
(2000) 02 MP CK 0037

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 340 of 1989

Nav Bharat Press (P) Ltd. and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 01-02-2000

Acts Referred:

Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 — Section 17

Citation : (2000) 86 FLR 556 : (2001) ILR (MP) 931 : (2000) 2 LLJ 1275 : (2000) 3 MPHT 240

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : R.P. Jain, for the Appellant; Dinesh Agarwal and Ramesh Shrivastava, for the Respondent

Judgement

Dipak Misra, J.—Invoking the extraordinary jurisdiction of this Court the petitioners have prayed for issue of writ of certiorari for quashment of the order dated May 24, 1988 contained in Annexure I and the recovery certificate Annexure J issued in pursuance of the said order.

2. The facts as have been unfolded are that the original respondent No. 3 filed an application u/s 17(1) of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (hereinafter referred to as the "Act") for recovery of an amount of Rs. 25,992.50 towards the differential salary which was due to him under the Palekar Award. He also prayed for gratuity. The arrears of salary were claimed for the period October, 1979 to January, 1986. The petitioner resisted the said claim filing an objection. It was put forth before the competent authority that the respondent No. 3 was not in employment of the petitioners herein and, therefore, was not entitled to the amount claimed. The positive plea of the petitioner was that respondent No. 3 was an employee of "Shri Block Works" and had nothing to do with the petitioners' establishment which is known as "Nav Bharat Press Private Ltd.", An affidavit was filed by the Supervisor to that effect. The competent authority,

respondent No. 2 herein, without appreciating objection raised by the petitioners passed an order vide Annexure I directing payment of amount claimed by the original respondent No. 3 (now substituted by L. Rs.). It is averred that respondent No. 2 could not have adjudicated the controversy in question as the petitioner had disputed the factum of employment of the original respondent No. 3, Jugraj Singh Sarathe under the petitioners and the State Government could have only referred for adjudication to the Competent Labour Court as envisaged u/s 17(2) of the Act.

3. No return has been filed by the respondents. Respondents 1 and 2 have filed a return in support of the award.

4. I have heard Shri R.P. Jain, learned counsel for the petitioners, Shri Dinesh Agarwal, learned G. A. for respondent Nos. 1 and 2 and Shri Ramesh Shrivastava for the substituted legal heir of original respondent No. 3. Shri Jain has contended that once the status of the original respondent No. 3 was disputed the respondent No. 2 could not have adjudicated the controversy as it was beyond his jurisdiction and the State Government at best could have referred the matter. In support of his submission he has placed reliance on the decisions rendered in the case of Kasturi and Sons (Private) Ltd. Vs. N. Salivateeswaran and Another, , Newspapers and Periodicals, Bangalore v. State of Karnataka, and Nav Bharat Press v. State of M. P., M.P. No. 311 of 1980 decided on July 28, 1980 1982 LIC 684.

Combating the aforesaid contention, Shri Shrivastava and Shri Patel have canvassed that the Competent Authority has taken all the materials on record and the findings are based on cogent reasons and, therefore, the impugned order is unassailable.

5. To appreciate the rival submissions raised at the Bar, it is apposite to refer to the unamended Section 17 of the Act which reads as under:

"Where any money is due to a newspaper employee from an employer, under any of the provisions of this Act, whether by way of compensation, gratuity or wages, the newspaper employee may, without prejudice to any other mode of recovery, make an application to the State Government for the recovery of the money due to him, and if the State Government or such authority as the State Government may specify in this behalf is satisfied that any money 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 manner as an arrear of land revenue."

After the amendment the provisions read as under

"17 (1)--Where any amount is due under this Act to a newspaper employee from an employer, the newspaper employee himself, or any person authorised 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 manner as 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 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.

(3) The decision of the Labour Court shall be forwarded by it to the State Government which made the reference and any amount found due by the Labour Court may be recovered in the manner provided in Sub-section (1)."

6. In the case of *Kasturi & Sons* (supra), the Apex Court has considered the unamended provisions. Their Lordships' view is as under:

"The section provides for a procedure to recover the amount due from an employer, not for the determination of the question as to what amount is due. The condition precedent for the application of Section 17 is a prior determination by a competent authority or the Court of the amount due to the employee from his employer. It is only if and after the amount due to the employee has been duly determined that the stage is reached to recover that amount and it is at this stage that the employee is given the additional advantage provided by Section 17 without prejudice to any other mode of recovery available to him.

XXX XXX XXX Whenever the legislature wants to confer upon any specified authority, powers of a Civil Court in the matter of holding enquiries, specific provision is made in that behalf. If the legislature intended that the enquiry authorised u/s 17 should include within its compass the examination of the merits of the employee's claim against his employer and a decision on it, the legislature would undoubtedly have made an appropriate provision conferring on the State Government or the specified authority the relevant powers essential for the purpose of effectively holding such an enquiry.

XXX XXX XXX The powers of the authority specified u/s 17 must be found in the provisions of the Act itself, and they cannot be inferred from the incidental circumstances that the specified authority otherwise is a member of the Industrial Tribunal, since there is no provision in the Act which confers on the specified authority the relevant and adequate powers to hold a formal enquiry, it would be difficult to accept the position that various questions which may arise between the working journalists and their employers were intended to be dealt with in a summary and an informal manner without conferring adequate powers

on the specified authority in that behalf."

7. In the case of Newspapers and Periodicals (*supra*) their Lordships while considering a case after the amended provisions, expressed the view as under:

"The above observations of the Supreme Court apply equally even while construing the ambit and scope of Section 17 as it stands now (after its substitution by Central Act No. 65 of 1962). The position has not changed except for the fact that under Sub-section (2), as it stands now, the State Government has been conferred with powers to refer the question, the question being as to what amount, if any, is due to a working journalist from his employer, to an appropriate Labour Court for adjudication. The amount due under the Act means wages, which the newspaper employee claims he is entitled to get from his employer, as fixed by the Wage Board constituted under the Act to that category of employees to which he claims that he belongs. As observed by the Supreme Court in *Kasturi & Sons*" case that it is only if and after the amount due to the employee has been duly determined that the stage is reached to recover that amount invoking Section 17."

8. The Division Bench of this Court in the case of *Nav Bharat Press* (*supra*) held as under:

"From the facts stated above, it is clear that a dispute did arise within the meaning of Section 17(2) of the Act relating to the interpretation of the Wage Board Recommendations in the context of dearness allowance payable to the employees. The dispute cannot be decided without properly interpreting the Wage Board Report in the light of the Census Report of 1971. Such a matter could not have been determined by the Labour Commissioner u/s 17(1). In our opinion, the State Government was bound to make a reference u/s 17(2)."

9. On a reading of the amended provisions and keeping in view the decisions governing the field, it is graphically clear that a dispute arising with regard to amount due under the Act has to be referred to the appropriate Labour Court constituted under the Industrial Disputes Act, 1947. When the due is disputed on one ground or other the authority cannot adjudicate that *lis* and determine the rights. In the case at hand on a perusal of Annexure D, it is absolutely clear that the claim of the petitioner was resisted on the ground that he was never an employee of the petitioner. This stand has also been taken note of by the Deputy Labour Commissioner but he proceeded to adjudicate the matter. In the opinion of this Court when dispute of this nature was raised before the Deputy Labour Commissioner he could not have adjudicated the controversy u/s 17(1) of the Act and the matter could have been referred for adjudication u/s 17(2) of the Act.

10. In view of the aforesaid analysis, the order passed vide Annexure I is untenable and is liable to be quashed and accordingly, I do so. However, it is directed that the State Government shall make a reference of the dispute to the competent Labour Court constituted under the Industrial Disputes Act, 1947 within a period of 2 months from receipt of this order.

11. Resultantly, the writ petition succeeds and is hereby allowed. However, there shall be no order as to costs (sic). The security amount, if any, be refunded to the petitioners.