

(1974) 05 DEL CK 0013

In the Delhi High Court

Statesman Limited

APPELLANT

Vs

Lt. Governor and Others

RESPONDENT

Date of Decision : 31-05-1974

Acts Referred:

Citation : (1974) 05 DEL CK 0013

Hon'ble Judges : B.C. Misra, J

Bench : Single Bench

Judgement

B.C. Misra, J.—This writ petition has been filed by the management against the award of the Industrial Tribunal dated 18th January, 1973, made on a reference dated December 13, 1971, by which the Tribunal has decided the preliminary issues against the petitioner and has set down the dispute for decision on merits.

2. The material facts of the case are that respondent No. 3, Mr. B.D. Mathur, joined employment of the petitioner as sub-editor in 1950 and was in May, 1965, made a special representative. He was admittedly a "working journalist" within the meaning of the terms in Section 2(f) of the Working Journalists (Conditions of Service & Miscellaneous Provisions) Act, 1955 (which is hereinafter referred to as the Act). On his assignment as a special representative, the respondent claimed certain perquisites and benefits, which were denied to him. This raised an industrial dispute which was referred by the Lt. Governor, Delhi, by his order dated December 13, 1971, for adjudication of the Industrial Tribunal. The terms of reference were as follows:

1. (a) Did Shri Mathur become entitled to the covenanted grade when he was appointed as chief sub-editor and continued in the said grade thereafter and is the management justified in denying this grade to him?

(b) What relief, if any, is Shri Mathur entitled to and with effect from which date, and what directions are necessary in this behalf ?

2. Whether the management is justified in transferring Shri Mathur from Lucknow to Delhi without his consent and what relief, if any, is he entitled to?

3. Whether the management is justified in denying Shri Mathur his perquisites and benefits during his leave period in 1969, and what relief, if any, is he entitled to?

4. What are the terms and conditions of service applicable to Shri Mathur on his transfer to Delhi and what directions are necessary in this behalf ?

When the dispute proceeded for adjudication before the Industrial Tribunal, the management (petitioner herein) raised a number of objections inter alia that as Mr. Mathur was not a workman within the meaning of Industrial Disputes Act, the reference was without jurisdiction, and that the trade union has not espoused his cause, so the reference was not competent. On the pleadings of the parties, the Tribunal framed the following issues:

1. Whether Shri Mathur is a workman within the meaning of Section 2(s) of the Industrial Disputes Act?

2. Whether the Delhi Union of Journalists has no locus standi to espouse the cause of Shri Mathur?

3. Whether the said union has espoused the cause of Shri Mathur ?

4. Whether the reference is not in accordance with the Working Journalists Act?

5. Whether the dispute regarding wages claimed in the reference is not maintainable under the Industrial Disputes Act, 1947?

The Tribunal by the impugned order recorded the findings on the aforesaid issues in favor of the workman and against the management. Aggrieved by the said findings the petitioner has filed this writ petition assailing them. A counter-affidavit on behalf of the workman has been filed. The other two respondents in the writ petition are the Lt. Governor, who made the reference, and the Industrial Tribunal, who made the award and naturally they are not interested in contesting the writ petition and so have not entered appearance. Mr. G.B. Pai, advocate, appearing to support the writ petition, has raised the following contentions:

(1) Respondent No. 3 is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act 1947, and as such the reference under the Industrial Disputes Act was without jurisdiction and the finding of the Tribunal on issue No. 1 is contrary to law.

(2) The Working Journalists Act is a comprehensive statutory provision on the subject and so instrumentality of the Industrial Disputes Act cannot be used to give relief to the respondent by way of additional remedy and the reference is without jurisdiction.

(3) The reference postulates the dispute of individual workman and not an industrial dispute; since the finding of the Tribunal was that 19 workmen had espoused the cause of the respondent which would be sufficient if the espousal is confined to the working journalists which had a small membership but the

reference would be invalid if the union of all the workmen concerned was taken into consideration.

3. Mr. Pai has advanced able arguments at length. In substance the controversy is this: Is respondent No. 3 admittedly a working journalist covered by the Act? As such whether or not he is workman within the meaning of Industrial Disputes Act and whether or not the provisions of the Industrial Disputes Act can be utilised to obtain the denied relief to him from the Industrial Tribunal?

4. The answer to this question would depend on the construction of the provisions of the Journalists; Act and the Industrial Disputes Act. Section 3 of the Journalists Act reads as follows:

The provisions of the Industrial Disputes Act, 1947 (14 of 1947), as in force for the time being, shall, subject to the modification specified in Sub-section (2), apply to or, in relation to, working journalists as they apply to, or in relation to workmen within the meaning of that Act.

Section 5(2) of the Journalists Act reads as under:

Any dispute whether a working journalist has voluntarily resigned from service in any newspaper establishment on the ground of conscience shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act, 1947 (14 of 1947), or any corresponding law relating to investigation and settlement of industrial disputes in force in any State.

Section 14 of the Act reads as follows:

The provisions of the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), as in force for the time being, shall apply to every newspaper establishment wherein twenty or more newspaper employees are employed or were employed on any day of the preceding twelve months as if such newspaper establishment were an industrial establishment to which the aforesaid Act has been applied by a notification under Sub-section (3) of Section 1 thereof, and as if a newspaper employee were a workman within the meaning of that Act.

Section 17(1) of the Act reads thus:

(I) 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,

Besides the above provisions Section 13A contained in chapter 2, make provision that the Central Government shall as and when necessary constitute a Wage

Board for fixing and revising the wages, and then the recommendations of the Board are considered by the Central Government which ultimately passes an order accepting their recommendations or modifying them and such order is enforceable in accordance with the procedure prescribed in Section 17. The Central Government has also got the power to fix interim rates of wages. The Industrial Disputes Act, 1947, gives definition of "workman" as meaning any person employed including an apprentice in any industry to do any skilled, manual or clerical work for hire or reward and includes, for the purpose of any proceedings under this Act in relation to an industrial dispute, a workman discharged during that dispute but does not include any person employed in the naval, military or air service of the Crown.

5. The question raised is whether respondent No. 3 is a workman within the definition laid down by the Industrial Disputes Act, Section 2(s) of the Industrial Disputes Act defines workman is any person employed in any industry to do any skilled, unskilled, manual, supervisory, technical or clerical work. This expressly excludes managerial or administrative officers and naturally would not apply to literary or intellectual workers. In the case *Mitra Prakashan Ltd. v. Brahma Dutt Vidyarthi* (1956) 10 F.J.R. 505, a sub-editor of a story magazine was considered to be not included in the definition of workman. The answer does not turn merely on the definition of workman. The Working Journalists (Industrial Disputes) Act 1 of 1955 was passed on March 12, 1955. The object of the Act as given in the objects and reasons are: "One of the matters referred to the Press Commission was the settlement of disputes affecting working journalists. The Press Commission examined the position in the light of judicial pronouncements and found that working journalists did not come within the scope of the Industrial Disputes Act." The Commission, however, considered it essential that they should be entitled to the benefits of the procedure for the investigation and settlement of disputes envisaged in that Act and the Bill was designed to achieve the same object by extending the provisions of Industrial Disputes Act. The provisions of the Act have given the definition of the working journalist as employed in, or in relation to, any establishment for the production or publication of a newspaper or in, or in relation to, any news agency. Section 3 of this Act reads: "The provisions of Industrial Disputes Act, 1947, shall apply to, or in relation to, working journalists as they apply to, or in relation to workmen within the meaning of that Act." This Act was repealed by the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act 45 of 1953. Section 3 of this Act has maintained the provisions of Section 3 of the Act 1 of 1955. The result is that by a fiction of law, the provisions of Industrial Disputes Act have been extended to and applied to, or in relation to the working journalists, in the same manner and to the same extent as they apply to, or in relation to, workman defined in Industrial Disputes Act. Consequently, the working journalists are fully entitled to take advantage of the provisions of the Industrial Disputes Act like any other workman without their being labelled workman as such. The modification of the Industrial Disputes Act in its application to working journalists is indicated by Sub-section (2) of Section

3 and other provisions of the Act but subject to them the Industrial Disputes Act mutates and mutants applies to the working journalists. It is, Therefore, not necessary to decide whether they are really workmen as such but they do rank with them for the benefits of the Act. The preliminary issue No. 1. decided by the Tribunal, is Therefore, not open to challenge.

6. Mr. Pai has laid considerable emphasis on the fact that the Working Journalists Act was a complete code and by necessary intendment excluded instrumentality of the Industrial Disputes Act. The argument as advanced is very attractive. It has, however, no substance. Machinery provided by the Act relates to fixation and revision of rates of wages besides a few other matters like retrenchment, gratuity and leave, etc. Procedure of fixation and revision of wages consists in constitution of a Wage Board and the Government is required to consider and decide upon its recommendations. The provision also entitles the Government to fix interim rate of wages (Section 13A). The reliefs claimed by the third respondent from the petitioner management in the instant case are not covered by the relief envisaged by the provisions of the Act. The respondent is not seeking fixation or revision of any rates of wages. Apparently he was contended by the grant of the same in his capacity as sub-editor. The dispute has arisen with regard to the denial of the same grade to the respondent on his being transferred as special representative. The right of the respondent to continue to get the same raises a dispute which cannot be settled by the Wage Board or by the Government under the Act. Mr. Pai, learned Counsel for the petitioner, was asked to point out any machinery contained in the Act for adjudication of the dispute raised in the instant case, but he was unable to lay his hands on any provision except Section 17. Section 17 deals with the recovery of the amount due by coercive measures as well as the decision of some questions in dispute by labour Court under the Industrial Disputes Act. This provision again points to the fact that the dispute between the parties is to be determined under the provisions of the Industrial Disputes Act and there is nothing contained in Section 17 or any other provision of the Act to debar the reference of the dispute between the parties for adjudication by an Industrial Tribunal or labour Court as the case may be. Again, if the contentions of Mr. Pai were accepted, the provisions of Section 3 of the Act applying the provisions of the Industrial Disputes Act to the working journalists as it applies to the workman would become redundant. Both the provisions must harmoniously be construed. So construed, they do not leave any room for doubt that the provisions of Industrial Disputes Act are certainly ancillary and are to be used in aid of rights and disputes of the working journalists governed by the Working Journalists Act. In *Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others*, , the Court observed at page 307 that "There was no industrial dispute as such which had arisen or was apprehended to arise as between the employers and the working journalists in general, though it could have possibly arisen as between the employers in a particular newspaper establishment and its own working journalists. What was contemplated by the provisions of the impugned

Act, however, was a general fixation of rates of wages of working journalists which would ameliorate the conditions of their service and the constitution of a wage board for this purpose." The Supreme Court, considered the contention that the Working Journalists Act was discriminatory and void on the ground that it was a special legislation for its benefit for fixing the rates of wage different from the machinery employed for other work- men in the Industrial Disputes Act. This contention was rejected. It was also observed in this case that if the provisions of the Industrial Disputes Act, which was a general Act, had been made applicable to the working journalists, there would have been no quarrel with the same. Mr. Pai has cited *Sanghvi Jeevraj Ghewar Chand v. Madras Chillies, Grains and Kirana Merchants Workers Union* (1968) 35 F.J.R. 162, *Vectoils Private Ltd. v. Their Workmen* (1971) 40 F.J.R. 191, *Sarat Chatterji & Co. (Private) Ltd. v. Central Government Industrial Tribunal* (1962) 23 FJR. 288, and *G.M. Telang v. Shaw Wallace and Co. Ltd.* (1964) 23 F.J.R. 224. Mr. Pai cites them to show that where a statute is a complete code, the other provisions of law would not be attracted to it. For instance in *Sanghvi Jeevraj Ghewar Chand* (1968) 35 F.J.R. 162, it was held that in the establishments to which Bonus Act did not apply, benefit of the Act could not be extended. Similarly, in *Vegoils Private Ltd.* (1971) 40 F.J.R. 101, reference is made to the contract labour. "I am unable to find any assistance from the said authorities. In the present statute under consideration, Section 3 of the Act expressly applies the provisions of the Industrial Disputes Act to the working journalists. The Journalists Act even taken as a complete code for the sake of argument would include within its ambit Section 3 and the provisions of the Industrial Disputes Act extended to it by a fiction created by provisions of law. There is nothing in the Journalists Act which expressly or by necessary intendment excludes the application of the Industrial Disputes Act, to matters which are expressly not covered by the Journalists Act. The contention of the learned Counsel, Therefore, fails.

7. The last contention of the learned Counsel is a corollary from his earlier contentions. The Tribunal has found that although the disputes raised and referred to the Tribunal for adjudication by the referring order raised an individual dispute, the same had been espoused by the Union of the Working Journalists. This union, according to the findings of the Tribunal, had 40 members who were not defaulters and were active members entitled to vote and out of them 19 had espoused the cause of the respondent. They certainly constitute a substantial number of the journalists who decided to take up the case of the respondent. According to Mr. Pai, if the respondent were treated only as working journalist, the espousal by the union was sufficient in the; instant case. On the other hand, if he were treated as a workman under Industrial Disputes Act, he needed a large number of workmen from amongst other trade unions to espouse his cause. The finding I have returned is that the respondent No. 3 is a working journalist governed by the Journalists Act and he is not a workman within the meaning of Industrial Disputes Act but all the provisions of the Industrial Disputes Act fully apply to him, as they apply to a workman and so

he is entitled to take advantage of the provisions of the Industrial Disputes Act and the machinery for adjudication of disputes provided by it. In view of this finding the espousal of the cause of the respondent is sufficient to convert individual dispute of the workman into an industrial dispute. The contention of the counsel has no force and the finding of the Tribunal on the preliminary issues does not suffer from any legal infirmity. As a result, the writ petition fails and is dismissed but, in the circumstances of the case the parties will bear their respective costs.