

(2015) 02 MP CK 0012

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2831 of 2015

Sanwarmal Sharma

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 26-02-2015

Acts Referred:

Constitution of India, 1950 — Article 12

Right to Information Act, 2005 — Section 12, 20, 20 (j)

Citation : (2015) 02 MP CK 0012

Hon'ble Judges : S.K. Gangele, J.

Bench : Single Bench

Advocate : Manish Tiwari, Counsel, for the Appellant; Akhilesh Singh, PL, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S.K. Gangele, J.—The petitioners have filed this petition for the following reliefs :-

"(i) To treat the 20(j) waiver signed by the petitioners as illegal and invalid for he signatures on it was obtained by the respondent No. 3.

(ii) To make payment of wages to the petitioners as per recommendation of justice Mazithia Wage Board duly accepted by the Central government as per the directions of the Hon"ble Supreme Court.

(iii) To direct the respondents to act and pursue for implementation and regularization and to implement the award with effect from April, 2014 in term of order passed by the Hon"ble Supreme Court of India in W.P.(Civil) No. 246 of 2011 dated 7.2.14 by which the Hon"ble Supreme Court of India has directed to pay the pay scale in term of award upon recommendation made by Justice Mazithia Wage Board for working journalists and non-journalists of newspapers and news agencies employees;

(iv) For grant of any other appropriate relief(s) as you lordships may deem fit and proper in the facts and circumstances of the case.

(v) To direct the State Government through Labour Commissioner to recover the amount due to the petitioner in terms of the recommendations of Majithia Wage Board and also ensure further payments of wages in future in terms of the said recommendations."

2. The grievance of the petitioners in this petition is that respondent No. 3, which is the Publication House, engaged in the business of publication of Newspaper has neither paid the wages to the petitioners in accordance with Justice Mazithia Wage Board Recommendations nor revised their salary in accordance with such recommendations. They further pleaded that "Justice Mazithia Wage Board Recommendations" (in short "MWBR") were challenged in W.P.(civil) No. 246/11 before the Supreme Court. The Hon"ble Supreme Court dismissed the writ petitions vide judgment dated 07.02.2014 (Annexure P/3) and also issued certain directions in regard to payment of revised wages. Inspite of the directions issued by the Supreme Court, the respondent No. 3 has not made payment to the petitioners.

3. Learned counsel appearing on behalf of respondent No. 3 on caveat has contended that the petitioners have already exercised their option of retaining their current wages as per Clause 20(j) of MWBR, hence the petitioners are not eligible to claim entitlement in accordance to MWBR. It is further submitted by the counsel that the respondent procured the information under Right to Information Act, 2005 from the Ministry of Labour and Employment, according to which, if an employee exercises his option for retaining his existing Pay Scale and emoluments then MWBR would not be applicable on him. It is further contended that the Hon"ble Supreme Court has also observed the same in the judgment. The petitioners themselves submitted the undertaking before the respondent No. 3 in regard to waiver of their entitlement, hence the petitioners are not entitled for any relief. It is further submitted by learned counsel that the writ petition filed by the petitioners against the respondents is not maintainable because the respondent No. 3 is not a State within the meaning of Article 12 of the Constitution.

4. The recommendations of MBWR were challenged before the Hon"ble Supreme Court in W.P.(Civil) No. 246/11. The Hon"ble Supreme Court vide judgment dated 07.02.2014 dismissed the writ petitions and held that the recommendations of the Wage Board are valid. A copy of the Wage Board Recommendation (Part-V) in regard to working journalists and non-journalists employees in the Newspaper Establishment has been filed by the petitioners as Annexure-1(a) along with the petition. Section 20 of Chapter 19 prescribes fixation of wage in the revised scale. Section 20 (j) further prescribes that the employee has an option for retaining his existing pay-scale and existing emoluments. The relevant section reads as under :-

"The revised pay scales shall become applicable to all employees with effect from 1st July, 2010. However, if an employee within three weeks from the date of publication of Government Notification under section 12 of the Act enforcing

these recommendations exercises his option for retaining his existing pay scale and "existing emoluments", he shall be entitled to retain his existing scale and such emoluments." The existing emoluments have also been defined under explanation which reads as under :-

"Explanation : The "existing emoluments" of an employee shall mean his basic pay, variable dearness allowance at the All India average Consumer Price Index Number for industrial Workers (Base 2001=100) at 167 during the period of July 2009 to June 2010, convertible to CPI -IW (Base 1982=100) by the conversion factor of 4.63, and interim relief of 30% of basic pay sanctioned vide notification S.O. No.2524 (E) and 2525(E) dated 25th August, 2008 as applicable for working journalists and non-journalists newspaper employee respectively." 5. The petitioners had submitted declarations before the respondents to the effect that the prevailing wage structure of the Company is better and more favorable than the wage structure recommended by Majithia Wage Board, considering the prospects of future growth with the Company and accordingly I hereby exercise my option to be retained in the prevailing wage structure of the Company. A copy of the declaration submitted by each of the petitioner has been filed along with the petition. Now, the petitioners sought a declaration in this petition that this undertaking, signed by the petitioners, which is a waiver, is illegal and invalid and the signatures were obtained by the respondent No. 3 under force and coercion, hence it is not binding on the petitioners. In my opinion, in exercise of writ jurisdiction, this court cannot take evidence to the effect that whether the undertaking given by the petitioners by which they had waived their right to receive wages in accordance with the MWBR in accordance with Clause 20(j) was obtained under coercion. For the aforesaid purpose, the petitioners can very well approach the Labour Court or appropriate forum where a declaration can be granted by the court that the undertaking given by the petitioners was valid or not. However, in exercise of writ jurisdiction, this court cannot issue a writ in favor of the petitioners declaring the undertaking given by the petitioners invalid.

6. Apart from this, the answering respondent is a Publication House. It is engaged in the publication of newspaper in which the petitioners are working in an industrial establishment. The answering respondent is not a State or instrumentality of the State, hence the writ petition is not maintainable against the respondent No. 3. However, the petitioners are at liberty to approach appropriate forum for their grievances.

7. Consequently, I do not find any merit in this petition. It is hereby dismissed. There shall be no order as to the costs.