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April 11.

THE WORKMEN OF WESTERN INDIA MATCH CO. LTD.

v.

THE WESTERN INDIA MATCH CO. LTD.,

(A. K. SARKAR, K. SUBBA RAO and J. R. MUDHOLKAR, JJ.)

Industrial Dispute—Scale of pay—Condition of service —Dearness allowance—Employees of sales office and factory, if could be equated - Earlier settlement—Termination of— Charter of demand, if could be treated as notice of termination of previous settlement—Industrial Disputes Act, 1947(14 of 1947), s. 19(2).

R the respondent company has got a factory, with an office attached thereto, in Alambazar a suburb of Calcutta and also has its sales office in the commercial area of Calcutta Without first giving a formal notice under s. 19(2) of the Industrial Disputes Act, terminating an earlier settlement, the Union made fresh demands, contained in a charter of demands, *inter alia* for the enhancement of dearness allowance, alteration of the basis of computing it and the revision of pay scale alleging that what they get is much below what corresponding employees at the sales office get and that the present rates are inadequate in view of the rise in cost of living.

The dispute relating to dearness allowance alone was first referred to the Tribunal but later the dispute relating to grades and scale of pay was also referred to the same Tribunal.

The Tribunal after overruling the preliminary objection of the company that it had no jurisdiction to proceed wtih the reference because no notice terminating the settlement as contemplated by s. 19(2) of the Act was given by the workmen, found that the employees were not entitled to higher dearness allowance or to the alteration of the basis of computation of the dearness allowance, but there has been a change in the circumstances which justified a revision of the scale of pay.

Held, (1) that when during the pendency of negotiations the Union by a letter had asked the company to treat the charter of demand as a notice under s. 19(2) of the Act without first terminating an earlier settlement under an award and the company had agreed to refer the matter in dispute

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to the adjudication of a tribunal, the question of a formal notice under s. 19(2) of the Act was immaterial, for the presentation of the charter of demand followed by the letter amounted to a notice of termination of settlement.

(2) that the members of a Union like the one of employees of the respondent's factory have been dealt with by the company on a different footing from the employees of a sales office in Calcutta, the former being employees of an engineering concern and the latter of a mercantile one, who are governed by the recommendation of the Bengal Chamber of Commerce and, therefore, the case of the factory employees cannot be equated with that of the sales office employees. The factory employees cannot, as of right, demand that the benefit of the rates fixed by the Bengal Chamber of Commerce be also given to them, because the rates were not intended to be applied to them.

Clerks of Calcutta Tramways v. *Calcutta Tramways Co. Ltd.* [1956] S.C.R. 722, applied.

(3) that there is no valid reason for compelling employers to offer uniform terms of employment to their employees working in different establishments because various considerations must enter into the question such as the value of their work to the employer, the employer's ability to pay, the cost of living, the availability of persons for doing the particular kind of work and so on. The action of an employers who does not offer uniform condition of service to all its employees doing work which, broadly speaking may be called similar, can not be regarded as discriminatory or a breach of any principle of industrial law.

(4) that the Industrial Tribunal in refusing to extend to the employees of the respondent in the factory in Alambazar benefit of dearness allowance formulated by the Bengal Chamber of Commerce has not contravened any principle of natural justice or any important principle of industrial law. Even assuming that an Industrial Tribunal has exercised its discretion wrongly in not awarding uniform dearness allowance to all the employees of the same employer working in different establishments, that is no ground for interference under Art. 136.

State of Madhya Pradesh v. *G. C. Manawar* [1955] S.C.R. and *Bengal Chemical & Pharmaceutical Works Ltd. Calcutta* v. *Their Workmen*, [1959] S. C. R. 136, ralied on.

(5) that an award of an Industrial Tribunal cannot ordinarily be revised unless there is a circumstances ; but here, there has been a change of circumstances because cost of living has admittedly gone up since then. This is so notorious a fact that court is entitled to take notice of it. The object of awarding dearness allowance is to neutralise, at least partially, the rise in the cost of living and in the circumstances the factory employees are entitled to have the old basis revised.

Burn & Co. Ltd. v. *Their Workmen*, [1956] S. C. R. 781, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 429 of 1961.

Appeal by special leave from the Award dated September 16, 1958, of the Fourth Industrial Tribunal, West Bengal, in Cases Nos. VIII-II of 1958.

N. C. Chatterjee, A. N. Sinha and *Dipak Dutta Choudhri* for the Appellants.

C. K. Daphtary, Solicitor-General of India, B. Sen and *B. N. Ghosh* for the respondent.

1962. April 11. The Judgment of the Court was delivered by

MUDHOLKAR, J.—This is an appeal by special leave against an award made by the court of Industrial Tribunal, West Bengal, Calcutta. *Mudholkar J*

The relevant facts are these : The Western India Match Co., (respondent) has got a factory with an office attached thereto in Alambazar, which is a suburb of Calcutta. It has also got a sales office at Calcutta which is situate in the commercial area. Certain disputes arose between the factory employees and the respondent, pursuant upon the presentation of a charter of demands by them to the respondent on January 25, 1957. These demands were seven in number. The demands included enhancement of the dearness allowance and alteration of the basis of computing it. They

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also included a demand for the revision of pay scales. The respondent was unwilling to concede the demands and thereupon the appellant-union approached the Labour Commissioner, West Bengal. Apparently on his suggestion certain conferences were thereafter held between the parties and the Conciliation Officer with a view to arrive at a settlement. During those conferences certain counter proposals were put forward by the respondent but they were not accepted by the union. Eventually the Government of West Bengal by its order dated January 14, 1958 referred the dispute relating to the dearness allowance alone to the Fourth Industrial Tribunal at Calcutta but not the other disputes. Conciliation proceedings regarding other disputes were resumed after the aforesaid reference was made and on May 23, 1958 a settlement was reached between the Union and the respondent on all issues excepting the one relating to grades and scales of pay. It was agreed that this issue be referred for adjudication to the same tribunal which was dealing with the question of dearness allowance. Upon this the Government of West Bengal referred that issue to the Fourth Industrial Tribunal, West Bengal by order dated June 3, 1958.

Before dealing with the contentions of the parties it would be desirable to set out some more facts. The Western India Match Co., has got factories not only at Alambazar but also at Bareilley in Uttar Pradesh, Ambernath in Maharashtra, Tiruvottiyur in Madras and at Port Blair. The Factory at Alambazar was established in the year 1930. Besides these factories the respondent maintains separate sales offices at various places in India to push sales and execute orders. One of such sales offices is located in the city of Calcutta.

At the time of the reference 1, 866 persons were employed in the factory at Alambazar. Out

of them 1,504 were daily-rated or piece-rated employees and the remaining 362 were monthly-rated employees. Amongst them 27 were officers, 67 clerks and 32 supervisors. The rest were bearers, watchmen, malis, fitters etc. Apart from the officers all the monthly-rated employees admittedly fall within the definition of workers under the factories Act.

In the year 1946 a union called the Wimco Mazdoor Union was formed comprising only of the daily-rated and piece-rated workers. This union was given recognition by the respondent. In the year 1950 another union called the Wimco Employees' Union comprising solely of the monthly-rated employees, other than officers, was formed and was duly recognised by the respondent. One of the conditions under which the recognition was given was that its membership should consist only of monthly-rated employees of the factory except the officers.

Shortly after the recognition of this Union it entered into an agreement with the management of the respondent company whereby the scales of pay, dearness allowance and various conditions of service of the monthly paid employees at Alambazar factory were settled. The date of this agreement is September 29, 1951.

Certain disputes arose between the Union and the respondent in the year 1954 which were referred by the Government of West Bengal by its order dated September 1, 1954 to the Second Industrial Tribunal, West Bengal, for adjudication. In the course of the proceedings, however, an agreement was reached between the appellant-union and the respondent on April 29, 1955. Eventually on September 15, 1955 an award made in pursuance of the settlement arrived at was published in the Calcutta Gazette. It may be mentioned that the

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settlement related to various matters relating to the conditions of service of employees including pay and dearness allowance. Further, under this agreement the production bonus which the monthly rated workmen received was merged in their basic pay. The aforesaid award was terminable upon giving two months' notice commencing after December 31, 1956. Without giving a formal notice terminating the agreement the appellant-union made fresh demands on January 25, 1957 pertaining to the same matters which were covered by that agreement.

What happened thereafter has already been indicated by us above.

The main ground on which the appellant-union sought revision of the previous award and the alteration of the basis of computation of the dearness allowance and alteration of the scales of pay is that what the respondent is paying to the factory employees works out to something very much below what corresponding employees at the sales office get. This, they say, is unfair. The second ground on which their claim with respect to these two matters is based is that other comparable concerns give better terms to their employees than the respondent. The third is that the present rates are inadequate in view of the rise in cost of living and the fourth, that the respondent in making large profits and can easily afford an upward revision in dearness allowance and scales of pay.

On behalf of the respondent a preliminary objection was taken to the effect that the tribunal had no jurisdiction to proceed with the reference because no notice terminating the settlement as contemplated by s. 19, sub-s. 2 of the Industrial Disputes Act, 1947 was given by the appellant. On merits its contentions were :

(1) that the conditions of service of employees of the sales office are different from those working in the factory;

(2) that there has been no material change of circumstances since the making of the previous award justifying any revision of the scales on the lines suggested;

(3) that the conditions of service to scales of pay and dearness allowance prevailing in the factory at Alambazar are as good, if no better, than those of employees of other concerns such as Bridge & Roof Co, Imperial Chemical Industries, Hindusthan Lever and Marshall & Sons which are in fact much larger concerns and cannot be compared with the respondent-company;

(4) that the respondent has not the capacity to pay higher dearness allowance to its monthly-rated employees in the factory due to increase in the cost of production, labour charges, enhancement of excise duty and keen competition of the products which have together resulted in reducing the percentage of profits

The preliminary objection was overruled by the Tribunal. It, however, held that the employees at the factory were not entitled to a higher dearness allowance or to the alteration of the basis of computation of the dearness allowance but that there has been a change in the circumstances which justified a revision in the scales of pay. The Tribunal accepted the contention and adopted the revised scales of pay offered by the respondent-company to the appellant-union during the conciliation proceedings.

Mr. B. Sen for the respondent-company reiterates the objection based on s. 19(2) of the Industrial Disputes Act, 1947. That provision is to the

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effect that a settlement arrived at between the employer and the employees shall be binding for such period as is agreed upon by them and if no such period is agreed upon for a period of six months from the date of the settlement and shall continue to be binding on them after expiry of that period until the expiry of two months from the date on which a notice in writing of his intention to terminate the settlement is given by one of the parties to the other party. Unquestionably the parties had arrived at a settlement on April 29, 1955 relating, amongst other things, to dearness allowance and the scales of pay and no formal notice as contemplated by sub-s. (2) of s. 19 was given. In our opinion, however, it is not open to the respondent-company to raise this contention in so far as revision of pay scales is concerned because in the memorandum of settlement May 23, 1958 signed by the representatives of the parties to this appeal it is clearly provided that the revision of scales of pay be referred for adjudication to the same Industrial Tribunal which was dealing with the question of dearness allowance. Besides, that, this memorandum contains the following recital:

> "Parties were met jointly on several occasions as a result of which the entire dispute, except the issues of (1) Dearness allowance (which has already been referred to the Fourth Industrial Tribunal for adjudication) and (2) Revision of scales of pay, has been settled on the following terms;....."

This recital shows that the respondent was agreeable to refer to the Tribunal not only the issue relating to revision of pay scales but also that dealing with dearness allowance. Further, in para. 37 of its written statement the respondent-company clearly accepted the position that the Tribunal had jurisdiction to deal with the issue of dearness allowance. This circumstance precludes the respondent from

now objecting to the jurisdiction of the Tribunal. Apart from that we may point out that in its reply dated March 29, 1957 to the charter of demands sent on behalf of the appellant-union it was stated that the previous settlement had not been validly terminated and in answer to that the General Secretary of the Union wrote on April 8, 1957 saying that various representations made by the union to the respondent and the presentation of the charter of demands amounts to a notice of termination of the settlement. Thus, though no formal notice under s. 19(2) was given this letter can itself be construed as notice within the meaning of that provision. It may be noted that the representation was made long after the expiry of two months from this date. For these reasons we overrule the contention of Mr. Sen.

Now, coming to the merits, the main point urged by Mr. Chatterjee on behalf of the union is that there has been discrimination between the employees of the respondent in the Alambazar factory and their counterparts in the sales office in Calcutta. According to him even though these persons do the same kind of work they are given different grades and scales of pay and different scales of dearness allowance. He contends that the employees of the same employer doing the same kind of work in the same city ought not to be differentiated in this manner and that decision of the Tribunal denied the members of the appellant-union equality with their counterparts in the sales office and is contrary to the principles of industrial law we may, however, point out that the appellant union claimed party with the sales office employees only in the matter of dearness allowance and have referred to the existence of different pay scales in the sales office only in support of their claim for an upward revision of the present pay scales. It is, therefore, not open to learned counsel now to urge that the pay scales also

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should be same for the factory employees as for the sales office employees. We shall, therefore, consider the argument based on the ground of unwarranted discrimination only in so far as it relates to the question of dearness allowance.

For considering this argument it is desirable to bear in mind the history of industrial adjudication in Bengal and also the precise reason why a different basis for computing dearness allowance is applied to the respondent employees in the sales office from that applied to its factory employees. Towards the end of the year 1945 the Bengal Chamber of Commerce made an enquiry as to the cost of living of the clerical staff employed in mercantile firms in the city of Calcutta. On the basis of that enquiry it fixed a certain amount as dearness allowance for these employees. It also fixed for the employees what it called the middle class cost of living index and recommended acceptance of its findings to its constituent members. Mr. Sen stated that the respondent's sales office is a member of the Bengal Chamber of Commerce but its factory in Alambazar is not a member of the Chamber of Commerce and this was not controverted by Mr. Chatterjee.

In the year 1948 disputes arose between the employees and employers of engineering firms in Calcutta as well as employees and employers of mercantile concerns in Calcutta. These disputes were referred to separate Industrial Tribunals. The first Engineering Tribunal was appointed on July 3, 1948 to which disputes relating to 119 companies, including the respondent's factory, were referred. The award made by it was eventually published in the Calcutta Gazette and effect was given to it. Further disputes arose between some engineering concerns and their employees. These were referred to a second Engineering Tribunal on August 31, 1950

and effect was given to its award. It would, therefore, appear that members of a union like the one of employees of the respondent's factory at Alambazar have been dealt with on a different footing from the employees of a sales office in Calcutta, the former being employees of an engineering concern and the latter of a mercantile one. It was, however, contended before us that they are not two independent undertakings but parts of the same one, that is, Western India Match Co., and, therefore, in the matter of payment of dearness allowance at least they should be dealt with on the same footing.

As we have already pointed out the employees in the sales office are governed by the recommendations of the Bengal Chamber of Commerce which the respondent was more or less bound to accept to be in line with other similar establishments and, therefore, the case of the factory employees cannot be equated with that of the sales office employees. In *Clerks of Calcutta Tramways* v. *Calcutta Tramways Co. Ltd.*(1) the clerical staff of the Calcutta Tramways claimed that since they belonged to the middle class they should be paid dearness allowance on the basis of the finding of the Bengal Chamber of Commerce. Their plea was nagatived by this Court on the ground that in the matter of grant of dearness allowance no hard and fast rule is applicable to all kinds of employees, that there are different grades amongst middle classess and the clerical staff of the Calcutta Tramways cannot claim to be awarded dearness allowance at the rates fixed by the Bengal Chamber of Commerce for mercantile firms. It may further be pointed out that the factory employees cannot all claim to belong to the middle class because admittedly two-thirds of them belong to what is known as the subordinate staff.

It may be that the clerical staff both in Calcutta proper and in Alambazar does work which

(1) [1956] S.C.R. 772.

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one set of clerks does is not the same as that of the other set. Clerks in the factories have to do work in connection with the manufacturing processes in the factory, the labour employed in the factory, raw materials arriving in the factory, the finished products of the factory and so on and so forth. The work which the clerical staff in the sales office has to do is connected with the marketing of the finished product, dealing with other firms, carrying on correspondence with the head office and other units and so on and so forth. There is no identity in the work of the two sets of clerical staff though there may be similarity. It is said that the work they do carries more responsibility. That may or may not be so but clearly if the work each set of employees does is not identical, it would be open to the employer to place different values on them. The same thing could be said about the work of the subordinate staff. If under these circumstances the respondent agreed to adopt a different mode of computation of dearness allowance in respect of the employees in the sales office from that offered by it to the employees in the factory, could it be said that the respondent was making invidious distinction? The sales office being a mercantile office the respondent had to fall in line with other similar establishments and pay to the employees in the sales office the same dearness allowance as other mercantile firms were paying to their employees. In the circumstances the factory employees cannot as of right demand that the benefit of the rates fixed by the Bengal Chamber of Commerce be also given to them though those rates were not intended to be applied to them.

Moreover it has to be borne in mind that in the previous settlement the appellant-union was content to accept the working class cost of living index as the basis for determining their dearness

allowance and even in their present demands they have alternatively suggested that the same be adopted with certain variations in the rates in three slabs.

It is true that the employees in Alambazar as well as in Calcutta are living within the limits of the Corporation of Calcutta. But that circumstance though relevant is not by itself sufficient to justify payment to them of the same rate of dearness allowance as the sales office employees. We cannot ignore the fact that the employees of other factories situate in that area are not paid dearness allowance at the rates formulated by the Bengal Chamber of Commerce and, therefore, if those rates are adopted by the respondent with respect to the factory employees the existing industrial peace in that region may be destroyed. The tribunal must, therefore, be said to have exercised its discretion properly in not acceding to the appellant's demand in this respect.

We may also point out that the employees in the factory have been recruited on terms and conditions which from the beginning are different from those that govern the sales office employees. It is not disputed that certain benefits such as those relating to rations, free quarters, gratuity etc., which are extended to the factory employees are not extended to the sales office employees. What is said, however, is that the sum total of these considered along with the pay and dearness allowance of the factory employees still place them at a disadvantage as compared to the sales office employees. It is true that the sales office employees are, by and large, in a comparatively better position; but that again is due to the fact that recruitments in the two establishments have all along been made on different terms and conditions.

We do not think that there is any valid reason for compelling employers to offer uniform terms of

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employment to their employees working in different establishments because various considerations must enter into the question such as the value of their work to the employer, the employer's ability to pay, the cost of living, the availability of persons for doing the particular kind of work and so on. Indeed, the Minimum Wages Act itself proceeds on the basis that the employer has large discretion in so far as the most important condition of service is concerned, that is, pay, so long at it is not below the minimum wage prescribed. It is a well known fact that the biggest employer, the State, does not offer uniform conditions of service to all employees doing work which, broadly speaking, may be called similar. Thus to take one illustration, the clerical staff and the menial staff—now called class IV staff—employed in the Secretariat are governed by terms and conditions of service different from those prevailing in other offices such as those under the Delhi Administration. High powered Pay Commissions have not regarded this as discriminatory treatment or breach of a principle of industrial law. In the *State of Madhya Pradesh* v. *G.C. Mandawar* (1) it was contended on behalf of the clerical staff in the State of Madhya Pradesh that they should be paid dearness allowance at the same rate as the Central Government employees posted in Madhya Pradesh on the ground that they were doing similar work at the same place. Their contention was, however, rejected by this Court.

Looking at the matter thus we cannot say that the Industrial Tribunal in refusing to extend to the employees of the respondent in the factory in Alambazar the benefit of dearness allowance formulated by the Bengal Chamber of Commerce has contravened any principle of natural justice or any important principle of industrial law. In this connection we

(1) (1955) 1 S.C.R. 599.

may refer to the decision in *Bengal Chemical & Pharmaceutical Works Ltd., Calcutta* v. *Their Workmen* (1) where Gajendragadkar, J., who spoke for the Court observed:

> "Though Article 136 is couched in widest terms, it is necessary for this Court to exercise its discretionary jurisdiction only in cases where awards are made in violation of principles of natural justice, causing substantial and grave injustice to parties or raises an important principle of industrial law requiring elucidation and final decision by this Court or discloses such other exceptional or special circumstances which merit the consideration of this Court."

Therefore, even assuming that an Industrial Tribunal has exercised its discretion wrongly in not awarding uniform dearness allowance to all the employees of the same employer but who are working in different establishments, that is no ground for interference under Art. 136.

The second ground on which the Tribunal's decision regarding dearness allowance is challenged is that even at the stage of giving evidence Mr. Wasmouth, the General Manager of the respondent said that the respondent still sticks to the offer regarding dearness allowance but despite that the Tribunal did not make any change in the dearness allowance. It is contended on the basis of this stand of Mr. Wasmouth that the respondent accepted the position that there was scope for raising the dearness allowance. In answer to this argument Mr. B. Sen urged that the offer which the company had made was a package deal but since the appellant-union was not willing to accept the whole of the respondent's offer, the Tribunal was right in not granting any increase in the dearness allowance. We may point out, however, that the

(1) (1959) Supp. 2 S.C.R. 136, 140.

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only outstanding questions between the parties were two—one relating to the dearness allowance and the other relating to the scales of pay. A comparative chart showing the union's demand and the company's offer of the existing scales of pay, dearness allowance, superannuation, casual leave, sick leave and over-time has been placed on record and is annexure G.I. We are not concerned with matters other than the first two and we, therefore, reproduce below only that portion of the chart which relates to the first two of these matters:

		Union's demand			Company's offer
		Rs.			Rs.
1. Grade &	A 1	35/-	1/8/-	65/- (30 yrs.)	30/- 1/4/- 50--EB-1/4/- 55/-
scales of	A 2	40/-	2/8/-	90/-	,, 35/- 1/4/- 55-EB-1/4/- 60/-
pay	A 3	60/-	3/8/-	130/-	,, 60/- 2/0/- 80/-
	B 1	65/-	5/0/-	115/-EB-7/- 185/-(20 yrs.)	55/-4/0/- 95/- EB-5/- 125/- no offer
	C 1	75/-	6/0/-	135/-EB-8/- 215/- (20 yrs.)	70/- 5/8/-125/- EB-7/- 167/-EB-195/-
	C 2	95/-	8/0/-	175/-EB-12/- 295/-(20 yrs.)	85/-7/8/-160/- EB-10)- 220/-EB-10/-260/-
	C 3	120/-	12/0/-	240/-EB-18/- 420/-(20 yrs.)	110/-10/-210/- EB-16/- 306/-EB-16/-370/-
	C 4	Upto a limit of Rs. 650/-			Upto a limit of Rs. 500/-

	A. As per sales office		B. Rs.	Rs.	
2. Dearness allowance	Employees on	No offer	1 to 50/-basic	125%	1 to 25/- basis 125%**
			51 to 100 ,,	25%	26 to 50 ,, 40%
			101 to 150 ,,	17%	51 to 150 ,, 30%
			151 to 200 ,,	12%	151 to 200 ,, 12%
			201 to 250 ,,	7%	201 to 250 ,, 7%
			251 to 300 ,,	5%	251 to 300 ,, 5%
			In addition 3% for every 5 pts. rise or fall of working class index figure.		In addition 3% for every 5 pts. rise or fall of working class index figure.

** Adjusting the existing R. B. with this salb.

It will be clear from this that the union had made alternative demands in respect of dearness allowance, one was that the same scale as that for sales office employees should be adopted and the other was variation in three slabs of the present scheme accepting as the basis the working class cost of living index figure. The company refused to make any counter-offer with regard to the primary demand of the appellant-union. But in regard to the alternative demand it made a counter-offer. If we understand Mr. Wasmouth right the respondent company stood by its counter-offer based on the working class cost of living index figures before the Tribunal even though the

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conciliation proceedings broke down. During these proceedings this counter-offer was linked with the counter-offer pertaining to grades and scales of pay. Presumably, therefore, the company regarded the package deal not merely as a concession made for putting an end to disputes but also because it regarded it as fair and the financial commitment entailed by it to be within its means. No doubt in the evidence Mr. Wasmouth has said that the respondent-company does not stick to its offer relating to grades and scales of pay. But that would not render what was a fair and reasonable offer during the stage of negotiations, no longer fair and reasonable or necessary. The Tribunal has revised the pay scales on basis of the respondent's offer. If, therefore, dearness allowance is revised on the basis of the respondent's offer what would in effect be done would be only that which the respondent company during the conciliation proceedings had itself offered to do, a thing which was considered to be fair and reasonable and also necessary. In these circumstances we find it difficult to understand the principle on which the Tribunal proceeded in refusing to revise the scales of dearness allowance on the basis of the respondent-company's offer.

Though, therefore, we reject the contention of the appellant-union that the dearness allowance should be fixed on the same basis as that obtaining in the sales office we think that in view of the stand taken by the respondent-company throughout the proceedings dearness allowance should be revised in accordance with the company's offer. The fact that it made such an offer is indicative of two things: the necessity and propriety of revision of the dearness allowance as well as the ability of the respondent-company to pay higher dearness allowance. It was no doubt contended

before us that the offer was made during negotiations and was without prejudice and we should therefore, keep it out of our mind. But we cannot overlook the fact that Mr. Wasmouth stuck to that offer even after the conciliation proceedings had ended infructuously and thus in effect revived the the original offer.

Mr. Sen, however, argued that on the basis of the decision in *Burn & Co. Ltd.*, v. *Their Employees* (1) that an award of Industrial Tribunal cannot be reopened unless it is established that there has been a change in the circumstances on the award is based and that since there has been no such change the award of 1955 pertaining to dearness allowance ought not to be revised. It is true that an award cannot ordinarily be revised unless there is a change of circumstances. But here, there has been a change of circumstances because cost of living has admittedly gone up since then. This is so notorious a fact that we are entitled to take notice of it. The object of awarding dearness allowance is to neutralise, at least partially, the rise in the cost of living and in the circumstances the factory employees are entitled to say that the old basis needs to be revised. There is thus no substance in Mr. Sen's argument.

On the question of the grades and scales of pay the contention of learned counsel is that the Tribunal has not applied its mind to the question but has mechanically accepted the respondent's offer. This statement is not wholly accurate. No doubt the Tribunal has accepted as reasonable the offer which the respondent has made; but it has given reasons for doing so. In its award the Tribunal has stated :

> "The principal point made in support of the demand is that the grades and scales of pay are too short and that they should be

(1) [1956] S.C.R. 781.

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extended with such modifications as may appear necessary in the circumstances of the case."

Then after comparing the existing grades with the company's offer the Tribunal observed :

> "It would appear at a glance at this chart that the existing rates provide for scales of pay in the case of six grades upto 16 years and in the case of one it provides for ten years only. The Union's demand is for extending the scales upto 20 years in place of ten and sixteen years, and both the minimum and maximum limit of the scales of pay would be raised in all cases. The Company's offer except in the case of grade B(1) if much in advance of the existing grades and scales of pay. There are good justifications for revision of the grades and and scales of pay, and the Company's offer, in my opinion, should have been accepted by the Union. The revision of the grades and scales of pay as in the Company's offer will, to a great extent, remove the hardships of the employees, who, for the present, must remain satisfied with such revision.

It has, therefore, applied its mind to the company's offer and also borne in mind the demand made by the union. Upon consideration of these matters the Tribunal came to the conclusion that the company's offer is a reasonable one. Its finding in this regard is one of fact and cannot be permitted to be challenged in an appeal under Art. 136.

In this view we allow the appeal partly and direct that the award be modified by providing for a revision of the dearness allowance on the basis of the company's offer. Subject to this modification, the appeal will be dismissed. In view of the partial success of the parties we make no order as to costs.

——— *Appeal allowed in part.*