**(2015) 02 KL CK 0121**

**In the High Court Of Kerala**

**Case No :** R.P. No. 853 of 2014 in W.A. 584/2014

New Indian Express — APPELLANT

Vs

State of Kerala and Others — RESPONDENT

**Date of Decision :** 27-02-2015

**Acts Referred:**

Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 — Section 12, 13A, 13A(1), 13A(2), 13A(3)

**Citation :** (2015) 02 KL CK 0121

**Hon'ble Judges :** Alexander Thomas, J.;T.R. Ramachandran Nair, J.

**Bench :** Division Bench

**Advocate :** M. Gopikrishnan Nambiar, P. Gopinath, P. Benny Thomas and K. John Mathai, for the Appellant; Noushad Thottathil, Government Pleader, Advocates for the Respondent

## Judgement

Alexander Thomas, J.—This review petition has been filed by the 1st respondent in W.A. No. 584/2014 seeking to review the judgment of the Division Bench rendered on 22.9.2014 in that writ appeal. The writ appeal was filed by the 3rd respondent (Employees'' Association) in W.P.(C). No. 31500/2013 to impugn the judgment dated 3.3.2014 of the learned Single Judge in that writ petition. The said writ petition was filed by the review petitioner herein. The review petitioner herein had instituted the above said writ petition to impugn Exts. P10 and P11 orders for the recovery of the amount notified as per Ext. P1 notification dated 24.10.2008 issued under Sec. 13A of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (hereinafter referred to as ''the Act''). The prayers in the writ petition were as follows:

"i) To issue a writ of certiorari calling for the records leading to Exts. P3, P10 and P11 notices and quash the same,

ii) To declare that the claim raised by the 3rd respondent and the workers concerned for interim relief at the rate of 30% is not sustainable under law,

iii) To pass an interim order staying all further proceedings pursuant to Exts. P3, P10 and P11 notices,

AND

iv) To grant such other relief as this Hon''ble Court may deem fit and proper in the circumstances of the case."

2. The main finding rendered by the learned Single Judge in the writ petition was to the effect that the subsequent events that led to the issuance of Ext. P9 final wages award on 11.11.2011 and the directions issued by the Apex Court in paragraph 73 of the judgment reported in ABP Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, , make Ext. P1 interim wage inoperative. Accordingly, it was directed in the writ petition that the writ petitioner need to satisfy only the arrears due w.e.f. 11.11.2011 as per Justice Manjithia Wage Board Award by March, 2015 and that the enhanced wages are to be paid from April, 2014 and that the remittance of the arrears to the Wage Board Award would necessarily have to concede to the above said orders of the Apex Court and directed the Revenue Recovery officers concerned to accept the amounts now paid by the writ petitioner and further recovery be made only in accordance with the aforementioned judgment of the Supreme Court, etc. Aggrieved by these directions, the 3rd respondent in the writ petition had filed the above said writ appeal.

3. The Division Bench as per the impugned judgment rendered on 22.9.2014 in W.A. No. 584/2014 held in paragraph 15 thereof that the primary ground urged by the writ petitioner that the interim relief under Sec. 13A will get merged with the final award under Sec. 12 and that the interim award is not enforceable after the notification of the final award, is untenable and unsustainable. It was held therein that the interim rates of wages notified under Sec. 13A(1) shall remain in force for the period mandated in Sec. 13A(3), which is until the order under Sec. 12 comes into operation and that as per Sec. 13A(2) any interim rates of wages so fixed shall be binding on all employees in relation to newspaper establishment and the employees concerned shall be entitled to be paid wages at the rates which shall, in no case be less than the interim rates of wages fixed under Sec. 13A(1) and in case such interim rates are not paid by the employer, then the employee is at liberty to set in motion the recovery proceedings as per Sec. 17. Accordingly, it was held in paragraph 16 on page 25 of the judgment in the writ appeal that the writ petitioner-employer is legally bound to pay interim wages notified as per Ext. P1 in terms of Sec. 13A(1) to the members of the writ appellant-Association @ 30% of the basic wages for the period from 8.1.2008 up to 10.11.2011.

4. With the above said findings allowing the writ appeal, the appellant-Association would have been fully satisfied by the dismissal of the writ petition filed by the employer, so as to effectuate the impugned recovery proceedings. However, the learned counsel appearing for the writ petitioner-employer

 

submitted before the Division Bench that in view of the financial difficulties faced by the newspaper establishment, the employer may be given some leeway in the matter of the time for payment of the interim rates of wages under Sec. 13A to the writ appellant-Association. It was only in view of this specific request made by the learned counsel appearing for the writ petitioner-employer (review petitioner herein) that the Division Bench in paragraph 17 on pages 28 and 29 of the impugned judgment ordered that the writ petitioner-employer will pay the admitted interim wages for the aforementioned period in question @ 25% to the members of the writ appellant-Association after deducting any amount, if already paid, within one month and that the balance 5%, so as to constitute the entire 30% interim wages envisaged under Ext. P1, shall be paid to the members of the writ appellant-Association within a further period of three months therefrom and that in case the aforementioned amounts are not paid within the above said time limit, then the competent recovery authority among the official respondents shall proceed with the recovery proceedings of the interim wages notified in Ext. P1 etc. Now the writ petitioner-employer has filed this review petition contending that 14 out of 68 members of the writ appellant-Association are not eligible employees as per the provisions of the above said Act in question. In that regard they have produced Annexure-A to show the list of 14 employees who are allegedly not eligible for the benefit of the interim wages. Annexure-B has been produced to show the list of 54 employees who are stated to be eligible and Annexure-C has been produced in the review petition to show that the actual amounts payable to each of the above said 46 employees out of 54 employees etc. It is therefore contended that the 14 employees covered by Annexure-A are not eligible for Wage Board Recommendations as they do not come under the definition of eligible employees as per the provisions of the Act and that the judgment in writ appeal to the extent upholds the liability of such 14 employees is liable to be reviewed. Further it is urged that even considering 30% as the interim relief, there is variation in the calculation arrived at by the 2nd respondent and that the correct figures of amount due are those shown in Annexure-C etc.

5. The 3rd respondent in the review petition (writ appellant) has filed a counter affidavit dated 24.1.2015 in the review petition. It is contended by them in their counter affidavit that the above said averments based on Annexures A to C produced along with the review petition are factually wrong and that the contention of the review petitioner that the 14 employees covered by Annexure-A are not eligible for the benefits of the Manisana Wage Board is absolutely false and incorrect and that the said 14 employees are not persons in the management category as alleged by the review petitioner and that those employees do not have any disciplinary powers and they are only employees of the review petitioner-Company and having no managerial or disciplinary powers and that they are fully eligible for the benefit of the interim wages in question. The review petitioner has filed a reply affidavit dated 9.2.2015 in the review petition. It is admitted in paragraph 4 of the reply affidavit that three person out

 

of the aforementioned 14 employees, namely, Gloria Paul, C.G. Pradeep Kumar and Vinod Kumar T.M., are actually eligible for the benefit of interim relief and thus the disputes sought to be projected by the review petitioner are now confined only to 11 employees and not 14 as originally projected in the review petition. It is further clearly admitted in paragraph 7 of the said reply affidavit by the review petitioner that this Court had directed to pay interim wages @ 30% to the members of the 3rd respondent-Association and that the rate at which the interim relief has been ordered is not the subject matter in this review petition. Certain other averments are made in the reply affidavit regarding the aspects relating to the eligibility of the above said 11 employees in question.

6. Heard Sri. Benny Thomas, learned counsel appearing for the review petitioner and Sri. Thampan Thomas, learned counsel appearing for the 3rd respondent-employees'' Association (writ appellant) and learned Government Pleader appearing for all the official respondents.

7. The dispute projected in the review petition is only on a narrow compass regarding the eligibility of 11 employees out of 68 members of the writ appellant-Association and also relating to the exact computation of the amount as sought to be projected in Annexures A to C. From a reading of the writ petition filed by the review petitioner, it can be seen that to Ext. P3 notice dated 11.2.2013 issued by the respondent-Labour Commissioner to the review petitioner regarding payment of notified interim wages @ 30%, the review petitioner is stated to have given reply thereto on 28.2.2013. Thereafter, the respondent-Labour Commissioner is said to have issued notices dated 30.9.2013 and 13.11.2013 and the review petitioner is stated to have submitted explanations thereto as per Ext. P4 dated 21.10.2013, Ext. P5 dated 20.11.2013 and Ext. P6 dated 6.12.2013. Finally, the respondent-Labour Commissioner is stated to have issued Ext. P7 notice dated 30.9.2013. In Ext. P3 issued by the respondent-Labour Commissioner, the list of 68 employees covered by that notice has been given by the Labour Commissioner. The petitioner has not stated either in any of their replies or in the writ petition that any of the said 68 employees are ineligible for the benefit of the above said Wage Board constituted under the provisions of the Central Act. The exact amount due to each employee has also been shown cogently and clearly by the Labour Commissioner in Ext. P3. Nowhere in the writ petition or in any of the exhibited documents, the review petitioner has a case that the amounts computed for any of the employees are incorrect or wrong. The present objections raised in the review petition have not been raised by the review petitioner at any point of time either in their replies to the official respondents or by way of pleadings in the writ petition or in the writ appeal. There are no averments or materials in the writ petition or in the pleadings submitted by the review petitioner in the writ appeal, regarding the factual aspects sought to be projected in Annexures A to C produced in the review petition. Thus, objections have been raised for the first time only in the review petition. Therefore, we are of the considered opinion that the review petitioner cannot be permitted to raise any such contention at this belated stage,

 

that too at the stage of review petition. It is clearly submitted by the learned counsel for the review petitioner that they do not have any dispute regarding the rate of interim wages @ 30%. The only dispute is on the basis of those projected in Annexures A to C produced in the review petition. Based on the pleadings and materials brought on record in the writ appeal, we are of the considered opinion that there has not been any error apparent on the face of record in the impugned judgment in writ appeal. We see no grounds to review the judgment and accordingly the review petition is dismissed. Needless to say, it has already been directed in the impugned judgment that in case the amounts are not paid by the employer within the time limit as directed in the judgment in writ appeal, it is open to the competent authority among the official respondents to proceed with the recovery proceedings, etc.