

(1998) 05 DEL CK 0078
In the Delhi High Court
Case No : C.W.P. No. 3523 of 1994

Shardendu

APPELLANT

Vs

Labour Commissioner and Others

RESPONDENT

Date of Decision : 19-05-1998

Acts Referred:

Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 — Section 17, 17(2)

Citation : (1999) 1 LLJ 471

Hon'ble Judges : R.C. Lahoti, J;Mukul Mudgal, J

Bench : Division Bench

Advocate : Randhir Jain, for the Appellant; Rakesh Kumar, Raj Birbal and Vidhu Upadhyay for Respondent Nos. 1, 2 and 4 and Poonam Lal, for the Respondent

Judgement

1. Heard finally.

Rule D.B.

The petitioner seeking recovery of his claims and dues against his employer, the Respondent No. 3, has filed this petition seeking quashing of an order of reference made u/s 17(2) of Working Journalists And Other Newspaper Employees (Conditions of Service) And Miscellaneous Provisions Act, 1955.

2. It appears that the petitioner was in employment of Respondent No.3. He was transferred from Bhopal to Lucknow. There is a dispute whether the petitioner rendered any service to Respondent No.3 after his transfer to Lucknow. The fact remains that the petitioner preferred a claim before the Labour Commissioner, Delhi. The statement of claim filed by the petitioner is to be found at pages 62 to 69 of the paper book. The petitioner has raised a claim for an amount of Rs. 1,34,000/-

3. Before the Labour Commissioner, the Respondent No.2 did not file any written statement. The proceedings witnessed only adjournments. On December 20,1993, in the presence of both the parties, the next date of hearing was fixed

as January 17,1994 at 11.00 A.M. Surprisingly, the matter was taken up by the Labour Commissioner on December 29, 1993 and he passed the following order :

"The issue involved is regarding recovery of dues from the Management of Associated Journal Ltd., u/S 17 of the Working Journalists Act. The said certificate for recovery may be issued by designated Inspector under the Act u/s 17-B.

Sd.-29.12.93"

..... (Cell) may please take the issue with Section(L)

4. It appears that the Govt. of N.C.T. of Delhi formed an opinion that there was a dispute regarding dues payable to the petitioner and hence directed a reference to be made u/s 17(2) of the Act vide order of reference Annexure-VII requiring the Labour Court No. IX to adjudicate upon the dispute.

5. Learned counsel for the petitioner submitted that the claim preferred by the petitioner was never disputed by Respondent No.3 before the Labour Commissioner. The Labour Commissioner had rightly issued the recovery certificate u/s 17(1) and there was no occasion for an order of reference being made. Learned counsel for Respondent No.3 on the other hand submitted that the claim preferred by the petitioner had never met with any adjudication by any competent authority without which recovery certificate could not have been issued and the only appropriate course available was to make a reference. It is also pointed out by learned counsel for Respondent No.3 that the Labour Commissioner having adjourned the hearing on December 20, 1993 to January 17, 1994 could not have taken up the matter abruptly on December 29, 1993 and directed a certificate of recovery to be issued.

6. Section 17 of the Act (relevant part thereof) reads as follows:

Recovery of money due from an employee:-

(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.

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7. The learned counsel for Respondent No. 2 has placed reliance on the law laid down by the Supreme Court in the case of Kasturi and Sons (Private) Ltd. Vs. N. Salivateeswaran and Another, and a decision of Division Bench of this Court in Colon Plastic Ltd. v. Union of India 1997(1)LLN 247.

8. In Kasturi & Sons Ltd. (supra) their Lordships have held inter alia:-

"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....."

9. Having heard the learned counsel for the parties, we are of the opinion that no recovery certificate could have been issued without a competent authority having recorded an adjudication on the claim made by the petitioner. The order dated December 29, 1993 cannot be called an "adjudication". Even if the Respondent No.3 had not filed any reply to the petitioner's claim still the Labour Commissioner was supposed to apply his mind to the claim preferred by the petitioner and record a finding thereon. Certainly this has not been done. Simply directing a recovery certificate to issue, as if by a stroke of pen, does not amount to an adjudication by any stretch of imagination.

10. For the foregoing reasons, we are of the opinion that the petition is devoid of any merit. The order dated December 29,1993 being nonest, no writ can issue for its implementation.

11. However, in compliance with the interim order of this Court dated February 13, 1998 Respondent No.3 has deposited an amount of Rs. 50,000/- with the Registrar of High Court of Delhi on February 15,1998. In our opinion, part of the amount deserves to be released to the petitioner and part of the amount deserves to be returned to Respondent No.3 but subject to undertakings to be filed by both the parties consistently with the operative part of this order.

12. The petition is disposed of in the following terms:

1. The Labour Court shall expeditiously proceed with the order of reference dated December 29, 1994 (Annexure VIII) and shall dispose of the same within a period of six months from the date of first appearance of the parties thereat in compliance with this order.

2. Out of the amount of Rs. 50,000/-deposited by Respondent No.3 with the Registrar of High Court of Delhi, an amount of Rs.25,000/- shall be released by way of interim relief to the petitioner, and balance amount of Rs.25,000/- shall be refunded to Respondent No.3. The petitioner shall file an undertaking of his own before the Registrar to the effect that in the event of petitioner's claim being refused, he shall refund the amount to Respondent No.3. Respondent No.3

shall file an undertaking through its authorised representative or constituted attorney accompanied by a resolution of the Board of Directors that in the event of Labour Court deciding in favor of the petitioner the Award of the Labour Court shall be honoured within a period of two months from the date of Award.

3. Filing of undertaking does not prejudice the right of either party for having remedy against the Award if one may feel aggrieved thereby.

4. The petitioner and Respondent No.3 are directed through their respective counsel to appear before the Labour Court on May 26, 1998.