
(1989) 04 BOM CK 0056
In the Bombay High Court
Case No : Writ Petition No. 884 of 1977

Nava Bharat

APPELLANT

Vs

Nagpur Union of Working Journalists and Others

RESPONDENT

Date of Decision : 21-04-1989

Acts Referred:

Industrial Disputes Act, 1947 — Section 10(1), 2
Working Journalists (Fixation of Rates of Wages) Act, 1958 — Section 3(1), 6, 6(3), 7
Working Journalists and Other Newspaper Employees (Conditions of Service) and
Miscellaneous Provisions Act, 1955 — Section 12, 13, 3(1), 9

Citation : (1991) 1 LLJ 591

Hon'ble Judges : W.M. Sambre, J;H.D. Patel, J

Bench : Division Bench

Advocate : S.G. Aney and Anand Paerchure, for the Appellant; S.D. Thakur, for the Respondent

Final Decision : Dismissed

Judgement

H.D. Patel, J.—It is rather a pity that three Working Journalists employed with the petitioner Nava Bharat, a Hindi daily of Nagpur, have yet to reap the benefit of an award made by the Industrial Tribunal, Nagpur, on 1st January, 1977. These unfortunate Working Journalists have not even received the statutory benefit that has become due and payable under the recommendations of the Working Journalists Wage Committee, which came into force from 29th May, 1959 and also the recommendations of the Wage Board for Working Journalists, which came into force from 1st July, 1967. The three Working Journalists have since ceased to be in employment for one reason or the other, and though one of them has put in long service, it is not possible even to compute the terminal benefits on the basis of last pay drawn. Though the demand initially embraced the claim for 17 Working Journalists, the dispute is now restricted to three of them, others having settled their claim, may be out of frustration resulting from delay, in which the petitioner Nava Bharat seems to be interested, and may also be for the reason of their inability to withstand the strain of litigation for years

together.

2. Originally two references were made by the Government of Maharashtra u/s 10(I)(d) of the Industrial Disputes Act, 1947 read with Section 3(1) of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 for adjudication of the industrial dispute stipulated therein between Nava Bharat, a Hindi daily, and their workmen. Both the references were decided by a common award, which is impugned in this petition.

3. The subject-matter of Reference (IT) No. 10 of 1972 is as follows;

"The following working journalists employed in the Nava Bharat Hindi Daily Newspaper shall be given the category as mentioned against their names on the basis of nature of work performed by them. They shall be paid their wages as per their category with retrospective effect i.e. from the respective dates of appointments:

Sl. No. Name Categories to be classified.

1. Shailendra Kumar Resident Editor
2. Shiv Narayan Dwivedi Managing Editor
3. Ghanshyam Saxena Chief Sub-Editor
4. Satyanarayan Sharma Chief City Reporter
5. Radhey Shyam Agrawal Chief Sub-Editor
6. Satyanarayan Dubey Chief Sub-Editor
7. Azad Shanu City Reporter
8. Purshottam Purohit Commercial Reporter
9. Manmohan Maheshwari Chief Sub-Editor
10. Deendayal Purohit Provincial Editor Spl. Correspondent Leader Writer
11. Umesh Choube Provincial Editor Spl. Correspondent Leader Writer
12. Goverdhan Das Mehta Provincial Editor Spl. Correspondent Leader Writer
13. Surendra Mishra i City Reporter Commercial Editor
14. Laxmidas Gandhi City Reporter Commercial Editor
15. Mahesh Gupta Feature Editor Proof Reader
16. Om Prakash Soni Feature Editor Proof Reader
17. Avinash Sharma Sub-Editor."

Of the 17 employees as stated above the dispute is now restricted only in respect of Ghanshyamdas Saxena, Satyanarayan Dubey and Satyanarayan Sharma.

4. The respondent No. I Nagpur Union of Working Journalists filed a statement of claim in justification of their demands. Their main contention was that the Nava Bharat, a daily Hindi Newspaper, is a partnership firm and Ramgopal Maheshwari is the principal Partner. It publishes a daily Hindi Newspaper from Nagpur. Various editions are also published from places like Raipur, Jabalpur, Bhopal and Indore, The revenue of the paper, according to the first respondent, was more than Rs. 12.50 lakhs. The parties are governed by the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (hereinafter referred to as "Act No. 45 of 1955"). Various provisions are quoted in the Statement of claim from the said Act to show that the Government had powers for fixation of rates of wages in respect of working journalists and also for its revision. The procedure therefore is also prescribed. The case on behalf of the Working Journalists was that the Wage Board was constituted on 12th November, 1963, which submitted a report on 27th October, 1967. The Central Government passed an order bringing into force the recommendations of the Wage Board with effect from 1st July, 1967. Upon enforcement of the recommendations, it was contended that every Working Journalist is entitled to be paid by the employer wages which shall not be less than the rate of wages specified in the order. The order was not implemented by the petitioner. Even the minimum wages are not paid to the workmen. The classification of the newspaper is made on the basis of gross revenue of the newspaper establishment. On the basis of such classification the first respondent claimed that the petitioner firm belonged to Class V of the various classes enumerated in the recommendations. For the purpose of dearness allowance, Nagpur fell in the area No. II. The classification of the Working Journalists is given as follows:

"In Classes V, VI and VII, daily newspapers,

I. Editor

II. Assistant Editor, Leader Writer, News Editor, Special Correspondent.

II-A. Chief Sub-Editor, Chief Reporter, Principal Correspondent in a Metropolitan Centre accredited to a State Government, Correspondent accredited to the Central Government other than a Special Correspondent.

III. Reporter, Sub-Editor, Correspondent News Photographer, Calligraphist, Artists, Librarians and Index Assistants and all Working Journalists other than those mentioned under any other group unless placed higher by the establishment.

IV. Proof Reader."

The pay scales of the categories are also extracted for ready reference and they are as follows:

Class Group of Employees Scale

V. (Rs. 12 1/2 Lakhs & above & less than Rs. 25 lakhs I Not less than Rs.700 p.m.

II. Rs. 425-20-525-35-700-50-800 (12 Yrs.)

II-A. Rs. 375-16-455-33-620-40-700 (12 Yrs.)

III. Rs. 175-15-250-30-400-35-575 (12 Yrs.)

IV. Rs. 120-6-150-12-210-15-240 (12 Yrs.)

5. The first respondent further stated in the statement of claim that there was a dispute in the matter of categorisation in respect of some Working Journalists including the three involved in this petition. It was hence claimed that Ghanshyam Saxena was actually working as Chief Sub-Editor, though his designation was only as Sub-Editor. He has put in 21 years of service and was performing the duties of Chief Sub-Editor for the last several years. He is neither given the pay scale, nor the benefits under the Wage Board's recommendation for the category in which he has been working. Similarly Satyanarayan Dubey is also working as a Chief Sub-Editor since the year 1960 till he resigned from service on 20th September, 1977. The first respondent hence claimed that he should be properly categorised and the wages and other benefits as due under the Wage Board recommendation for Working Journalists for such category should be paid to him. In respect of Satyanarayan Sharma a claim was put forth to categorise him as Chief City Reporter and to pay him the wages as prescribed by the Wage Board recommendations along with other benefits. In the end, the first respondent prayed that all the Working Journalists in Nava Bharat be categorised according to the categories demanded and they be paid the wages as per the Wage Board recommendations retrospectively from the date of their appointments.

Later on the first respondent by amending the statement of claim, desired re-classification of the Nava Bharat according to the Wage Board recommendations in terms of paragraph 4.22. According to them, the newspaper will be in Class V, because the revenue had considerably increased after 1966. Reliance was also placed on the Wage Committee Report for Working Journalists, which was accepted by the Central Government on 19th May, 1959 of the Wage Committee that came to be constituted on June 14, 1958 under the provisions of the Working Journalists (Fixation of Rates of Wages) Ordinance, 1958, which was later on replaced by an Act (Act No. 29 of 1958). The recommendations were brought into force with effect from 29th May, 1959 and the duration of the recommendation was fixed upto 30th June, 1967. According to the first respondent, the Nava Bharat was classified as Class "E", but the First Labour Court decided this question in Sangawar's case and classified the newspaper in Class "D" in the years 1965, 1966 and 1967. Hence re-classification was claimed in Category "D" for the period when the Wage Committee Report was in force and thereafter in Class V as per the recommendations of the Wage Board for Working Journalists and claimed the wages according to the said classifications.

6. The petitioner resisted the demands very vehemently by filing their reply. Initially by way of preliminary objection the validity of the reference was

challenged on the ground that there was no industrial dispute, much less an apprehended industrial dispute. The dispute, if any, was an individual dispute and as such the dispute does not fall within the definition of "industrial dispute" as defined u/s 2(k) of the Industrial Disputes Act, 1947. It was also their defence that since majority of the Working Journalists, about eleven in number, have intimated the Tribunal that no industrial dispute exists between them and the petitioner Nava Bharat, reference was not maintainable.

7. The petitioner admitted that Nava Bharat is a partnership concern and publishes its newspaper from Nagpur and editions from Raipur, Jabalpur, Bhopal and Indore. It was, however, denied that the gross revenue of the paper was 12 1/2 lakhs. According to them, the gross revenue was Rs. 7,30,320.83 in the year 1965, Rs. 7,83,301.76 in the year 1966, Rs. 9,67,192.00 in the year 1967, Rs. 10,95,401.00 in the year 1968, Rs. 11,36,361.00 in the year 1969 and Rs. 13,64,195.00 in the year 1970. According to the recommendations, the classification is to be based on average revenue of the three accounting years. It was pointed out that for the first time the revenue of the petitioner firm crossed the limit of 12 1/2 lakhs, but this crossing over cannot be the basis for re-classification of the newspaper, because the re-classification has to be done on the basis of average revenue of three immediately preceding accounting years. According to the petitioner, their establishment comes under Class VI where the gross revenue is 5 lakhs and above, but less than 12 1/2 lakhs. The petitioner would continue to be in Class VI unless the revenue for immediately three preceding years exceeds 12 1/2 lakhs. According to the petitioner, during the period when the recommendations of the first wage Committee were in force, Nava Bharat was classified in Class "E". It was also their defence that the recommendations of the Working Journalists Wage Committee as well as of the Wage Board for Working Journalists have no statutory force and are not enforceable in the court of law.

8. The petitioner Nava Bharat also alleged that they paid the wages to the Sub-Editors much in excess of what is found payable by the recommendations of the First Wage Committee. It was then pointed out that the pay scales applicable to the petitioner newspaper are as follows :

Class Group of Employees Scales Years

VI. (Rs. 5 lakhs & above and less than Rs. 12 1/2 lakhs.) I Not less than Rs. 500 p.m.

II Rs.225-13-290-25-415-30-475 (12 Yrs.)

II-A Rs. 200-11-255-20-355-30-425 (12 Yrs.)

III Rs. 150-9-195-14-285-20-325 (12 Yrs.)

IV Rs. 110-5-135-11-190-15-200 (Revised)

The wage scales are made applicable to the Working Journalists employed in the

petitioner press.

9. With reference to the individual cases, the petitioner firm denied that Ghanshyam Saxena worked as Chief Sub-Editor, According to them, there was no such post in the establishment He is only a Sub-Editor. The date of his employment is 12th April, 1941. His claim to become Chief Sub-Editor is baseless. He never performed the duties of Chief Sub-Editor. The duties performed by him favourably compare with that of a Sub-Editor. During the subsistence of the First Wage Committee, Ghanshyam Saxena was paid the wages of a Sub-Editor, which wages were more than the prescribed one.

10. In response to the claim put forth by Satyanaryan Dubey, the petitioner denied that he worked as Chief Sub- Editor. According to them he worked only as a Sub-Editor. He was initially appointed as an apprentice in the year 1960 and from the year 1962 he performed the duties of Sub-Editor. He was paid on the same basis like Ghanshyam Saxena.

11. In response to the claim of Satyanarayan Sharma the petitioner stated that he was working as a City Reporter and not as a Chief City Reporter. He was, therefore, not entitled to claim the wages of a higher post.

12. The other connected Reference (IT) No. 5 of 1972 is not answered by the Industrial Tribunal and in the absence of any challenge by the first respondent, it is not necessary to narrate the demands. The best course open is to ignore this reference.

13. By the award dated 3rd January, 1977 preliminary objections were initially decided by the Industrial Tribunal before embarking upon the main issues involved in the reference. In the first instance the learned Industrial Tribunal negatived the plea raised on behalf of the petitioner firm that the reference is bad, inlaw and without jurisdiction, inasmuch as there is no industrial dispute. It also negatived the contention that the dispute, even if there be, was an individual dispute not falling within the definition of "industrial dispute" as defined u/s 2(k) of the Industrial Disputes Act, 1947. It was also found that though eleven Working Journalists have withdrawn their support to the dispute, it does not render the reference incompetent and/or without jurisdiction. The learned Industrial Tribunal also negatived the defence that the matters forming subject-matter of reference are not covered by the Third Schedule. The contention of the petitioner that the recommendations made by the Working Journalists Wage Committee as well as by the Wage Board for Working Journalists have no statutory force and not capable of being enforced in the court of law, was also negatived. A finding was also rendered by the learned Industrial Tribunal that it is indeed unfortunate that such an influential and established newspaper should not have implemented the recommendations of the Wage Committee or Wage Board for Working Journalists. On merits of the demands the learned Industrial Tribunal after scanning the evidence led by either of the parties found that both Ghanshyam Saxena and Satyanarayan Dubey have been

working in the category of Chief Sub-Editor, former from the date of appointment and the latter from 1st April, 1960. These findings were given on the basis of nature of duties performed by these workmen. Similarly it was found that Satyanarayan Sharma has been working as Chief City Reporter from 1st January, 1960. Consequently the three Working Journalists were held to be entitled to the wages as per their category in terms of the recommendations of the Working Journalists Wage Committee and subsequently the Wage Board for Journalists. Since the Nava Bharat falls in Class "E", all the three Working Journalists would fall in Grade II-A and their pay scale would be Rs. 125-15-200-25-300. Such a position would exist till 30th June, 1967. Thereafter it is indicated in the award that from 1st July, 1967 to 31st December, 1971 the Nava Bharat would be in Class VI as per the recommendations of the Wage Board and the three Working Journalists would fall in Group JJ-A and would be entitled to the pay scale of Rs. 200-11-255-22-365-30-425. As from 1st January, 1972 the petitioner Nava Bharat entered Class V and the pay scale of Rs. 375-16-455-33-620-40-700 would be applicable to the three Working Journalists, which they are entitled to receive. It is in these terms that the award in respect of Ghanshyam Saxena, Satyanarayan Dubey and Satyanarayan Sharma was made. Aggrieved by the said award, this writ petition is filed.

14. Initially the objection regarding maintainability and validity of the reference was pressed into service. The objection was that the reference was bad in law and without jurisdiction inasmuch as no industrial dispute exists or is apprehended between the parties, and even if there is a dispute, it is more or less an individual dispute not falling within the definition of "industrial dispute" u/s 2(k) of the Industrial Disputes Act, 1947. The objection is totally devoid of any substance and needs to be rejected. The Supreme Court in *Centra Provinces Transport Services Ltd. v. Raghunath Gopal Patwardhan*(1), while deciding whether, a claim of dismissed employee for reinstatement is an industrial dispute within the meaning of Section 2(12) of the C. P. and Berar Industrial Disputes Act (Act No. XXIII of 1947) had an occasion to consider the definition of "industrial dispute" in Section 2(k) of the Industrial Disputes Act. It was observed therein that "notwithstanding that the language of Section 2(k) is wide enough to cover a dispute between an employer and a single employee, the scheme of the Industrial Disputes Act does appear to contemplate that the machinery provided therein should be set in motion, to settle only disputes which involve the rights to workmen as a class and that a dispute touching the individual rights of a workman was not intended to be the object of an adjudication under the Act, when the same has not been taken up by the union or a number of workmen." (PP.30-31). These very observations were also followed in another decision of the Supreme Court in *The Newspapers Ltd. Vs. The State Industrial Tribunal, U.P.*, . Applying the aforesaid observations in the present case there can be no doubt that the dispute referred for adjudication is an "industrial dispute" relating to the working journalists as a class between themselves and their employer. The reference was in respect of 17 Working Journalists employed as a

class by the petitioner Nava Bharat, and the dispute involved therein relates to categorisation of the Working Journalists according to the nature of work done by them and payment of wages as per their category right from the date of their appointment. Though a dispute between an employer and a single employee cannot per se be an "industrial dispute", but it can become one, if it is taken up by the Trade Union or a number of workmen. The present dispute is also taken up by the Union, who have made a concerted demand on behalf of the Working Journalists to set right the grievance against their employer-the petitioner Nava Bharat. There can be no doubt that the dispute referred for adjudication of the Industrial Tribunal is nothing but an industrial dispute as defined under the Act.

15. A capital was sought to be made out on behalf of the petitioner Nava Bharat regarding majority of the Working Journalists listed in the schedule to the order of reference withdrawing their support to the industrial dispute by sending intimation in writing that the disputes between them and the management have ceased to exist and on that count also the reference is rendered incompetent and invalid. This ground was opposed on behalf of the first respondent Union by contending that the letters were secured by the management under duress. It is not necessary for us to enter into this controversy, because even presuming that the letters were voluntarily despatched by 11 Working Journalists withdrawing their support to the dispute, that would not by itself render the reference incompetent and/or invalid. One cannot lose sight of the fact that on the date of demand as well as during the pendency of the proceedings and also on the date of reference all the 17 Working Journalists, which constituted a bulk or a class as aforesaid, desired an adjudication in the matter. Once a valid reference for adjudication has been made, it is idle to contend that the Industrial Tribunal shall cease to have jurisdiction to deal with the reference by reason of the fact that the majority of workmen, who had collectively sponsored the cause of workmen by raising a dispute, had subsequently, during the pendency of the adjudication, retracted or withdrawn their support. It is correctly pointed out by the Industrial Tribunal that its jurisdiction to adjudicate the industrial dispute stems from and is sustained, until it makes an award and the same becomes enforceable by the reference itself, which has been made on the basis of industrial dispute existing or apprehended on the date of reference and the jurisdiction to proceed in the matter is not in any way affected by the fact that subsequent to the date of reference the workmen or a substantial number of them, who had originally sponsored the cause, had later resiled or withdrawn from it. There is no substance even in this contention that the reference has become incompetent and, therefore, invalid.

16. One more feeble attempt is made to oust the jurisdiction of the Industrial Tribunal by contending that the Tribunal can adjudicate industrial disputes relating to any matter specified in the Third Schedule u/s 7-A of the Industrial Disputes Act. It was urged that the Third Schedule does not include any such matter as are set out in the order of reference. We find no force whatsoever even in this contention. Item No.7 of the Third Schedule is "classification by grades"

and item No. I deals with "wages including the period and mode of payment". The Working Journalists have demanded their proper category on the basis of work performed by them and payment of wages as per that category. Evidently, therefore, matters forming subject-matter of reference are squarely covered by the Third Schedule and hence the contention raised has no base to stand upon.

17. It was next urged on behalf of the petitioner Nava Bharat that the recommendations made by the Working Journalists Wage Committee as well as by the Wage Board for Working Journalists have no statutory force and they are not capable of being enforced in the court of law. Both the recommendations will have to be examined with reference to the relevant provisions as contained in the Working Journalists (Fixation of Rates of Wages) Act, 1958 (No. XXIX of 1958) and the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (No. XLV of 1955).

18. The Central Government under Sub-section (1) of Section 3 of the Working Journalists (Fixation of Rates of Wages) Act, 1958 constituted a Committee to fix the rates of wages in respect of the Working Journalists by the notification dated 14th June, 1958. The said Committee made recommendations to the Central Government for fixation of rates of wages in respect of the Working Journalists of the Wage Board decision. The Central Government accepted the recommendations and made Order No. SO 1257, dated 25th May, 1959 in terms of the recommendations of the Committee contained in Chapter III of its Report subject to modifications mentioned in the order itself in exercise of the powers conferred by Section 6 of the Act (No. XXIX of 1958). A direction was also issued by the Central Government that the said Order shall come into operation on the dates specified in paragraph 30 read with paragraph 41 of Chapter III. The date on which the recommendations of the Wages Committee have come into force is the date of publication of the aforesaid Order under subsection (3) of Section 6 of the Act No. XXIX of 1958 and that date is 29th May, 1959. Once the Order is brought into operation, it becomes enforceable and every Working Journalist is entitled to be paid by his employer the wages at the rate which shall in no case be less than the rate of wages specified in the Order u/s 7 of the Act No. XXIX of 1958.

19. Similar is the case in respect of the recommendations of the Wage Board for Working Journalists under the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (No. XLV of 1955). Section 9 thereof empowers the Central Government to constitute a Wage Board for the purpose of fixing or revising the rates of wages for Working Journalists. Accordingly by the notification published by the Government of India, Ministry of Labour and Employment, S.O. No. 3202, dated 12th November 1963 the Wage Board came to be constituted. Section 12 of the Act No. XLV of 1955 empowers the Central Government to enforce the recommendations of the Wage Board. Accordingly the Central Government accepted the recommendations of the Wage Board, subject to certain modifications and made an Order S. O. No.

3883 dated 27th October, 1987 in terms of the recommendations as contained in Chapter IV of the Report and further directed that the said order shall come into operation on the dates specified in paragraph 4.32 read with paragraph 4.38. The enforcement date is 1st July, 1967 in so far as the petitioner Nava Bharat is concerned. Once the order is brought into operation, there is no escape for the management from implementation of the Wage Board decision. This is clear from Section 13 of the Act No. XLV of 1955, which stipulates that on coming into force the order of the Central Government u/s 12 thereof, every Working Journalist shall be entitled to be paid the wages at the rate which shall in no case be less than the rates of Wages specified in the Order.

20. It was next urged on behalf of the petitioner Nava Bharat that in case it is found that the recommendations of the Wage Committee are not enforceable, it is not open for the Industrial Tribunal to award wages to Ghanshyam Saxena from the date of his appointment in the year 1951. According to the petitioner's counsel, such an award only in respect of one Working Journalist would create immense disparity amongst those who were in employment during that period. In any eventuality it was urged that the Central Government having fixed the date on which the recommendations of the Working Journalists Wage Committee are brought into force, it would be improper to give retrospective operation from the date earlier to the one fixed by the Central Government. These submissions will have to be judged with reference to the demands made in the reference. There is no doubt that the Union desired the categories to be fixed in respect of all Working Journalists named in the demand according to the work performed by them and to pay the wages of the categories right from the date of their joining the service. Therefore, the demand is for payment of wages for the work done in past. If it is established that a particular working journalist was doing the work of higher category without being paid the wages of that category, the Union was perfectly within its right to make out a demand that such working journalist should be paid from the date the work of higher category was extracted. In this context, a recent decision of the Supreme Court in P.K. Singh and Others Vs. Presiding Officer and Others, , will be of great assistance, wherein it is laid down as follows (P. 365):

"By merely doing the same kind of work which is done by a "B" Grade Fitter a workman appointed as a "C" Grade Fitter will not be entitled to claim the wages of a "B" Grade Fitter unless he is duly promoted after getting through the prescribed trade tests. Such a workman cannot complain that he was not being paid the salary and allowances due to a "B" Grade Fitter, since he did not possess an existing right to claim it. If on an adjudication made on the said question on a reference made u/s 10(1) of the Act, it is held that he should be deemed to be a member of the cadre of "B" Grade Fitters, then only he would be able to claim the salary and allowances payable to "B" Grade Fitters."

Because it is not possible for the workman to claim higher wages for performing duties of higher category without getting the dispute adjudicated u/s 10(1) of the

Industrial Disputes Act, the Industrial Tribunal has every jurisdiction to adjudicate such demands and grant wages from the date the work of higher category was extracted by the employer. There can be no limitation for the period, once it is established that the Working Journalist is performing the duties of higher category from a particular date. The question, however, remains to be decided whether the Industrial Tribunal was justified in granting the wages recommended by the Working Journalists Wage Committee from 1st December, 1951 which is the date of employment of Ghanshyam Saxena. Our answer must be in the negative. No reasons are assigned for making Wage Committee recommendations applicable to Ghanshyam Saxena from December, 1951. The Industrial Tribunal could have fixed the separate wage scale covering the period of eight years, but that was not done. Simply by a stroke of pen the wages that were made payable from 29th May, 1959 under the recommendations of Working Journalists Wage Committee, were made payable in the year 1951, which in our opinion, cannot be permitted, obviously because the learned Industrial Tribunal failed to apply its mind before making the grant. Shri Ghanshyam Saxena would, however, be entitled to claim wages for the category in which he is fixed by the Industrial Tribunal from 29th May, 1959.

21. Our attention was next invited to an order passed by the Judge, Second Labour Court, Nagpur on 30th June, 1976 in Application (IDA) Nos. 570 and 573 of 1968 and (IDA) Nos. 2680 and 2681 of 1968. These applications were filed u/s 33-C(2) of the Industrial Disputes Act, 1947 by Ghanshyam Saxena and Satyanarayan Dubey. These applications were decided along with applications filed by the other Working Journalists on the date mentioned above. In these applications Ghanshyam Saxena and Satyanarayan Dubey seem to have claimed that they have worked in the capacity of Chief Sub-Editor, but were not paid the wages for that category and hence they sought computation of the benefits in terms of money, wages of higher category in which they have worked. Both the applications were ultimately dismissed. A finding, however, came to be recorded that the applicants failed to prove that they worked in higher capacity for the claim period as stated in the application. Taking advantage of this finding, it was urged on behalf of the petitioner, Nava Bharat, that the very same issue is also involved in the reference proceedings in so far as Ghanshyam Saxena and Satyanarayan Dubey are concerned, and this issue having been decided by the Judge, Second Labour Court, Nagpur, who was competent to decide that issue, the decision in respect of the said issue operates as *res judicata* in the subsequent reference proceedings. Reliance for this purpose was placed on the decision of this Court in *Sitaram Balaji Paunikar and others v. Gyarsilal Ramjilal Agarwal* 1989 Mh.LJ. 139.

22. It is now a well settled principle of law that industrial litigation is no exception to the general principles underlying the doctrine of *res judicata*. However, doubts have been expressed in *Mumbai Kamgar Sabha, Bombay v. Abdulbhai Faziullabhai and Ors.* 1976 (32) F.L.R. 291., about the extension of sophisticated doctrine of constructive *res judicata* to industrial law, which is

governed by special methodology of conciliation, adjudication and consideration of peaceful industrial relations where collective bargaining and pragmatic justice claim precedence over formalised rules of decision based on industrial contests, specific causes of action and findings on particular issues. Sitaram's case (supra) which was relied upon on behalf of the petitioner Nava Bharat relates to a decision of constructive res judicata and, therefore, it cannot be of much use to the petitioner. In any eventuality, we will shortly point out that the facts and law laid down in Sitaram's case (supra) cannot be made applicable to the case at hand.

23. In order to decide the issue in question, it is necessary first to look into the respective jurisdiction of the Labour Court u/s 33-C(2) of the Industrial Disputes Act and that of the Industrial Tribunal to adjudicate the dispute u/s 10(1) of the Act. The Supreme Court in *The Central Inland Water Transport Corporation Ltd. Vs. Their Workmen*, , explained the proposition thus:

"In a suit, a claim for relief made by the plaintiff against the defendant involves an investigation directed to the determination of (i) the plaintiff's right to relief; (ii) the corresponding liability of the defendant, including, whether the defendant is, at all, liable or not, and (iii) the extent of the defendant's liability, if any. The working out of such liability with a view to give relief is generally regarded as the function of an execution proceeding. Determination No. (iii) referred to above, that is to say, the extent of the defendant's liability may sometimes be left over for determination in execution proceedings. But that is not the case with the determinations under heads (i) and (ii). They are normally regarded as the functions of a suit and not an execution proceeding. Since a proceeding u/s 33-C(2) is in the nature of an execution proceeding, it should follow that an investigation of the nature of determinations (i) and (ii) above is, normally outside its scope. It is true that in a proceeding u/s 33-C(2) as in an execution proceeding, it may be necessary to determine the identity of the person by whom or against whom the claim is made if there is a challenge on that score. But that is merely "incidental". To call determinations (i) and (ii) "incidental" to an execution proceeding would be a perversion, because execution proceedings in which the extent of liability is worked out are just consequential upon the determinations (i) and (ii) and represent the last stage in a process leading to final relief. Therefore, when a claim is made before the Labour Court u/s 33-C(2) that Court must clearly understand the limitations under which it is to function. It cannot arrogate to itself the functions say of an Industrial Tribunal which alone is entitled to make adjudications in the nature of determinations (i) and (ii) referred to above, or proceed to compute the benefit by dubbing the former as "incidental" to its main business of computation. In such cases determinations (i) and (ii) are not "incidental" to the computation. The computation itself is consequential upon and subsidiary to determinations (i) and (ii) as the last stage in the process which commenced with a reference to the Industrial Tribunal."

It is laid down that proceeding u/s 33-C(2) is a proceeding in the nature of

execution proceeding wherein the Labour Court calculates the amount of money due to a workman from his employer or if the workman is entitled to any benefit, which is capable of being computed in terms of money, the Labour Court proceeds to compute the benefit in terms of money. Thus calculation or computation follows upon an existing right to money or benefit in view of its being previously adjudged or otherwise, duly provided for and must arise in the course of and in relation to the relationship between the workman and the employer. In the recent decision in P.K. Singh's case cited (supra) the Supreme Court reiterated that a workman's claim u/s 33-C(2) for higher wages for having worked as "B" Grade Fitter, though he was designated as "C" Grade Fitter cannot be disposed off unless his right to claim "B" Grade is first adjudicated in a reference u/s 10(1) of the Industrial Disputes Act, 1947 and his application u/s 33-C(2) is not maintainable. Obviously, therefore, the Labour Court functioning u/s 33-C(2) of the Industrial Disputes Act, 1947 is a Court of limited jurisdiction and it cannot arrogate to itself the jurisdiction to adjudicate the dispute regarding classification, which is solely within the realm of the Industrial Tribunal. Similar was the situation before the Judge, Second Labour Court, Nagpur in the applications preferred by the two Working Journalists Ghanshyam Saxena and Satyanarayan Dubey u/s 33-C(2) of the Industrial Disputes Act. An objection was also raised on behalf of the petitioner Nava Bharat that the applications were not maintainable because the principal question involved therein related to reclassification of workman and such a relief could not be claimed in an application u/s 33-C(2) of the Industrial Disputes Act. The Court, however, held that it had jurisdiction to consider the claims. The Labour Court thereby wrongly arrogated the jurisdiction to itself to decide even the question of re-classification, but unfortunately while considering the case on merits the Second " Labour Court virtually found that there was no pre-existing right to claim the amount. This will be apparent from the following extracts of the order:

"Ghanshyam Saxena Exh.58 admitted that his appointment was oral. To the particular question recorded in question and answer with regard to the nature of his appointment he did not say assuredly that his appointment was that of a Chief Sub-Editor. He has further stated that in the non-applicant concern there were number of Sub-Editors and he has admitted that he signed attendance and salary register as "Sah Sampadak". There is ocean of difference between Sah Sampadak and the Chief Sub-Editor. Instead of signing as Sah Sampadak when in the year 1969 (with that year we have no concern) he started to sign as the Chief Sub-Editor, immediately the Chief Editor objected to him in putting that designation....."

"Satyanarayan Dubey Exh. 63 admitted that his appointment was oral. He has admitted that the register which was maintained by the non-applicant for attendance and salary he was to sign in column of Sub-Editor."

In these circumstances, it cannot be said that there is a decision on merit. In any eventuality it was an erroneous decision inasmuch as the Second Labour Court

could not have assumed the jurisdiction to decide the question of re-classification of Working Journalists in an application u/s 33-C(2) of the Industrial Disputes Act. The forum for that purpose is separately provided in the Industrial Disputes Act, 1947. Such a decision, therefore, cannot come in the way of the Tribunal to adjudicate the industrial dispute relating to the classification or re-classification which, as stated above, is exclusive prerogative of the Industrial Tribunal. Issue allegedly decided by the Second Labour Court cannot prevent the Industrial Tribunal from re-classifying the Working Journalists Ghanshyam Saxena and Satyanarayan Dubey on the plea of *res judicata*.

24. Before we consider the grievance of the petitioner Nava Bharat in respect of each of the three Working Journalists, it is necessary to find out to what extent the management has implemented the recommendations of the Wage Committee, which came into operation on May 29, 1959 and the recommendations of the Wage Board, which came into force on June 1, 1967.

Though a bald statement is made in the reply filed by the petitioner Nava Bharat that the Working Journalists have been given the wage scales as recommended, this statement is far from truth. The evidence on record, which is very well scanned and appreciated by the Industrial Tribunal, shows that the basic pay and dearness allowance, which is required to be paid separately, is not paid and instead consolidated wages are admittedly being paid to the Working Journalists till the year 1971. The management never issued any appointment letter to any of their employees. Therefore, the question of issuing the letter at the time of classification of employees was hence out of question. The evidence on record shows that no order in writing relating to appointment, confirmation, promotion and classification was ever given by the petitioner Nava Bharat. This is despite the fact that Rule 3 of the Model Standing Orders applicable to the Working Journalists under the Bombay Industrial Employment (Standing Order) Rules does require such order to be given in writing. Even the compulsory register required to be maintained in Form "D" and "E", which is a mandate of Rule 37 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Rules, were not followed. Since the wages were consolidated till the year 1971, it was also not possible even to carry out the fitment in the grade, which a particular Working Journalist was entitled to under the recommendations of the Working Journalists Wage Committee as well as in the recommendations of the Wage Board for Working Journalists and further to grant of increments based on length of service. Apparently the directions given in both the above said recommendations have not been followed by the petitioner Nava Bharat. If on the basis of this material, the learned Industrial Tribunal has drawn his conclusion that non-maintenance of records was with deliberate intention of escaping the legal consequences flowing therefrom, no fault could be found with such a conclusion. Similarly we agree with the conclusion of the Industrial Tribunal that the management of Nava Bharat has miserably failed to implement the recommendations of the Working Journalists Wage Committee as well as the recommendations of the Wage Board for Working Journalists.

25. The Industrial Tribunal after examining the oral and documentary evidence on record found that Ghanshyam Saxena and Satyanarayan Dubey worked as Chief Sub-Editors and negatived the claim of one Shri R.S. Agrawal. The Industrial Tribunal also found that Satyanarayan Sharma was working as Chief City Reporter. These findings were attacked on behalf of the petitioner Nava Bharat on the ground that none of these two categories or posts were in existence during the period of their claim in their establishment, and therefore, it was not possible for the Industrial Tribunal to have fixed the three Working Journalists in such categories. It was further urged that in any eventuality, there cannot be more than one post of Chief Sub-Editor in one establishment, and this was made clear by examining the witnesses from other newspaper establishments. We will shortly point out that none of these two contentions carry any weight.

26. It is true that there was no category of Chief Sub-Editor or the category of Chief City Reporter in the Establishment of Nava Bharat. When the recommendations of the Working Journalists Wage Committee were brought into force on May 29, 1959 the categories of Chief Sub-Editor and Chief Reporter came to be introduced. The recommendations described the duties of Chief Sub-Editor as a person, who regularly assigns and allocates the work to Sub-Editors, Supervises their work and is generally responsible for determination of the news space and general display of news. Similarly the duties of Chief Reporter were described as a person who was in charge of all reports at a centre of publication, supervises their work and also reports on more important news of the centre. This description was further enlarged in the recommendations of the Wage Board for Working Journalists, which were brought into force from July 1, 1967. A Chief Sub-Editor was described as a person who takes charge of a shift at the news desk, allocates and supervises the work of one more sub-editor and is generally responsible for the determination of news space and the general display of news in the paper or in a particular edition. Similarly Chief Reporter was also described as a person who is in charge of all reporters at a centre of publications, supervises their work and also regularly reports and interprets all news of legislature, political or general importance. Once the duties are enumerated and the Working Journalist who performs such duties or even a substantial part thereof, can be classified in the category in which he performs such duties and is entitled to claim the category and wages attached to that category irrespective of the fact that such a category was not in existence in the establishment. No Working Journalist can be denied a category if he actually performs the duties of that category, merely on the ground that such a category was never in existence in the establishment. Therefore, when the Industrial Tribunal found that there was evidence to hold that Ghanshyam Saxena and Satyanarayan Dubey performed the duties of Chief Sub-Editor and Satyanarayan Sharma performed the duties of Chief City Reporter, there can be no hesitation to classify them in their respective categories and also pay them accordingly. Whether there can be more than one Chief Sub-Editor in an establishment is a question which remains to be answered. At least no such limitation is to be found in either of the

recommendations. It is also not possible to lay down any hard and fast rule about it. It will always depend upon the type of establishment, the nature of work involved and the capacity of the establishment to engage the number of employees. This is evident from the evidence available on record. Shri Modak Chief Sub-Editor of Tarun Bharat, a Marathi daily published from Nagpur, was a witness examined on behalf of the petitioner Nava Bharat. According to him, he himself, Shri Fadnavis, Shri Mahashabde and Shri Thengri are all working as Chief Sub-Editors. Shri L.T. Joshi is a Chief City Reporter. After narrating the duties performed by the Chief Sub-Editor, he disclosed that Tarun Bharat Works in two shifts and a Chief Sub-Editor is there in every shift. The evidence shows that though the minimum requirement is two, yet there are four Chief Sub-Editors in the Tarun Bharat. Shri Manohar Andhare of Yugd-harma, a Hindi daily published from Nagpur, also entered the witness box. He deposed that at the relevant time he was working as Chief Sub-Editor. He also narrated that Shri Ghate was another Chief Sub-Editor working in the same shift, but was looking after the magazine section, which is a publication of four pages on every Sunday. He also deposed that the Chief Sub-Editor was only in-charge of the day shift and night shift remains in-charge of the Sub-Editor. This feature may be peculiar to the establishment where the witness is working. It cannot be accepted as a general opinion more so in the face of the description given in the Wage Board recommendations of Working Journalists to the Chief Sub-Editor as "a person who takes charge of a shift at the news desk" . A third witness examined by the petitioner Nava Bharat was Shri Tikekar, Chief Sub-Editor of Nagpur Times, an English daily also published from Nagpur. In this establishment there are three Chief Sub-Editors, one for each shift, and Shri Padalkar is the Chief City Reporter. Therefore, what emerges from the evidence of the petitioner themselves is that engagement of one or more Chief Sub-Editor depends upon the factors enumerated above and it cannot be confined to only one Chief Sub-Editor for every establishment. The evidence of the above three witnesses has also been discussed by the Industrial Tribunal in paras 62, 63 and 64 of the award.

27. It was next sought to be contended that the evidence on record is not sufficient for the Industrial Tribunal to hold that the three Working Journalists worked in the category in which each one of them is classified. It is to be remembered that this Court will not re-assess the whole evidence again in this writ petition. We have carefully seen that the Industrial Tribunal has examined both oral as well as documentary evidence on record and only after due assessment of that evidence the conclusions have been drawn and categorised those Working Journalists according to the work they performed and even rejected those whose claim was not sustainable. No interference is hence called for in the circumstances.

28. The net result as found by the Industrial Tribunal, would be that Ghanshyam Saxena is working in the category of Chief Sub-Editor from the date of his appointment, but he will be entitled to claim the salary for that category only from May 29, 1959. Similarly Satyanarayan Dubey is also working in the

category of Chief Sub-Editor from the date of his appointment and will be entitled to claim the salary of that category from April 1, 1960. Satyanarayan Sharma has been found to be working as Chief City Reporter from January 1, 1960 though employed in the year 1956 and he would be entitled to claim the wages of that category from January 1, 1960. Since the petitioner Nava Bharat was found to be covered in Class "E" according to the recommendations of the Working Journalists Wage Committee, Ghanshyam Saxena would fall in Group II-A and would be entitled to be fitted in the scale of Rs. 125-15-200-25-300 and would also be entitled to the initial increments based on length of service. Satyanarayan Dubey would similarly fall in Group II-A and will be entitled to the same pay scale as Ghanshyam Saxena, but from April 1, 1960. Similarly Satyanarayan Sharma will be initially fitted in Group III since he was only a Reporter, when the recommendations of the Working Journalists Wage Committee came into force on May 29, 1959. He will first have to be fitted along with initial increments in the pay scale of Rs. 100-5-150-10-200-12.50-225. Subsequently from January 1, 1960 Satyanarayan Sharma would fall in Group II-A as Chief City Reporter and will be entitled to be fitted in the pay scale of Rs. 125-15-200-25-300. All the three Working Journalists will continue to get the scales mentioned above till June 30, 1967. From July 1, 1967 to December 31, 1971 the petitioner Nava Bharat is found to be covered in Class "VI" as per the recommendations of the Wage Board for the Working Journalists and Ghanshyam Saxena, Satyanarayan Dubey and Satyanarayan Sharma would be entitled to be fixed with the recommended increments in the pay scale of Rs. 200-10-255-22-365-30-425 in Group II-A. From January 1, 1972 the petitioner Nava Bharat entered Group "V" and the said three Working Journalists will be entitled to the pay scale of Rs. 375-16-455-33-620-40-700. Except for the slight modification in the date of enforcement of the recommendations of the Working Journalists Wage Committee in respect of Ghanshyam Saxena, the award remains unchanged as no interference is called for.

29. The award confers only the benefit which the three Working Journalists were even otherwise entitled to under the recommendations of the Working Journalists Wage Committee and subsequently under the Wage Board for the Working Journalists. These benefits should have been given voluntarily by the management of Nava Bharat soon after the respective recommendations were brought into force, but this was not done. The first respondent had to fight for the rights at least in respect of the three Working Journalists involved herein. As the years were rolling by, an apprehension was expressed that the award will not be implemented even in future and, therefore interest at the rate of 18 % per annum should be awarded at least from the date of the award. That interest would compensate to some extent the sufferance which the three Working Journalists underwent so far. This demand for interest was vehemently opposed on behalf of the petitioner Nava Bharat firstly on the ground that this Court had no jurisdiction to grant interest in exercise of the powers under Articles 226 and 227 of the Constitution and secondly, because there was no sufferance caused to

the Working Journalists since this Court had stayed the operation of the award except in respect of Shri Satyanarayan Dubey whose payment was ordered to be made, but that payment was subject to the final decision of the writ petition.

30. The apprehension expressed on behalf of the three Working Journalists cannot be said to be without any basis. An attempt was made by this Court to obtain from the management the computation of the amounts found due to the three working Journalists under the award, but though the hearing continued for more than a week, the computation was never made. A pretence to prepare those calculations was, however, made. In fact the management had no intention to calculate the amounts due and submit them to the Court. This conduct speaks volumes about the attitude of the management. It transpires that the management still wants to avoid implementing the award. Even at the cost of repetition, it may be observed here that the payment had become due on May 29, 1959 and thereafter on July 1, 1967, when the recommendations of the Wage Committee and the Wage Board respectively were enforced and that is what the award only confers upon the three Working Journalists. No doubt this Court had stayed the operation of the award and that prevented the two of the three Working Journalists from recovering the amount. Though no stay was operating in respect of Satyanarayan Dubey, he could not recover the amount because the payment was made subject to the final decision of the writ petition. Though the three Working Journalists have ceased to be in employment long back, their final wages still remain to be determined, with the result that even the terminal benefits which necessarily are to be computed on the basis of last pay drawn still remain in abeyance. The demand for interest in the circumstances may be reasonable, but have we the jurisdiction to grant the relief to the respondent Union in a writ petition filed by the management in exercise of the powers under Articles 226 and 227 of the Constitution? We do not think that it is possible to grant the relief sought for by the first respondent considering the powers which this Court can exercise in a writ jurisdiction.

31. Except for the slight modification in disallowing the claim of Ghanshyam Saxena for the period prior to May 29, 1959, the petition is devoid of any substance and is accordingly dismissed. The petitioner Nava Bharat shall bear the costs of the respondent Nos. 2, 3 and 4 quantified at Rs. 6,000 besides bearing their own.