IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.299 OF 2009

Hindustan Lever Employees Union & Ors. ..Petitioners

V/s.

Hindustan Unilever Ltd. ..Respondents.

WITH

WRIT PETITION NO.639 OF 2009

Hindustan Lever Research Centre
Employees Union ..Petitioners.

V/s.

Hindustan Unilever Ltd. ..Respondents.

WITH

WRIT PETITION NO.140 OF 2009

Hindustan Unilever Ltd. ..Petitioners.

V/s.

Hindustan Lever Research Centre
Employees Union. ..Respondents.

WITH

WRIT PETITION NO.127 OF 2009

Hindustan Unilever Ltd. ..Petitioners

V/s.

Hindustan Lever Employees Union & Anr. ..Respondents.

Mr.P.K.Rele, Sr.Counsel with Mr.R.N.Shah, Counsel with
Mr.Rajesh P. Rele, Counsel i/b. Sanjay Udeshi & Co.
for Petitioner in WP No.127/09 & for Respondent No.1
in WP No.299/09.

Mr. K.K.Singhvi, Sr.Counsel with Mr.Benet D'Costa
i/b. Meena Doshi for Respondent in WP No. 127/09 &
for Petitioner in WP No.299/09.

Mr.C.U.Singh, Sr.Counsel with Mr.R.N.Singh, Counsel with Mr.Mahesh S. Londhe i/b. Sanjay Udeshi & Co. for petitioner in WP No.140/09 and for Respondent No.1 in WP No.639/09.

Ms. Meena Doshi, Counsel with Mr.Benet D'Costa for Respondent in WP No.140/09 and for Petitioners in WP No. 639/09.

CORAM: A.M.KHANWILKAR,J

DATE : MAY 4, 2009.

P.C. :

1. All these Writ Petitions question the self-same award passed by the Industrial Court. These are the cross-Petitions filed by the Management and the Union. Having regard to the grounds urged by the respective parties, in my opinion, as arguable questions have been raised, all the four Petitions deserve to be admitted. Hence, Rule in all the four Petitions.

2. The next question is about grant of interim relief. The management prays for stay of operation of the impugned Award, whereas the Union submits that the workmen having succeeded before the Tribunal and the amount receivable under the Award is only in relation to the interest to be paid to the workmen of their past dues, no interim relief be granted.

3. The common contention in Petitions filed by the Management is essentially two fold. Firstly,

that the directions issued by the Tribunal regarding adjustment of amount against the arrears in terms of clause (c) of paragraph-41 is manifestly wrong. In that, the Management was entitled for adjustment in respect of amount already paid to the workmen with effect from 1st December, 1997, 24th June, 1998 or 23rd August, 1999 as the case may be and not 1st May, 2002, as has been observed. Insofar as this grievance is concerned, the Counsel appearing for the workmen Union in all fairness stated that the Management be permitted to make adjustment against the arrears from the aforesaid dates and not 1st May, 2002 as observed by the Tribunal. As a matter of fact the Petitions filed by the Management would succeed to this limited extent on the basis of the stand taken by the workmen union. In other words, the Management is entitled to make adjustment against the arrears from 1st December, 1997, 24th June, 1998 or 23rd August, 1999, as the case may be.

4. The next grievance of the Management is with regard to the quantum of interest awarded by the Tribunal as per clause (e) of paragraph-41 of the Award. According to the Management, the direction issued by the Tribunal is the outcome of confusion and manifestly wrong. In that, the Tribunal has confined the claim relating to allowances of the

workmen for the period from 1st January, 1996. However, has referred to rate of Rs.1278/- per person per month, which is ascribable to claim under that head from 1987 as is demonstrated from chart at page 156. Counsel for the workmen Union on the other hand submits that the chart relied by the Management at page 156 was not produced on record before the Tribunal. Besides, in the objections filed before the Tribunal, the Union demonstrated specific cases where the Management disbursed the allowance amount at Rs.1278/- per month and Rs.1468/- per month as can be discerned from paragraph-7 of the Objection. Indeed, the Counsel for the Management made attempt to explain the said instances. However, in my opinion, the directions issued by the Tribunal regarding interest need not be stayed. In that, the same is founded on the settlement of past dues at page 157. Clause (e) thereof reads thus:

> "(e) Interest at the rate of 10% p.a. will be paid by the Management for all past dues relating to allowances for the full period from 1st April, 1987 to 28th February, 2003. The interest will be paid at the rate of Rs.1278/- per person per month for the period from 1st April, 1987 and additionally Rs.190/- per person per month from 1st January, 2000. That is to say that with effect from 1st January, 2000 the employees will get an interest payment of Rs.1468/-. The eligibility for this payment will be worked out based on the clauses in para c & d hereinabove."

In other words, I do not think it appropriate to stay the directions issued by the Tribunal with regard to the payment of interest to the workmen.

5. The next question is whether the Management should pay the said amount directly to the workmen. I am in agreement with the stand taken by the Management that since the amount involved towards this head would be quite substantial, running into about Rs.10 Crores in aggregate; and in the event the Management were to succeed in these Petitions, it would become difficult, if not impossible, to recover the amount already paid to the workmen. The appropriate course is to direct the Management to deposit the amount referable to clause (e), after the Management deducts all payments already made or as ordered in terms of this order. The amount so deposited by the Management can be allowed to be withdrawn by the Union on condition that the Workmen who are already in service and are not likely to retire in near future shall file undertaking in this Court that they shall reimburse the amount withdrawn by them towards their claim amount alongwith interest thereon if any, if the Court so directs at the final hearing or agree to allow the Management to deduct the amount from the future wages as the case may be, consistent with the directions to be given by the

Court in that behalf.

6. Insofar as the workmen who are not in service or the workmen of closed units, they shall be entitled to withdraw the amount receivable by them in terms of this order upon furnishing solvent security in the like amount and on condition that they shall bring back the said amount alongwith interest if the Court were to so direct at the final hearing.

7. Insofar as Writ Petition No.140 of 2009 is concerned, the same is filed by the Management in relation to the Fine Chemical Units. In this Petition, the additional issue raised is that, although the Tribunal was obliged to consider the claim of parity in relation to the workmen involved in this Petition, the Tribunal has glossed over that aspect and has erroneously applied the same principle as in the companion reference proceedings. Besides, it is argued that the Charter of demand of the workmen is dated 13th April, 2000 and the reference is made on 5th March, 2001. It was argued that the workmen would be entitled for the benefits at best on and from the date of Charter of demand and not from 1st January, 1996 as is the case in the companion reference. This argument clearly overlooks that the charter of demand is for claim with effect from 1st

January, 1996. The workmen, who are dissatisfied with the view taken by the Tribunal, have also filed cross-Writ Petitions challenging the self same Judgment. All the issues raised by both the sides will have to be considered at the final hearing. Even this case will have to abide by the interim arrangement as is being ordered in the companion Writ Petitions in terms of this order.

8. The Counsel appearing for the Management lastly submitted that in any case, the Management should be permitted to make further adjustment of amount already paid to the workmen towards "Shift Allowance" which relief has been denied to the workmen by the Tribunal. Counsel for the workmen Union on the other hand contended that the interim arrangement directed by this Court on the earlier occasion not to recover the amount already paid by the Management to the workmen towards the head of Shift Allowance be continued during the pendency of these Writ Petitions. However, in my opinion, the Management is entitled for adjustment of the said amount for the simple reason that the Tribunal has not accepted the claim of the workmen in this behalf. In the event the workmen were to succeed on this issue, appropriate direction can always be issued by the Court at the final hearing. Moreover, as in the

case of Management, even though the Management has made out ground for admission of the Writ Petitions, Management has been directed to pay amount towards interest component. Applying the same logic the Management ought to be permitted to adjust the amount already paid by the Management in terms of the interim arrangement ordered by the Court. In other words, the Management would be free to adjust the amount already paid to the respective workers towards "Shift Allowance" against the amount required to be deposited after making adjustment against the arrears in terms of this order. Indeed, in the event, the workmen succeed in relation to the claim of "Shift Allowance", the Management will have to pay that amount alongwith interest to the respective workmen, if the Court were to so direct. This arrangement would meet the ends of justice.

9. Accordingly, Insofar as Interim Relief in all these Petitions is concerned, the same is as follows:

(1) The Management shall deposit amount as specified above in this Court within six weeks from today. The Management would be entitled to adjust the amount already paid to the workmen from 1st December, 1997, 24th June, 1998 or 23rd August, 1999, as the case

may be, against the arrears of dues and also deduct the amount already paid to the workmen towards "Shift Allowance".

(2) The concerned workmen would be free to withdraw the amount receivable by each of them on condition that the workmen who are in service and not likely to retire in near future shall file undertaking in this Court to the effect that they shall reimburse the amount withdrawn by them alongwith interest or allow the Management to deduct the amount from future wages, as the Court may direct. Insofar as the workmen who are not in service or were employed in the units which are already closed, shall furnish solvent security for the commensurate amount, to be withdrawn by them and agree to reimburse the entire amount alongwith interest as would be ordered by the Court.

(3) In the event, any amount deposited by the Management is not withdrawn within 8 weeks from the date of deposit, the Registry shall invest the same in appropriate fixed deposit scheme to derive best interest

returns during the pendency of the Writ Petitions.

Ordered accordingly.

(A.M.KHANWILKAR,J)