

(2018) 12 DEL CK 0065

In the Delhi High Court

Case No : Letters Patent Appeal No. 549 Of 2018, Civil Miscellaneous No. 39593 Of 2018

Statesman Limited

APPELLANT

Vs

Union Of India & Anr

RESPONDENT

Date of Decision : 05-12-2018

Acts Referred:

Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 — Section 9, 10, 11(2), 12, 12(1), 12(2), 13C Industrial Disputes Act, 1947 — Section 33(C)(2)

Citation : (2018) 12 DEL CK 0065

Hon'ble Judges : S. Muralidhar, J; Sanjeev Narula, J

Bench : Division Bench

Advocate : Samar Bansal, Manan Shishodia, Devahuti Pathak, Bhagwan Swarup Shukla, Kamaldeep, Sharvan Kumar, Vijendra Mahndiyan, Pallavi Awasthi

Final Decision : Disposed Off

Judgement

Dr. S. Muralidhar, J

1. This is an appeal filed by the Statesman Limited directed against the judgment dated 6th July, 2018 passed by the learned Single Judge disposing of the Writ Petition No.6319/2014 filed by the Respondent- Statesman Mazdoor Union ("the Union").

2. The background facts are that two Wage Boards were constituted under Sections 9 and 13C of the Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (the WJ Act) on 2nd September, 1994 by the Government of India. The said Wage Boards submitted their recommendations to the Central Government on 25th July, 2000. On 5th December 2000, a notification was issued by the Ministry of Labour, Government of India in exercise of the powers conferred under Section 12 of the WJ Act. It was stated in the notification that the Central Government had proposed to accept the recommendations of the Manisana Wage Board subject to

modifications which, in the opinion of the Central Government, did not cause any important alterations in the character of the recommendations. This was followed by another notification dated 15th December 2000 proposing amendments to the earlier notification dated 5th December 2000, substituting "Table-I" in clause (g) of para-1 of the earlier notification.

3. Both the notifications were challenged by M/s. Manipal Media Network Limited in the Karnataka High Court by way of W.P.(C) No.28588/2001 which came to be disposed of by an order dated 1st February, 2006. One of the grounds of challenge was that the aforementioned notifications issued by the Central Government were violative of Section 12 (2) of WJ Act, since no notice was issued to that Petitioner prior to effecting modification to the recommendations of the Wage Board by the Central Government. According to the writ petitioners, those alterations were material and would increase their liability in the payment of wages to the journalists.

4. The Standing Counsel for the Central Government in the Karnataka High Court, who appeared in the petition, conceded that no notice was issued to those Petitioners prior to issuing the afore-mentioned notifications under Section 12 of WJ Act and that the alterations made by the Central Government would result in increasing the liability of the Petitioner in the payment of wages to the journalists. On this ground, both the notifications dated 5th December, 2000 and 15th December, 2000 were quashed by the Karnataka High Court and the matter was remitted to the Central Government for "reconsideration in accordance with law after issuing notice to the Petitioner". The Petitioner there was further granted opportunity to make a representation to the Central Government seeking appropriate alterations to the recommendations of the Wage Board which according to it were not in conformity with the legislative guidelines enumerated in under Section 10 of WJ Act. It was further directed that the representations to that effect, if made by the Petitioners to the Central Government, would be considered in accordance with law.

5. Meanwhile, W.P.(C) No.4940/2002 had been filed in this Court by the Indian Newspaper Society in this Court again challenging the very same notifications dated 5th and 15th December, 2000. It was urged during the hearing of the petition, on the basis of the above decision of the Karnataka High Court in the Manipal Media Network Limited case that since the mandatory prior consultation of the stakeholders has not been conducted and further since the judgment of the Karnataka High Court striking down the two notifications had attained finality, the said two notifications did not survive.

6. The learned Single Judge of this Court by order dated 21st November, 2006 in W.P.(C) No.4940/2002 accepted the above plea and quashed both the notifications.

7. In 2009-2010 a fresh writ petition was filed in the Karnataka High Court by certain individuals. This was numbered as W.P.(C) 5226/2010 and titled as Sri

Achutha Rao & Ors. v. Union of India, Manisana Wage Board and Manipal Media Network Limited. There were other similar petitions which were part of the same batch. These Petitioners here sought issuance of fresh notification and implementation of Manisana Wage Board with respect to the Manipal Media Network Ltd. In what could be termed as a consent order, the Karnataka High Court disposed of the writ petition after noting that Manipal Media Network Ltd. Was agreeable to implementing the Manisana Wage Board Award in the case of its employees.

8. Meanwhile, the Respondent-Union approached the Labour Court by filing a claim under Section 33 (C) (2) of the Industrial Disputes Act, 1947 (ID Act) for recovery of the dues arising out of the two notifications dated 5th and 15th December, 2000. However, these claims were dismissed by the Labour Court on 6th April, 2013, upholding the defence of the present Appellant that the said notifications did not survive in view of the order dated 21st November, 2006 passed by the learned Single Judge of this Court in W.P.(C) No.4940/2002.

9. Meanwhile, several representations were sent by the Union. The Union also filed W.P.(C) 20020/2004 titled Statesman Mazdoor Union v. Govt. of NCT of Delhi & Ors. seeking similar relief with regard to the Manisana Wage Board. This writ petition was dismissed on 30th October, 2006.

10. It is in the above backdrop that the Respondent-Union filed a fresh writ petition being W.P.(C) No.6319/2014 seeking writ of mandamus to the Central Government to re-notify both the notifications dated 5th December, 2000 and 15th December, 2000.

11. In the impugned order dated 6th July, 2018 which is under appeal here, the learned Single Judge held that the earlier order dated 21st November, 2006 of the Single Judge of this Court, allowing Writ Petition No.4940/2002 involved a challenge only to the notification dated 15th December, 2000 that the notification dated 5th December, 2000 was never quashed by this Court by the order dated 21st November, 2006. The learned Single Judge noted that by an order dated 1st February, 2006, the Karnataka High Court had quashed the notifications insofar as it related to the Manipal Media Network Ltd. and the matter had been remitted to the Central Government for reconsideration in accordance with law. According to the learned Single Judge, the judgment dated 1st February, 2006 of the Karnataka High Court did not survive in view of the subsequent order dated 21st January, 2011 passed in W.P.(C) No.5226/2010 titled Achutha Rao v. Union of India directing M/s. Manipal Media Network Ltd. to pay the benefits of Manisana Wage Board to the petitioner-employees. It is also noted that the Central Government had not issued any fresh notification under section 11(2) of WJ Act. In the circumstances, the Central Government was directed to dispose of the representation of the Union within a period of two months after following the due procedure as laid down under the WJ Act.

12. This Court has heard the submissions of Mr. Samar Bansal learned counsel

for the Appellant, and Mr. Bhagwan Swarup Shukla, learned Standing Counsel for the Union of India. Dr. Vijendra Mahndiyan and Ms. Pallavi Awasthi, Advocates appeared for the Union.

13. At the outset, the Court would like to discuss the provisions relevant in the present case, i.e. Section 12 of the WJ Act, which reads as under:

"12. Powers of Central Government to enforce recommendations of the Wage Board.

(1) As soon as may be, after the receipt of the recommendations of the Board, the Central Government shall make an order in terms of the recommendations or subject to such modifications, if any, as it thinks fit, being modifications which, in the opinion of the Central Government, do not affect important alterations in the character of the recommendations.

(2) Notwithstanding anything contained in sub-section (1), the Central Government may, if it thinks fit,

(a) make such modifications in the recommendations, not being modifications of the nature referred to in sub-section (1), as it thinks fit: Provided that before making any such modifications, the Central Government shall cause notice to be given to all persons likely to be affected thereby in such manner as may be prescribed, and shall take into account any representations which they may make in this behalf in writing; or

(b) refer the recommendations or any part thereof to the Board, in which case, the Central Government shall consider its further recommendations and make an order either in terms of the recommendations or with such modifications of the nature referred to in sub-section (1) as it thinks fit.

(3) Every order made by the Central Government under this section shall be published in the Official Gazette together with the recommendations of the Board relating to the order and the order shall come into operation on the date of publication or on such date, whether prospectively or retrospectively, as may be specified in the order."

14. In terms of Section 12 (1) of the WJ Act, on receipt of recommendation of the Wage Board, the Central Government has two options available one is to accept the Wage Board recommendations and issue an order for its implementation. Section 12 (1) of the WJ Act permits the Central Government to make only such modifications to the recommendations that "do not affect important alterations in the character of the recommendations".

15. A second course of action is envisaged under Section 12 (1) of the said Act where the Central Government seeks to make modifications that are material in nature and alter the recommendations of the Wage Board. In such event, the procedure under Section 12 (2) of the said Act, viz., by issuing a prior show cause notice "to all persons likely to be affected"

which in this case would include the Appellant employer as well as the Respondent No.2 Union. In other words, the Central Government cannot unilaterally make modifications to the Wage Board recommendations.

16. Therefore, in terms of Section 12 (1) of WJ Act, it was necessary in the present case for the Central Government to have issued an order under Section 12 (1) of the Act accepting the Wage Board recommendations. It could have made only such alterations that did not materially affect the recommendations. The opinion of the Central Government that the alterations would not materially affect the recommendations was judicially reviewable and that is what happened before the Karnataka High Court in the Manipal Media Network Limited case. As noticed earlier in the Manipal Media Network Limited case the Central Government conceded before the Karnataka High Court that although it had stated in the notifications dated 5th and 15th December, 2000 that the alterations were not material in nature, they in fact were and therefore it also did not dispute that the procedure under Section 12 (2) of the WJ Act was not followed. This led to the Karnataka High Court quashing both the notifications by the order dated 21st November, 2006 in W.P.(C) No.4940/2002.

17. Interestingly, the opening part of the judgment dated 21st November, 2006 of the learned Single Judge of this Court begins with the words "challenge was both to two notifications dated 5th December, 2000 and 15th December, 2000" and that the "notifications had been challenged on the ground that the notifications were issued in contravention of Section 12 (2) of WJ Act." Therefore, in the opening paragraph itself the learned Single Judge had noted that the challenge in the writ petition was to both the notifications. The second paragraph of the aforementioned order also begins by stating that the notifications were also challenged by "Manipal Media Network Ltd. before the Karnataka High Court...". Therefore, it is not possible to accept the contention of learned counsel for the Union that the learned Single Judge was not dealing with a challenge to both the notifications, but only to one of them.

18. The challenge to the two notifications in the Karnataka High Court was noted. However, while discussing the order dated 1st February, 2006 of the Karnataka High Court, the learned Single Judge observed that it had "struck down the notification" on the ground of contravention of Section 12 (2) of the Act, since no notice was given by the Government to the affected parties before modifying the Wage Board recommendations. Later, while noting that the Karnataka High Court had struck down the notifications, the learned Single Judge used the word "notification" in singular and not in plural, although there can be no manner of doubt whatsoever that both the notifications i.e. dated 5th December, 2000 and 15th December, 2000 were challenged before the learned Single Judge and that both the notifications were in fact struck down.

19. Therefore, the reading of the earlier judgment dated 21st November, 2006 by the learned Single Judge who passed the impugned order dated 6th July 2018, does not appear to be correct. It is plain that both the notifications dated 5th

December and 15th December, 2000 were struck down by this Court. A further factor to be noted is that although the Union before this Court was not a party to those proceedings, the Appellant being part of the Indian Newspaper Society (INS) was certainly a party to the Writ Petition No.4940/2002.

20. It is not as if the Union was not aware of the above events. There was a specific averment in relation to the above order and the challenge to the two notifications in the above averments made in the Writ Petition (civil) No.6319/2014. A perusal of the said writ petition shows that the Union had itself averred in paragraph-14 as under:

"That, however, the Manipal Media Net Work Pvt. yd. a vernacular daily in Kannada also challenged the award of the Manisana Wage Board before the Karnataka High Court in writ petition No.28588/01 in which the Karnataka High Court vide order dated 1.2.06 struck down the notifications dt. 5.12.2000 and 15.12.2000 relating only to the Manipal Media Network Pvt. Ltd. on the ground that no opportunity was given to the petitioner u/s 12 (2) of the working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 while making modifications in the recommendations. In the order dt. 1.2.06 the Karnataka High Court observed as under:

"5. In my opinion, the Central Government ought to have issued notices to the petitioner prior to passing of the orders-Annexures 'J' and 'K', as the modifications made by the Central Government would increase the liability of the petitioner in the payment of wages to the journalists. In the absence of modifications made by the Central Government are vitiated. Accordingly, the orders passed by the Central Government dated 5.12.2000 and 15.12,2000 produced as Annexures "J" and "K" respectively are quashed in so far as they relate to the petitioner herein and the matter is remitted to the Central Government respondent No. 1 for reconsideration in accordance with law after issuing notice to the petitioner.

6. Learned Senior Counsel also submits that the recommendations of the Wage Board - Annexure "G" is not in conformity with the legislative guidelines enumerated in Section 10 of the Act. If it be so, it is open to the petitioner to make representation to the Central Government seeking for appropriate alternations. If such a representation is made, the Central Government shall consider the same in accordance with the law. All the contentions of the parties are kept open." Copy of the order dt. 1.2.06 is Annexure-D hereto."

21. Further in paragraph-16 of the petition, the Union averred as under:

"Subsequent to the orders in Writ Petition No. 28588/01 by the Karnataka High Court, the Indian and Eastern Newspapers Society, the powerful Association of Newspaper Employers at Delhi, approached this Hon'ble Court vide Writ Petition No. 4940/02. In the said Writ Petition though the Central Government pleaded that the modifications brought in the notification, as compared to the

recommendations of the Wage Board are insignificant and as per Section 12 of the Act the Central Government is empowered to make such modifications, held that since the Govt. of India has not challenged Karnataka High Court's order, upheld the challenge to the notifications and struck down the notifications once again."

22. Therefore, the correct position that emerges upon reading the aforementioned earlier writ petition of the Union is that it was fully conscious that both the notifications dated 5th December, 2000 and 15th December, 2000 issued under Section 12(1) of the WJ Act by the Central Government read with Section 12(2) thereof were struck down both by the Karnataka High Court as well as by this Court.

23. In para 17 of the Writ Petition (C) No.6319/2014 it is averred that the Union had filed LCA 178/2006 before the Labour Court seeking calculation of the amount due to the workmen and for direction to the management to make such payment. It is stated that the said application was dismissed by the Labour Court by an order dated 6th April, 2013:

"on the ground that the notification dated 5.12.2000 and 15.12.2000 notifying the recommendations of the Wage Board stands quashed and no calculations could be made on the basis of the said recommendations of the Manisana Singh Wage Board."

24. The fact of the matter is that the Union approached the Labour Ministry in the beginning of 2012 seeking re-notification of the Manisana Wage Board. After all its attempts failed, it filed the afore-mentioned writ petition with the prayer that:

"may be directed to re-notify the notifications dt. 5.12.2000 and 15.12.2000 without any further delay."

25. The learned Single Judge failed to notice that with both the parties not contesting the factual position that both the notifications dated 5th and 15th December, 2000 stood quashed by this Court as well as by the Karnataka High Court and that those orders had attained finality, the question of any direction to the Central Government to revive those very notifications did not arise. It was also perhaps not noticed that both the Karnataka High Court as well as this Court had, while quashing the above notifications, required the Central Government to again perform that exercise by issuing a fresh order/notification, as the case may be, under Section 12 (1) of WJ Act. Despite both these orders having become final, the Central Government had not made any move in that regard. It had also not challenged those orders of Karnataka High Court and this Court.

26. Therefore, the proper prayer that should have been made if at all by the Union in this Court was for a direction to the Central Government to exercise its powers under Section 12 of WJ Act and pass necessary orders in the manner indicated. However, for some reason, the prayer in the Writ Petition (C)

No.6319/2014 was not properly worded.

27. What is the outcome of the above discussion? As far as the Appellant is concerned, it is right in its contention that both the notifications dated 5th and 15th December, 2000 issued by the Central Government under the WJ Act seeking to accept the Manisana Wage Board recommendations with modifications stand struck down. Learned counsel for the Appellant is, therefore, also right in his contention that the question of entertaining a petition on behalf of the Respondent-Union for reviving those very notifications that have been struck down, does not arise.

28. It appears that pursuant to the impugned judgment of the learned Single Judge, the parties are at present before the Central Government, but there has not been much headway made and for obvious reasons the Court is of the view that it will be futile for the Central Government to consider whether the very same notifications that have been struck down should be revived. It may also be mentioned that just like it happened with Manipal Media Network Ltd., many of the newspaper establishments have, irrespective of the judgment of the Karnataka High Court and this Court quashing the notifications dated 5th and 15th December, 2000, decided to implement the Manisana Wage Board recommendations in respect of their respective employees, perhaps with some modifications, but in some establishments, however, like for instance in the Statesman, no attempt was made to implement the Wage Board recommendations, thus leaving the members of the Respondent-Union with a legitimate grouse.

29. It is also a fact that after the Manisana Wage Board, a fresh Wage Board was constituted and its recommendations have been by and large implemented across the country by the newspaper establishments. That, however, will not efface the Manisana Wage Board recommendations and what is due to the members of the Respondent-Union in terms thereof. In other words, there is no limitation for the exercise of powers by the Central Government under Section 12 of WJ Act.

30. Moreover, as expressly permitted both the Karnataka High Court and this Court, it is always open to the Central Government to issue a fresh order in terms of Section 12 (1) of the Act accepting the recommendations of the Manisana Wage Board. If the modifications are going to materially alter the recommendations, the Central Government will have to issue prior notice to all those affected in terms of Section 12 (2) of the WJ Act.

31. Keeping in view the above position, the Court sets aside that portion of the judgment dated 6th July 2018 of the learned Single Judge which holds that one of the notifications, i.e. one dated 5th December, 2000 will survive.

32. Further, the Court permits the Respondent No.2 Union to make a representation to the Central Government not later than four weeks from today asking the Central Government to exercise its powers under Section 12 (1) of WJ

Act and issue an order for implementation of the Manisana Wage Board recommendations.

33. On such receipt of the representation, the Central Government will pass appropriate orders thereon in accordance with law, after considering the points put forth by the Respondent No.2 Union as well as the Appellant. This be done within twelve weeks of the receipt of the representation and the decision communicated to the Union and the Appellant within a week thereafter. If either party has still a grievance, it will be open to either of them to seek appropriate remedy in accordance with law.

34. The appeal and pending application are disposed of in the above terms.