
(2018) 08 MP CK 0149

In the Madhya Pradesh High Court

Case No : Writ Petition No.16218, 16180 Of 2018

Nai Dunia

APPELLANT

Vs

Labour Department

RESPONDENT

Date of Decision : 20-08-2018

Acts Referred:

Working Journalists and other News Paper Employees (Conditions of Service) and
Miscellaneous Provision Act, 1955 — Section 17, 17(2)
Industrial Disputes Act, 1947 — Section 10, 10(4)

Citation : (2018) 08 MP CK 0149

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Advocate : ?Girish Patwardhan

Final Decision : Dismissed

Judgement

Heard on the question of admission and interim relief.

By these writ petitions, the petitioners are challenging the impugned order whereby, the reference has been made by the State Government to the

Labour Court under Section 17(2) of the Working Journalists and other News Paper Employees (Conditions of Service) and Miscellaneous Provision

Act, 1955 (for short "the Act"). The petitioner has also challenged the order of Deputy Labour Commissioner dated 19.7.2017 forwarding the

matter for making the reference.

The similar order of reference was subject matter of challenge in W.P.No.16209/2018 in the case of Nai Dunia Vs. State of M.P. and others and

connected

Writ Petitions and these batch of writ petitions have been dismissed by the coordinate Bench by the order dated 25.7.2018 by holding:

4. Before adverting 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.

(2) 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.

(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:

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.

8. It appears that non-implementation of the aforesaid order had given rise to a 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 Majithia 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 read 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's 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, nowhere 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.â??

Hence, the issue which the petitioner is raising before this Court has already been considered and decided by the coordinate Bench in the aforesaid

order.

Learned counsel for the petitioner placing reliance upon the judgment of the Supreme Court in the matter of Tata Iron and Steel Co. Ltd Vs. State of

Jharkhand reported in LAWS(SC) 2013 9 47 as also in the matter of National Engineering Industries Ltd. Vs. State of Rajasthan and others: AIR

2000 SC 469 has submitted that the jurisdictional issue cannot be raised before the Labour Court. But this aspect has already been considered by the

coordinate Bench in the judgment quoted above by holding that the petitioner is not precluded from raising such a issue and the Labour Court has the

jurisdiction to decide the point arising out of the reference as well as the matter incidental thereto as provided under Section 10 (4) of the Act.

Having regard to the aforesaid and for the detailed reasons which has been assigned by the coordinate Bench in the case of Nai Dunia (supra) quoted

above, I do not find any merit in the present writ petitions which are accordingly, dismissed on the same terms as noted in the above order.