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**(2009) 04 PAT CK 0008**  
**In the Patna High Court**  
**Case No : CWJC No. 17370 of 2008**

Times Publishing House Ltd.

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

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**Date of Decision : 07-04-2009**

**Acts Referred:**

Bihar Shops and Establishments Act, 1953 — Section 16, 17, 17(1), 2, 26  
Constitution of India, 1950 — Article 254  
Industrial Disputes Act, 1947 — Section 10, 11A, 2A, 3, 33C  
Working Journalists (Industrial Disputes) Act, 1955 — Section 3

**Citation : (2009) 3 PLJR 574**

**Hon'ble Judges : Ramesh Kr. Datta, J**

**Bench : Single Bench**

**Advocate :** Shivaji Pandey, B.B. Sharar, N. Tiwari, K.B. Sharan and N.M. Tiwari, for the Appellant; R. Griyaghey, Sunil Kumar and Ravi Sharan for the Respondent No. 2 and Mr. S.K. Mandal and Bipin Kumar for the State, for the Respondent

**Final Decision : Allowed**

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## **Judgement**

Ramesh Kr. Datta, J.—Heard learned counsel for the petitioner, learned counsel for respondent No. 2 and learned counsel for the State. The petitioner seeks quashing of the orders dated 8.12.2006 and 21.12.06/ 14.5.07 passed by the Deputy Labour Commissioner, Patna in B.S.E. Case No. 3 of 2005 by which he did not decide the preliminary issue regarding his lack of jurisdiction to entertain an application under the Bihar Shops and Establishments Act with regard to persons who are covered under the Working Journalists (Conditions of Service and Miscellaneous Provisions) Act, 1955.

2. The brief facts of this case are that the petitioner is a publishing house. Under the provisions of the aforesaid Working Journalists Act a Wage Board known as the Manisana Wage Board was constituted by the Central Government and its recommendations were subsequently accepted and duly published and notified by the Central Government on 5.12.2000. The employees of the petitioner's-company through the office bearer of the Times of India Newspaper Employees

Union filed an application u/s 28 of the Bihar Shops and Establishments Act before the Deputy Labour Commissioner, Patna stating that their wages as per recommendation of Manisana Wage Board Award has not been paid for the period mentioned therein and individual claims were attached with the application making a total of Rs. 11,68,82,128/-. The petitioner appeared and filed a preliminary objection on various grounds including that. the Manisana Wage Board Award being an award notified by the Government of India could not be implemented under any local/State Act, much less the Bihar Shops and Establishments Act, 1953 but only under the provisions of the Working Journalists Act. The respondent No. 2 had earlier filed a writ application being C.W.J.C. No. 7240 of 2002 before this Court claiming implementation of the Manisana Wage Board Award in respect of non-journalists with effect from 1.4.1998. The said application is still pending.

3. In the preliminary objection, the petitioner had raised the issue of the pendency of the said writ petition also and for the said reason also, it was prayed that the proceedings before the Deputy Labour Commissioner under the B.S.E. Act were not maintainable. The Deputy Labour Commissioner without deciding the entire issue regarding his jurisdiction to proceed for the implementation of a Wage Board under the Working Journalists Act merely relied upon the statement made on behalf of respondent No. 2 that the application has been dismissed for want of prosecution and for the said reason proceeded with the matter without deciding the basic issue regarding jurisdiction by his order dated 8.12.2006. Again a review petition was filed by the petitioner to decide the entire jurisdiction matter as also it was contended therein that the writ petition was still pending before the High Court. However, by the order dated 21.12.06/ 14.5.07 the said stand was not accepted by the Deputy Labour Commissioner who directed that the matter will be proceeded with.

4. Learned counsel for the petitioner submits that the Working Journalists Act is a complete code and any award under the said Act can only be implemented in terms of the provisions provided in the said Act itself and not under the Bihar Shops and Establishments Act. It is contended that the Working Journalists Act by Section 3 makes only the Industrial Disputes Act, 1947 applicable with certain modifications for the working journalists covered under the Working Journalists Act and not any other enactment and for the said reason it is not open to the Deputy Labour Commissioner to proceed in the matter under the Bihar Shops and Establishments Act. In this regard he also refers to Section 17 of the Act which provides two modes of recovery of the dues from the employer under the said Act either by way of application to the State Government or by a reference being made by the State Government on its own motion or on application made to it to a Labour Court constituted under the Industrial Disputes Act, 1947 or under any law for the investigation and settlement of industrial disputes enforced in the State. It is submitted that the Deputy Labour Commissioner is not a Labour Court constituted under the Industrial Disputes Act and thus he could not have proceeded in the matter, that too, when as a matter of fact no reference at

all has been made by the State Government. In support of the aforesaid proposition, learned counsel for the petitioner relies upon a decision of a Division Bench of this Court in the case of Samachar Bharti Vs. Kedar Nath and Others, and the relevant part of Para 6 of the said decision are quoted below:--

"3. The Working Journalists Act was passed by the Central Legislature after coming into force of the Bihar Act. The petitioner is a newspaper establishment within the meaning of clause (d) of Section 2, and there does not seem to be much debate and dispute that the respondent is a working journalist within the meaning of clause (f). That being so, the Working Journalists Act is an Act to regulate the conditions of service of the respondent, as is apparent from the preamble of the Act. Section 5 of the said Act provides for payment of gratuity, Section 6 prescribes the hours of work, Section 7 refers to leave and Sections 8 and 9 deal with the fixation or revision of rates of wages. So providing for many matters governing the service conditions of the Working Journalist, the provisions of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) have also been made applicable, with slight modifications by Sections 3 and 4 of the Working Journalists Act. It will thus be seen that the Working Journalists Act read with the Industrial Disputes Act provides a complete code to regulate the conditions of service of working journalists. It would appear from several decisions of this Court as also of the Supreme Court some of which will be alluded to hereinafter, that the legislative power either of the Centre or of the State to enact such legislations as the Working Journalists Act or the Bihar Act are to be found in one or the other item of the Concurrent List, viz., List-III of the Seventh Schedule. That being so, on two grounds it may be held that the conditions of service of the respondent are exclusively governed by the Working Journalists Act and the Industrial Disputes Act, and for the redress of his grievance, if any, he has to follow the remedy provided therein. One of the grounds on which such a view may be rested is with reference to Article 254 of the Constitution. In matter of details the provisions may not be identical, but, broadly speaking, the Central Act as also the Bihar Act cover the same field. It would be pertinent to state here that Section 26 of the Bihar Act, as it was originally enacted, was repealed and substituted by a new section by an amending Act, being Bihar Act 26 of 1959 which came into force on the 25th of November, 1959. This amending Act had not been reserved for the assent of the President, nor had it received his assent. Without an elaborate discussion of the matter, to put it briefly, therefore, it would be legitimate to take the view that if there is a complete code to govern the service conditions of the Working Journalists by a Central Act, the Bihar Act will give way to the former and the rights and liabilities of the newspaper establishment and the working journalists would be governed by the Working Journalists Act (incorporating many matters, as it does of the Industrial Disputes Act).

The other reason, which may be given to support the view expressed above, is this. The Bihar Act, as the preamble indicates, is an Act to provide for the regulation of conditions of work and employment in shops and other

establishments and for certain other purposes. I have no doubt in my mind that the news agency, like the petitioner, would be an establishment within the meaning of sub-section (6) of Section 2 of the Bihar Act. The Bihar Act being of a general nature will cover ordinarily and generally all kinds of workers working in the establishment. Therefore, this is a general Act. The Working Journalists Act, however, is a special act governing the service conditions of the working journalists, only working in the newspaper establishment. That being so, on the principle "general bus specialia derogant" the Special Act will exclude the application of the General Act. My reasons for saying so are these. Reading the Working Journalists Act with the Industrial Disputes Act on the one hand and the provisions of the Bihar Act on the other, it may be found that in regard to many matters there are provisions in both the Acts e.g. hours of work for a working journalist are provided in Sec. 6 of the Central Act, while daily and weekly hours of work in establishments are provided in Section 9 of the Bihar Act. Section 7 of the Central Act deals with leave, Section 16 of the Bihar Act deals with the same subject-matter. It is not necessary to multiply instances of there being provisions in the Central Act as also in the Bihar Act on the same subject. On some matters, which are provided in the Central Act, Bihar Act is silent and vice versa. In regard to some matters the scope and the grounds on which a particular relief can be granted are different in the two Acts. Reading the Working Journalists Act with Sections 2-A and 10 of the Industrial Disputes Act it would be noticed that the order of an allegedly illegal dismissal or discharge can be attacked by raising an industrial dispute. The scope of the reference u/s 10 would be in one sense wide than the remedy provided in Section 26 of the Bihar Act and in another sense it would be narrower. It would be wider because the powers of an Industrial Tribunal for adjudication of a reference made under the Industrial Disputes Act are not circumscribed by any statutory provision but are governed by the well-enunciated principles of law by judicial decisions. On the other hand, the power of the authority u/s 26 of the Bihar Act is circumscribed by the statute. It was narrower in the sense that an Industrial Tribunal had to adjudicate upon limited questions, but, it seems, in this regard the difference has been done away with by introduction of Section 11-A in the Industrial Disputes Act by the Industrial Disputes (Amendment) Act, 1971. The question therefore, arises that if two statutes are there to govern the service conditions of a particular type of employees, is the employee or the employer to be left in doubt as to which Act will govern their service condition, which remedies will be available to them and, while taking any action, what are they to do, which law are they to follow? To my mind, the questions posed by me, suggest the answers that if there is a Special Act, which is a complete code in itself to govern the service conditions of a particular type of employees, that Act must govern them although in some respects it may not be an advantageous or adequate either to the employee or to the employer as any other Act or the general Act may be."

"6. I am clearly of the opinion that to govern the service conditions of the working journalists the Working Journalists Act, incorporating as it does some of

the provisions of the Industrial Disputes Act, is a complete code and, therefore, the working journalists cannot take recourse to Section 26 of the Bihar Act."

5. Learned counsel for the respondent No. 2 on the other hand submits that an application u/s 28 of the Bihar Shops and Establishments Act cannot be considered to be not maintainable since after the decision of the Wage Board, the matter now pertains to the payment of the dues under the award of the said Wage Board for which there is a provision u/s 26 of the Bihar Shops and Establishments Act and thus the respondents were entitled to approach the Deputy Labour Commissioner in this matter.

6. Learned counsel in this regard also relies upon the provisions of Section 17 of the Act. It is argued by learned counsel that even Section 17(1) provides for recovery of amount due by an application made to the State Government and since the mode of recovery has also been provided by the Bihar Shops and Establishments Act, the same would not be considered as barred by the provisions of the Working Journalists Act.

7. Learned counsel also relies upon sub-section (2) of Section 17 of the Act which provides for the matter being referred to a Labour Court, and submits that the Deputy Labour Commissioner being a Labour Court, the matter has rightly been raised before him.

8. In support of the said propositions raised by him, learned counsel relies upon a decision of the Karnataka High Court in the case of M/s Newspapers and Periodicals, Bangalore and Another vs. State of Karnataka and Others reported in 1982 Lab I.C. 684 in Para 13 of which it has been held as follows:--

"...Here again it may be noted that this cheaper remedy made available to the newspaper employee is "without prejudice to any other mode of recovery" he may have in law. This means he can, if he so chooses, file a regular suit or may, perhaps, take recourse to Section 33C of the Act of 1947. If the newspaper employee takes recourse to any of these alternate methods, the question of hearing the employer earlier to initiation of any action does not arise at all...."

9. He further relies upon a decision of the Delhi High Court in the case of Delhi Consumer Co-operative Wholesale Stores Ltd. vs. Secretary (Labour) and etc. reported in 1983 Lab. I.C. 1652 in para 23 of which it has been held as follows:--

"The next argument was that as the Stores was governed by the Delhi Shops and Establishments Act the workmen could only seek the relief under the said Act and not from the Labour Court. We cannot agree. This argument was not raised before the Labour Court and the petitioner would be prima facie barred from raising it before us. Notwithstanding this we allowed Dr. Singhvi to argue it on merits. But we find no substance in it. It is not disputed that respondent-workmen were also governed by the provisions of Industrial Disputes Act. In that context it is not understood how the workmen could be denied the relief under the Industrial Disputes Act. The Labour Court was thus competent to award

reinstatement with back wages. The applicability of the Shops and Establishments Act only means that if the workman is covered by the said Shops Act he may seek relief also under the said Act but this cannot debar him from seeking relief under the Industrial Disputes Act, if he is entitled to the same. The object of the Shops Act is to give some minimum benefits and relief to the vast unorganized sector of the employees, it is not meant to take away the rights which an employee enjoys under the industrial Disputes Act or other beneficial labour legislation. Moreover there is nothing in the Shops Act which deals with the case of retrenchment or closure. Shops Act is not meant to deny relief to workmen under the Industrial Disputes Act by the mere fact of Stores being also registered under the Shops Act. The Shops Act is complimentary to Industrial Disputes Act. It does not exclude the applicability of any other Act. Rather Industrial Disputes Act is a specific Act dealing with the rights and obligations of employees and employer under the Act. Once the workmen are covered by Industrial Disputes Act, the provisions of Industrial Disputes Act will prevail over the provisions of any other Act, in case of conflict. Here there is no conflict, they are only supplementing each other. The argument to deny the benefit of Industrial Disputes Act to respondent workmen must, therefore, fail. Reference in this connection may be made to *Adaishwar Lal vs. Labour Court* (1970 Lab. JC 936 Delhi). In view of the above discussion we see no merit in the petition. Dismissed with costs. Counsel's fee is fixed at Rs. 500/-".

10. It is submitted by learned counsel that since Section 3 of the Working Journalists Act applies the provisions of the Industrial Disputes Act to the working journalist covered under the Act and as per the decision of the Delhi High Court the Shops and Establishments Act is complimentary to the Industrial Disputes Act, hence the said Act is also applicable to the working journalists and recovery of amount due under the Wage Board constituted under the Working Journalists Act.

11. It is lastly submitted by learned counsel that even it is presumed that a wrong forum has been chosen, it does not mean that the relief itself should go out and the person concerned should not be granted the relief which they are entitled as per the law.

12. On a consideration of the aforesaid submissions of learned counsel for the parties, this Court finds force in the submission of learned counsel for the petitioner. It is evident from the Division Bench decision of this Court in *Samachar Bharti's case* (supra) that the Working Journalists Act has been held to be a complete code in itself to the exclusion of the applicability of the provisions of the Bihar Shops and Establishments Act which matter was specifically under consideration before the Division Bench. Once it is so held it is evident that it is not open to the working journalists to take recourse to the provisions of the Bihar Shops and Establishments Act for redressal of any of their grievance for recovery of any amount due under the Working Journalists Act.

13. So far as reliance by learned counsel for the respondent No. 2 upon the

provisions of Section 17(1) and (2) of the Working Journalists Act is concerned, the same also appears to be wholly misconceived as the reference to any other mode of recovery can only mean the mode of recovery which may be permissible under the Working Journalists Act read with the provisions of the Industrial Disputes Act which has been made specifically applicable to them by Sections 3 and 4 of the Act. Once it is held that recourse cannot be taken by the working journalists to the provisions of the Bihar Shops and Establishments Act since the Working Journalists Act itself a complete code, there cannot be any question of interpreting the provisions of Section 17 to the contrary.

14. In this regard the decision of the Karnataka High Court in the case of Newspapers and Periodicals (*supra*) do not at all support the contention of learned counsel for the respondent No. 2 and the matter considered in the said decision has no applicability at all with the issue raised herein.

15. Similarly the reliance upon the decision of the Delhi High Court in Delhi Consumer Co-operative Wholesale Stores Ltd. (*supra*) is also wholly misconceived as the issue therein was one relating to the application of the Industrial Disputes Act vis-a-vis the Delhi Shops and Establishments Act the matter did not concern the applicability of the Working Journalists Act.

16. The contention of learned counsel for the respondent No. 2 that the Deputy Labour Commissioner is a Labour Court is also misconceived since u/s 2(g) of the Working Journalists Act all words and expressions used but not defined in that Act and defined in the Industrial Disputes Act, 1947 shall bear the meaning assigned in the latter Act and the word Labour Court has been defined by Section 2(b) to mean a Labour Court constituted u/s 7 of the Industrial Disputes Act. The provisions of Section 7 clearly show that such a Labour Court has to be constituted by an appropriate Government by notification in the Official Gazette. The Deputy Labour Commissioner has certainly not been constituted by the Government as a Labour Court by any such notification u/s 7.

17. The other submissions of learned counsel for the respondent No. 2 that even when a wrong forum has been chosen the relief cannot go out is also unacceptable as the decision on jurisdiction does not bar the relief but only bars the entertainment of the matter by such wrong forum. Thus in the light of the aforesaid discussions, the writ application is allowed. The impugned orders dated 8.1.2006 and 21.12.06/14.5.07 passed by the Deputy Labour Commissioner, Patna in B.S.E. Case No. 3 of 2005 are quashed and it is held that the Deputy Labour Commissioner, Patna has no jurisdiction to entertain an application under the Bihar Shops and Establishments Act with regard implementing the award of a Wage Board constituted under the Working Journalists Act and as a result the entire proceedings being B.S.E. Case No. 3 of 2005 are also quashed.