

(1987) 09 BOM CK 0085
In the Bombay High Court
Case No : Writ Petition No. 2796 of 1982

Prabhakar Shankar Kulkarni

APPELLANT

Vs

Jayantrao Tilak and Others

RESPONDENT

Date of Decision : 21-09-1987

Acts Referred:

Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 — Section 2

Citation : (1993) 3 LLJ 593

Hon'ble Judges : V.V. Vaze, J;P.B. Sawant, J

Bench : Division Bench

Advocate : P.D. Kamerkar, for the Appellant; K.Y. Mandlik and U.K. Mandlik, for the Respondent

Final Decision : Dismissed

Judgement

Vaze, J.—Prabhakar Kulkarni, a journalist, residing at Kolhapur, was working as a part -time correspondent to various newspapers including Kesari published by the Kesari Maratha Trust from Pune. Kulkarni worked as a correspondent of Kesari from Kolhapur from Nov. 1962 and alleges that on 25th Dec., 1974, his services were terminated without notice. The Labour Court, Kolhapur in Reference (IDS) No. 107 of 1976 concluded that the termination of the employment of Kulkarni by the Kesari Maratha Trust with effect from 21st Dec. 1974 was illegal and ordered that the employer should pay Rs. 390/- as notice pay, Rs. 780/- as retrenchment compensation and a like amount as compensation for loss of employment and costs, but rejected the prayer for reinstatement and back wages. Aggrieved Kulkarni has challenged this award by the present writ petition.

2. According to Shri Kamerkar, the learned counsel for the Petitioner, the termination of the services of the Petitioner was malafide because he did not oblige the Trust in signing a certificate about inflated figures of sales circulation in Kolhapur District and that the Petitioner was entitled to full back wages and

reinstatement.

3. After hearing arguments and after perusing the admission of Kulkarni that he was working on a retainer basis for some newspapers other than Kesari such as Free Press Journal, Samachar Bharati and Navshakti but that he had an obligation that news covered by him should not be sent to any other newspaper which is competing with and which is rival newspaper of Kesari such as the Sakal and Tarun Bharat published from Pune, we are afraid the very basis of the reference to the Labour Court is rendered doubtful.

4. The Working Journalists and other Newspaper Employees (Conditions of Service and Miscellaneous Provisions) Act, 1955 was based on the recommendation of the Press Commission which was constituted by the Government to inquire among other things, into the condition of employment of working journalists. The definition of "working journalists" appearing in Clause (b) of Section 2 of the Act as it then stood read as under:

"Working journalist" means a person whose principal avocation is that of a journalist and who is employed as such in, or in relation to, any establishment for the production or publication of a newspaper or in, or in relation to, any news agency or syndicate supplying material for publication in any newspaper, and includes an editor, a leader-writer, news-editor, sub-editor, feature-writer, copy-tester, reporter, correspondent, cartoonist, news-photographer and proof-reader, but does not include any such person who -

(i) is employed mainly in a managerial or administrative capacity, or

(ii) being employed in a supervisory capacity, exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature". 5. The Tribunal for Working Journalists constituted under the Act made some recommendations about basic wages applicable to full-time correspondents and also recommended that the part-time correspondents should be paid on column basis. Government also received representations that part-time correspondents were being retrenched by newspaper establishments as well as news agencies with a view to avoiding the liability for payment in terms of the recommendations of the Tribunal. Further, although, part-time correspondents employed by the newspaper establishment, whose principal avocation is journalism would be regarded as working journalists under the Act, it was felt necessary to amend the Act suitably to remove all doubts in this regard. (See statement of objections and reasons of the Amending Act 36 of 1981). By this amendment effected by Act 36 of 1981, the words "who is employed as such, either full-time or part-time in, or in relation to, one or more newspaper establishments" were substituted for the words "who is employed as such in, or in relation to, in newspaper establishment" making it clear beyond a pale of doubt that part-time journalists are covered by the definition of "working journalists" under the Act.

6. We would not wish it to be thought that before the 1981 amendment a part-

time correspondent would not have been covered by the definition of working journalist covered by the Act but as laid down by the Supreme Court in *The Management of Express Newspapers Ltd. Vs. B. Somayajulu and Others*, , the employment of such a correspondent must necessarily postulate exclusive employment, because a working journalist cannot serve two employers. The Court went on to elucidate (at page 390) "thus the requirement of employment postulates conditions of service agreed between the parties subject to which the relationship of master and servant comes into existence. In the context, employment must necessarily postulate exclusive employment, because a working journalist cannot serve two employers, for that would be inconsistent with the benefits which he is entitled to claim from his employer under the Act. Take the benefit of retrenchment compensation, or gratuity, or hours of work, or leave; how is it possible for a journalist to claim these benefits from two or more employers ? The whole scheme of the Act, by which the provisions of the Industrial Disputes Act have been made applicable to working journalists, necessarily assumes the relationship of employer and employees and that must mean exclusive employment by the employer on terms and conditions of service agreed between the parties".

7. We need not dilate on this aspect any further because this finding of the Labour Court that Kulkarni was a working journalist within the meaning of Section 2(a) of the Act has not been challenged by the employer by a writ petition. However, in view of the admission of Kulkarni that he was working on retainer basis for Navshakti, Samachar Bharati and Free Press Journal along with Kesari, we are not inclined to interfere with the order of the Labour Court which has granted compensation but refused reinstatement.

8. Petition fails and is dismissed. Rule discharged with no orders as to costs.