/340232/2022

Government of West Bengal
Labour Department, I. R. Branch
N.S. Building, 12th Floor
1, K.S. Roy Road, Kolkata - 700001

No. Labr/. 1016 ./(LC-IR)/22015(15)/132/2019 Date: 21-11-2022

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No.1355-IR/10L-21/96 dated. 16/08/2002 referred to the 5th I.T. which has been subsequently transferred to this Tribunal Vide G.O. N.O. 1257-IR/IR/MISC28/2015 dt. 17/12/19 the Industrial Dispute between M/s Hindustan Motors Ltd., P.O. Hind Motor, Hooghly and their workmen 1) Hindustan Motors & Hyderabad Industries Workers' Union, Hindmotor, 2) Hindustan Motors & Hyderabad Industries Workers' Employees Union, Hindmotor, 3) Hindustan Motors & Hyderabad Industries Ltd. Sangrami Sramik Karmachari Union, Sec – II, Saradapally, Makhla, Hooghly, 4) Hindustan Motors Ltd. Employees & Majdoor Union, 5) Hindustan Motors Ltd. Sangrami Sramik Union regarding the issue mentioned in the said order, being a matter specified in the Second Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, Fourth Industrial Tribunal, West Bengal.

AND WHEREAS of the said Fourth Industrial Tribunal, West Bengal, has submitted to the State Government its award 20/10/2022 on the said Industrial Dispute vide memo no 1588 – L.T. dated 21/10/2022.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said award as shown in the Annexure hereto.

ANNEXURE

(Attached herewith)

By order of the Governor,

Sdt
Joint Secretary

to the Government of West Bengal

/340232/2022

No. Labr/ 1016/1(5) /(LC-IR) Date: 21-11-/2022

Copy, with a copy of the Award, forwarded for information and necessary action to:

1. M/s. Hindustan Motors Ltd., P.O. Hind Motor, Hooghly.
2. Hindustan Motors & Hyderabad Industries Ltd. Sangrami Sramik Karmachari Union, Sec – II, Saradapally, Makhla, Hooghly.
3. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariate Building, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
4. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
5. The Sr. Deputy, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

Joint Secretary

No. Labr/ 1016/2(2) /(LC-IR) Date: 21-11-/2022

Copy forwarded for information to:

1. The Judge, Fourth Industrial Tribunal, West Bengal with reference to his Memo No. 1588 – L.T. dated 21/10/2022.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Joint Secretary

In the matter of an industrial dispute between M/s. Hindustan Motors Ltd., P.O. Hind Motor, Hooghly and their workmen represented by

1) Hindustan Motors & Hyderabad Industries Workers' Union, Hindmotor,
2) Hindustan Motors & Hyderabad Industries Employees' Union, Hindmotor, and
3) Hindustan Motors & Hyderabad Industries Ltd., Sangrami Sramik Karmachari Union, Sec – II, Saradapally, Makhla, Hooghly.

(Case No. VIII-156/2002)

BEFORE THE FOURTH INDUSTRIAL TRIBUNAL, WEST ENGAL

PRESENT

SMT. DURGA KHAITAN, JUDGE

FOURTH INDUSTRIAL TRIBUNAL

KOLKATA

A W A R D

DATE - 20.10.2022

In the matter of an industrial dispute between M/s. Hindustan Motors Ltd., P.O. Hind Motor, Hooghly and their workmen represented by

1) Hindustan Motors & Hyderabad Industries Workers' Union, Hindmotor,
2) Hindustan Motors & Hyderabad Industries Employees' Union, Hindmotor, and
3) Hindustan Motors & Hyderabad Industries Ltd., Sangrami Sramik Karmachari Union, Sec – II, Saradapally, Makhla, Hooghly.

vide G.O. No. 1355-IR/IR/10L-21/96 dt. 16.08.2002 referred to the Fifth Industrial Tribunal which has been subsequently transferred to this Tribunal vide G.O. NO. 1257-IR/IR/MISC28/2015 dt. 17.12.2015 for adjudication of the issues.

I S S U E S

1) Whether freezing of D.A. from September, 2001 and adjustment of non-production days against privilege or sick leave by the management of M/s. Hindustan Motors Ltd. are legal and justified?

2) What relief, if any, are the workmen entitled to?

Instant industrial dispute was initially referred to 5th Industrial Tribunal by the Labour Department, Government of West Bengal vide G.O. No. 1355-IR/IR/10L-21/96 dt. 16.08.2002 and thereafter it was transferred to this Tribunal vide order No. 1257-I.R./IR/MISC-28/2015 dt. 17.12.2015.

In the reference there were three Unions but thereafter two more Unions namely (i) Hindustan Motors Limited Employees and Majdoor Union and (ii)Hindustan Motors Limited Sangrami Shramik Union were added as parties/Union no-4 & 5 vide order number 13 dated 8.04.2003 and order number 123 dated 12.09.2008 respectively.

SEAL OF THE FOURTH INDUSTRIAL TRIBUNAL ★ GOVT OF WEST BENGAL ★

Written statement of Unions

Union No. 1, 2, 3, 4 & 5 have filed separate written statements.

As the issues Under reference are not union's specific or in other words are general and applicable to all workmen, the written statements filed by the Unions are summarized as follows.

It the case of unions that they are registered unions and that the company used to follow unfair labour practice.

It is the further case of unions that the adjustment of D.A. is made on the basis of increase or decrease in consumer price index for each quarter as identified by the Confederation of Indian Industries and follows as per the tripartite engineering wage settlement which is binding on all engineering industries. On 21.10.2001 suddenly the company issue a notice freezing D.A. payable to all eligible employees that is daily rated workmen and monthly rated staff. The company stated that the increase in D.A. was supposed to take effect from the quarter beginning from September, 2001. The Unions states that such act of company was arbitrary, bad, illegal and an example of unfair labour practice. The union submits that the plea of financial stringency of company is false and baseless and the company cannot freeze D.A. in violation of law. It amounts to change in condition of service. The unions wrote several letters to the company against such illegal act and stated that dispute under Section 9(A) of I.D. Act was pending before the conciliation officer so the company could not freeze D.A. during such pendency but the management paid no heed to their such objection and the matter went to the Labour Commissioner but despite all efforts of Labour Department for amicable settlement the company was adamant and the attempts for amicable settlement ended in vain and matter was referred to the Tribunal.

It is the further case of unions that so far as adjustment of non-productive days against privilege or sick leave is concerned the union and company agreed that for daily rated workmen and grade scale staff privilege leave and sick leave will be as follows:- D.R.W.-P.L. maximum 15 days, S.L. 15 days, grade scale staff – P.L. maximum 15 days and S.L. 15 days. After notice dt. 21.10.2001, from 03.12.2001 suddenly the company started deducting 4 privilege leaves in a month from accumulated leave of employees by declaring non-production days. In the bipartite meeting dt. 30.11.2001 between the management and the Union the management proposed to adjust privilege leave for 'E' & 'M' employees against every non-working days. It was further proposed by the management that for grade scale staff and workmen adjustment of privilege leave shall be one day per week that is four days in a month and 15 days privilege leave will be adjusted upto 31 March, 2003. The union opposed said proposal by saying that total leave accumulated by a workman each year is maximum 30 days i.e. 15 Privileged Leave and 15 Sick Leave therefore it is impossible how they will adjust 48 days non-working days

when total leave is 30 days. No decision was arrived at on this point in the meeting on 30.11.2001, therefore, the action taken by management regarding adjustment of P.L. leave on non-working days is totally arbitrary.

It is the further case of unions that since November, 1998 the company declared non-production days and subsequently directed the workmen to stay inside the factory after recording their attendance but from December, 2001 company arbitrarily decided to deduct one privilege leave per week from accumulated leaves of employees on declared non-productive days. The workmen were ready to work as per their scheduled duty hours but due to direction of the company they could not do so.

It is the further case of the unions that the monthly rated employees are entitled to enjoy leave for 30 days in a year and daily workmen are entitled to one day leave for every 20 day for being physically present. For enjoying earned leave the employee has to be physically present on stated number of working days and he earns leaves by such process and employees are required to apply for privilege leave as and when required on prescribed form.

It is the further case of the unions that the order in question is neither based on any agreement nor supported by any clause of the certified standing order. So, the same is not legally sustainable. By adjusting privilege leave or sick leave against non-production based the management tried to deprive the workmen from their legitimate entitlement. Therefore, the notice is illegal and liable to be set aside and the decision of company regarding freezing of D.A. and adjustment of leave ought to be withdrawn.

Written statement by Company

The company filed amended written statement as per order dt. 13.02.2004. The company filed separate written statement against different unions.

The case of the Company as found from all these written statements is that the reference is not maintainable as it suffers from estopple on the part of the Unions and such other grounds. The case of the Company is that it was incorporated in Baroda State Company's Act, 1918 on or about 11th February, 1942 and thereafter in 1948 it set up passenger car manufacturing plant at Hind motor and the unit in Baroda, at Port Okhla, were transferred to Hind motor. It was situated at Uttarpara and had capacity of 30000 to 40000 Units per annum with the productivity level of approximately two cars / employees / year and a very high employee costs structure was involved. In 1971 and 1985 the company submitted two proposals to the Central Government for manufacturing small passenger Cars but those proposals were not allowed.

In the early 1980s the Government of India (GOI) started taking steps for modernizing passenger car industry. Hindustan Motors Ltd. (HML), Uttarpara Plant taking advantage of this situation launched a premium car called Contessa but HML did not have the fiscal concessions that were available to the new entrants.

In early 1990s GOI decided to modernize the economy and delicensed passenger car industry in 1993. Many global car manufacturers entered to Indian market with highly automated large volume plants and with medium volume plants. they relied intensively on outsourced and imported components and were granted several concessions like sales tax exemption and soft loan, concessional power tariff etc. unlike HML.

In 1993 GOI started joint venture in partnership with Suzuki Motors and set up Maruti Udyog Ltd. Which outsourced and bought out items on concessional import duty on a large scale.

In 1985 HML once again applied for permission to GOI to manufacture fuel efficient contemporary passenger cars in collaboration with ISUZI Motors Ltd., Japan but after four years the application was rejected in September, 1989.

The small passenger car manufactured by Maruti captured large share of auto-mobile market in India. By 1990 the market share of HML in passenger car's sphere came down to 15.8% as compared to 71.3 % in 1980. It further came down to 3.1% in 2000-01 and to 2.4 % in 2002-2003.

The GOI delicensed auto mobile industry in 1993 and there were many new entrants in this field like Mercedes Bench Ltd., Pal-Peugeot, Daewoo, General Motors, Mahindra Ford, India Auto Ltd., Honda, Hyundai, Skoda, Toyota and Tata Motors all these companies were allowed to import items like engine, gear-box etc. thus their manufacturing cost was proportionately less than the manufacturing cost of HML.

The Hind motor Factory was not in a position to cope with the competition. The new entrants in the passenger car industry employed fewer employees and depended on outsourced materials. Their employee cost was much lesser than HML. All other manufacturing companies namely Standard Motor Company Ltd. and Premier Auto Mobiles Company Ltd. closed down.

It is the further case of the company that the present employee cost constitutes 62% of the total fixed expenses of their plant.

It is the further case of the company as stated in 2004 that in the current year(2004) also the trend of company losing market share continue and loss for 7 months period up to October, 2001 was Rs. 3172.84 lakhs. Since 1965 to 2003 Uttarpara plant lost Rs. 206 crores but still the company survived because of infusion of funds by promoters, increased borrowing from bank and support from other profitable units of the Company. Yet as the company was unable to pay due dividends to the share-holders the chances of further investment diminished.

Despite all adversities the company undertook massive expansion and upgradation program at a project cost of Rs. 75 crores in 1997 to protect the company amidst such intense competition and to protect the future of the workforce. The expansion was to enhance the production capacity and to introduce new models. Details of this expenditure was submitted to various department of Government of West Bengal. This

expansion was financed by fresh borrowing from ICICI. The Government of West Bengal allowed the company incentive in the form of 50% deferment of payable sales tax for a period of 9 years. Despite such expansion, the productivity was much less because of lack of work culture for which the company requested the State Government to improve the work culture at HML factory vide its letter dt. 18.06.1997 and 13.08.1997 but to no effect.

The company continued to suffer for periodical increase in employees cost by way of D.A. and by way of changing ceiling limit for bonus payment and P.F. contribution rate etc. The recession in passenger car industry caused further deterioration in the financial health of the company. The Company started taking soft measures like VERS since 1995 from time to time but it did not get desired response. During the VERS scheme which was opened from 07.11.2002 to 31.03.2003 only 334 employees opted for it. From 1995 till 2003 around 2969 employees opted for voluntary early retirement.

The company also took various other measures for cost reduction including forming various task forces to control and reduce expenses, austerity measures, reducing bonus / ex-gratia, reducing badli engagement, freezing cost of living allowance for managers/executives, reducing managerial staff from 1239 in March, 1999 to 761 in March, 2003 etc.

On July 8, 2001 the company gave notice U/s. 9A of I.D. Act proposing freezing of D.A. of daily rated workmen and monthly rated staff from September, 2001. It also proposed to adjust one sick leave for daily rate workmen and monthly rated staff in a week irrespective of number of non-working days in a week as the company was in severe financial crisis.

Such measures were taken by the company to reduce expenses and cost factors. It was necessary for survival of the industry.

The company has denied all allegations and averments made by the unions and has prayed for adjudicating the reference in favour of the company dismissing the claim of the unions.

Evidence of union

To prove their case union examined following witnesses: -

P.W.-1 Dipak Baxi was examined by Union No. 3. In his examination-in-chief he deposed that he is the general secretary of Union No. 3 and their union is the only bargaining authority with the management. He deposed that on 21.10.2001 the company freezed the D.A. on the ground that it was running in losses and from 03.12.2001 the company started observing non-working days and lay off on the ground of reduced demand and reduced production. He prayed as per prayer of the written statement. He proved his letter dt. 03.05.2002 addressed to the Additional Labour |Commissioner (Ext. 1).

During cross-examination he deposed that besides his union there is one worker's union, one employee's union and one Majdoor union. He deposed that in August, 2002 when this dispute was referred to the Tribunal there were more than 7000 employees in the company and his union had 52 percent's following. On 29.10.2002 election was held. P.W.-1 further deposed during cross-examination that he is not an employee of Hindustan Motors and that their union was formed in 1997 and he became the general secretary in 1999.

During cross-examination he deposed that he has not filed any paper to show that he became the General Secretary in 1999. He deposed that there is constitution of their union but he did not produce the said constitution of their union. He deposed that he is aware of the contents of the written statement filed on behalf of the union No. 3 and it has not been mentioned in the said written statement that there is no connection of profit and loss in freezing of D.A.

In reply to question "whether it is written in the written statement that the company started observing non-working day and lay-off w.e.f. 03.12.2001?" PW-1 answered that the said question has been described in para 3 & 8 of the written statement filed on behalf of the union No. 3.

During cross-examination, PW-1deposed that it has not been written in such a manner that the company was under lay-off w.e.f. 03.12.2001. It has also not been written in para 3 of the written statement filed on behalf of the union No. 3 that the non-working day was started on and from 03.12.2001. But it has been written in the said written statement that notice dated 03.12.2001 was sent by the company volunteered PW-1. He also denied that they did raise dispute before the management about freezing of D.A. and adjustment of non-production days against privilege and sick leave.PW-1 deposed that they did not file any document before this Tribunal to show that they made correspondence with the management requesting them to let the union know as to why the notice regarding freezing of D.A. and adjustment of leave are not justified. The correspondence was made with the Commissioner in the matter witness volunteered. Pw-1 deposed that the xerox copy of the letter, (Exbt.1), was addressed to the Labour Commissioner but there is no indication in the said xerox copy of the letter that the copy of the aforesaid letter was forwarded to the management.

During cross-examination, P.W.-1 deposed that he is a B.Sc.(Honours). Freezing D.A. is a matter related to monetary transaction. He admitted that the company saves money by freezing D.A., witness volunteered that the labourer suffers monetary loss due to freezing of D.A.

He deposed that the salary range of employees of Hindustan Motors is between Rs.5,000/- to Rs.3,00,000/- per month and the salary range of the workers is between Rs.5,000/- to Rs.6,000/- per month. He admitted that no paper has been filed before this

Tribunal to show that the company issued lay-off notice and that there is no issue regarding lay-off in order of reference and even prayer with regard to lay-off has also not been made in the written statement filed by their union. There is no paper submitted before this Tribunal showing it is also in vogue in the company for adjustment of the leave, till today.

P.W. 1 deposed that one settlement took place with the union in 1993 & 1996 regarding charter of demand and a similar settlement took place in 2000. The settlement took place in 1993 & 1996 with CITU and INTUC. He does not know whether the copies of the said settlement were distributed amongst the workmen of the factory.P.W. 1 denied that the contents made in the letter (Exbt.1) are baseless. He denied that the financial condition of their company is poor. Pw-1 deposed that he is aware of the total production and sale of the vehicles of the company and he knows the aforesaid position of the company for last 50 years.PW-1 deposed that he is aged about 38 years. P.W. 1 deposed that the present position regarding production and sale of the vehicles of the company is declining. The said decline has been caused as earlier 16000 workers used to produce 25000 vehicles in a year but now 5000 workers have been producing above 12000 in a year .

During cross-examination, P.W.-1, Sri Dipak Bakshi did not furnish any paper to show about the total number of the members of their union in the month of August, 2002 & July, 2001. He deposed that without calculation, he can't saywhether the employee's cost was increased upto 340% during the period from 1980-81 to 2000-2001 and also without calculation, he can't say whether the employee's earnings were increased by 539% & whether the incentive per vehicle was increased by 84% during the aforesaid period. He denied that the company suffered loss of Rs.42.5 crores during 2000-2001 or that the employee's cost was Rs.103.22 crores during 2000-2001. He could not say the total extent of loss of the company during 2000-2001. Pw-1 deposed that the loss of the company was shown by the management after showing the false depreciation of the machineries. He admitted that the employee's cost was Rs.103.22 crores during 2000-2001. Pw-1 deposed that the employee's cost was Rs.99.39 crores during 2001-02 and Rs.80.06 crores during 2002-03.. PW-1 deposed that they raised objection before the management about false projection of loss of the company but he did not furnish any document to show that they raised objection before the management about false projection of loss of the company.PW-1 deposed that they made correspondence with the management about the false projection of depreciation charged but they did not submit any such documents or papers.

P.W. 1 denied that he has got no knowledge about the financial position of the Uttarpara Unit of the company and his evidence about the financial position of their company was not poor is false.

P.W. 1 denied that the salary range of the workmen at Uttarpara Unit of their company varies from Rs.6,000/- to Rs.8,000/-.

P.W. 1 admitted that he did not file any papers showing that there were 16000 workmen in Auto division at Uttarpara Unit of their company at any point of time and that he can produce the document to this effect. PW-1 admitted that he did not produce any authenticated papers showing that 16000 workmen of Auto division of the Uttarpara Unit of their company manufactured 25000 vehicles but he can produce those documents.

P.W. 1 denied that the scheme of D.A. freezing and adjustment of non-production days against privilege and sick leave were adopted for the purpose of making the company financially viable and the company did not take any step to deprive the workmen of the Uttarpara Unit of the company.PW-1 denied that the scheme which is taken for freezing of D.A. and adjustment of leave for the betterment of the workman as a whole as well as for the survival of the industry and notice was issued accordingly regarding freezing of D.A. and adjustment of non-production days against privilege or sick leave. PW-1 denied that their prayer made before this Tribunal is baseless and total action taken by the company is legal.

P.W. 2 Shri Sukhendu Biswas, Secretary of Hindustan Motor & Hyderabad Industries Workers Union (HMHIWU) deposed that their union is affiliated to CITU and he has retired in July, 2003. P.W. 2 deposed that their union had a bipartite agreement with the management lastly in July 2000 and D.A. was settled on the basis of consumer price index after interval of each 3 months on the basis of industry wise engineering wage settlement. The company followed the D.A. as per bipartite agreement. PW 2 deposed that it was found that if industry wise engineering wage settlement is fixed any allowance exceeding to the allowance given by the company it will have overriding effect over the fixation of allowance by the company. He proved the notice of change issued by factory manager on 21.10.2001 effective from Sept. 2001 (Exbt.2). PW 2 deposed that after receiving this notice they expressed their demand to the company by giving a letter. He denied that company issued notice freezing DA. He proved letter dated 30.10.2001 given by him to factory manager (Exbt.3). PW 2 proved the minute of bipartite meeting dt. 2.11.2001 (Exbt.4).

P.W. 2 deposed that in the meeting dated 2.11.2001 their demands were not met up. On 6.12.2001 company gave them a letter with annexures (Exbt.5 & 6). P.W. 2 deposed that he also attended meeting on 30.11.2001.

P.W. 2 proved the letter dt. 6.11.2001 given to the general secretary of his union by Shri D. Munshi forwarding minutes of meeting dated 2.11.2001 (Exbt.4/1). PW 2 deposed that the management did not pay any heed to their demand so they approached Labour Commissioner. On 22.10.01 they informed the matter to the Labour Commissioner. He proved the letter dated 22.10.01 (Exbt.7).

P.W. 2 deposed that daily rated workers earned privilege leave of one day against their presence in the factory for 20 days and the monthly rated employees get privilege leave for 30 days in a year and all employees get sick leave of 15 days in a year. P.W. 2 proved the memorandum of settlement over charter of demand of workmen employed in engineering unit other than central public sector undertaking in West Bengal (Exbt.8). He proved the memorandum of settlement between the company and HMHIWU (Exbt.9).

P.W. 2 deposed that the management neither fulfilled their demand nor gave any reply against their notice. He proved the copy of letter given by their general sectary to the factory manager on 15.10.01 (Exbt.10) and deposed that it was agreed that sick leave will be 15 days in a year as per agreement. The company declared non production days once in the year 1998 and workers drew salary for the entire period.

P.W. 2 proved the letter given by the general secretary and joint secretary of two unions jointly on 15.02.2002 (Exbt.11) and deposed that the company gave effect to that notice from 01.09.01.and his union had no information whether the company had obtained any permission from the Labour Commissioner to that effect. He proved letter dated 29.10.01 given by the general secretary of his union to the factory manager (Exbt.12). PW 2 deposed that they did not receive information from the company regarding freezing of DA on 8.7.01. He proved the leave application form (Exbt.12), copy of memorandum of settlement dated 9.2.96 (Exbt. 13 &.14) and prayed for award in terms of their written statement.

Cross examination of P.W. 2, Sukhendu Biswas :-

During cross examination P.W. 2 deposed that they became a minority in union no. 1 since October 2002. They were majority in union no. 1 in the year 2000 when the settlement between the union and management took place. He was the secretary at that time and several meetings on several matters took place between union and management since 1965 till 2002. P.W. 2 admitted that meetings were held during 2000 and 2001 on issues of production loss, productivity, bonus, DA, etc. He admitted they received the notice u/s 9A (Exbt.2) and they did not make any correspondence with the management after receiving it, alleging that it was illegal.

P.W. 2 deposed that he worked in the company for 38 years and participated in different negotiations and management used to send minutes of meeting to their unions. P.W. 2 deposed that their union received letter dated 16.10.01 and proved that letter (Exbt.A). P.W. 2 deposed that after receiving this letter (Exbt.8) they came to know about freezing of DA and adjustment of leave against non-productive days. P.W. 2 deposed that he does not know whether leaves of executives were also adjusted with non-productive days or not. Leave of workmen were adjusted. He denied that notice dated 8.7.2001 were served upon this union or the union refused to accept. He deposed that he does not know whether any permission is required from the Labour Commissioner for freezing of DA or not. P.W. 2 denied that the company did not commit any wrong by freezing DA and by

leave adjustment after serving notice u/s 9A of I.D.Act. He denied that this scheme was required for survival of company.

On 9.1.07, this witness was further examined in chief on recall. During this he proved the xerox copy of notice issued by company on 31.5.01 (Exbt.43) and he proved another notice dated 31.5.01 (Exbt.44) and typed copy of letter issued by union to the company (Exbt. 45).

Cross-examination of PW 2 after examination in chief on recall:

P.W. 2 deposed that he does not know who received Exbt. 45 on behalf of the company. He denied that the letter (Exbt.45) is a manufactured document or that the union never sent any such letter to the company. He could not say whether any protest letter was sent by the union against their notice dt. 31.5.01 (Exbt.44). He admitted that there was no seal of the company or of the labour commissioner on Exbt. 45. He admitted that telephone number appearing on the letter dt. 22.10.01 and in Exbt. 45 are different. He deposed that the form of letter dt. 22.10.01 and of Exbt. 45 are different but contents are same. He denied that Exbt.45 or letter dt. 22.10.01 were not received by anybody on behalf of company ever or the stamp on letter. 22.10.01 is manufactured.

P.W. 3 Ajit Kumar Chakraborty:- On 23.03.2005 P.W. 3 Shri Ajit Kumar Chakraborty, the Joint General Secretary of union no. 2 that is Hindustan Motor & Hyderabad Industries Employees Union (HMHIEU) affiliated to INTUC deposed that he joined the company in Sept, 1972. He proved the standing order of the company (Exbt.15) the annexure of director's report (Exbt.16), letter dated 31.07.2000 given by the vice president to the Asst. Secy. to the Govt. of the West Bengal, Labour Department and conciliation officer forwarding memorandum of settlement (Exbt.17) and deposed that at the relevant time he was the vice president of the union and his signed letter dated 31.7.2000. P.W.3 proved the memorandum of settlement over charter of demand of workman employed in the engineering unit (Exbt.18), notice dated 31.5.01 regarding non-productive days issued by the factory manager (Exbt. 19 another notice dated 31.5.01 issued by the factory manager (Exbt. 19/A), copy of letter 14.6.01 given by the factory manager to the joint general Secretary of union no. 2 regarding measures to be adopted for survival of theunit (Exbt.20), letters dated 10.8.01 and 22.8.01 addressed to MIC Labour and Chief Minister (Exbt.21 and 21/A respectively).

P.W. 3 deposed that in addition to their union there are 3 other unions in the company. He proved letter dated 20.9.01 given by union no. 1 to the acting Chief Minister (Exbt.22). P.W. 3 deposed that there are recognised unions and the company used to enter into bipartite agreement with them. PW 3 deposed that the bargaining union has come into force from November, 2002 and prior to that union no. 1 & 2 were the recognised unions. Before Nov., 2002 any agreement or settlement were held between management and union no. 1 & 2. He proved the minutes of meeting dated 12.9.01 (Exbt. 23). He proved 5 letters given by the union to the management on 8.10.01, 18.10.01, 3 letters of 19.10.01 (Exbt. 24 series), notice of change issued by factory manager on

21.10.01 (Exbt. E) along with annexures (Exbt.25), two letters dt. 13.10.01 given by their union to the factory manager (Exbt. 26 and 26/A), letter dated 5.11.01 relating to adjustment of leave with non-productive days given by the factory manager to his union(Exbt.27), 2 letters dated 13.11.2001 given to the factory manager by union no. 2 (28 and 28/A), 2 letters dt. 14.11.01 and letter dt. 16.11.01 & 23.11.01 given by the company to the Joint Secy. of his union (Exbt. 29 series), letter dt. 7.12.2001given by the union to the factory manager (Exbt.30) reply of the factory manager to the union 10.12.2001 (Exbt.30/A), letter of the union dt. 17.11.02 addressed to the CM about the anti-labour practices of company (Exbt.31) letter dt. 15.2.02 given by union no. 2 & 3 jointly to the factory manager forwarded to the Secretary of Labour Department & letter dt. 15.2.2000 given by the company to the union (Exbt. 32 & 32/A).

P.W. 3 proved the letter dtd. 26.2.2002 given by his union to the factory manager received by the company on 28.2.02 (Exbt.33) 2 letters dt.5.3.02 given by his union to the President of Hyderabad Industries Ltd. Hindmotor and the factory manager Hindustan Motor Ltd. (Exbt.34 & 34/A), he proved the reply of factory manager dt. 6.3.02 addressed to union no. 1 & 2 (Exbt.35), letter dt. 6.3.2002 given by the president INTUC to the CM Govt. of WB (Exbt.36), letter dt. 7.3.2002 given by Hyderabad Industries Ltd. to both unions (Exbt.37) letter dt. 26.4.2002 issued by Addl. Labour Commissioner to Union no. 1 & 2 (Exbt. 38 letter dt, 29.4.2002 by the factory manager to the Addl. Labour commissioner (Exbt.39) letter dt. 2.5.02 by their union to addl. labour commissioner (Exbt.40), publication of the copy of award dt. 19.8.1999 passed by the 1st industrial tribunal in connectionwith Case No. 1590-I.R./3A/79/98 (Exbtr.41) and the award (Exsbt.41/A).

P.W. 3 proved that paper cutting of page 9 of 'The Telegraph dt. 22.8.2002 (Exbt.42) and of 'Economic Times' of the same date (Exbt. 42/1). He prayed for direction of the company to pay DA for 50 months and payment ofsalary to the workers for non-productive days with interest and cost of litigation.

Cross examination of P.W. 3, Ajit Kumar Chakraborty:- Cross examination of P.W. 3 started on 29.01.2007 after further examination in chief on recall and cross examination of P.W. 2.

During cross examination, P.W. 3 deposed that it is mentioned in the Director's report that sale of passenger car is dropping (Exbt.16). He deposed that he was one of the signatories in the settlement where he agreed about flexibility in operation of plan (Exbt.17). He deposed that till 2000 the company used to give them written notice of decisions of the company but after 2000 they stopped informing or giving notice. He admitted that company affixed notice dated 31.5.01 regarding its decision (Exbt. 19 and 19/A). He admitted that the management served notice dt. 14.6.2001 to his union (exbt.20). P.W. 3 deposed that he signed on the WS filed on behalf of union no. 2. P.W. 3

deposed that the management informed the employees about the proposed changes of certain conditions vide Exbt. 25. He deposed that his union participated in thebargaining agent election in the year 2005. P.W. 3 deposed that registration No. of his union is 2101 He admitted that the Dy. Labour Commissioner Issued a certificate regarding votes obtained by the particular union, about 5100 and valid votes were cast in 2005 election out of which his union got only 91 votes. P.W. 3 deposed that his union verbally protested against the notices (Exbt. 19 & 19/A). P.W. 3 deposed that his union was present in the meeting dt. 12.9.2001 (Exbt.23) and he attended the meeting as the vice president of the union. And in that meeting, issues like freezing of D.A., and adjustment of leave were discussed. He admitted that in the minutes of that meeting their views were mentioned (Exbt.23). He however deposed that their views about non service of the minutes u/s 9A of I.D. Act regarding freezing of D.A. and adjustment of leave is not mentioned in the minute of the meeting.

P.W. 3 deposed that they did not raise any objection about non service of notice u/s 9A of I.D. Act and adjustment of leave vide Exbt.24 and there was no settlement between the management of the union to the effect that management shall not freeze D.A. and will not adjust leave against non productive days. He admitted that the salary of workmen were reduced from Sept., 2001. He deposed on 12.02.2007 that his total salary is Rs. 6900 and something and that he drew salary in the month of June, July, Aug. and Sept. 2001 @ Rs.6500 approx each month. He denied that the salary is not reduced. He deposed that adjustment of leave were applicable to the workman and staff and not to the managerial staff. P.W. 3 deposed that management sent letter dt. 16.11.2001 to their union and proved the copy of that letter (Ex 46). He deposed that there was no canteen in the factory in the year 2001 and only tea and biscuits were being served but his union did not send any letter to the management informing that they were not getting any meal as mentioned in letter dt. 16.11.2001. P.W. 3 deposed that meal @ 47 paise was served to the workman by the company previously when there were only 250 workmen. He denied knowledge of any canteen subsidy given by company of Rs.1.43 crores in the year 2001. P.W. 3 deposed that they verbally objected to the bonus in the year 2001 and accepted it under protest and subsequently observed one day strike regarding acceptance of bonus during the year 2001– 2002. P.W. 3 deposed on 5.3.2002 his union and another union sent a letter to the factory manager stating that they raised oral objection against bonus during 2001-2002 but it is not written in letter dt. 5.3.02. He denied that the strike mentioned in Exbt. 34 & 34/A were illegal. PW 3 admitted that Hindustan motor and Hyderabad Motor Ltd. are separate company. He denied that company took decision of freezing D.A. and leave adjustment due to the financial stringency.

Evidence of company

The company examined one Sankar Bhattacharjee as its sole witness.

O.P.W. 1 Sankar Bhattacharjee deposed that on 2.3.07 that he was working in the mailing department of Uttarpara Factory of Hindustan MotorLtd. for last 14 years and looks after mail received from different department and enter into the peon book. He deposed that he checks whether the letter has come under certificate of posting, regd. Post or ordinarily and dispatched both letters to different department after verifying whether it is noted in the peon book or not. He deposed that there is personnel department of the company. The mailing department maintained despatch register. O.P.W. 1 deposed that on 8.7.091 he received notice u/s 9A sent by the personnel dept. indicating that it was to be sent under certificate of posting, he received it by signing on the peon book (Exbt. A) and proved the relevant entry into the peon book (Exbt. A/1). O.P.W. 1 deposed that this notice was sent under certificate of posting and noting was made in the despatch register to that effect. He proved the despatch register (Exbt.B) and deposed that this notice was sent in the morning of 9.7.01. OPW1 deposed that dispatch of the notice was noted in serial no. 3763 and 3764 for two unions (Exbt. B/1 collectively). He proved the receipt of certificate of posting (Exbt. C). During his further examination in chief he deposed that in July, 2001 his salary was Rs. 5500/- p.m. and it was increased after July, 2001 and now (dt. of deposition 26.3.2007) he is drawing salary of Rs. 6009 approx. per month.

Cross examination of O.P.W. 1 Sankar Bhattacharjee:-

During cross examination O.P.W. 1 identified the copy of notice u/s 25A and admitted that the date of notice was 21.10.2001. O.P.W. 1 deposed that he did not serve these notices (Exbt. 25) to the union. He could not say whether the salary of managerial staff was increased at any time during the period from 2001 to 2007 or whether the company made any part payment of arrear D.A. or not.

During cross examination by union no. 2 O.P.W. 1 deposed that 3 employees including one bearer were working in mailing dept. and he knows about subject matter of this case and this case is relating to D.A. matter. On showing Exbt. A this witness replied that part of the peon book was written by him and rest was written by other employee. He deposed that the word "Notice dated" were written in Exbt. A/1 by him and H.M. & H.M.U. and H.M. Ltd. were written under the word "Notice dated" in Exbt. A/1. O.P.W. 1 deposed that there were 3 unions in the company in the year 2001. O.P.W. 1 deposed he can show the notice sent to the unions of the company under certificate of posting by producing the peon book. He denied that no letters were sent to the union by certificate of posting. O.P.W. 1 admitted that he cannot produce any document to show that letter was sent to the unions of the company at any point of time under certificate of posting. He denied that he deposed falsely that the notice was sent to the union under certificate of posting. He admitted that at sl. No. 3763 (Exbt. B/1) the word "industrial workers' union" are written and in sl. No. 3764 the word "joint general secretary, industrial employees'

union' are appearing. He deposed that these 2 unions are there in the company. O.P.W. 1 deposed that the legal dept. of the company makes correspondence directly with the unions.

During cross examination by union no. 1, O.P.W. 1 deposed that private letter are sent to mailing dept. without any sealed cover and the govt. letter are sent in sealed cover and he has power to go through the contents of the letter sent to the mailing dept. O.P.W. 1 deposed that the company or department did not give any order in writing to him to go through the letter received by the mailing dept. He admitted that the nature of letter or notice is not mentioned in the peon book. The rest portion of the copy of peon book was marked Exbt. A/2. About another entry he deposed that it was the copy of official record relating to the letter sent under certificate of posting (Exbt. C). He denied that Exbt. A/1 or Exbtr. B was subsequently manufactured or it was not sent by mailing dept. O.P.W. 1 deposed that the employees of mailing dept. do not go through the contents of letter received by mailing dept. from outside. O.P.W. 1 admitted that he did not submit any paper to show that he was instructed in writing to send the notice u/s 9A under certificate of posting.

Argument of union no. 3

The written and oral argument advanced on behalf of union no. 3 may be summarized as follows:

1. Ld. Counsel for union no. 3 argued that as per section 2 (rr) (i) of I. D. Act. Wages means DA also and so freezing of DA means freezing of wages also.
2. Ld. Counsel for union no. 3 argued that as per section 2(kkk) read with section 25M of I.D Act wages can be reduced by the company only after the compliance of legal procedure not otherwise.
3. Ld. Counsel for union no. 3 argued that as per section 2(ra) 25T 25U, schedule 5 part 1 item no. 15 of I.D. Act refusal to bargain collectively in good faith with the recognized trade union is an unfair labour practice and it is a criminal offence.
4. Ld. Counsel for union no. 3 argued that as per section 28(B)(4) of the Trade Union (West Bengal Amendment Act, 1983) a trade union which has obtained more than 50% of votes of workman through secret ballot of industrial establishment shall be the sole bargaining agent in respect of that industry.
5. Ld. Counsel for union no. 3 argued that as per section 28D(3) of Trade Union (West Bengal Amendment) Act, 1983 any recognition granted under this section shall be operative for a period of 2 years from the date of recognition and shall continue to be operative after expiry of 2 years for a period of 6 months and until a fresh recognition is granted whichever is earlier.

6. Ld. Counsel for union no. 3 argued that as per section 28E(1a), 32A and 34 of Trade Union (West Bengal Amendment) Act, 1983 sole bargaining agent union shall have the right to enter into collective agreement with the employer and if any employer fails and refuses to grant recognition to a trade union he shall be punished with imprisonment.
7. Ld. Counsel for union no. 3 argued that as per election held on 29.10.2002 HM and HILSSKU secured 52.62% votes and became sole bargaining agent union w.e.f. 1.11.2002. and as per election held on 18.3.2005 HM and HILSSKU secured 60.99 % votes and became sole bargaining agent union w.e.f. 1.4.2005. As per election held 9.1.2008 HM and HILSSKU secured 38.83% votes and became member of joint bargaining council w.e.f. 1.11.2008 and INTUC union (i.e.union no. 2) who did not sign the agreement of May, 2007 and objected to the agreement before this tribunal) also secured 3% votes. Union no. 3 raised strong objection against said agreement. Union no. 3 is recognized trade union of the factory as per section 28A of the Trade Union (West Bengal Amendment Act 1983).
8. Ld. Counsel for union no. 3 argued that asper section 28D(3) of the Trade Union (West Bengal Amendment) Act, 1983 HMHILSSKU was the only recognized and elected sole bargaining agent union of Hindustan Motor ltd. Uttarpara Unit upto 30.09.2007.
9. Ld. Counsel for union no. 3 argued that agreement made by the company on May 2007 with other non-recognized trade union intentionally by-passing the sole bargaining agent union is highly illegal and amount to unfair labour practice. Union No. 3 has challenged the genuinity of signature of the workman on stated agreement attested by local M.L.A. who is no way connected by the company.So, all issues may be adjudicated in favor of the workmen, argued by the Ld. Counsel. Union no. 3 has filed certificate of its recognition as sole bargaining agent issued by the Registrar of Trade Union, W.B. on 31.10.2002 and on 28.03.2005, 15.1.2008 and 1.2.2008. These certificates corroborate that this union having secured majority votes of workers, was recognized as the sole bargaining agent for workman by concerned authority.

On 30.07.2015 vide order no. 236 this Tribunal dealt with the issue of one joint petition of settlement dt. 16.07.2007 and 03.08.2007 between the company and three unions namely Hindustan Motors & Hyderabad Industries Workers' Union, Hindustan Motors Ltd. Employees and Majdoor Union and Hindustan Motors Ltd. Sangrami Shramik Union and Ld. Court held that Union No. 2 & 3 are left out of these settlement and there is no explanation given by the company why Hindustan Motors and Hyderabad Industries Ltd. Shramik Karmachari Union being the sole

bargaining agent union and recognized union and Hindustan Motors and Hyderabad Industries Employees Union were not made parties to the settlement. Ld. Predecessor held that these two unions under reference have denied the settlement and as per provision of Trade Unions (West Bengal Amendment) Act, 1983 the sole bargaining agent union have the right to enter into collective agreement with the employers. Under such circumstances it was ordered that the memorandum of settlement dt. 09.05.2007 and petition dt. 16.07.2007 and 03.08.2007 and the controversy arising out of a settlement were to be adjudicated at the time of final award.

As the order dated 30.07.2015 (order no. 236) stands good in law till date this Tribunal has to adjudicate on the application filed by Company to pass Award in terms of the stated memorandum of settlement dated dt. 09.05.2007. And to so adjudicate the Tribunal must take into consideration the written argument filed by Company during hearing of petitions dated 16.7.2007 and 03.8.2007.

Written argument of Company

The Company argued that:

i. The company filed written notes of argument on 22.11.10 stating therein that 3466 workmen have accepted the terms of settlement and have been received the benefits arising out of the settlement.

ii. The company referred to various decisions of Hon'ble Courts and argued that concept of settlement with vast majority of workmen is consistent with the concept of Resolution of Industrial dispute and maintaining industrial peace. The company referred to following decisions :

a) **P. Virudhachalam and others Vs. management of Lotus Mills and another (ref.-1998-I-SCC 650)** – Hon'ble Court held that, "..... the employer on one hand and accredited representative of the workman on the other hand are expected to resolve the industrial dispute amicably as far as possible by entering into settlement....."

b) **Tata Engg. & Locomotive Co. Ltd. Vs. workman (ref. – 1981-II-LLJ-429 para 10)** : Hon'ble Court held that," If the settlement has been arrived at by vast majority of workers with their eyes open and also accepted by them in its totality it must be presumed to be just and fair and not liable to be ignored while deciding the reference merely because small number of workers were not party to it or refused to accept it."

c) **Reserve Bank of India & Ors. Vs. C.N.Sahasranaman&ors. (ref 1986-Suppl. SCC-143 para 60)** : Hon'ble court held that ,"it is well to bear in mind the fact that settlement of dispute by direct negotiation or settlement through collective bargain is always to be preferred for it is best suited for industrial

peace which is the aim of the legislation for settlement of labour dispute. Hon'ble Court referred to decisions of New Standing Engg. Co. Ltd. Vs. N. L. Abhyankar and Tata Engg. & Locomotive Co. Ltd.

d) **ITC Ltd. Workers welfare Association and another vs. Management of ITC Ltd. & another (Ref 2002(3) SCC 411)** : Hon'ble Court held that," the Court came to the conclusion that the settlement cannot be characterized to be unfair and unjust and once this conclusion is reached it is obvious that entire industrial dispute should have been disposed of in the light of this settlement.

e) **Transmission Corpn. A.P. Ltd. &ors. Vs. P. Ramachandra Ram & anr. (2006 (9) SCC 623 para 14)**: Hon'ble Court reiterated that the observation made in ITC Ltd. Workers welfare Association and another vs. Management of ITC Ltd. & another (Ref 2002(3)SCC 411).

f) **Herbertsons Ltd. Vs. their workmen (1976 (4) SCC 736 para 21)**: Hon'ble Court held that, "there will always be uncertainty with regard to result of the litigation of court proceeding when, therefore, negotiations take place which have to be encouraged particularly between labour and employer in the interest of general peace and well being, there is always give and take." This decision is reiterated in P. Virudhachalam and others Vs. Management of Lotus Mills and another (ref.-1998-I-SCC 650).

iii) Ld. Counsel for company argued that in view of above referred decisions settlement between the employer and employee is placed on higher pedestal than an award passed in adjudication. So, the settlement dated 31.5.07 is binding on entire workforce of the company in respective of their allegiance to particular union.

iv) So far as objection of union no. 2 is concerned, Ld. counsel for company argued that union no. 2 had microscopic following and they got only 91 out of 5100 votes and since union no. 2 & 3 did not participate in the election jointly so their strength must be assessed separately. The company however admitted that union no. 2 & 3 is not a party to the settlement dt. 31. 5.07.

v) So far as objection of union no. 3 is concerned, Ld. counsel for company admitted that union no. 3 is the sole bargaining agent (ref page 10 para 4 of written argument). But it acted contrary to the provisions of section 24 of Industrial Dispute Act and called a illegal strike. It was further argued that as the stated settlement is accepted by 92.8% of workman and it is for the benefit of workmen at large it cannot be termed as unfair labour practice and provision of sec. 28B(4), section 28D(3), sec.32A and 34 of Trade Union (West Bengal Amendment) Act, 1983 have got nothing to do with this issue and the

management did not violate these provisions. The Company reiterated that union no. 3 is the sole bargaining agent union so it ought to have supported the cause of the workmen.

vi) Ld. Counsel for company argued that allegation of union no.3 that the signature on the settlement are not genuine is baseless as the union has failed to name the workmen whose signature have been forged or who has been denied benefit arising out of settlement.

So, the award may be passed in terms of memorandum of settlement argued the company.

Written argument of Union No. 2

1. So far as application dt. 16.7.07 and 3.8.07 filed by the company praying for award in terms of memorandum of settlement is concerned, union no. 2 argued that signature on the purported agreement are fabricated and false. It is further argued that impugned settlement has been made without any consent of the sole bargaining agent i.e. union no. 3 or of union no. 2 so the Tribunal cannot take any cognizance of purported agreement.
2. Union No. 2 argued that one of the signatory of the agreement named union no. 2 in the agreement was not a party to the reference pending before this Court at the relevant point of time so the Tribunal cannot take cognizance of any action of an outsider.
3. Union no. 2 further argued that the number of signatory mentioned in impugned settlement is totally imaginary as union no. 2 & 3 who have jointly above 60% votes of workmen are not made party to that agreement. So, it is clear that signatures are manufactured and false and the purported agreement and the application are filed by the company with ulterior motive to victimize the workmen who were member of Union no. 2 & 3 and who formed the majority of the workforce.
4. It is further agued by union no. 2 that in absence of signature and consent of sole bargaining agent union i.e. union no. 3 the impugned settlement is not settlement in the eyes of law and the Tribunal has no jurisdiction to entertain it.

Ongoing through pleadings of parties, oral and documentary evidence on record, having regard to the arguments advanced and judgements referred, it is found that:-

1. All the factual aspects like these unions representing the workmen working in the stated unit of the company, freezing of D.A. by the company, adjustment of leave of

workmen against non-productive days by the company and the unions approaching the Dy. Labour Commissioner, are all admitted.

2. Issues to be adjudicated by this Tribunal are: (1) Whether freezing of D.A. from September, 2001 and adjustment of non-production days against privilege or sick leave by the management of M/s. Hindustan Motors Ltd. are legal and justified? And (2) What relief, if any, are the workmen entitled to?

3. So far as freezing of D.A. and adjustment of leave is concerned, the company justified the same on the ground of financial stringency, but no oral or documentary evidence of any such financial stringency like Company's balance sheet, Income tax returns or such other document is adduced by the company throughout trial and as such, the company has summarily failed to prove any such financial stringency which compelled the company to freeze the D.A. or to adjust the leave due to the workmen against declared nonproductive days.

4. Unions have proved the Notice of Company dated 21.10.2001 proposing freezing of D.A. and adjustment of leaves and their referring the matter to the Deputy labour Commissioner and letter of Union to DLC dated 03.05.2002 (Exhibit-2, 3 &1).

5. So far as Company's plea of financially deteriorating condition of Company is concerned Union has filed copy of Award passed by Ld.1st Industrial Tribunal on 12.8.1999 (Exhibit-41/A). The history of said award is thus- Company's prayer dated 26.11.1998 U/s 25M(1) of I.D.Act for lay off 7861 workmen and 2093 staffs was rejected by the State Government after hearing the Company. Being aggrieved by this order of Government Company preferred a Writ application before Hon'ble High Court, Calcutta. Being aggrieved by the order of Hon'ble Single Bench State Government preferred appeal before Hon'ble Division Bench and Hon'ble Division Bench partially allowed the appeal and directed the State Government to refer the matter to Industrial Tribunal. The crux of reasons cited by Company seeking lay off was financial stringency, declining production, declining demand etc, that is to say the reasons cited for lay off were identical to the reasons cited for freezing of DA and adjustment of leaves. Ld. 1st Industrial Tribunal on 12.8.1999 held that the Company's application has no sufficient merit and no bonafide intentions and the application seeking permission to lay off was filed with malafide intentions. The Award was passed against the Company. There is nothing on record to show that the Company moved any Higher forum against this award dated 12.8.1999. It is pertinent to note that within just two years of stated award the Company issued notice freezing D.A. and adjusting leaves of workmen. Thus the company has failed to prove any

financial stringency which compelled the company to freeze the D.A. or to adjust the leave due to the workmen against declared non productive days unilaterally against the existing agreement with the Unions.

6. Record shows that on 16.07.2007 the company filed an application stating that the matter was amicably settled between the company and around 92% of the workmen. So the award to that effect may be passed by the tribunal and on 3.8.2007 another similar application was filed by the company in continuation to the application dated 16.07.2007. As the company did not file the original stated agreement on prayer of union, the Tribunal directed the company to file the same which the company subsequently filed.

7. Record further shows that on 30.07.2015 vide order no. 236, Ld. Predecessor held that these two petitions dated 16.07.2007 and 03.08.2007 along with memorandum of settlement dated 09.05.2007 and controversy arising out of settlement will be adjudicated at the time of final award (Ref. No. 236 dated 30.07.2015).

8. This order passed by Ld. Predecessor remains good in law till date and accordingly, this Tribunal is duty bound to dispose of this application now along with the final adjudication.

9. Stated agreement or memorandum of settlement is signed by the company, union no. 1 and two other unions (Two of these unions were not party to the reference and one of the signatory Union was not party to this Case when purported agreement was executed), but the Company has admitted in their written argument filed during hearing of these petitions that Union no. 2 & 3, which were contesting the case till the penultimate stage, did not sign the agreement. The company argued in its written argument filed at the time of hearing of joint application dated 16.07.2007 and 03.08.2007 that as the majority of workmen i.e. 92.8% of workmen have signed the same, so the settlement needs to be accepted and referred to many cases of Hon'ble Court in support of the contention.

10. Union no. 2 & 3 on the other hand argued that stated signature of workmen were not genuine and that union no. 3 is the sole bargaining agent union and both union no. 2 & 3 are not party to this agreement and as per provisions of Trade Union (West Bengal Amendment) Act, 1983 sole bargaining agent union is vested with power of entering into collective agreement with the employer. Thus, in absence of sole bargaining agent union's presence/participation, the agreement has no value in the eyes of law and the same cannot be taken to be a valid document.

11. Union no. 3 has adduced oral and documentary evidence of it being the sole bargaining agent union by attaining the required majority of votes and the company has not denied stated status of this union by adducing any evidence whatsoever. Rather Company has repeatedly admitted that union no. 3 is the sole bargaining agent (ref page 10 para 4 and page 11of written argument of Company).

12. It is clear from the objection of union no. 2 & 3 to this stated memorandum of settlement that the signature of stated workmen is disputed by these unions, yet the company did not adduce any evidence in support of execution or genunity of the agreement. Neither is the stated agreement proved in evidence nor is any witness to its execution is examined by the company. Even after the order dated 30.07.2015, the company never adduced any such evidence.

13. Record shows that Company's evidence was declared closed on 25.04.2008 vide order no-111 but the company sought permission for vacating this order and for liberty to examine further witness/adduce further evidence. This prayer of company was allowed by court vide order no. 116 dated 25.06.2008. But despite this liberty, the company preferred not to adduce any further evidence.

14. The company in its written argument has admitted that Union no. 3 has alleged that the signature on the stated settlement are forged or reversely are not genuine but despite such objection by union no. 3 the company made no attempt to prove the agreement before the tribunal or to examine any of the signatory or witnesses or attesting officers of stated agreement to prove the authenticity of the signatures.

15. This dispute is referred to the tribunal by the government u/s 7A and it is a dispute between the company and the five unions who are representing the workmen. No workman individually or collectively is party to this dispute except through their accredited recognized unions. Under such factual matrix the signature of workman in their individual capacity on the agreement appears to be neither lawful nor procedurally proper.

16. Union no. 2 has filed certificate of its recognition as sole bargaining agent issued by the Registrar of Trade Union, W.B. on 31.10.2002 and on 28.03.2005, 15.1.2008 and 1.2.2008. These certificates corroborate that this union, having secured majority votes of workers, was recognized as the sole bargaining agent for workman by concerned authority.

17. Legally speaking once certain no. of workmen are represented before any court or tribunal through their unions the court or tribunal cannot take cognizance of their entering into any such out of Court settlement in their individual capacity when no such workmen has appeared before the Tribunal informing that they have entered into any such agreement. More so when no such workman, individually or collectively had informed the tribunal of their loss of allegiance/ membership of stated unions which is representing them before the Tribunal.

18. Once the validity of the document is challenged by the adversary, duty is cast on the party claiming benefit of the document to prove it legally but the company has summarily failed to prove the document or its due execution before the Tribunal.

19. So far as the judgement referred by the company are concerned:

a) **P. Virudhachalam and others Vs. management of Lotus Mills and another (ref.-1998-I-SCC 650)** – In this case the settlement is arrived at during conciliation proceeding before the conciliation officer. And all unions, except one union having minority membership, signed the settlement and some workmen who were members of that minority union objected to the settlement. So factually this referred case is distinguishable from the case pending before this Tribunal. Moreover, in this case Hon'ble Court held that "the reigns of bargaining on behalf of workmen are handed over to the union representing such workman. This union espoused the common cause on behalf of all their workmen." (Para 9 at Page 659) So Hon'ble Court has clearly prioritized the union over individual workman in case of bargaining for their interest. In the case before the Tribunal admittedly the union challenging the stated settlement is the sole bargaining agent which means it holds membership of majority workmen. In Barauni Refinrey Pragatisil Shramik Parishad vs. Indian Oil Corpn Ltd. (ref. 1991 (1) SCC 4) Hon'ble Court held that, "a settlement arrived at in course of conciliation proceeding with a recognized majority union will be binding on all workmen..... and individual employee of minority union is discouraged from scuttling the settlement as there is an underlying assumption that the settlement reached with help of conciliation officer must be fair and reasonable". Thus, the decision referred to is factually distinguishable.

b) **Tata Engg. & Locomotive Co. Ltd. Vs. workman (ref. – 1981-II-LLJ-429 para 10)** – In this case the issue to be decided was whether Tribunal is to adjudicate on fairness or justness of a settlement when the vast majority of workmen have accepted them. Hon'ble Court held that if the settlement is arrived at by vast majority of workers with their eyes open and was also

accepted by them in its totality it mut be presumed to be just and fair". Thus, referred judgement is distinguishable from the case pending before this Tribunal.

c) **Reserve Bank of India &Ors. Vs. C.N.Sahasranaman&ors. (ref 1986-Suppl.SCC-143 para 60)** – In this case, the constitutionality of the scheme framed by Reserve Bank of India for promotion and seniority list of workmen was challenged. Thus, this is distinguishable.

d) **ITC Ltd. Workers welfare Association and another vs. management of ITC Ltd. & another (Ref 2002(3)SCC 411)** – In this case, Hon'ble Court held that Industrial Tribunal could not substitute its own views for those reflected in the settlement. Moreover, in this case also the settlement was arrived at during conciliation proceeding and therefore, it carried presumption that this is just and fair (ref Para 17).

e) As the purported memorandum of settlement of May 2007 was admittedly neither participated nor signed by sole bargaining agent union i.e. the majority holding union no. 3 and is denied and disputed by sole bargaining agent union and even the individual signatures appearing are also alleged to be forged by the sole bargaining agent union and reversely company had failed to prove the execution of stated agreement by adducing any evidence whatsoever. This tribunal is not in a position to look into the fairness or justness of alleged agreement and in none of the referred cases relied by the company the execution of the agreement is challenged so the ratio thereof cannot be applied to this case.

20. As per provisions of Trade Union (West Bengal Amendment) Act, 1983 the sole bargaining agent union is vested with the power of entering into collective agreement with the employer and the company has admitted in the written argument that union no. 3 namely H.M & H.I.L. Sangrami Shramik Karmachari Union is the sole bargaining agent union so any agreement with any other union or individual workman is not lawful as per the Trade Union (West Bengal Amendment) Act, 1983. No explanation whatsoever is given by the company as to why Hindustan Motors & Hyderabad Industries Ltd. Sangrami Sramik Karmachari Union being the sole bargaining union and recognized union and Hindustan Motor and Hyderabad Industries Employees Union were not made party to the settlement. Record shows that these 2 unions were two out of three unions named in the reference made by the government and out of rest two unions one was made party to this case after filing of purported memorandum of settlement. Hindustan Motors & Hyderabad Industries Ltd., Sangrami Sramik Karmachari Union was made party in this case on 12.09.2008 i.e. after filing of memorandum of settlement. Another union namely Hindustan Motor Ltd. Employees & Mazdoor Union was brought on record on 8.4.2003. Matter

was referred to Tribunal by the Government on 16.08.2002. It is clear that 2 out of that 3 unions have disputed the execution of the agreement, one of them being holder of 52% votes of workmen and being the sole bargaining agent as admitted by the company in their written argument. This fact raises question about whether at all majority workmen endorsed stated agreement or not.

21. It is found that this Tribunal raised question about veracity and legality of stated memo of agreement vide order. No. 236 dt on 30.7.15 and said order was never challenged by the company before any higher forum.

22. In view of such facts and circumstances the purported memorandum of agreement cannot be relied upon by the Tribunal and no award can bepassed on the basis of the same.

23. That brings us to the issues referred for adjudication to this Tribunal which is -

a. Whether freezing of D.A. from September, 2001 and adjustment of non-production days against privilege or sick leave by the management of M/s. Hindustan Motors Ltd. are legal and justified?

b. What relief, if any, are the workmen entitled to?

24. In their written statement the only reason for freezing of DA and adjustment of leave against non-productive days given by company is financial stringency and decreasing production/demand but the company only witness OPW 1 Sankar Bhattacharjee has failed to produce any document whatsoever showing any such financial stringency or decreasing production/demand. The company did not produce any balance sheet or income tax return or any other such document to corroborate its claim that was forced to decrease the DA of employees or adjust their leave thereby depriving them of their lawful salary for the reason of it's failing economic health.

25. This issue is discussed in detail in para-2, 3, 4 & 5 at page-23(Supra).

26. Thus it is found that freezing of D.A. from September, 2001 and adjustment of non-production days against privilege or sick leave by the management of M/s. Hindustan Motors Ltd. are not found to be legal or justified.

All issues are adjudicated accordingly. It is found that Management was not justified in freezing of D.A. from September, 2001 and adjustment of non-production days against privilege or sick leave permissible to workmen.

Hence, it is,

ORDERED

that the freezing of D.A. from September, 2001 and adjustment of non-production days against privilege or sick leave permissible to workmen is unjust and illegal. Company is directed to recall the order of freezing of D.A. from September, 2001 and adjustment of non-production days against privilege or sick leave permissible to workmenby 20.12.2022 and to clear the dues of all workmen towards DA and encashment of leaves for the period since September 2001till date by 20.12.2022. The dues of workers who have died or reached the age of superannuation during last 20 years are to be cleared by 20.12.2022.

Let a copy of this award be sent to the Principal Secretary to the Government of West Bengal, Labour Department, New Secretariat Buildings, 1, Kiran Sankar Roy Road, Kolkata-700001.

Sd/-
Durga Khaitan
Judge
Fourth Industrial Tribunal
Kolkata

20.10.2022

Dictated & Corrected by me,

Sd/-
Durga Khaitan
Judge

Judge
Fourth Industrial Tribunals W.B.