
(2018) 08 MP CK 0102

In the Madhya Pradesh High Court

Case No : Writ Petition No.16189 Of2018

Nai Dunia A Unit Of Jagran Publication Ltd.

APPELLANT

Vs

Labour Department

RESPONDENT

Date of Decision : 13-08-2018

Acts Referred:

Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 10, 10(4)
Working Journalists and Other Newspaper Employees (Conditions of Service) and
Miscellaneous Provisions Act, 1955 — Section 17, 17(1), 17(2)

Citation : (2018) 08 MP CK 0102

Hon'ble Judges : Vivek Rusia, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

Rohit Arya, J

This order shall govern disposal of W.P.Nos.16209, 16178, 16185 and 16198 of 2018. Regard being had to the similitude of the controversy involved

and the nature of relief claimed in all the writ petitions, they have been heard analogously and disposed of by this singular order.

For the sake of convenience, the facts in W.P.No.16209/2018 have been dealt with.

2. This writ petition under Article 226 of the Constitution of India has been preferred challenging the legality, validity and propriety of the impugned

reference made to the Labour Court by the State Government vide order dated 24/08/2017 passed under section 17(2) of the Working Journalists and

Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (for short ' the Act') taking into consideration the order

passed by the Deputy Labour Commissioner, Indore Division, Indore (respondent

No.2).

The terms of reference is as under:

â??IUnHkZ dh 'krZ

vkosnd Jh ine firk jkelgk; 'kekZ] 12] Jhjke uxj] Ikkyrk usekoj jksM] bankSj dks
Je thoh i=dkj ,oa vU; lekpkj i= deZpkjh Â¼lsok 'krsZÂ½ ,oa fofo/k

micU/k vf/kfu;e 1955 ds vUrxZr ethfB;k ost cksMZ dh vuq'kalk vuqlkj fdruh jkf'k
ikus dh ik=rk g\ vkSj bl laca/k esa fu;kstd dks D;k funsZ'k fn;s tkus

pkfg,\â??

on grounds; (i) the Deputy Commissioner, Labour Court while addressing the application under section 17(1) of the Act filed by the respondent No.3,

Padam S/o Ramsahai Sharma has committed patent illegality having dealt with merits of the claim of entitlement in its order dated 19/07/2017; (ii) the

respondent No.3 admittedly has not filed an application before the State Government seeking reference of the dispute of claim of entitlement under

section 17(2) of the Act in the prescribed form 'C' referable to rule 36 of the Rules, 1957 framed under the Act. Hence, the impugned reference made

under section 17(2) of the Act is without jurisdiction; (iii) the State Government had no material before it to act on its own motion for making the

impugned reference under section 17(2) of the Act; (iv) the terms of reference suggest that the question of entitlement is beyond the scope thereof

and the recommendations of the Majithia Wage Board are applicable to the respondent No.2.As such, the order of reference is patently bad and

illegal.

3. Heard.

4. Before advertng to the aforesaid contentions, it is considered apposite to quote sections 17(1) and (2) of the Act in extenso.

17. Recovery of money due from an employer:- (1) Where any amount is due under this Act to a newspaper employee from an employer, the

newspaper employee himself, or any person authorized by him in writing in this behalf, or in the case of the death of the employee, any member of his

family may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the amount due to him,

and if the State Government, or such authority, as the State Government may specify in this behalf, is satisfied that any amount is so due, it shall issue

a certificate for that amount to the Collector, and the Collector shall proceed to recover that amount in the same manners an arrear of land revenue.

If any question arises as to the amount due under this Act to a newspaper employee from his employer, the State Government may, on its own motion

or upon application made to it, refer the question to any Labour Court constituted by it under the Industrial Disputes Act, 1947 (14 of 1947), or under

any corresponding law relating to investigation and settlement of industrial disputes in force in the State and the said Act or law shall have effect in

relation to the Labour Court as if the question so referred were a matter referred to the Labour Court for adjudication under that Act or law.

(Emphasis supplied)

5. Upon careful reading of section 17(1) of the Act, the newspaper employee himself, or any person authorized by him in writing, or in the case of the

death of the employee, any member of his family may, make an application before the State Government for the recovery of the amount due to him or

to such authority , as the State Government may specify in this behalf, if it is satisfied that the amount so due, shall issue a certificate for that amount

to the Collector, and the Collector shall proceed to recover that amount in the same manner as an arrears of land revenue.

Undisputedly, the authority is specified by the State Government by a notification, i.e., the Deputy Labour Commissioner, Madhya Pradesh.

Likewise, upon reading sub-section (2) of section 17 of the Act, it suggests that if any question arises as to the amount due under this Act to a

newspaper employee from his employer, the State Government may, on its own motion or upon application made to it, refer the question to any Labour

Court constituted under the Industrial Disputes Act, 1947 or under any corresponding law relating to investigation and settlement of industrial disputes

in force in the State and such Act or law shall have direct applicability to the Labour Court as if the question so referred was a matter referred to the

Labour Court under the said Act or law for adjudication. As a natural corollary, the provision contained under section 10 of the Industrial Disputes

Act, 1947 (for short 'the Act of 1947) shall have application. Relevant part thereof quoted below:

10. Reference of disputes to Boards, Courts or Tribunals.-

...

4. Where in an order referring an industrial dispute to [a Labour Court, Tribunal or National Tribunal] under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, [the Labour Court or the Tribunal or the National Tribunal, as the case may be,] shall confine its adjudication to those points and matters incidental thereto.â??

(Emphasis supplied)

6. The controversy involved in the instant case revolve around the order of the Government of India, Ministry of Labour And Employment dated 11/11/2011 for implementation of the revised rates of wages for working journalists and non-journalist newspaper employees, as per Wage Board recommendations known as Majithia Wage Board.

7. Implementation/non-implementation of the benefits flowing therefrom and the controversy related and incidental thereto had given rise to mushroom growth of litigation at different forums. Eventually, the Hon'ble Supreme Court has decided a bunch of writ petitions lead case being W.P. (Civil) No.246 of 2011 (ABP Pvt. Ltd., & Another Vs. Union of India and others) alongwith Contempt petition (Civil) No.252 of 2012 on 07/02/2014. The operative portion reads as under:

â??73. In view of our conclusion and dismissal of all the writ petitions, the wages as revised/determined shall be payable from 11.11.2011 when the Government of India notified the recommendations of the Majithia Wage Boards. All the arrears up to March, 2014 shall be paid to all eligible persons in four equal installments within a period of one year from today and continue to pay the revised wages from April, 2014 onwards.â??

8. It appears that non-implementation of the aforesaid order had given raise to bunch of contempt petitions; lead case being Contempt Petition (C) No.411 of 2014 (Avishek Raja and others Vs. Sanjay Gupta) and the same was disposed of on 19/06/2017 wherein the Hon'ble Supreme Court has expressed its deep concern and serious view as regards implementation of the accepted recommendations of the Majitjhia Wage Board and further observed that all cases where complaints with regard to non-implementation of the said recommendations or otherwise shall not give rise to contempt petitions but, the recourse open to employees under section 17 of the Act. Paragraph 27 is relevant and the same is reads as under:

27. Having clarified all doubts and ambiguities in the matter and upon holding that none of the newspaper establishments should, in the facts of the cases before us, be held guilty of commission of contempt, we direct that henceforth all complaints with regard to non-implementation of the Majithia Wage Board Award or otherwise be dealt with in terms of the mechanism provided under Section 17 of the Act. It would be more appropriate to resolve such complaints and grievances by resort to the enforcement and remedial machinery provided under the Act rather than by any future approaches to the Courts in exercise of the contempt jurisdiction of the Courts or otherwise.

9. Thereafter, in the aforesaid case by another dated 13/10/2017, the Hon'ble Supreme Court has observed as under:

Upon hearing the learned counsel for the applicant we clarify our Judgment dated 19.06.2017 to mean that dispute (s) referred for adjudication under Section 17(2) of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 will be disposed of by the concerned Labour Court/Industrial Tribunal as Expeditiously as possible, preferably, within six months of the reference being made.

With the aforesaid clarification the miscellaneous application is disposed of.

10. In the backdrop of the aforesaid factual matrix of the case in hand, it appears that the respondent No.3 has filed an application under section 17(1) of the Act in the Office of the Labour Commissioner, Madhya Pradesh seeking benefit of the recommendations of the Majithia Wage Board for the period 2006 to 2016 by virtue of his working on the post of Assistant Engineer with the petitioner, Nai Dunia Newspaper, Indore.

11. The petitioner upon notice issued by the prescribed authority appeared and raised multidimensional objections as regards maintainability of the application and prayed for its rejection inter alia disputing and denying the employee - employer relationship and the applicability of the Majithia Wage Board recommendations to claim classification by the respondent No.3 as regards the pay scales and also denied calculation sheet submitted by him, etc.,

12. Looking to the complexity involved due to serious dispute raised by the petitioner as against the entitlement for claim, the prescribed authority, i.e.,

the respondent No.2 reached the conclusion that the amount claimed cannot be said to be 'due amount' for which the recovery certificate may be ordered to be issued to be recovered as arrears of land revenue and, in the fitness of things, it was observed that such question related to entitlement of claim may be referred to the Labour Court for adjudication under section 17(2) of the Act. Consequently, the order so passed was sent to the State Government.

13. The State Government upon consideration of the relevant facts has made the impugned reference to the labour Court.

14. The first contention of the petitioner that the prescribed authority has dealt with and decided the question of entitlement of claim is found to be factually incorrect as in the order dated 19/07/2017, no where the Authority records a finding on the question as regards entitlement or as to the amount due. Instead, it has expressed its inability to deal with the application under section 17(1) of the Act for the reason of existence of disputed questions of fact based on the respective pleadings of the parties.

As regards the second and third contentions that the impugned reference was incompetent in the absence of application under section 17 of the Act in Form C referable to rule 36 of the Rules appended to the Act, in the opinion of this Court, is of no consequence in the obtaining facts and circumstances of the case inasmuch as section 17(2) of the Act as discussed above also empowers the State Government 'on its own motion' and the information so supplied to the State Government by the prescribed authority is the relevant material to make a reference to the labour Court to determine the question arising as to the amount due to the respondent No. 3. Hence, no illegality is found in the impugned reference for this reason.

As regards the fourth contention, suffice it to say that the section 17(2) of the Act aptly makes it clear that the jurisdiction of the labour Court while addressing on the question related to entitlement of the amount due under the terms of reference in question shall have the same jurisdiction as the labour Court is conferred upon under the ID Act while answers the reference made to it under the said Act, resorting to the investigation and adjudication of the dispute referred to it.

15. The apprehension of the learned counsel for the petitioner that it shall be precluded to raise the jurisdictional issue related to the

question/entitlement of the amount due, regard being had to the terms of the reference, in the opinion of this Court, is misconceived. The labour Court

shall have jurisdiction to decide the points arising out of reference as well as the matters incidental thereto as provided for under section 10(4) of the

Act of 1947. It needs no mention that the aforesaid sub-section (4) of section 10 of the Act of 1947 empowers the labour Court to deal with the

jurisdictional facts arising out of terms of the reference.

16. Consequently, this Court is of the considered opinion that the impugned reference under section 17(2) of the Act made to the labour Court by the

State Government is legal and valid.

17. Before parting with the case, it is considered apposite to observe that in the light of the orders passed by the Hon'ble Supreme Court and in

particular, order dated 13/10/2017 (supra) referred to above, the labour Court shall endeavour to decide the reference expeditiously.

18. Consequently, all the writ petitions stand dismissed with the aforesaid observation.

19. Let a copy of the order be placed on the record of other cases.

In view of the above, present petition also stands disposed of in the same terms .