

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

No. Labr/ 1289 / (LC-IR)/ 22015(16)/338/2018

Date : 14/11/2025

ORDER

WHEREAS under Labour Department's Order No. 647-I.R./IR/11L-55/2015 Dated 01.07.2015, Corrigendum No: Labr./381/(LC-IR)/22015(16)/338/2018 Dated 12.02.2021 with reference to the Industrial Dispute between The Assembly of God Church 18, Royd Street, Kolkta-700016 and its workmen represented by The Assembly of God Church & School's Employees Forum, regarding the issues mentioned in the said order, being a matter specified in the Second Schedule of the Industrial Dispute Act' 1947 (14 of 1947), was referred for adjudication to the 4th Industrial Tribunal, Kolkata.

AND WHEREAS the 4th Industrial Tribunal, Kolkata, has submitted to the State Government its Award dated 11.11.2025 in Case No. VIII-27/15 on the said Industrial Dispute Vide e-mail dated 12.11.2025 in compliance of Section 10(2A) of the I.D. Act' 1947.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act' 1947 (14 of 1947), the Governor is hereby pleased to publish the said Award in the Labour Department's official website i.e **labour.wb.gov.in**.

By order of the Governor,


Assistant Secretary

to the Government of West Bengal

No. Labr/ 1289 /1(5)/(LC-IR)/ 22015(16)/338/2018

Date : 14/11/2025

Copy forwarded for information and necessary action to:

1. The Assembly of God Church 18, Royd Street, Kolkta-700016.
2. The Assembly of God Church & School's Employees Forum.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariat Building, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
5. The Deputy Secretary, IT Cell, Labour Department with request to cast the Award in the Department's website.


Assistant Secretary

to the Government of West Bengal

No. Labr/ 1289 /2(3)/(LC-IR)/ 22015(16)/338/2018

Date : 14/11/2025

Copy forwarded for information to :

1. The Judge, 4th Industrial Tribunal, Kolkata, N.S. Building, 1, K.S. Roy Road, Kolkata-700001 with reference to e-mail dated 12.11.2025.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.
3. Office Copy.


Assistant Secretary

to the Government of West Bengal

In the matter of an Industrial Dispute between The Assembly of God Church and its workmen represented by The Assembly of God Church & School's Employees Forum.

(Case No. VIII-27/15)

Reference No: 647-I.R./IR/11L-55/2015 Dated 01.07.2015

Corrigendum No: Labr./381/(LC-IR)/22015(16)/338/2018 Dated 12.02.2021

BEFORE THE FOURTH INDUSTRIAL TRIBUNAL, KOLKATA: WEST BENGAL

P R E S E N T

SHRI NANDAN DEB BARMAN,
JUDGE FOURTH INDUSTRIAL TRIBUNAL
KOLKATA.

Workmen represented by The Assembly of God Church & School's Employees Forum.

..... Applicant/Union of Workmen

Vs.

The Assembly of God Church
18, Royd Street, Kolkta-700 016.

..... Opposite Party / Employer.

A W A R D

Dated: 11th November, 2025.

ISSUES UNDER REFERENCE TO BE ADJUDICATED

- (1) Whether the non-payment of V.D.A. to the non-school workmen of the Management with effect from 01-01-1997 & violation of Section 9A of the Industrial Disputes Act, 1947 are justified? (After Corrigendum by the appropriate Government Dated 12.02.2021, the date with effect from "01-01-1997" was replaced by "April, 1998".)
- (2) What relief, the workmen thus affected are entitled to?

Written Statement from & on behalf of the workmen

- 1) That the workmen are being represented by the General Secretary of Assembly of God Church & School's Employees Forum (Regd. No. 25063) and the said Union having the locus standi to file the written statement for the cause its

members who are the staff of Assembly of God Church, registered under the Societies Registration Act, 1961.

- 2) That the employees since joining were being paid Variable Dearness Allowance (in short VDA) per month according to the rise or fall of the Price Index. For the perusal of the Learned Tribunal the applicant refers the appointment letter dated March 13, 1991 of one of the staff is enclosed herewith, wherefrom it can be ascertained that Variable Dearness Allowance of Rs. 389/- per month separately shown and being paid. The applicant craves leave to produce the same.
- 3) That similarly, the applicant refers the pay slip of July, 2014 of one of the staff shows that no Variable Dearness Allowance is being paid. The applicant craves leave to produce the same.
- 4) The applicant submits that the Chairman issued a Notice to the staff, the content of which is re-produced below:

“I am pleased to inform you that the administration has decided to increase the Variable Dearness Allowance by Rs. 77.00 per month with effect from August 1, 1990.

This decision has been taken in keeping with the cost of living index which has moved upwards by 51 points on an average in the preceding 12 months.

You are therefore finding that this increase has been given effect in computing your salary for this month. Sd/ Chairman.

P.S. All staff signed on the duplicate copy of this notice”.

5. The applicant submits that the Law & Estate Officer on behalf of the management issued letter to all staff on April 02, 1998 intimated that the salaries have been revised with effect from 01.01.1998 but Variable Dearness Allowance has been withdrawn.
6. The applicant thereafter demanded to re-introduce the Variable Dearness Allowance, otherwise the staff members will be affected financially and further agitated that the salary of the staff of Church is very poor comparing to the School, who are being paid higher basic plus other allowances including Variable Dearness Allowance. The applicant states that Variable Dearness Allowance is not the bounty of the management, but it is the legal right of the staff to get according to the per point rise of fall of price index, to cope up the stiff market condition.

7. That the said Union has been representing to the company as well as to the Labour Commissioner demanding re-introduction of Variable Dearness Allowance but the company didn't pay heed. The conciliation proceeding was being failed; the matter was referred to this Learned Tribunal for adjudication. All letters will be produced at the time of disclosure of documents.
8. That the management is liable to pay the Variable Dearness Allowance since 01.01.1997 to all staff together with the arrear payments.

Written Statement of O.P/Employer.

1. That the order of reference issued by the Assistant Secretary as it appears there from is not maintainable in law as the same has not been issued by the Secretary being empowered by virtue of position as Chief Executive in the Ministry of Labor under appropriate government.
2. That the order of reference suffers from infirmity of non application of mind of the appropriate government and the reference has been made in a most cavalier fashion, hence the same is not maintainable.
3. That the order of reference is not maintainable in as much as the appropriate government while exercising administrative power in referring the purported dispute committed grave error in inferring violation of section 9A of the Act in the issue framed and there by without any authority of law took a role of adjudicator at pre adjudication stage. Such invalid order of reference cannot confer any valid power and jurisdiction upon the Ld. Tribunal to adjudicate the issues referred there under.
4. That the order of reference is not maintainable as the issue of nonpayment of Variable Dearness Allowance (hereinafter referred to as VDA) w.e.f. 01.01.97 as referred for adjudication is a non existing issue and there exists no grievance or dispute of the Union with reference to nonpayment of VDA w.e.f. 01.01.97 written statement of the Union before amendment discloses that grievance has been raised for withdrawal VDA from 01.01.98. This apart even after amendment the Union has made claim which per se factually incorrect and based on non-existing grievance. Hence, there cannot be any adjudication on nonest issue and the issue over which no dispute exists cannot be referred or adjudicated.
5. That the order of reference is not maintainable in as much as the issues framed in the order of reference in a form of industrial disputes is ex-facie

bad in law and what has been referred for adjudication is not an industrial dispute and non-existing issue.

6. That the order of reference issued by the state government is not maintainable in as much as the state government issued the order of reference on the issues not raised and conciliated and the purported failure report under section 12(4) of the Act which is the basis of formation of opinion of the state government has not been properly considered by it.
7. That the order of reference is not maintainable in as much as the subject matter of the dispute is a stale one and stale dispute cannot be adjudicated or referred by the state government.
8. That the state government has referred the purported dispute on the issue of justifiability of nonpayment of VDA and there is no scope to adjudicate such purported dispute as question of entitlement of VDA has not been referred for adjudication. Hence there cannot be valid adjudication based on such wrong, improper, invalid and defective order of reference.
9. That the order of reference is not maintainable and the Union is legally incompetent to raise dispute on the issue on principle of waiver, estoppels and acquiescence. Further the dispute so referred is covered by settlement between the workmen and the management long back in 1998. The workmen at large have been acting upon the same over almost last two decades.
10. That the Union has no locus standi to espouse the case of and to represent the workmen and the Union is not a recognized one.
11. The Union does not enjoy support of substantial number of workmen to convert the alleged grievance as indicated in the order of reference to a valid industrial dispute. Hence the Union is not competent to maintain the purported dispute as industrial dispute. Further the Secretary who verified the written statement is not legally competent to do so.
12. That the issues of purported industrial dispute referred for adjudication or rose by the Union is not an alive issue and is a closed chapter and there is no scope to reopen the dead issue after more than a decade.

The management states that the employees accepted nonpayment of VDA linked with rise and fall of cost of living index and have been accepting the wages without payment of additional VDA since 1998 without any reservation.

13. That what has been referred for adjudication is not an “Industrial dispute” as Church is not an “industry” under section 2(j) of the Act and the person employed therein is not “workman” under the Act. Consequently the Union under reference is not a Trade Union under Trade Union Act.
14. Without waiving the above legal objection relating to maintainability of the reference vis a vis jurisdiction of the Ld. Tribunal the Church state the following relevant fact.
 - A. That the Church is set up not for any commercial purpose and it is engaged in religious, charitable and philanthropic activities for the welfare of humanity. The object of the Church includes encouraging and promoting education and social services program. As part of its activities it provides free shelter, and food and undertakes various other welfare activities for the poorest section of the society like Bustee feeding program through which 8,000 to 10,000 people are provided free nutritious meal for six days in a week from seven different feeding points at Calcutta, sponsoring around 7,500 poor and needy students through its vernacular and other schools. As part of its charitable and welfare activities it also undertakes program for rehabilitation of the children of the exploited mother and leprosy affected persons who are unable to join in the mainstream of the society. It also undertakes various health care programs. The Church undertakes all round developmental work for underprivileged members of the society in backward areas. The Church as part of its noble, philanthropic and social services also provide supply of clean, pure drinking water in backward districts and provides all kind of help to needy and helpless people. The functioning of the Church solely depends on the donation and fund received from USA and Canada as main donors and from various religious and other organizations. Over a period of time funding from abroad has substantially been reduced with the change of socio-economic and political scenario particularly in east European countries as a result of which the Church has been facing acute fund crunch and meeting its noble commitment to humanity has become difficult, yet it has not deviated from its committed goal. Excess of expenditure over income in 2011-12 was Rs. 1,87,80,558.31 which in the financial year 2014-15 was Rs. 2,15,98,233.71. Financial position has become so grave that further additional burden may compel the Church to stop its welfare and philanthropic activities.
 - B. That the employees of the Church initially were not entitled to VDA as one of the component of total pay packet. Only from July 1986 Church Management introduced VDA lined with cost of living index as one of the component in

total pay packet separately in addition to dearness allowance. Besides Basic Pay, DA and VDA the employees are also paid with other allowances like house rent allowance, lunch allowance domestic allowance, medical allowance, transport allowance etc. Taking into consideration uncertain rise of cost of living index and its fall and also considering limited financial resources and alarming fund crunch the management of Church decided to freeze Variable Dearness Allowance from calendar year 1998 and the management continued to pay the amount of VDA at the same rate payable in 1997 and there has been no reduction in the amount. However, subsequently the amount of VDA payable was added to and merged with the amount of fixed DA payable to the employees from November 2000. Freezing payment of VDA, the amount of which depends on uncertain rise and fall of cost of living index helps the management to make proper budgetary provision for future years towards manpower cost which was essentially required in days of financial crisis. Management has also effected periodical wage revision giving substantial wage increase every 3 years, in addition to annual increments in basic pay, allowances including dearness allowance following freezing of Variable Dearness Allowance. The employees welcome the decision and readily accepted the revised pay and allowance with stagnation of VDA at the point of 1997 yet the Church management beside holding informal meeting also held meeting with all staff members to ascertain whether they had any grievance or clarification in the matter of upward wage revision and discontinuance of further Variable Dearness Allowance over and above the cost of living index of 1997. A Separate and formal notice in writing was also issued on 02.04.1998 to the staff members following the decision as aforesaid taken and implemented. All the staff members without any reservation or murmur accepted the decision and since January 1998 they have been receiving the increased salary and DA without additional Variable Dearness Allowance than what was payable in 1997. The employees never raised any dispute on the issue of freezing of dearness allowance and its merger with Fixed Dearness Allowance for more than a decade and by efflux of time and upon acceptance of pay structure without payment of any additional VDA for about fifteen years it has become a closed chapter. It is worth mentioning that despite the present diminishing fund flow and increasing gap between expenditure and income as stated above, in last September (2015) besides substantial revision in basic pay and increase in other allowances there has been a huge increase ranging from Rs. 1600/- to 2,600/- in D.A. It is further stated that the employees employed in vernacular and vocational institutions run by the Church for the oppressed section of the

society do not get Variable Dearness Allowance which continues to be included in the wages of the employees of the Church.

- C. That the Church states after long slumber only in 2013 for the first time the present Union as a strategy to gain ground and to establish its presence sought to generate issue and to achieve its goal without considering the interest of the employees picked up the issue of demand of VDA and thereby sought to cause disharmony in the relation between the management and the employees and raised purported dispute.
 - D. That the workmen are not legally entitled to any VDA also because the Church is not scheduled industry and the workmen cannot demand introduction of VDA.
15. The Church now deals with the statements and/or the allegations contained in the written statement of the Union. The Church states that the statements contained in the written statement are untrue, misconceived and the Church denies each and every such statement and/or allegations, save and except which are matters on record and save and except which are specifically admitted herein and save and except which are matters of record.
- A. With reference to the statement made in paragraph 1 of the written statement of the Union the Church denies that the Union represents the workmen or that it has locus-standi to file the written statement for the alleged cause of the workmen. The Church states that the Union lacks support of substantial number of employees and lacks representative character and authority to espouse the cause of the workmen.
 - B. With reference to the statements made in paragraph 2,3,4 and 5 of the written statement of Union, the Church states that the statement made therein are matters of record and the Church does not admit anything contrary to or inconsistent with the record.
 - C. With reference to the statements made in paragraph 6 of the written statement of the Union, the Church states that the statements made therein are utterly vague and incorrect, hence denied. It is stated that there is no scope to reintroduce the VDA at the whims and caprice of the Union. The workmen have never shown any reluctance or dissatisfaction in receiving their monthly wages in its present any structure without separate element of VDA which suggest that the revised salary and total pay package with its periodical upward revision is beneficial to them than earlier pay pattern showing separate component of Variable Dearness Allowance. It is further stated that

wages payable to staff of vernacular school run by the Church is not higher than that of the Church as alleged. Rather the salary of number of teaching staff of vernacular school is even lower than that of bottom level staff of the Church. Further said schools are also not run by self funding like the Church unlike other self financed schools and schools receiving fees from students. It is emphatically denied that the salary of the staff of the Church is poor compared to that of school as alleged. It is however stated that the salary of the staff of the Church is higher than other comparable Churches in the region. It is further stated that formulation of any structure falls within the domain the governing body of the Church and the employees cannot claim Variable Dearness Allowance separately as a matter of right nor the management is under any legal obligation to pay Variable Dearness Allowance linked with cost of living index. The employees are enjoying substantial hike in their dearness allowance. In the fact and circumstances it is denied that the Variable Dearness Allowance is not the bounty of the management and the legal right of the staff as alleged and the Union is called upon to prove such assertion.

- D. With reference to the statements made in paragraph 7 and 8 of the written statement of the Union, the Church states that without any authority the Union demanded reintroduction of VDA and the demand raised is devoid of any merit legally and otherwise, the employees were paid VDA in 01.01.97 and as such there cannot be any further liability as sought to allege. It is denied that management is liable to pay Variable Dearness Allowance from 01.01.97 as falsely stated.
16. The Church states that the claim made by the Union is legally impermissible and unjust and not bonafide. The workmen are not entitled to any monetary benefit and relief as claimed or otherwise.
17. The Church submits that legal objections rose in paragraph 1 to 12 since touch the very root of the jurisdiction of the Tribunal and those may be heard and decided as preliminary issue before entering into the merit of the case.
18. The Church craves leave to add alter or amend the statement or to file additional statement at later stage if required for efficacious adjudication of the purported dispute.

DECISIONS WITH REASONS

One Mohit Ghosh being the General Secretary of the Applicant/Union of Workmen in order to establish their case adduced his oral evidence as PW-1 and also

produced so many documentary evidences, which have been exhibited as Exhibit-1 to Exhibit-15 respectively.

The documents as exhibited by the Applicant/Union of Workmen are as follows:

Exhibit-1	Representation dt. 02.09.13 of the Union.
Exhibit-2 & 2/1	Representation dt. 18.09.13 & 06.01.14.
Exhibit-3	Letter dt. 14.03.12 & 15.03.11 to ALC , Govt. of W.B.
Exhibit-3/1	Notice dt. 02.04.98.
Exhibit-3/2	Salary advice.
Exhibit-3/3	Notice to staff.
Exhibit-4 (series)	Pay advice of the employee.
Exhibit-5	Letter dt. 10.10.13 of D.L.C.
Exhibit-6	Letter dt. 21.11.13 & 22.01.14 to G. S. Union and Company by D.L.C.
Exhibit-7	Letter dt. 29.10.13 to D.L. C., W.B. by V. Singh, Principal.
Exhibit-8 & 8/1	Employee Pay Slip
Exhibit-9	Letter dt. 24.02.14 to D.LC. by C. K. Sinha, Law & Estate Officer.
Exhibit-10 (collectively)	Original salary advice in respect of the employees containing VDA.
Exhibit-11	Original letter issued by the employee (P.W.-1) to Mr. H. Roy, DLC
Exhibit-12, (collectively) (with objection)	Copies of the online acknowledgements for Annual Return of the Trade Union
Exhibit-13, (collectively) (with objection)	Original Annual Return for the year 2009 in Form-H.
Exhibit 14, (collectively)	Photocopies of the Annual Return for the year 2020 in Form-H.
Exhibit-15	Original certificate of Registration of Trade Union issued by the Registrar of Trade Union, West Bengal, dated 09.01.2009.

On the other hand, the OP/Employer Church in order to establish their case adduced evidence by tendering affidavit-in-chief of one Mr. Ujjal Rakshit, who has been examined and cross-examined as OPW-1.

In addition to his oral evidence, this OPW-1 also exhibited some documentary evidence for and on behalf of OP/Employer, which have been marked as Exhibit-A to Exhibit-AK respectively.

List of Documents as exhibited by the OP/Employer are as follows:

Exhibit-A	Letter dt. 20.11.2000 to Mr. Mohit Ghosh by A.G. Church
Exhibit-B	Letter dt. 20.11.2000 to Mr. Mohit Ghosh by A.G. Church
Exhibit-C	Letter dt. 23.09.03 to Mr. Mohit Ghosh.
Exhibit-D/1 (collectively)	Signatures of W.W.-1 on show-cause notice
Exhibit-E	Photocopy of letter dt. 24.04.01.
Exhibit-F	Photocopy of letter address to W.W.-1 by A.G. Church
Exhibit-G (collectively)	Photocopies of letters given to W.W.-1 by A.G. Church
Exhibit-H	Copy of circular dt. 02.04.1998 used by Church
Exbt-I.	Computer generates salary sheet of Hardev Nayak and others for the month of Sept 1997, Oct 1997, Nov 1997, Aug 1998, Sept 1998 & Oct 1998
Exhibit-J	Payroll of A. G. Church, Vernacular school for the month of Nov, 2015
Exhibit-K	Balance sheet and income expenditure as on 31 st March, 1997
Exhibit-L	Balance Sheet and income expenditure of Church as at 31 st March, 1998
Exhibit-M	Balance Sheet and income expenditure of Church as on 31 st March, 2013
Exhibit-N	Balance Sheet and income expenditure of Church as on 31 st March, 2014
Exhibit-O	Balance Sheet and income expenditure of Church as on 31 st March, 2015
Exhibit-P	Extract of the Minutes of meeting of the Church dated March 26, 1998
Exhibit-Q	Letter dated 23.11.2006 of the Church intimating to Mohit Ghosh for revisions and amenities.
Exhibit-R	A letter to Mr. Satya Rao dated November 20, 2000
Exhibit-S	A letter to Mr. Satya Rao dated Sept 23, 2003 for his salary revision
Exhibit-T	Letter to Satya Rao dt Nov 23, 2006 for his revision of salary & amenities.
Exhibit-U	Salary sheet of A.G. Church for the month of September, 1986

Exhibit-V	A letter to Mrs. Jayanti Mondol dated November 20, 2000 for revision of salary and medical benefit
Exhibit-W	Extract of resolution of the Church dt. 22.09.1986.
Exhibit-X	Constitution and bylaws of the Church.
Exhibit-Y	System generated salary register of Hardev Nayak, Mohit Ghosh, Bulbul Biswas for the period April 1997 to March 1998.
Exhibit-Z	System generated salary register of Hardev Nayak, Mohit Ghosh, Bulbul Biswas for the period April 1998 to March 1999.
Exhibit-AA	System generated salary register of Hardev Nayak, Mohit Ghosh, Bulbul Biswas and Simon Das for the period of April 1999 to March 2000.
Exhibit-AB	System generated salary register of Hardev Nayak, Mohit Ghosh, Bulbul Biswas and Simon Das for the period of April 2000 to March 2001.
Exhibit-AC	System generated salary register of Hardev Nayak, Mohit Ghosh, Bulbul Biswas and Simon Das for the period of April 2001 to March 2002.
Exhibit-AD	Letter of confirmation dt. 16.09.1998 issued by Church to Daniel Sarkar.
Exhibit-AE	Letter of confirmation dt. 28.04.1998 issued by Church to Paresh Kr. Jana.
Exhibit-AF	Letter of confirmation dt. 17.12.1998 issued by Church to Surrandar Basu.
Exhibit-AG	Letter of confirmation dt. 09.12.1997 issued by Church to Kartick Smanta.
Exhibit-AH	Letter of confirmation dt. 9.12.97 issued by Church to Rabi Sankar Pillai.
Exhibit-AI	Letter of confirmation dt. 13.08.1997 issued by Church to Fatima Biswas.
Exhibit-AJ	Letter of confirmation dt. 23.03.2001 issued by Church to Prabir Biswas.
Exhibit-AK	Letter of confirmation dt. 02.07.1999 issued to Simon Das.

Ld. Counsel representing the Applicant/Union of Workmen has filed his written arguments, contending inter alia different points relating to facts and relevant law and citation of different cases to make it relevant to establish the case of Applicant/Union of Workmen.

According to his argument Variable Dearness Allowance (in short VDA) as service condition was provided to the employees of the Church till the month of March,1998 but it was withdrawn since the month of April, 1998 by violating the provision of Section 9A of Industrial Disputes Act. There are some documents exhibited from their ends to show that VDA was paid to the employees of the Church till 1997 and it was increased to Rs. 77/- per month w.e.f. 1st August, 1990. The employees of the O.P/Church through their Registered Trade Union have prayed for VDA by way of Charter of Demand but the management of the Church never pay heed to their demand and ultimately finding no other alternative the Applicant/Union of Workmen raised the dispute before the management of the O.P/ Church and also to the Labour Commissioner, Government of West Bengal seeking redressal of the dispute relating to nonpayment of VDA.

The Ld. Counsel in additional to his written and oral argument relied upon some decisions of the Hon'ble Courts as reported in 1972 (II) LLJ -P -259; 1983 (II) LLJ-P. - 200; 2002 (2) CHN para 13 1978 (I) LAB IC Page-467 & 2018 (I) SCC Labour & Service page 686.

On the other hand, Ld. Counsel representing the O.P/Employer has filed written argument contending inter alia different points relating to law and facts and also citations of different cases to make it relevant to establish the case of the OP/Church.

At the very outset Ld. Counsel for the OP/Employer Church has argued that the issues referred by the appropriate Government in connection with this case for adjudication are vague and accordingly the case is not maintainable to adjudicate on such

vague and improper issues. The appropriate Government referred this case on issues out of which one issue is appeared to be pre-determined holding that there is a violation of Section 9A of Industrial Disputes Act. In this case under reference adjudication of any pre-determined issue cannot be undertaken by the Tribunal as the said reference with such issue is suffers from gross illegality. He further argued that onus is upon the Applicant/Union of Workmen to prove the violation of Section 9A of Industrial Disputes Act or refusal to pay VDA, if any, by adducing relevant evidence.

According to his further argument admittedly the OP/Employer Church used to pay VDA to the employee which was not withdrawn in the year 1997 but the same was freezed at the level of payment in the year 1997 and even after April, 1998 it was continued and thereafter merged with the fixed DA from the month of November, 2000. At that time the employees welcomed the said decision and readily accepted the revised pay and allowances by merger of VDA with fixed DA. But unfortunately after 15 years when it becomes a close chapter the concerned Union of Workmen to establish their existence picked up the issue with the demand of VDA in the year 2013. During the period in between the year 1998 to 2013 the Union although raised demand and dispute with regard to pay and allowances but never raised any demand or dispute for VDA. He further argued that the contention of Exhibit-3(1) will show that VDA will remain unchanged at the level of 1997, even the documents i.e., Exhibit-A and Exhibit-B will show the merger of VDA with fixed DA and abolition of VDA.

Admittedly, it will appear from Exhibit - AD and AE that VDA are being paid after the year 1997. There is no issue for adjudication challenging the illegality of freezing of VDA at the level of 1997 and its merger with the fixed DA. Hence, the issues referred for adjudication with pre determined holding of violation of section 9A of the Act are bad and nonest and accordingly the case under reference is not maintainable and liable to be disallowed.

Besides his above discussed oral and written arguments Ld. Counsel for the OP/Employer Church also relied upon some decisions of the Hon'ble Courts as reported in AIR 1963-569; 1988 LAB IC page 1225; 2001 (1) CHN page 333; 1989 LAB IC 1546; 1979 LAB IC 585 SC; 1975 LAB IC 1153 & 1983 LAB IC NOC 93.

Having heard the above discussed arguments of both side Ld. Counsels and on careful perusal of the materials on record including pleadings of the parties and oral as well as documentary evidence of the parties, admittedly it appears that the relationship between the parties as the employer and its employee was not disputed.

As it appears from the evidence of the Union i.e., Exhibit-12 to Exhibit-15, the existence and the status of the Applicant/Union as a Registered Trade Union also cannot be discarded and the locus-standi of the Applicant/Union of Workmen to espouse the cause of the employee concerned remained successful as no adverse evidence could be adduced from the end of the OP/Employer Church to discard such status of the

Applicant/Union of Workmen as a Registered Trade Union of the workmen concerned with regard to the dispute under reference.

It has been admitted by the management of the OP/Employer Church in their pleadings in para 14 and 15 of their written statement that initially there was no dispute that employees concerned were entitled and provided with VDA which was introduced in the year 1986 and continued even after the year 1998 which was subsequently freezed at the level of 1997 and merged with fixed DA from November, 2000.

Having perusal of some exhibited documents of the Applicant/Union of Workmen like Exhibit-3/2, admittedly it appears that in the salary advice of some employees for the month of February, 1988 and May, 1988 the payment of VDA of Rs. 113/- have duly been reflected. Similarly, salary advice in respect of some other employees for the period in between the year 1987 & 1988 which have been exhibited as Exhibit-10 (collectively) also goes to show that there was a payment of VDA of Rs. 113/- each per month.

Now, if we go through the exhibited documents of OP/Employer Church, then it would appear from Exhibit-B, which was issued by the management of the OP/Church to Mr. Mohit Ghosh, the General Secretary of the Applicant/ Union of Workmen herein, that he was informed that his salary and medical benefit have been revised from 1st September, 2000. It was contended in the said letter to Mr. Mohit Ghosh that, "all other amenities has remained unchanged as agreed by the staff at the meeting held for staff members on March 27, 1988. The Variable Dearness Allowance was to remain unchanged at the 1997 level. Accordingly, both the Variable Dearness Allowance and Fixed Dearness Allowance have been merged as Dearness Allowance and increased as above, thereby abolishing the Variable Dearness Allowance". So from this documentary evidence issued by the management upon Mr. Mohit Ghosh, who was the General Secretary to the Applicant/Union of Workmen, who raised the dispute by demanding the Variable Dearness Allowance clearly goes to show that until the month of November, 2000 i.e., before revision of his salary and medical benefit there was a provision for payment of Variable Dearness Allowance and there was a meeting held for staff members on March 27, 1998, when the staff members was agreed to have Variable Dearness Allowance remained unchanged at the 1997 level and for merger of Variable Dearness Allowance and Fixed Dearness Allowance and thereby abolition of the Variable Dearness Allowance. Said Mohit Ghosh, as witness of Applicant/Union of Workmen as WW-1, during his cross-examination admitted that, "after the year 1997 quantum of Variable Dearness Allowance was not increased or decreased". Although it was claimed after amendment of written statement that the management is liable to pay the Variable Dearness Allowance by reintroducing the same w.e.f. 01.01.1997 but having heard the argument of the Ld. Counsel of the OP/Employer Church and on perusal of their exhibited documents, like Exhibit-AD to Exhibit-AI, admittedly it appears that information provided to some employees for confirmation of service and their scale with allowances for the

periods in between August, 1997 to December 1998, the provision of payment of Variable Dearness Allowance remain present. In those exhibited documents Variable Dearness Allowance was payable to most of the employees concerned of Rs. 1594/- per month and at that time Fixed Dearness Allowance was of Rs. 360/- per month for most of the employees, except Mr. Daniel Sircar, but the similar type of documents issued in favour of one employee Mr. Prabir Biswas for the period of March 23, 2001 goes to show that there was no provision of payment of Variable Dearness Allowance but the Dearness Allowance was increased at Rs. 2247/- per month in place of previous fixed DA of Rs. 360/- per month. So, the merger of Variable Dearness Allowance and the Fixed Dearness Allowance is clear from these exhibited documents of the OP/Employer, which have been marked Exhibit-AJ.

So, from the above discussed documentary evidences on record it is clearly established that whatever may be the case of the Applicant/Union of Workmen about nonpayment of VDA from 01.01.1997 then by way of corrigendum and amendment of Written Statement from April, 1998 but the documentary evidence adduced from the end of the OP/Employer unequivocally established that there was a provision for payment of unchanged Variable Dearness Allowance till the month of October, 2000 but from the month of November, 2000 the said VDA was merged with fixed DA by increasing a hefty amount of fixed DA. In this regard it has already been discussed on earlier occasion that the factum of said merger of VDA and fixed DA was not only reflected in the exhibited documents of Applicant/Union of Workmen i.e. Exhibit-3/1, but also reflected in the exhibited documents of OP/Employer Church i.e., in Exhibit-A & B respectively.

Making the case under reference is vulnerable Sri Mohit Ghosh as witness of Applicant/Union of Workmen as WW-1, during his cross-examination stated that, "his main dispute is the disparity of wages between School and Church employees".

From Exhibit-9, it was made clear that the establishment of the school of Assembly of God Church is separated from the establishment of the Church of Assembly of God Church. So, the pay structure of the employees of school cannot be equated with the pay structure of the employees of Church. Exhibit-F is a document which goes to show that the enhancement of DA of the AG Church employee w.e.f. 1st September, 2015 which vary according to grade.

It is pertinent to mention here that from several documents of both the parties admittedly it appears that there is a provision for revision of pay with the intervals of every 3 years and the employees of AG Church got benefitted through such revised salary and allowances. In this regard said Mohit Ghosh witness of Applicant/Union of Workmen as WW-1 during his cross-examination admitted that, "it is true that salary was being increased at the interval of every three years". It was also admitted by him that after revision of pay for the year, 2003 his salary was increased. Sri Mohit Ghosh as WW-1 again made his evidence inconsistent and vulnerable when during his cross-examination

once he admitted that, "I am aware that VDA was merged with basic pay", but again stated that, "I cannot recollect now whether VDA was merged with basic pay or not". Inconsistently it was also stated by him that, "I cannot recollect now whether the amount of VDA was merged with fixed DA or not".

From Exhibit-11, which is a letter issued by Mr. Mohit Ghosh as General Secretary of Applicant/Union of Workmen to the Deputy Labour Commissioner, it appears that it was informed by him to the said Deputy Labour Commissioner that the Variable Dearness Allowance was withdrawn by the management of the OP/Church since April, 1998 but from the discussion above with regard to the documentary evidences of the OP/Church it is clearly established that VDA was not withdrawn since April, 1998 but it was continued till the month of October, 2000 i.e., it was merged with the fixed DA in the month of November, 2000. Since it was merged with the fixed DA after having a meeting with the staff members on March 27, 1998 then nothing about its existence can be expected after a decade i.e., after a lapse of long 13 years on 02.09.2013 when Exhibit-1 was issued by the said General Secretary of the Union of workmen on 02.09.2013. Had the workmen of the concerned Union being deprived for abolition of VDA since the month of November 2000, then they ought to have claimed the same within a reasonable period like within 2 / 3 months, even within 2/3 years of the alleged cause but none of them raised any demand or dispute with regard to the said VDA within a period of long 12 years. So, the principle of estoppel waiver and acquiescence is appropriately applicable in this case to discard the prayer of the Applicant/Union of Workmen. Since the Applicant/Union of Workmen is not consistent about the fact and actual date of merger of the VDA with fixed DA then nothing about the case of the Applicant/Union of Workmen can be relied upon to establish their case. As a result of which I find nothing convincing to rely upon the demand and the case on dispute of the Applicant/Union of Workmen to adjudicate the issue No. 1 in favour of the applicant/ Union of workmen.

However, keeping in mind the relevant arguments of the Ld. Counsel of the OP/ Employer Church and considering the facts and circumstances and the nature of dispute and the evidences on record, it can justifiably held that the said issue No. 1 to adjudicate "Whether the nonpayment of VDA to the non-school workmen of the management w.e.f. 01.01.1997 after corrigendum April 1998 and violation of Section 9A of Industrial Disputes justified", is a partly pre determined issue. Because, in the self same issue it was already asked for to decide, "whether violation of Section 9A was justified" before adjudication of the main issue, "whether the nonpayment of VDA to the non-school workmen of the management w.e.f. 01.01.1997 was justified". So, keeping in mind the respective arguments of the Ld. Counsel of the OP/Employer Church and the decisions relied upon by him there will be no impropriety if it is held that the issue concerned is not properly framed for adjudication of the dispute in hand. It is a settled principle of law that

a Tribunal cannot travel beyond the issue on dispute under reference as referred by the appropriate Government for adjudication.

Perused all the decisions as cited by both the parties to rely upon those decisions to make it relevant to establish their case but having considered the facts and circumstances and the dispute under reference, particularly issue with purported pre determined issue of violation of section 9A of Industrial Disputes Act, 1947, I find nothing convincing to rely upon any such decisions to make it relevant to arrive at a just decisions in adjudicating the issues of this case under reference.

So, having considered such facts and circumstances and the above discussed inconsistencies in the date of cause of action and framing of such issue, I find the issue No. 2 has no relevancy with merit as the workmen are not entitled to any relief as prayed for.

Both the issues are accordingly adjudicated against the Applicant/Union of Workmen. The case against the OP/Employer Assembly of God Church is accordingly fails.

Hence, it is,

ORDERED

That there was no non-payment of Variable Dearness Allowance to the non-school workmen of the Management with effect from April, 1998 and no such violation of Section 9A of the Industrial Disputes Act, 1947 as alleged and as such no question of adjudication exists to see whether it was justified. As a result of which no workmen is entitled to get any relief as prayed for.

This is my award.

Let the copies of this Award be supplied to the parties to this case free of cost.

Let a copy of this order be sent on line in PDF form to the Secretary, Labour Department, Government of West Bengal, N.S. Buildings through the dedicated e-mail for information and doing subsequent action as per provision of law.

Dictated & Corrected by me

Sd/-
Judge,
Fourth Industrial Tribunal
Kolkata

Sd/-
Judge,
Fourth Industrial Tribunal
Kolkata
11.11.2025