned for provident fund, HRA, Leave encashment, bonus, gratuity, overtime, etc. or any other benefits.

3) Demand No. 7:- Travelling Conveyance Allowance- This demand is allowed partly. The First Party Company is directed to increase this allowance from Rs. 600 to Rs.800 per month. This allowance will not be reckoned for

provident fund, HRA, Leave encashment, bonus, gratuity, overtime, etc. or any other benefits.

4) Demand No.8:- Medical Allowance This demand is allowed partly. The First Party Company is directed to pay the medical allowance @ Rs.1000/- per month to all categories of workmen, who fall out of the purview of the ES! Act. This allowance will not be reckoned for provident fund, HRA, Leave encashment, bonus, gratuity, overtime, etc. or any other benefits.

5) Demand No. 9:- Education Allowance- This demand is allowed partly. The First Party Company is directed to pay the education allowance @ Rs.1000/- per month to all the workmen whose children are studying in school or college or even doing higher studies. This allowance will not be reckoned for provident fund, HRA, Leave encashment, bonus, gratuity, overtime, etc. or any other benefits.

6) Demand No.10:- Leave Travel Allowance-The First Party Company is directed to grant Leave Travel Allowances to all the employees concerned in this Reference at par with that given to Talaja factory workmen on the same terms and conditions. This demand is allowed partly. This allowance will not be reckoned for provident fund, HRA, Leave encashment, bonus, gratuity, overtime, etc. or any other benefits.

7) Demand No.11:- Mediclaim Policy to the Family Member~:-This demand is partly allowed. The First Party Company is directed to provide to the family of the concerned workmen who fall out of the purview of the ESI Act with the Mediclaim Policy amounting to Rs.1 lac only, at par with that being given to the Talaja factory workmen on the Fame terms and conditions.

ii) The following demands of the Second Party Workmen are rejected:-

1) Demand No.1 :- Revision in the Pay Scale/Salary.

2) Demand No.2:- Adjustment.

3) Demand No.3:- Fixed Dearness Allowance.

4) Demand No.4:-Variable Dearness Allowance.

iv) The First Party Company is directed to extend the benefits arising out of the grant of the aforementioned demands in clause (ii) herein to the workmen concerned in this Reference w.e.f 13.11.2009.Arrears of these allowances upto 31-03-2014 be paid the workmen

concerned within 60 days from the date of publication of this award by the appropriate Authority.

v) The First Party Company is at liberty to adjust the interim amount paid to the concerned employees from their arrears.

vi) In the circumstances, no order as to cost.”

5. Both the employer and the union challenged the said award by instituting separate writ petitions before the High Court of Bombay and these writ petitions were disposed of by a common judgment by a learned Single Judge of the High Court, being the judgment under appeal before us. The Union’s writ petition was registered as Writ Petition No. 1920 of 2014 whereas the writ petition of the company was registered as Writ Petition No.3152 of 2014. The High Court allowed the workmen’s writ petition by setting aside the award of the Tribunal so far as the first four demands as per the charter are concerned and upheld the Tribunal’s verdict regarding Demand No. 5-11. The particulars thereof would appear from the following passages of the judgment: -

“25. The Petitioner union is demanding increase in basic wages from 1 January 2010. The proposed revised pay scale is as follows :

GRADE											
USK	10	1	1 3	2	19	3	28	4	40	5	55
SSK	20	2	2 6	3	35	5	50	7	71	9	98

SK	30	3	3 9	5	54	7	75	10	105	14	147
HSK	100 0	1 0 0	1 3 0 0	15 0	17 50	225	242 58	325	3400	450	4750
1 st CLASS BOILER ATTENDANT	110 0	1 1 0	1 4 3 0	16 5	19 25	250	267 5	375	3800	525	5375
WATCHMAN	500	5 0	6 5 0	75	87 5	115	122 0	165	1715	250	2465
PEON	400	4 0	5 2 0	60	70 0	90	970	130	1360	180	1900
HEAD WATCHMAN	750	7 5	9 7 5	12 5	13 50	200	195 0	300	2850	425	4125
DRIVER	750	7 5	9 7 5	12 5	13 50	200	195 0	300	2850	425	4125
JR. SUPERVISOR	120 0	1 2 0	1 5 6 0	18 0	21 00	270	291 0	400	4110	550	5760
SR. SUPERVISOR	250 0	2 5 0	3 2 5 0	35 0	43 00	550	595 0	825	8425	117 5	11950
OFFICER SUPERVISOR	300 0	3 0 0	3 9 0 0	45 0	52 50	675	727 5	100 0	1027 5	145 0	14625

The following adjustments are proposed so as to rationalize the transition from the present basic wage structure to the revised scale proposed as above:

A. The present basic of employees I staff as in annexure I & II should brought up to the level of minimum of wage scales wherever they are below.

B. Those whose present wages of basic do not fit in any stages of their respective revised wage scales and fall in between two stages, they should be stepped up to earnest highest stages in the scales.

C. On doing so (a) and (b) above every employee / staff should be granted additional increment in their respective wage scales as indicated below:-

i) Those who have put service up to 5 years increment -1

ii) Those who have put service more than 5 years but less than 10 years increment -2

iii) Those who have put service more than 10 years but less than 15 years increment -3

- (iv) Those who have put service more than 15 years but less than 20 years increment -4
- (v) Those who have put service more than 20 years but less than 25 years increment -5
- vi) Those who have put service more than 25 years increment -6”

“29. To arrive at the proposed revision, the existing fixed dearness allowance of Rs.225/- for daily rated unskilled (USK), Semi skilled (SSK) and skilled workmen (SK) as also monthly rated Highly Skilled workmen (HSK), 1st class boiler attendants, watchmen, head watchman, drivers, peons (i.e. all employees other than supervisors and officers) can be appropriately raised by Rs.1000/- per month so as to make it Rs.1225/- per month. Fixed dearness allowance for monthly rated junior supervisors, supervisors and senior supervisors and officers may not be increased. So far as variable dearness allowance is concerned, no increase may be in order till 2011. Increase, if any, deserves to be considered from 2011 onwards, which demand, anyway, is the subject matter of a separate reference (for the period 2011-2014).”

So far as the employer’s writ petition is concerned the same was dismissed. The High Court held that there was no serious anomaly in the demands of the union allowed by the Tribunal.

6. The union, in its writ petition, argued that the Tribunal had failed to consider the plea of the workmen for parity with similarly situated units in the vicinity as well as its claim for overtime allowances. The test applied by the High Court as regards comparison with the similar units would appear from paragraph 26 of the impugned judgment, which reads:-

“26 In Justification, what was submitted was that this, along with the applicable allowances (as revised), would bring the Mumbai workmen on par with their counterparts in the Taloja unit. To assess this submission, I called upon both parties to submit their respective charts of Mumbai and Taloja salaries for all classes of workers and the impact of revision in pay scales proposed by the union. According to the union, the revision proposed would bring up the salaries of skilled grade workmen having 15 years of service (taken as a representative case) to Rs.16,250/- per month as against the salaries of Rs.16,248/- of their Taloja counterparts (as of October 2010). (Comparative chart of Godrej Industries, Deepak Fertilizers and Hikal Ltd. shows their comparable salaries, as of October 2010, of Rs.28,621/-, Rs.20,492/- and Rs.21,419/- respectively.) The monthly and annual burdens on the Respondent employer occasioned by the increase work out to between Rs.6.58 lacs to Rs.14.01 lacs per month, and Rs.78.94 lacs to Rs.1.68 crores, for the particular wage fixation period, namely, from 2008 to 2011.”

7. The employer has assailed the judgment questioning the jurisdiction of the Writ Court in entering into fact-finding exercise while testing legality of an award. The employer’s case argued by Mr. Cama, learned Senior Advocate, sought to fault the approach of the High Court mainly on this ground. He has also argued that the units with which the High Court had made comparison to arrive at its finding were not similarly situated, having regard to their industrial output and financial position. He submits further that the High Court in any event would not sit in appeal over the Tribunal’s award in exercising its jurisdiction of judicial review, primarily applying the scope of the writ of certiorari. He

has relied on judgments of this Court in the cases of **Surya Dev Rai v. Ram Chander Rai and Others** [(2003) 6 SCC 675], **General Management, Electrical Rengali Hydro Electric Project, Orrisa and Others -vs- Giridhari Sahu and Others** [(2019) 10 SCC 695]. In the former judgment, it has been held:-

“12. In the exercise of certiorari jurisdiction, the High Court proceeds on an assumption that a court which has jurisdiction over a subject-matter has the jurisdiction to decide wrongly as well as rightly. The High Court would not, therefore, for the purpose of certiorari assign to itself the role of an appellate court and step into reappreciating or evaluating the evidence and substitute its own findings in place of those arrived at by the inferior court.”

Broadly the same principle has been laid down in the case of **Giridhari Sahu** (supra). Mr. Cama has also submitted that in the event the High Court found flaw in the reasoning of the Tribunal on factual basis, instead of undertaking the exercise of revision of pay scale and wages as also other facilities itself in substituting its view in place of the Tribunal's, the High Court ought to have remanded the matter to the Tribunal itself.

8. The union was represented by Mr. Sanjay Singhvi, learned senior counsel. His submission is that it would be well within the jurisdiction of the High Court to undertake some form of exercise of appreciation of facts and on judgments he has relied on the

judgment of this Court in the cases of **M/S Unichem Laboratories Ltd. -vs- Workmen** [(1972) 3 SCC 552], **Workmen -vs- New Egerton Woollen Mills** [(1969) 2 LLJ 782], **Shail (SMT) -vs- Manoj Kumar and Others** [(2004) 4 SCC 785], **IEL Supervisors' Association and Others -vs- Duncans Industries Ltd. and Another** [(2018) 4 SCC 505].

9. Relying on this line of authorities, and also a judgment of this Court in the case of **Gujarat Steel Tubes Ltd. and Others -vs- Gujarat Steel Tubes Mazdoor Sabha and Others** [(1980) 2 SCC 593], he has argued that the jurisdiction of the High Court under Article 226 of the Constitution of India is wide enough and can decide factual issues instead of remanding a matter. In the latter authority, it was held, inter-alia, that in appropriate cases, the High Court's jurisdiction could be coordinate to that of the Tribunal.

10. On behalf of both the parties, a large body of authorities has been relied upon but in this judgment, we shall deal with those decisions only which we find relevant for effective adjudication of the present appeal.

11. As we have already indicated, the main question which has been argued by the learned counsel appearing for the employer is on the issue as to whether the High Court had travelled beyond its jurisdiction in appreciating facts and in that process substituted the finding of the Tribunal with its own finding on facts. To substantiate the point, as we have already discussed, the cases of **Giridhari** (supra) and **Surya Dev Rai** (supra) have been relied on by Mr. Cama.

12. There are authorities, to which we have referred to earlier in this judgment that lay down the scope of jurisdiction of the High Court. In the cases of **Unichem Laboratories Ltd.** (supra), **Shail (SMT)** (supra), **IEL Supervisors' Assn.** (supra) as also the case of **Gujarat Steel Tubes Ltd.** (supra), it has been held that the High Court in appropriate cases can go into facts while examining an award of a Tribunal.

13. For revision of wages and other facilities, the standard criteria which is followed by the industrial adjudicator is to apply industry-cum-region test, which in substance implies that the prevailing pay and other allowances should be compared with equally placed or similarly situated industrial units in the same

region. To determine comparability of units applying the industry-cum-region test, inter alia, the financial capacity of the employer would be a strong factor. Reliance on this point has been placed on the cases of **French Motor Car Co. Ltd. -vs- Workmen** [(1962) 2 LLJ 744], **The Silk and Art Silk Mills Association Ltd. -vs- Mill Mazdoor Sabha** [(1972) 2 SCC 253] and **Shivraj Fine Arts Litho Works -vs- State Industrial Court, Nagpur & Ors.** [(1978) 2 SCC 601].

14. Substantial argument of Mr. Cama was on selection of comparable units. His submission is that the High erred in identifying the matching units and also calling for fresh charts in course of hearing of the writ petition with respect to Taloja unit of the original employer. It is the stand of the employer that such evidence gathering exercise ought not to have been undertaken by the High Court. It was also pointed out on behalf of the employer that it was making losses barring in three financial years between 2008-09 and 2021-22. Further submission of Mr. Cama is that the workmen of the Taloja unit were not of the same employer after the demerger had taken place and that they were

involved in a separate set of activities when compared to the other units in question.

15. Analysis of the authorities relied on by the learned counsel for parties reflect the position of law on this point to be that, though the High Court ought not to reappreciate evidence and substitute its own finding for that of the Tribunal, it would not be beyond the jurisdiction of the High Court in its power of judicial review to altogether eschew such a process. The High Court, in the impugned judgment, however, reappreciated the evidence led before the Tribunal in identifying comparable concerns for applying the industry-cum-region test. In particular, the employer has emphasised that the High Court ignored the negative financial status of the company on the ground that the losses made by it was miniscule. In this regard, the judgments of this Court in the case of **A.K. Bindal -vs- Union of India & Ors.** [(2003) 5 SCC 163] **Mukand Ltd. -vs- Mukand Staff & Officers Association** [(2004) 10 SCC 460] have been relied upon. Both these authorities lay down the financial capacity of an employer is an important factor which could not be ignored in fixing wage structure. In the given facts where the employer seriously contested the use of the concerned units as comparable ones,

and highlighted its difficult financial position, the proper course would have been to remit the matter to the Industrial Tribunal rather than entering into these factual question independently in exercise of the writ jurisdiction. This exercise would have required leading of evidence before the primary forum, the Industrial Tribunal in this case.

16. On behalf of the employer, it was also specifically argued that various allowances like house rent, shift allowance, travelling, medical, education and leave travel were granted without any evidence. The employer's witness no.2 had given his deposition in detail, particularly on financial position of the company. From the judgment impugned, we do not find proper analysis of the employer's evidence in that regard. So far as the union's appeal is concerned, their point is confined to treatment of overtime wages in computing allowances admissible to them. That question also ought to be re-examined.

17. We, accordingly, set aside the judgment of the High Court delivered on 25.07.2019 as also the Tribunal's award. Let the Tribunal re-examine the cases of the respective parties afresh. We are conscious of the fact that these proceedings arise from a

charter of demand made in 2008. We direct the Tribunal to conclude the reference within a period of six months. The Civil Appeal No.2744 of 2023 against the review order dated 22.06.2021 also stands disposed of.

18. Thus, all the three appeals stand disposed of in the above terms.

19. There shall be no order as to costs.

20. Pending application(s), if any, shall stand disposed of.

.....**J.**
(ANIRUDDHA BOSE)

.....**J.**
(SANJAY KUMAR)

NEW DELHI
APRIL 09, 2024